

#1

IN THE CIRCUIT COURT FOR MONTGOMERY COUNTY, MARYLAND

EATON PLACE ASSOCIATES, LLC,
c/o The Scott Group, Inc.
110 N. Washington Street, Suite 300
Rockville, Maryland 20850

Plaintiff,

v.

Case No. _____

NOVA WOMEN'S HEALTH CARE, INC.,
t/a NOVA Health Care
10400 Eaton Place, Suite 515
Fairfax, Virginia 22030

and

MI YOUNG KIM
10400 Eaton Place, Suite 515
Fairfax, Virginia 22030

Defendants.

Case# 056757
NON CASE
CV CLERK FEE- 30.00
MD LEGAL SERV 37.00
TOTAL 67.00
Rec'd NOVE Rm 4 45565
LEX MLN Bk 4 1670
Dec 20 2011 11:44 am

COMPLAINT

Plaintiff Eaton Place Associates, LLC, by counsel, files this Complaint against Defendants NOVA Women's Health Care, Inc. t/a NOVA Health Care and Mi Young Kim, and in support thereof states as follows:

Introduction

1. This is a Complaint for a Declaratory Judgment in which Plaintiff Eaton Place Associates, LLC seeks a determination as to the nature and scope of Defendant NOVA Women's Health Care, Inc. t/a NOVA Health Care's obligations under a lease agreement, as well as a declaration that its conduct constitutes a material breach thereof.

11325 Random Hills Road, Suite 200, Fairfax, Virginia 22030
TEL 703.273.8898 FAX 703.273.8897

Cameron McEvoy PLLC
2011 DEC 20 PM 12:01

RECEIVED
CLERK'S OFFICE
MONTGOMERY CO. MD

Parties

2. Plaintiff Eaton Place Associates, LLC (“Eaton”) is a limited liability company organized and existing under the laws of the State of Maryland with its principal place of business located in Montgomery County.

3. At all times relevant herein, Defendant NOVA Women’s Health Care, Inc. (“NOVA”) has operated an abortion clinic, at times under the trade name “NOVA Health Care”, purportedly as a corporation organized and existing under the laws of the Commonwealth of Virginia.

4. Upon information and belief, NOVA regularly advertises its business in, and solicits patients from, the State of Maryland.

5. At all times relevant herein, Defendant Mi Young Kim (“Kim”) has been the President of NOVA and an adult individual residing in the Commonwealth of Virginia.

Jurisdiction and Venue

6. Jurisdiction is vested in this Court over NOVA pursuant to Md. Code Ann., Courts and Judicial Proceedings § 1-501 and § 6-103 based upon NOVA’s transaction of business in the State of Maryland and its execution of a contract containing a provision (as set forth more fully below) wherein NOVA consented to litigate any contractual disputes in Maryland.

7. Jurisdiction is vested in this Court over Kim pursuant to Md. Code Ann., Courts and Judicial Proceedings § 1-501 and § 6-103 based upon Kim’s execution of a personal guaranty of a contract between Eaton and NOVA (as set forth more fully below) that was to be performed in part in the State of Maryland.

8. Venue is proper pursuant to Md. Code Ann., Courts and Judicial Proceedings

§ 6-201(b) as NOVA contractually consented to litigate any contractual disputes in Montgomery County, Maryland.

Factual Background

9. At all times relevant herein, Eaton has owned certain commercial rental property located at 10400 Eaton Place, Fairfax, Virginia 22030 (the "Building").

10. By Office Building Lease dated May 23, 2006 (the "Lease"), Eaton leased one of the Building's office suites (the "Premises") to NOVA.

11. A true and accurate copy of the Lease, as amended, is attached hereto and incorporated herein as Exhibit A.

12. In connection with the Lease, Kim executed a Guaranty of Lease (the "Guaranty") on or about May 23, 2006, personally guaranteeing all sums stated in the Lease, including but not limited to reasonable attorney's fees incurred by Eaton.

13. A true and accurate copy of the Guaranty is attached hereto and incorporated herein as Exhibit B.

14. Paragraph 6.1 of the Lease governs the use of the Premises and specifies that: "Tenant will not use or occupy the Premises for any disorderly, unlawful, or extra hazardous purposes, or for any purpose that will constitute waste, nuisance or unreasonable annoyance to Landlord or other tenants of the Building, or for any purpose prohibited in the rules and regulations promulgated by Landlord."

