

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

BNY MELLON, NATIONAL
ASSOCIATION and THE BANK OF NEW
YORK MELLON,

Plaintiffs,

v.

OCCUPY PITTSBURGH, an unincorporated
association, JANE DOES (1-50), and JOHN
DOES (1-50),

Defendants.

CIVIL DIVISION

No.: GD 11-025549

**PLAINTIFFS' MOTION FOR
PRELIMINARY INJUNCTION**

Code: 003-Trespass Against Property Owner

Filed on behalf of Plaintiffs BNY Mellon,
National Association and The Bank of New
York Mellon

Counsel of Record for These Parties:

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IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

BNY MELLON, NATIONAL ASSOCIATION) and THE BANK OF NEW YORK MELLON,)	CIVIL DIVISION
Plaintiffs,)	No.: GD 11-025549
v.)	
OCCUPY PITTSBURGH, an unincorporated) association, JANE DOES (1-50), and JOHN) DOES (1-50),)	
Defendants.)	

PLAINTIFFS' NOTICE OF PRESENTATION

To: Defendant Occupy Pittsburgh, an unincorporated association
Defendants Jane Does (1-50), and
Defendants John Does (1-50)

TAKE NOTICE that Plaintiffs, BNY Mellon, National Association and The Bank of New York Mellon (collectively, "BNY Mellon"), will present Plaintiffs' Motion for Preliminary Injunction to the Court on December 27, 2011 at 9:30 am, as follows:

1. BNY Mellon will be presenting a *Motion to Assign Injunction Case to the Commerce and Complex Litigation Center* ("the Complex Case Designation Motion") before the Honorable Christine A. Ward, in the Court of Common Pleas of Allegheny County, 820 City-County

Building, 414 Grant Street, Pittsburgh, PA 15219 on December 22, 2011, at 9:30 a.m. or as soon thereafter as the Court directs.

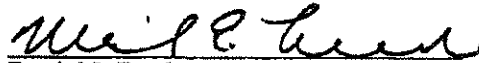
2. If the Court grants the Complex Case Designation Motion and assigns the case to the Commerce and Complex Litigation Center, the *Motion for Preliminary Injunction* will be presented to the Judge assigned by the Commerce and Complex Litigation Center, in the Court of Common Pleas of Allegheny County, City-County Building, Eighth Floor, 414 Grant Street, Pittsburgh, PA 15219, at 9:30 a.m. on December 27, 2011, or as soon thereafter as the Court directs.

3. If the case is not assigned to the Commerce and Complex Litigation Center, BNY Mellon will present the *Motion for Preliminary Injunction* to the Judge assigned by the Court to hear Motions in cases on the General Docket at 9:30 a.m. on December 27, 2011 in the Court of Common Pleas of Allegheny County, City-County Building, Eighth Floor, 414 Grant Street, Pittsburgh, PA 15219 on December 27, 2011, at 9:30 a.m. or as soon thereafter as the Court directs.

You are invited to attend and take any actions you may deem necessary.

REED SMITH LLP

Dated: December 12, 2011



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York Mellon*

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

BNY MELLON, NATIONAL ASSOCIATION and THE BANK OF NEW YORK MELLON,) Civil Division
) No.: GD 11-025549
Plaintiffs,)
v.)
OCCUPY PITTSBURGH, an unincorporated association, JANE DOES (1-50), and JOHN DOES (1-50),)
Defendants.)

PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

Plaintiffs, BNY Mellon, National Association and The Bank of New York Mellon, (collectively, "BNY Mellon"), by and through its undersigned counsel, and pursuant to Rule 1531 of the Pennsylvania Rules of Civil Procedure, respectfully request that this Honorable Court issue a preliminary injunction enjoining Defendants' unlawful occupation of its property. In support of this Motion, BNY Mellon incorporates the averments of the *Verified Complaint for Injunctive Relief* ("V. Compl.") filed in this action by reference as if fully set forth herein, and BNY Mellon further states as follows:

1. Plaintiff BNY Mellon, National Association is a National Bank Association with its principal place of business located at BNY Mellon Center, 500 Grant Street, Pittsburgh, PA 15258. BNY Mellon, National Association, was formerly known as Mellon Bank, N.A. (V. Compl. at ¶ 1).
2. Plaintiff The Bank of New York Mellon is a New York banking corporation with its principal place of business located at One Wall Street, New York, NY 10286. (V. Compl. at ¶ 2).

