

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER-----X
KELA TENNIS, INC.,

Plaintiff,

-against-

CITY OF MOUNT VERNON, FIGUEROA &
SON CONTRACTING CO., INC., and
RICHARD THOMAS, MAYOR OF THE CITY
OF MOUNT VERNON,Defendants.
-----X**SUMMONS**

Index No.

TO THE ABOVE-NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED to answer the Complaint in this action and to serve a copy of your Answer; or, if the Complaint is not served with this Summons, to serve a Notice of Appearance upon the Plaintiff's Attorneys, within twenty (20) days after the service of this Summons, exclusive of the date of service or within thirty (30) days after the service is complete if this Summons is not personally delivered to you within the State of New York. If you fail to so appear or answer, judgment will be taken against you by default for the relief demanded in the Complaint.

Dated: White Plains, New York
June 6, 2018**KEANE & BEANE, P.C.**By: 

Joel H. Sachs

Andrew P. Tureaud

Attorneys for Plaintiff Kela Tennis, Inc.

445 Hamilton Avenue, 15th Floor

White Plains, New York 10601

(914) 946-4777

To: City of Mount Vernon
Defendant
Mount Vernon City Hall
One Roosevelt Square
Mt. Vernon, NY 10550

Figueroa & Son Contracting Co., Inc.
Defendant
64 Ashland Street
New Rochelle, NY 10801

Richard Thomas
Mayor of the City of Mount Vernon
Defendant City of Mount Vernon
Mount Vernon City Hall
One Roosevelt Square
Mt. Vernon, NY 10550

SUPREME COURT OF THE STATE OF NEW YORK
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KELA TENNIS, INC.,

Plaintiff,

-against-

THE CITY OF MOUNT VERNON,
FIGUEROA & SON CONTRACTING CO,
INC., and RICHARD THOMAS, MAYOR OF
THE CITY OF MOUNT VERNON,Defendants.
-----X**VERIFIED COMPLAINT**

Index No.:

Plaintiff KELA TENNIS, INC. ("Kela Tennis" or "Plaintiff"), by its attorneys, KEANE & BEANE, P.C., as and for its Verified Complaint in this matter, alleges as follows:

Nature of Case

1. Plaintiff brings this action against Defendant City of Mount Vernon ("Mt. Vernon"), Figueroa & Son Contracting Co., Inc. ("Figueroa"), and Richard Thomas, Mayor of the City of Mount Vernon ("Mayor Thomas") resulting from Mt. Vernon's breach of a License Agreement dated February 26, 2015, whereby Mt. Vernon granted to Kela Tennis the exclusive right, license and privilege to maintain and operate an indoor and outdoor tennis facilities at Memorial Field in the City of Mt. Vernon for a term of fifteen (15) years, commencing on April 1, 2015 (the "License Agreement").

2. At the time Kela Tennis and Mt. Vernon entered into the License Agreement, the tennis facilities at Memorial Field were incomplete and not fully-developed. Pursuant to the License Agreement, Mt. Vernon was obligated to make capital improvements to the

tennis facility, and to provide Kela Tennis with the utility infrastructure to properly operate indoor and outdoor tennis facilities at Memorial Field.

3. From the outset, Mt. Vernon failed to honor its obligations to Kela Tennis pursuant to the License Agreement by, among other things, constructing only six (6) of the eight (8) tennis courts required pursuant to the License Agreement, by failing to complete construction of the clubhouse and restrooms, and by not installing the utility infrastructure or lighting necessary to permit Kela Tennis to operate an indoor and outdoor tennis facility.

4. The various breaches of the License Agreement by Mt. Vernon caused severe delays in the opening of the tennis facility, and resulted in Kela Tennis expending more than \$340,000.00 in out of pocket expenses to make improvements to the tennis facility that were necessary for the facility to open, but which were obligation of Mt. Vernon pursuant to the License Agreement.