15. Paragraph 6.1 of the Lease further specifies that "a use that on a regular basis attracts a large number of people would cause unreasonable annoyance to Landlord and other tenants of the Building."

16. NOVA's operation of an abortion clinic on the Premises has attracted numerous protestors who protest in front of the Building on a regular basis and whose presence and actions constitute an unreasonable annoyance to Eaton as well as its other tenants in the Building who are trying to run their respective businesses.

17. Exhibit A to the Lease also sets forth certain rules to which NOVA agreed and paragraph 1 thereof provides that "Tenant shall not permit the visit to the Premises of persons in such numbers or under such conditions as to unreasonably interfere with the use and enjoyment of the entrances, corridors, elevators and other public portions or facilities of the Building by other tenants."

18. Disturbingly, a number of NOVA's patients appear to have been allowed to leave its office too soon after their procedures and, as a result of post-operative aftereffects, have been observed lying down in the corridors within the Building and, in some instances, even vomiting.

19. The presence of individuals lying on the floors of the common area hallways to the Building and, in some instances getting physically ill, unreasonably interferes with the use and enjoyment of the public portions of the Building by other tenants.

20. Article XX defines an "Event of Default" as including the "violation or failure to observe any other covenant or condition of th[e] Lease for a period of thirty (30) days following Landlord's or Landlord's attorney's written notice thereof to Tenant" and provides for the recovery of reasonable attorney's fees sustained by Eaton as a result thereof.

21. Eaton provided NOVA with notice of the aforementioned violations of the Lease as early as April 12, 2011.

22. Most recently, Eaton's legal counsel provided a formal notice of default to NOVA by letter dated November 23, 2011.

23. A true and accurate of the November 23, 2011 letter is attached hereto and incorporated herein as Exhibit C.

24. By letter dated November 29, 2011, NOVA's legal counsel responded by denying "the existence of any default" and indicating that NOVA would not avail itself of the thirty (30) day cure period to remedy the stated violations of the Lease.

25. A true and accurate of the November 29, 2011 letter is attached hereto and incorporated herein as Exhibit D.

26. Article XXIII of the Lease states that "[i]n the event of litigation or other disputes, a trial or other legal action will take place in Montgomery County, Maryland."

27. Eaton has satisfied all conditions precedent prior to the filing of this lawsuit, except to the extent that the performance of any such conditions has been waived, prevented or otherwise excused by virtue of NOVA's conduct.

COUNT I
(Declaratory Judgment)

28. Eaton repeats and incorporates by reference the allegations contained within paragraphs 1 through 27 above as if fully set forth herein.

29. An actual present controversy exists between Eaton and NOVA concerning their respective rights and obligations under the Lease.

30. Eaton is entitled to a declaratory judgment construing the Lease and declaring the parties' respective rights, status and other legal relations as provided for in Md. Code Ann., Courts and Judicial Proceedings §§ 3-406 and 3-407.

31. Eaton requests that this Court declare that NOVA's aforementioned conduct constitutes an Event of Default, as that phrase is defined in the Lease, and, accordingly, that

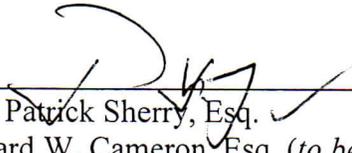
Eaton is entitled to exercise all contractual rights and remedies arising out of NOVA's default under the Lease.

WHEREFORE, in consideration of the foregoing, Plaintiff Eaton Place Associates, LLC moves this Court to grant it the following relief:

- (a) Declaring that NOVA's conduct constitutes an Event of Default, as that phrase is defined in the Lease, and, accordingly, that Eaton is entitled to exercise all contractual rights and remedies arising out of NOVA's default under the Lease;
- (b) Awarding Eaton its reasonable attorney's fees pursuant to the Lease; and
- (c) Granting such further relief as this Court deems just and proper.

Respectfully submitted,

EATON PLACE ASSOCIATES, LLC
By Counsel


John Patrick Sherry, Esq. ✓
Edward W. Cameron, Esq. (*to be admitted pro hac vice*)
Cameron/McEvoy PLLC
11325 Random Hills Road, Suite 200
Fairfax, Virginia 22030
(703) 273-8898 (telephone)
(703) 273-8897 (facsimile)
jpsherry@cameronmcevoy.com
ecameron@cameronmcevoy.com
Counsel for Plaintiff