3. Upon information and belief, Defendant Occupy Pittsburgh is an unincorporated association that maintains a web-site at <http://www.occupypittsburgh.org/>; purports to have a General Assembly; and represents itself as being in solidarity with certain other groups, including Occupy Wall Street. (V. Compl. at ¶ 3).
4. Upon information and belief, Defendants Jane Does 1-50 are unidentified natural persons who are members of or otherwise affiliated or associated with Occupy Pittsburgh. (V. Compl. at ¶ 4).
5. Upon information and belief, Defendants John Does 1-50 are unidentified natural persons who are members of or otherwise affiliated or associated with Occupy Pittsburgh. Collectively, Occupy Pittsburgh, Jane Does 1-50, and John Does 1-50 shall be referred to as "Defendants." (V. Compl. at ¶ 5).

I. FACTUAL BACKGROUND

(A) BNY Mellon Green Is Accessory Open Space, Reserved For Future Development, and Not Urban Open Space Required to Be Provided in the Golden Triangle Zoning District.

- (1) **BNY Mellon Acquires and Constructs BNY Mellon Client Service Center Including the Open Space of BNY Mellon Green.**
6. On or about February 24, 1998, BNY Mellon, National Association, acquired certain real estate situate in the City of Pittsburgh, County of Allegheny, Pennsylvania, and bearing block and lot numbers 2-E-200-01, 2-E-216, 2-E-235, 2-F-215, and 2-F-250 from Card-Flo #1, Inc., by Special Warranty and Quit Claim Deed ("Card-Flo Deed") that subsequently was recorded with the Allegheny County Department of Real Estate at Deed Book Volume 10141, Page 331. (V. Compl. at ¶ 7, Ex. 1).
 7. On or about September 1, 1998, BNY Mellon, National Association, acquired certain real estate situate in the City of Pittsburgh, County of Allegheny, Pennsylvania, and bearing

block and lot number 2-F-230 from the Urban Redevelopment Authority of Pittsburgh, by deed ("URA Deed") that subsequently was recorded with the Allegheny County Department of Real Estate at Deed Book Volume 10294, Page 225. (V. Compl. at ¶ 8, Ex. 2). The URA Deed and Card-Flo Deed hereinafter is referred to as the BNY Mellon Property.

8. BNY Mellon acquired the BNY Mellon Property, which at the time was vacant, commercial real estate, for a project involving the construction of a multi-story operations center and associated 650 stall parking garage which is now known as BNY Mellon Client Service Center. (V. Compl. at ¶ 9).
9. On June 3, 1998, BNY Mellon, through its agent, filed an Application for Project Development Plan Approval with the Office of Zoning Administrator for the Department of City Planning ("City Planning") of Pittsburgh, Pennsylvania (the "Application"), regarding the BNY Mellon Property with BNY Mellon Client Service Center (the "Project"). (V. Compl. at ¶ 10, Ex. 3).
10. The provisions of the Pittsburgh Zoning Code in effect at the time of BNY Mellon's Application for approval of the Project and governing the City's review and subsequent approval of the Project is hereinafter referred to as the 1988 Zoning Code. (V. Compl. at ¶ 11, Ex. 4).
11. BNY Mellon proposed to build on the vacant, commercial real estate, *inter alia*, an eleven-story operations center, required parking, accessory "Urban Open Space," as defined in the 1988 Zoning Code, as well as certain additional temporary "Open Space," also defined, intended for future development. (V. Compl. at ¶ 12).