5. As a result of the significant out of pocket expenses incurred by Kela Tennis to open the tennis facility, Mt. Vernon and Kela Tennis entered into an Addendum to the License Agreement dated December 2015 (the "License Agreement Addendum"), whereby Mt. Vernon agreed to accept significantly reduced annual license fees from Kela Tennis.

6. By 2016, Mt. Vernon had virtually abandoned its efforts to complete construction at the tennis facility, leaving an unfinished skeleton steel structure and other incomplete construction at the facility.

7. Mt. Vernon's failure to complete the capital improvements at the tennis facility pursuant to the License Agreement has caused Kela Tennis to expend significant sums of money to rent office and restroom trailers to service the tennis facility since it

opened in May 2015. As a result of the ongoing expenses incurred by Kela Tennis, Mt. Vernon DPW Commissioner Ralph Uzzi, Mt. Vernon Recreation Commissioner Darren Morton and Mt. Vernon Mayor Ernie Davis advised Kela Tennis that it did not have to remit license fees to Mt. Vernon, or reimburse Mt. Vernon for the ongoing utility charges at the tennis facilities pursuant to the License Agreement, until such time as Mt. Vernon so advised.

8. In 2018, Mt. Vernon and Mayor Thomas embarked on a mission to restore Memorial Field, at the expense, and to the detriment of, Kela Tennis.

9. Notwithstanding the License Agreement, commencing in February 2018, corporation counsel and outside counsel for Mt. Vernon, made repeated demands that Kela Tennis to cease doing business and immediately vacate the tennis facility so that Mt. Vernon could build an eight-lane track at Memorial Field.

10. Upon information and belief, the demands made upon Kela Tennis were made at the express direction of Mayor Thomas.

11. From February 18, 2018 to present, Mt. Vernon gave Kela Tennis a host of reasons, each of them false, to support its demand that Kela Tennis vacate the tennis facility.

12. By letter dated February 3, 2018, counsel for the City wrote to Kela Tennis claiming Kela Tennis was in default of the License Agreement by failing to make the license fee payments to Mt. Vernon, which breach Kela Tennis vehemently denied.

13. Thereafter, by letter dated February 16, 2018, Corporation Counsel for Mt. Vernon wrote the Kela Tennis advising that the long deteriorated grandstands at

Memorial Field now constituted an “emergency condition” under the Mt. Vernon City Code requiring Kela Tennis to immediately vacate the tennis facilities.

14. Upon information and belief, Mayor Thomas directed corporation counsel for Mt. Vernon to manufacture an “emergency condition” requiring Kela Tennis to vacate the tennis facility.

15. At a meeting with corporation counsel and Kela Tennis on February 28, 2018, corporation counsel for Mt. Vernon advised Kela Tennis that it must vacate the tennis facility on or before March 1, 2018, because the City’s insurer would not issue a policy of insurance covering Mt. Vernon if Kela Tennis continued to maintain and operate the tennis facility, and because the New York State Department of Environmental Conservation (“DEC”) deemed the cleanup work at Memorial Field to be hazardous, requiring Kela Tennis to vacate the tennis facility.

16. Kela Tennis advised corporation counsel for Mt. Vernon that it maintained a policy of hazard and liability insurance covering the tennis facility and surrounding area at Memorial Field.

17. Kela Tennis also contacted DEC and was advised that regulated material at Memorial Field constituted non-hazardous solid waste.

18. By letter dated April 30, 2018, outside counsel for Mt. Vernon advised Kela Tennis that Mt. Vernon revoked the License Agreement, and demanded Kela Tennis vacate the tennis facility by June 1, 2018, or Mt. Vernon would use force, if necessary, to dispossess Kela Tennis.

19. On May 12, 2018, outside counsel for Mt. Vernon again wrote to Kela Tennis advising that the structure of the grandstands at Memorial Field constituted an “unsafe condition” under the Mt. Vernon City Code, and demanded that Kela Tennis immediately vacate the Tennis facility.

20. In late May 2018, Mt. Vernon commenced demolition of the grandstands at Memorial Field, which did not interfere in any manner with Kela Tennis’ operation of the tennis facility adjacent to Memorial Field. Mt. Vernon safely demolished the grandstands without any incident with regard to Kela Tennis.

21. Mt. Vernon’s demands that Kela Tennis vacate the tennis facility continued unabated. At or around midnight on June 1, 2018, under the cover of darkness, Mt. Vernon, with the assistance of Defendant Figueroa, forcibly gained entry to the indoor tennis facility at Memorial Field operated by Kela Tennis, vandalized the tennis bubble covering the tennis courts causing it to rapidly deflate damaging the light fixtures and other equipment owned by Kela Tennis therein, and shut off and padlocked the utilities servicing the tennis facility. Upon information and belief, Mayor Thomas directed Mt. Vernon to vandalize the tennis bubble and dispossess Kela Tennis in the early hours of the morning, with the use of force and self-help.

22. Mt. Vernon’s use of force and self-help to vandalize the tennis bubble and forcibly lock out Kela Tennis from its maintenance and operation of the tennis facility at Memorial Field constitutes a material breach of the License Agreement.

THE LICENSE AGREEMENT AND ADDENDUM

23. On February 26, 2015, Mt. Vernon and Kela Tennis entered into the License Agreement, a true copy of which is attached hereto as Exhibit "A".

24. Pursuant to the License Agreement, Mt. Vernon granted to Kela Tennis, and Kela Tennis accepted from Mt. Vernon, the exclusive right, license and privilege to maintain and operate indoor and outdoor tennis facilities at the Memorial Field Tennis Area located at 431 Garden Avenue, Mt. Vernon, NY 10550 (the "Memorial Field Tennis Facility").

25. The License Agreement provides Kela Tennis with the exclusive right to maintain and operate the Memorial Field Tennis Facility for a term of fifteen (15) consecutive tennis seasons, commencing on April 1, 2015, and continuing through November 30, 2029.

26. Pursuant to the License Agreement, Mt. Vernon was obligated to build and complete construction of the clubhouse at the Memorial Field Tennis Facility at its cost and expense, including the erection of a steel structure with roof insulation, exterior finishing and infrastructure, including plumbing lines, gas lines, and electrical service.

27. Mt. Vernon was further responsible for all fixed equipment at the Memorial Field Tennis Facility, including underground electric wiring, underground plumbing facilities, concrete and earth anchor work, underground watering system and concrete equipment pads and electric blockhouse fences.

28. Pursuant to the License Agreement, Kela Tennis agreed to pay yearly license fees to Mt. Vernon on a monthly basis.

29. In December 2015, as a result of Mt. Vernon's failure to complete the capital improvements and utility infrastructure at the Memorial Field Tennis Facility, and the resulting delays in the ability of Kela Tennis to open the tennis facility, Mt. Vernon drafted an Addendum to License Agreement dated December 2015 (the "License Agreement Addendum") which reduced the license fees to be paid by Kela Tennis. A true copy of the License Agreement Addendum is attached hereto as Exhibit "B".

30. Mt. Vernon's failure to complete the capital improvements and utility infrastructure at the Memorial Field Tennis Facility caused the inability of Kela Tennis to open the tennis facility from September 2015 through April 2016, and again from September 2016 through November 2016.

31. As a result of the above, Mt. Vernon DPW Commissioner Ralph Uzzi, Mt. Vernon Recreation Commissioner Darren Morton and Mt. Vernon Mayor Ernie Davis advised Kela Tennis that its obligations to pay license fees to Mt. Vernon pursuant to the License Agreement and to reimburse Mt. Vernon for the utilities at the Memorial Field Tennis Facility were suspended until such time as Mt. Vernon completed construction at the Memorial Field Tennis Facility pursuant to the License Agreement.

32. To date, Mt. Vernon has failed and refused to complete the construction of the capital improvements or provide the utility infrastructure required by Kela Tennis to maintain and operate indoor and outdoor tennis at the Memorial Field Tennis Facility.