12. Importantly, the Application recognized that “[f]uture phases will be developed” on the temporary Open Space. (V. Compl. at Exhibit 3 at p. *3) (emphasis added.)
13. On June 16, 1998, City Planning presented a report to the City Planning Commission for Pittsburgh (“Planning Commission”) recommending preliminary approval of the Project (“June 16, 1998 Report”). (V. Compl at ¶ 14).
14. In the June 16, 1998 Report, City Planning stated, “[t]he building will occupy approximately one half the vacant property. **The remainder will be landscaped and reserved for future development.**” (V. Compl. at Exhibit 5 at p. *3) (emphasis added).
15. The June 16, 1998 Report states that the property to be reserved for future development as the “temporary open spaces” would be created at “Grant and Sixth Avenue, and one block to the east at Ross Street and Sixth Avenue.” *Id.*
16. The Planning Commission preliminarily approved the Project on June 16, 1998, subject to final approval of the landscape, building elevations, and sign designs. (V. Compl. at ¶ 16).
17. Subsequently, City Planning issued a Report (the “November 10, 1998 Report”) recommending final approval of the Project for the November 10, 1998 meeting of the Planning Commission. City Planning described the non-building portion of the Project as follows:

Permanent landscaping includes a permanent pedestrian promenade that will extend from Grant Street through the site to Sixth Ave Extension. This will provide a pedestrian walkway to the main entrance of the new building from Grant Street, and will serve as part of the Urban Open Space requirement.... **Temporary open spaces will be created at Grant and Sixth Avenue** and one block to the east at Ross Street and Sixth Avenue.

(V. Compl. at Exhibit 6 at p. *3) (emphasis added.)

18. During the November 10, 1998, regular meeting of the Planning Commission, the Planning Commission recommended final approval of the Project. Again, in its oral presentation, City Planning stated that:

The landscape plan involved a permanent pedestrian promenade extending from Grant Street through the site to Sixth Avenue. This will serve as part of the Urban Open Space requirement....

[A] temporary open space will be created at Grant and Sixth and also one block to the east at Ross and Sixth.

(V. Compl. at Exhibit 7 at p. *3). That same day the Planning Commission gave final approval to the Project.

19. Under the Project and as approved by the Planning Commission, the temporary Open Space situate at Grant Street and Sixth constitutes what today is known as, and hereinafter referred to as, "BNY Mellon Green".

(2) BNY Mellon Owns and Operates BNY Mellon Green.

20. BNY Mellon, National Association owns BNY Mellon Green. (V. Compl at ¶ 20). BNY Mellon, National Association leases BNY Mellon Client Services Center to The Bank of New York Mellon. (V. Compl. at Ex. 8). Through that lease, The Bank of New York Mellon controls and operates BNY Mellon Green. (V. Compl. at ¶ 23).
21. Pursuant to the Planning Commission's approved plan for the Project, BNY Mellon improved the temporary Open Space constituting the BNY Mellon Green which consists of landscaping with a series of internal sidewalks, benches, and a central fountain. (V. Compl. at ¶ 21).
22. Also, pursuant to the Planning Commission's approved plan for the Project, BNY Mellon constructed the pedestrian walkway immediately abutting the T-Station and connecting from Grant Street to Ross Street (the "Sidewalk") which Sidewalk was designated as

required accessory Urban Open Space for the Project. The Sidewalk is bordered by BNY Mellon Center, Ross Street, and BNY Mellon Green. (V. Compl. at ¶ 22).

23. Under the Project and as approved by the Planning Commission, BNY Mellon Green was intended to be reserved for future commercial development as a subsequent phase of BNY Mellon Client Services Center development, was only temporarily to be used as additional Open Space, and was not designated as Urban Open Space subject to the Urban Open Space provisions of the Pittsburgh Zoning Code. (V. Compl. at ¶ 24).

(3) “Urban Open Space” Differs from “Open Space.”