THE PARTIES

33. Plaintiff Kela Tennis was and still is a domestic corporation duly authorized to conduct business in the County of Westchester, State of New York.

34. Upon information and belief, Defendant Mt. Vernon was and still is a municipal corporation duly organized and existing under and by virtue of the laws of the State of New York.

35. Upon information and belief, Defendant Figueroa was and still is an inactive domestic corporation with a place of business located at 64 Ashland Street, New Rochelle, NY 10801, County of Westchester, State of New York.

36. Defendant Richard Thomas was and still is the Mayor of the City of Mount Vernon, with offices located in the County of Westchester, State of New York.

VENUE

37. Plaintiff hereby designates Westchester County as the venue for the instant action pursuant to CPLR §509.

**AS AND FOR A
FIRST CAUSE OF ACTION
(Breach of License Agreement)**

38. Plaintiff repeats and realleges the allegations set forth in paragraphs "1" through "37" hereof as if fully set forth herein.

39. At all times, Kela Tennis performed each and every obligation to be performed on its part pursuant to the License Agreement.

40. Mt. Vernon breached the License Agreement by failing and refusing to complete the construction of the capital improvements or provide the utility infrastructure required by Kela Tennis to maintain and operate indoor and outdoor tennis at the Memorial Field Tennis Facility.

41. Mt. Vernon also breached the License Agreement by failing to construct eight (8) tennis courts at the Memorial Field Tennis Facility, but only constructing six (6) courts, by failing to complete the outdoor lighting at the facility and by not completing the construction of the tennis clubhouse which was to provide a tennis pro shop, concessions, a fitness gym and an after school program.

42. Mt. Vernon further breached the License Agreement, by alleging, in bad faith, that Kela Tennis was in default of the License Agreement, and with the assistance of Defendant Figueroa, forcibly gaining entry to the Memorial Field Tennis Facility, vandalizing the tennis bubble covering the tennis courts causing it to rapidly deflate damaging the light fixtures and other equipment owned by Kela Tennis therein, and shutting off and padlocking the utilities servicing the tennis facility.

43. Mt. Vernon and Figueroa's unlawful use of force to vandalize the tennis bubble and improperly shut off and padlock the utilities at the Memorial Field Tennis Facility, upon information and belief at the express direction of Mayor Thomas, has caused Kela Tennis to sustain monetary damages, including but not limited to loss of income and

physical damage to the tennis bubble, lighting fixtures and other equipment within the Memorial Field Tennis Facility at the time Mt. Vernon and Figueroa vandalized and deflated the tennis bubble.

44. As a result of the above, Kela Tennis has sustained damages in an amount exceeding \$25,000,000.

AS AND FOR A SECOND CAUSE OF ACTION
(Breach of Covenant of Good Faith and Fair Dealing)

45. Plaintiff repeats and realleges the allegations set forth in paragraphs "1" through "44" hereof as if fully set forth herein.

46. Mt. Vernon and Mayor Thomas breached the covenant of good faith and fair dealing implicit in the License Agreement with respect to the License Agreement by failing to afford Kela Tennis reasonable time and access to the Memorial Field Tennis Facility to remove the tennis bubble and such other lighting and equipment owned by Kela Tennis as provided for in Paragraph 25 of the License Agreement.

47. As a result of the breach of the covenant of good faith and fair dealing pursuant to the License Agreement by Mt. Vernon and Mayor Thomas, Kela Tennis has sustained damages in an amount to be determined at the trial of this action but no less than \$2,000,000.00.

AS AND FOR A THIRD CAUSE OF ACTION
(Permanent Injunction)

48. Plaintiff repeats and realleges the allegations set forth in paragraphs "1" through "47" hereof as if fully set forth herein.

49. The default notices dated February 3, 2018 and April 30, 2018 generated by outside counsel for Mt. Vernon contained materially false allegation(s) that Kela Tennis was in arrears to Mt. Vernon in the sum of \$265,000.00 pursuant to the License Agreement and License Agreement Addendum.