24. The 1988 Zoning Code required all new structures in C5-B Golden Triangle District B, including the proposed Project, to designate and provide 20% of the lot area at ground level as Urban Open Space. (V. Compl. at ¶ 25).
25. Urban Open Space is a defined term under the 1988 Zoning Code. 1988 Zoning Code § 903.02(o)(a) (definition of “Open Space, Urban”).
26. Under the 1988 Zoning Code, Urban Open Space serves one of the following four specific purposes: (1) facilitating pedestrian circulation; (2) providing space for “relaxation, sitting, informal recreation or activities such as entertainment, exhibits, eating and drinking”; (3) improving access to public transportation; and (4) providing connections to other urban or public open space network. (V. Compl. at ¶ 27).
27. As defined in the 1988 Zoning Code, Urban Open Space requires limited access to the “general public” only “during all business hours common to the area of the district” for these four purposes specified in the 1988 Zoning Code, § 903.02(o)(g). (V. Compl. at Exhibit 4 at p. *2) (citing Sections 903.02(o)(b), (c) & (g)).

28. Section 959.06(b)(4)(B)(6) of the 1988 Zoning Code expressly distinguishes "Open Space" from "Urban Open Space" by providing that "Open Space, in excess of that required by this ordinance, which may be provided on a development site shall be located and developed in a manner which does not disrupt or diminish the functioning or public utilization of the required [U]rban [O]pen [S]pace." (V. Compl. at Exhibit 4 at p *10).
29. Importantly, the 1988 Zoning Code separately defines Open Space as "that portion of a lot which is not occupied by buildings, parking areas, driveways, streets or loading areas," and, so defined, treats Open Space less restrictively than Urban Open Space. Unlike Urban Open Space, the 1988 Zoning Code does not require that such Open Space be made accessible to the public at all. (V. Compl. at ¶ 30, Exhibit 4 at pp. *2 & *10).
- (4) BNY Mellon Green Is Open Space in Excess of the Required Urban Open Space.
30. As part of the Project, BNY Mellon was required to provide approximately 21,405 square feet of Urban Open Space. However, in addition to the 21,405 square feet of Urban Open Space, BNY Mellon also provided 57,874 square feet of Open Space, including the temporary Open Space which constitutes BNY Mellon Green. (V. Compl. at ¶ 31).
31. BNY Mellon Green is Open Space provided in excess of the required Urban Open Space for the Project, and therefore is not subject to the requirements of the 1988 Zoning Code governing Urban Open Space. (V. Compl. at ¶ 32).
32. Under the Project and as approved by the Planning Commission, BNY Mellon Green is Open Space subject (at BNY Mellon's discretion) to future commercial development and is not required to be made accessible to the public. (V. Compl. at ¶ 33).
33. Under the Project and as approved by the Planning Commission, the only portion of the property between Grant Street and Ross Street designated as Urban Open Space was the

Sidewalk adjacent to BNY Mellon Green that extends from Grant Street to Ross Street in front of the main entrance at BNY Mellon Client Service Center. (V. Compl. at ¶ 34).

34. Under the Project and as approved by the Planning Commission, no portion of the Project, including the BNY Mellon Green or the Sidewalk, was dedicated to the public. (V. Compl. at ¶ 35).
35. BNY Mellon Green was, and remains, privately held, commercial property owned exclusively by BNY Mellon and reserved by BNY Mellon for future development. BNY Mellon is not required by the 1988 Zoning Code to make Open Space at BNY Mellon Green accessible to the public at any time. (V. Compl. at ¶ 36).
36. Accordingly, BNY Mellon Green is Open Space, reserved for future development, and not Urban Open Space required to be provided in the Golden Triangle Zoning District. (V. Compl. at ¶ 37).

(B) Occupy Pittsburgh Dispossesses BNY Mellon of BNY Mellon Green.

37. On October 15, 2011, Occupy Pittsburgh conducted certain operations, including marches and speeches in the City of Pittsburgh, which culminated in Defendants creating a make-shift occupation camp on BNY Mellon Green. The occupation camp occupies essentially the entirety of BNY Mellon Green. (V. Compl. at ¶ 38).
38. Defendants possessed BNY Mellon Green by erecting and maintaining temporary structures, such as tents, which form the occupation camp. (V. Compl. at ¶ 39).
39. Occupy Pittsburgh has represented that there are “50-odd occupiers” at the make-shift Occupy Pittsburgh camp at BNY Mellon Green. (V. Compl. at ¶ 40, Ex. 10).
40. Occupy Pittsburgh now has announced its intention to remain on BNY Mellon Green through the winter and beyond. (V. Compl. at ¶ 41).

41. Occupy Pittsburgh is seeking to raise funds for materials and supplies and proposes to erect more substantial shelters on BNY Mellon Green. (V. Compl. at ¶ 42).
42. Occupy Pittsburgh is further requesting “15lb propane cylinders and propane heaters.” (V. Compl. at Ex. 11). The presence of combustible heat sources would create safety risks, including but not limited to fire, explosion and carbon monoxide poisoning, if improperly stored or used at BNY Mellon Green. (V. Compl. at ¶ 43).
43. Historically, BNY Mellon closes BNY Mellon Green during the winter by placing chains at all pedestrian entrances to BNY Mellon Green. Because BNY Mellon closes BNY Mellon Green in the winter, there is no snow removal or treatment at BNY Mellon Green. (V. Compl. at ¶ 44).
44. On December 9, 2011, BNY Mellon delivered and posted at BNY Mellon Green a notice (the “Notice”) that required Defendants to remove “all tents and other structures as well as camping equipment and other stored personal items from BNY Mellon Green by no later than noon on Sunday, December 11, 2011.” (V. Compl. at ¶ 45, Ex. 12).
45. The Notice also states that “[a]fter that date, overnight camping and the presence of any structures, camping equipment and stored personal items will be prohibited and considered an unlawful trespass....” (V. Compl. at ¶ 46, Ex. 12)
46. Despite adequate notice to vacate the property, Defendants have failed to remove all tents and other structures as well as camping equipment and other stated personal items and continue to engage in camping activities at BNY Mellon Green. (V. Comp. at ¶ 57).
47. Defendants’ continued occupation of BNY Mellon Green in the manner set forth in Paragraph 46 which is incorporated by reference as if fully set forth herein (the “Occupation”) constitutes a trespass or alternatively a nuisance. (V. Compl. at ¶ 58).

II. ARGUMENT

48. A preliminary injunction is appropriately granted where: (1) the movant possesses a clear right to the injunctive relief; (2) the injunctive relief prevents immediate and irreparable harm to the movant; (3) refusing the injunctive relief will result in greater harm than granting it; (4) the injunctive relief will not adversely affect the public interest; and (5) the injunctive relief is narrowly tailored and restores the status quo.

(A) BNY Mellon Possesses a Clear Right to Injunctive Relief.

49. BNY Mellon's right to relief is clear.

50. Defendants' continued Occupation of BNY Mellon Green constitutes a trespass or alternatively a nuisance. (V. Compl. at ¶ 50).

51. In seeking a preliminary injunction, "a party's right to relief is clear if the party seeking the preliminary injunction is likely to prevail on the merits of the permanent injunction." *The Woods at Wayne Homeowners Ass'n. v. Gambone Bros. Constr. Co., Inc.*, 893 A.2d 196, 204 (Pa. Commw. Ct. 2006).

52. In order to show that a party is likely to prevail on the merits of a permanent injunction, a party must be able to show that it will likely prevail on the merits of the underlying cause of action. *See id.* at 207.

(1) BNY Mellon Is Likely to Prevail on the Merits of Its Claim for Trespass.

53. Pennsylvania law defines a trespass as an unprivileged, intentional intrusion upon land in possession of another. *Rawlings v. Bucks County Water & Sewer Auth.*, 702 A.2d 583, 586 (Pa. Commw. Ct. 1997) (citing REST. 2D TORTS § 158).

54. BNY Mellon owns BNY Mellon Green. (V. Compl. at Exs. 1, 2, and 8).

55. BNY Mellon provided notice to Defendants on December 9, 2011 that required Defendants remove "all tents and other structures as well as camping equipment and

other stored personal items from BNY Mellon Green by no later than noon on Sunday, December 11, 2011.” (V. Compl. at Exhibit 12).