50. Upon information and belief, the materially false default notices were sent at the express direction of Mayor Thomas.

51. Pursuant to the License Agreement, Mt. Vernon only had the right to terminate the License Agreement if Kela Tennis was in breach thereof.

52. Pursuant to the License Agreement Addendum and the agreement reached with Department of Public Works Commissioner Ralph Uzzi, Mount Vernon Recreation Commissioner Darren Morton and Mount Vernon Mayor Ernie Davis in 2016, Kela Tennis owed no license fees to Mt. Vernon at the time Mt. Vernon's counsel served the purported default notices on Kela Tennis.

53. Consequently, the default notices provided by counsel for Mt. Vernon to Kela Tennis were materially false, made in bad faith, and failed to constitute proper notice to Kela Tennis that it was in breach of the License Agreement and License Agreement Addendum.

54. Based on the above, Mt. Vernon failed to properly effect a revocation of the License Agreement such that it was authorized and permitted to use self-help to, with the help of Figueroa, vandalize the tennis bubble at the Memorial Field Tennis Facility in an effort to eject Kela Tennis in a forcible and unlawful manner.

55. Based on the above, Kela Tennis is entitled to be restored to occupancy and possession of the Memorial Field Tennis Facility.

56. Plaintiff is entitled to a judgment permanently enjoining and restraining Mt. Vernon, Mayor Thomas and Figueroa, and all persons or parties claiming under them from: (i) obstructing and impeding Plaintiff's operation and maintenance of the Memorial Field Tennis Facility, pursuant to the License Agreement, restoring Plaintiff to its occupancy of the Memorial Field Tennis Facility, and prohibiting Defendants from demolishing any portion of the Memorial Field Tennis Facility; (ii) compelling Defendants to remove the lock(s) unlawfully placed by them on the utilities servicing the Memorial Field Tennis Facility; and (iii) compelling Defendants Mt. Vernon and Mayor Thomas to comply with paragraph 25 of the License Agreement, which obligates Defendant Mt. Vernon to provide Kela Tennis reasonable time and access to the Memorial Field Tennis Facility to remove the tennis bubble and other equipment owned by Kela Tennis located at the tennis facility in the event the License Agreement expires or is terminate.

57. Plaintiff has no adequate remedy at law.

58. Plaintiff has not sought the relief requested in this action from this or any other court.

AS AND FOR A FOURTH CAUSE OF ACTION
(Preliminary Injunction)

59. Plaintiff repeats and realleges the allegations set forth in paragraphs "1" through "58" hereof as if fully set forth herein.

60. Paragraph 25 of the License Agreement provides that at the expiration or termination of the License Agreement, Kela Tennis shall be permitted reasonable time and access to the Memorial Field Tennis Facility to remove the tennis bubble and such other equipment owned by Kela Tennis used at the facility.

61. Mt. Vernon and Mayor Thomas have failed to abide by Paragraph 25 of the License Agreement, and have refused to permit Kela Tennis reasonable time and access to the Memorial Field Tennis Facility to remove the tennis bubble and its other equipment.

62. On June 6, 2018, Kela Tennis was advised by Mt. Vernon that it would not be permitted access to the Memorial Field Tennis Facility to remove the tennis bubble and other equipment at the tennis facility.

63. Based on the above, Kela Tennis is entitled to a judgment enjoining Mt. Vernon and Mayor Thomas from denying Kela Tennis reasonable time and access to the Memorial Field Tennis Facility to remove the tennis bubble and other equipment Kela Tennis owns at the tennis facility.

64. Plaintiff has not adequate remedy at law.

65. Plaintiff has not sought the relief requested in this action from this or any other court.

AS AND FOR A FIFTH CAUSE OF ACTION
(Treble Damages)

66. Plaintiff repeats and realleges the allegations set forth in paragraphs "1" through "65" hereof as if fully set forth herein.

67. As set forth above, Kela Tennis was disseized, ejected and put out of the Memorial Field Tennis Facility by Mt. Vernon and Mayor Thomas, and kept out by unlawful means.