56. Subsequent to noon on Sunday, December 11, 2011, Defendants refused to comply with the Notice and have intruded and trespassed and continue to intentionally and willfully intrude and trespass on BNY Mellon Green.
57. Defendants do not have consent to continue the Occupation and have no privilege or right to continue the Occupation. *Ochroch v. Kia-Noury*, 497 A.2d 1354, 1355-56 (Pa. Super. Ct. 1985) (trespassers “have no right at law or in equity to occupy or appropriate land that does not belong to them.”).
58. The continuing trespass harms BNY Mellon by depriving BNY Mellon of its property and by subjecting BNY Mellon to potential risk of liability.
59. Because it is likely that BNY Mellon will prevail on its claim for trespass, it has a clear right to relief and an injunction should be issued in its favor.

(2) Alternatively, BNY Mellon Is Likely to Prevail on Its Claim for Private Nuisance.

60. BNY Mellon is the exclusive owner of BNY Mellon Green and Defendants are trespassing on BNY Mellon Green. (V. Compl. at Exs. 1, 2, and 8).
61. Alternatively, if Defendants are not trespassing on BNY Mellon Green, which BNY Mellon disputes, Defendants’ Occupation constitutes a private nuisance.
62. A defendant may be held liable for a private nuisance if conduct invades the plaintiff’s interest in the “private use and enjoyment” of his land and the invasion is “intentional and unreasonable.” *Hughes v. Emerald Mines Corp.*, 450 A.2d 1, 4 (Pa. Super. Ct. 1982) (quoting REST. 2D TORTS 822).

63. An intentional invasion becomes unreasonable if, *inter alia*, “the gravity of the harm outweighs the utility of the actor’s conduct.” *Hughes*, 450 A.2d at 5 (quoting REST. 2D TORTS § 826).
64. The Occupation of BNY Mellon Green lacks utility because Defendants may express their viewpoint without invading and attempting to usurp the protected private property interests of BNY Mellon and may do so elsewhere.
65. The low utility of the Defendants’ actions cannot offset the significant harm caused to BNY Mellon by the complete deprivation of its right to use its BNY Mellon Green property, and the health and safety risks posed by the Occupation.
66. Thus, the Occupation constitutes a clear, intentional, and unreasonable invasion of BNY Mellon’s property rights
67. Because it is likely that BNY Mellon will prevail on its claim for private nuisance, it has a clear right to relief and an injunction should be issued in its favor.

(3) Alternatively, BNY Mellon is Likely to Prevail on Its Claim for Public Nuisance.

68. A public nuisance is an unreasonable interference with a right common to the general public. *Muehlieb v. City of Phila.*, 574 A.2d 1208, 1211 (Pa. Commw. Ct. 1990) (quoting REST. 2D TORTS § 821B(1)) (definition approved by *Machipongo Land and Coal Co., Inc. v. Com.*, 799 A.2d 751, 773 (Pa. 2002)).
69. BNY Mellon is the exclusive owner of BNY Mellon Green. (V. Compl. at Exhibits 1, 2 and 8). Alternatively, if there is any right common to the general public in BNY Mellon Green, which BNY Mellon disputes, Defendants’ Occupation unreasonably interferes with such right.

70. The circumstances that justify finding that an interference with a public right is unreasonable include: "(a) [w]hether the conduct involves a significant interference with the public health, the public safety, the public peace, the public comfort or the public convenience; (b) whether the conduct is proscribed by a statute, ordinance or administrative regulation; or (c) whether the conduct is of a continuing nature or has produced a permanent or long-lasting effect, and, as the actor knows or has reason to know, has a significant effect upon the public right." *Muehlieb*, 574 A.2d at 1211 (quoting REST. 2D TORTS § 821B(2)).
71. Defendants' Occupation involves a significant interference with the public health, the public safety, the public peace, the public comfort and the public convenience.
72. Defendants' Occupation is of a continuing nature and, if there is a public right, which BNY Mellon disputes, Defendants know or have reason to know that Defendants' Occupation is having a significant effect upon the public right.
73. A private plaintiff can pursue a common-law claim for public nuisance where the plaintiff's property rights are "specifically injured by the public nuisance over and above the injury suffered by the public generally." *Pa. S.P.C.A. v. Bravo Enter., Inc.*, 237 A.2d 342, 360 (Pa. 1968).
74. Through Defendants' continuing Occupation, Defendants' conduct has substantially impaired BNY Mellon's use and enjoyment of BNY Mellon Green by depriving access to all of the passive recreation spaces and informal activities areas of BNY Mellon Green.
75. Defendants' Occupation is specifically injuring BNY Mellon over and above the injury suffered by the public generally.

76. Defendants' conduct has been willingly and intentionally directed against BNY Mellon, and BNY Mellon suffers a unique harm in that, as property owner, BNY Mellon may be responsible for any potential violations of the applicable 1988 Zoning Code (or, were it applicable, the 1999 Zoning Code) or other violations of law.
77. Because it is likely that BNY Mellon will prevail on its claim for public nuisance, it has a clear right to relief and an injunction should be issued in its favor.
- (B) Relief Is Necessary to Prevent Immediate and Irreparable Harm to BNY Mellon.**
78. Defendants' continued Occupation is causing BNY Mellon immediate and irreparable harm and entry of a preliminary injunction is needed to end this harm.
79. BNY Mellon is being irreparably harmed in numerous ways, including:
- (a) BNY Mellon has been denied the use, enjoyment and possession of its property;
 - (b) BNY Mellon is unable to remedy any Pittsburgh Zoning Code violations, including, for example, the placement of structures without obtaining proper approvals due to the unauthorized use and occupation of BNY Mellon Green by the Defendants;
 - (c) Defendants' continued Occupation of BNY Mellon Green causes significant damage to BNY Mellon as, *inter alia*, it incurs utility, insurance, and tax expenses for property which it cannot control or enjoy;
 - (d) Defendants' continued Occupation of BNY Mellon Green exposes BNY Mellon to the risk of claims as a result of conduct by or injury to the occupying Defendants;
 - (e) Defendants' continued Occupation harms and threatens BNY Mellon's goodwill;
 - (f) Defendants' continued Occupation will prevent BNY Mellon from closing its BNY Mellon Green property during the winter as it historically has done; and
 - (g) Upon information and belief, Defendants' continued Occupation after posting of the Notice constitutes a defiant trespass in violation of 18 Pa. Cons. Stat. § 3503(b).
80. The Occupation of BNY Mellon's private property alone causes immediate and irreparable harm warranting injunctive relief. If damages are "substituted for the land, it

will amount to an open invitation to those so inclined to follow a similar course and thus secure valuable property rights.” *Dodson v. Brown*, 70 Pa. Super. 359, 361, 1918 WL 2935, at *1 (1918).

81. Defendants’ Occupation presents an immediate and ongoing health and safety risk, including to BNY Mellon’s employees, tenants and guests. *Heinl v. Pecher*, 198 A.2d 797, 800 (Pa. 1938); *The Woods*, 893 A.2d at 206-07; *Tinicum Twp. v. Del. Valley Concrete, Inc.*, 812 A.2d 758 (Pa. Commw. Ct. 2002).
82. Defendants’ Occupation also exposes BNY Mellon to a risk of liability as a result of conduct by or injury to the occupying Defendants, REST. 2D TORTS §§ 333-39, and injury to goodwill.
83. Due to the aforesaid immediate, irreparable and substantial harm, BNY Mellon is without an adequate remedy at law. (V. Compl. at ¶ 88).
84. Entry of a preliminary injunction relief is therefore necessary to prevent further irreparable harm to BNY Mellon.

(C) Refusing to Grant Injunctive Relief Will Result in Greater Harm Than Granting It.

85. Greater harm will be inflicted upon BNY Mellon and the general public by the denial of the injunction than the harm, if any, which will result to Defendants if the injunction is granted.
86. Defendants’ Occupation excludes BNY Mellon and its employees, tenants and guests from using BNY Mellon’s own property.
87. Injunctive relief will eliminate the ongoing health, safety, and welfare risks at BNY Mellon Green posed by Defendants’ continuing Occupation.

88. Injunctive relief will not harm Defendants. There are many other ways for Defendants to accomplish any legitimate goals they may have that would not involve occupying private property or ongoing health and safety risks.
89. Because refusing to grant injunctive relief will result in greater harm than granting it, a preliminary injunction should be issued.