68. Pursuant to RPAPL §853, Kela Tennis is entitled to a judgment awarding treble damages against Defendants Mt. Vernon, Figueroa and Mayor Thomas, based on their unlawful conduct set forth herein.

WHEREFORE, Plaintiff Kela Tennis respectfully requests the entry of judgment against Defendants Mt. Vernon, Figueroa and Mayor Thomas, as follows:

i) On Plaintiff's First Cause of Action for judgment against Defendants Mt. Vernon and Mayor Thomas for breach of the License Agreement in a sum exceeding \$25,000,000, with interest thereon;

ii) On Plaintiff's Second Cause of Action, for judgment against Defendants Mt. Vernon and Mayor Thomas for breach of the covenant of good faith and fair dealing implicit in the License Agreement in an amount to be determined at the trial of this action but no less than \$2,000,000, with interest thereon;

iii) On Plaintiff's Third Cause of Action: (a) for judgment permanently enjoining Defendants Mt. Vernon, Figueroa and Mayor Thomas, and all persons claiming under same, from obstructing and impeding Plaintiff's operation and maintenance of the Memorial Field Tennis Facility pursuant to the License Agreement, restoring Plaintiff to its occupancy of the Memorial Field Tennis Facility, and prohibiting Defendants from demolishing any portion of the Memorial Field Tennis Facility; (b) compelling Defendants to remove the lock(s) unlawfully placed by them on the utilities servicing the Memorial Field Tennis Facility; and (c) compelling Defendants Mt. Vernon and Mayor Thomas to comply with paragraph 25 of the License Agreement, which obligates Defendant Mt. Vernon to provide Kela Tennis reasonable time and access to the Memorial Field Tennis Facility to remove the tennis bubble and other equipment owned by Kela Tennis located at the tennis facility in the event the License Agreement expires or is terminate.

- iv) On Plaintiff's Fourth Cause of Action, for judgment against Defendant Mt. Vernon and Mayor Thomas enjoining Mt. Vernon from denying Kela Tennis reasonable time and access to the Memorial Field Tennis Facility to remove the tennis bubble and other equipment it owns at the tennis facility pursuant to Paragraph 25 of the License Agreement;
- v) On Plaintiff's Fifth Cause of Action, for judgment awarding treble damages against Defendants Mt. Vernon, Figueroa and Mayor Thomas based on their unlawful conduct set forth herein; and
- vi) That Plaintiff recover all costs and disbursements against the Defendants in this action, and for such other and further relief as the Court deems just and proper.

Dated: White Plains, New York
June 6, 2018

KEANE & BEANE, P.C.

By: 

Joel H. Sachs

Andrew P. Tureaud

Attorneys for Plaintiff Kela Tennis, Inc.

445 Hamilton Avenue, 15th Floor

White Plains, New York 10601

(914) 946-4777

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

KELA TENNIS, INC.,

Plaintiff,

-against-

THE CITY OF MOUNT VERNON, et al.,

Defendant(s).

VERIFICATION

Index No.:

STATE OF NEW YORK)

)ss.:

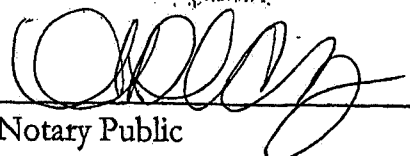
COUNTY OF WESTCHESTER)

KELA SIMUNYOLA, being duly sworn, deposes and says:

I am the President of Kela Tennis, Inc., the Plaintiff in the above-captioned action. I have read the foregoing Complaint and know the contents thereof; that the same is true to the best of my knowledge, except as to matters stated therein on information and belief and, as to those matters, I believe them to be true.


KELA SIMUNYOLA

Sworn to before me this
6th day of June, 2018


Notary Public

ERICA M DELACRUZ
Notary Public, State of New York
No. 01DE6196004
Qualified in Westchester County
Commission Expires Nov. 3, 2020