(D) Issuance of an Injunction Against Defendants' Conduct Will Serve the Public Interest and Will Not Adversely Affect Such Interest.

90. The public interest here is in protecting BNY Mellon rights as a lawful owner of property and in protecting health and safety
91. Defendants have no right of access to BNY Mellon Green and, even if they did, their Occupation would far exceed any such right of access.
92. Because issuance of an injunction against Defendants' conduct will serve the public interest and will not adversely affect such interest, a preliminary injunction should be entered.

(E) The Injunctive Relief Is Narrowly Tailored and Restores the Status Quo.

93. Here, the *status quo* is that BNY Mellon Green is Open Space exclusively owned by BNY Mellon.
94. Defendants have disturbed the status quo by their Occupation of BNY Mellon's private property.
95. An injunction would restore the status quo and the injunctive relief requested is narrowly suited to abate this harm. Therefore, a preliminary injunction should issue.

WHEREFORE, BNY Mellon respectfully requests that this Court enter judgment against Defendants Occupy Pittsburgh, Jane Does 1-50, and John Does 1-50 and grant preliminary injunctive relief pursuant to PA. R. CIV. P. 1531 ordering Defendants Occupy

Pittsburgh, Defendants Jane Does (1-50) and John Does (1-50), and all unnamed persons (including but not limited to Defendants' officials, officers, members, and agents), firms, or corporations who are in active concert or participation with any of the Defendants to: (1) immediately remove from BNY Mellon Green all tents and other structures, camping equipment, and stored personal items; (2) cease and desist and refrain from camping on BNY Mellon Green or bringing any tents and other structures, camping equipment, or stored personal items to BNY Mellon Green; (3) cease and desist and refrain from doing any acts that would interfere with, or obstruct, the free use and enjoyment of any portion of BNY Mellon Green by BNY Mellon, its tenants and invitees; and (4) abide by any notice posted by BNY Mellon on the BNY Mellon Green property that BNY Mellon Green is closed during the winter months, and granting such other relief as this Court deems just and proper.

Dated: December 12, 2011

Respectfully submitted,



Daniel I. Booker
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IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

BNY MELLON, NATIONAL ASSOCIATION and THE BANK OF NEW YORK MELLON,)	Civil Division
)	No.: GD 11-025549
Plaintiffs,)	
v.)	
OCCUPY PITTSBURGH, an unincorporated association, JANE DOES (1-50), and JOHN DOES (1-50),)	
Defendants.)	

ORDER

AND NOW, this _____ day of _____, 2011, upon consideration of Plaintiffs' Motion for Preliminary Injunction, it is hereby ORDERED that said motion is GRANTED and a Preliminary Injunction is hereby entered, as follows. Defendants Occupy Pittsburgh, Defendants Jane Does (1-50) and John Does (1-50), and all unnamed persons (including but not limited to Defendants' officials, officers, members, and agents), firms, or corporations who are in active concert or participation with any of the Defendants, are hereby ORDERED to:

- (1) immediately remove from BNY Mellon Green all tents and other structures, camping equipment, and stored personal items;
- (2) cease and desist and refrain from camping on BNY Mellon Green or bringing any tents and other structures, camping equipment, or stored personal items to BNY Mellon Green;
- (3) cease and desist and refrain from doing any acts that would interfere with, or obstruct, the free use and enjoyment of any portion of BNY Mellon Green by BNY Mellon, its tenants and invitees; and

(4) abide by any notice posted by BNY Mellon on the BNY Mellon Green property that BNY Mellon Green is closed during the winter months.

This ORDER shall become effective upon Plaintiffs files a bond with the Court in the amount of _____ naming the Commonwealth of Pennsylvania as obligee in accordance with PA. R. CIV. P. 1531(b), which Plaintiffs shall do forthwith. Upon posting of the bond, Plaintiffs shall post this ORDER conspicuously at BNY Mellon Green for a period of three (3) days and thereafter as Plaintiffs deem appropriate.

BY THE COURT:
