

IN THE CIRCUIT COURT OF THE 11TH
JUDICIAL CIRCUIT IN AND FOR
MIAMI-DADE COUNTY, FLORIDA

CASE NO.:

MUSEUM OF CONTEMPORARY ART,
INC.

Plaintiff,

v.

THE CITY OF NORTH MIAMI,
FLORIDA; LUCIE TONDREAU;
STEPHEN E. JOHNSON;
SCOTT GALVIN; CAROL KEYS;
PHILIPPE BIEN-AIME; and
MARIE STERIL;

Defendants.

COMPLAINT

Plaintiff, Museum of Contemporary Art, Inc. (the "MOCA"), sues The City of North Miami, Florida ("North Miami" or the "City"), Lucie Tondreau ("Tondreau" or the "Mayor"), Stephen E. Johnson ("Johnson" or the "City Manager"), Scott Galvin ("Galvin"), Carol Keys ("Keys"), Philippe Bien-Aime ("Bien-Aime"), and Marie Steril ("Steril"),¹ and alleges:

NATURE OF THE ACTION

1. This is an action by Plaintiff, MOCA against Defendant, the City for Breach of Contract and Declaratory Relief; against Defendants, the City, the Mayor, the City Manager, and City Council for Injunctive Relief, Conversion, and Tortious Interference, against Defendants, the Mayor, the City Manager, and City Council for Civil Conspiracy; and against Defendant, Tondreau for Defamation.

¹ Defendants, Galvin, Keys, Bien-Aime, and Steril are collectively referred to as the "City Council."

PARTIES, JURISDICTION, AND VENUE

2. Plaintiff, MOCA is a Florida non-profit corporation based in Miami-Dade County, Florida.

3. Defendant, North Miami is a municipality located in Miami-Dade County, Florida and a political subdivision of the State of Florida. The City is subject to this Court's jurisdiction.

4. Defendant, Tondreau is an individual who resides and resided at all times material in Miami-Dade County, Florida. Tondreau is the current Mayor of North Miami. Tondreau is subject to this Court's jurisdiction.

5. Defendant, Johnson is an individual who resides and resided at all times material in Miami-Dade County, Florida. Johnson is the current City Manager of North Miami. Johnson is subject to this Court's jurisdiction.

6. Defendant, Galvin is an individual who resides and resided at all times material in Miami-Dade County, Florida. Galvin is a current North Miami councilman. Galvin is subject to this Court's jurisdiction.

7. Defendant, Keys is an individual who resides and resided at all times material in Miami-Dade County, Florida. Keys is a current North Miami councilwoman. Keys is subject to this Court's jurisdiction.

8. Defendant, Bien-Aime is an individual who resides and resided at all times material in Miami-Dade County, Florida. Bien-Aime is a current North Miami councilman. Bien-Aime is subject to this Court's jurisdiction.

9. Defendant, Steril is an individual who resides and resided at all times material in Miami-Dade County, Florida. Steril is a current North Miami councilwoman. Steril is subject to this Court's jurisdiction.

10. This Court has subject matter jurisdiction over MOCA's causes of action alleged herein against Defendants because MOCA's damages exceed \$15,000.00 exclusive of interest, costs, and attorneys' fees.

11. Venue is proper in this Court pursuant to Fla. Stat. §§ 47.011 and 47.041 because (a) the causes of action alleged herein accrued in Miami-Dade County, Florida; and (b) Defendants, Tondreau, Johnson, Galvin, Keys, Bien-Aime and Steril reside in Miami-Dade County, Florida.

GENERAL ALLEGATIONS

A. The Museum of Contemporary Art

12. The Museum of Contemporary Art, North Miami (the "Museum") is a collecting museum located in downtown North Miami, Florida. The Museum offers visitors temporary exhibitions, along with exhibitions from a prestigious, extensive permanent collection of contemporary art owned by MOCA.

13. The Museum's mission statement is to make contemporary art accessible to diverse audiences – especially underserved populations – through the collection, preservation, and exhibition of the best of contemporary art and its art historical influences. As one of the City's former mayors recently commented publicly, the Museum was opened in 1996 following public concerns over the then-lack of cultural institutions located north of Flagler Street in downtown Miami, Florida.

14. The Museum facility is a 23,000 square foot structure designed by internationally acclaimed architect Charles Gwathmey which includes over 12,000 square feet of exhibition space consisting of a large main gallery with movable walls, a separate art pavilion, a gift shop,

an art storage and preparation area, and administrative offices. The facility also includes an outdoor courtyard used for performances, evening film screenings, and large art installations.

15. The Museum was constructed and opened in 1996. The construction of the Museum was made possible by a \$2.5 million federal allocation for urban revitalization, a \$1 million capital development grant from the State of Florida Fine Arts Council, and an \$82,500.00 grant from the Dade County Cultural Affairs Council. The City did not contribute financially to the Museum's construction.

16. Even though the Museum's construction was funded by outside sources, the City now owns the Museum's physical plant/facility. The City does not, however, own any portion of the permanent art collection.

B. The Board of Trustees/MOCA

17. As a political subdivision of the State of Florida engaged in the day-to-day operations of running a municipality, the City is not equipped to operate, manage, and run a world-class contemporary art museum. In recognition of this reality, since the Museum first opened, the City has relied heavily on assistance from prominent members of the South Florida community who have developed strong ties with and connections to the national and international art communities and, in particular, the contemporary art world. Over the years, these individuals have been the driving force of the Museum's success, including the Museum's exhibitions, events, and educational programming. Without the extensive time, energy, and resources provided by this fine group of philanthropists, the Museum would not have achieved the prominence in the art and cultural communities that defined the Museum for years.

18. To facilitate the development of the Museum's exhibitions, events, and educational programming, when the Museum first opened MOCA was formed as a Florida non-

profit corporation. To this day, this group of philanthropists conducts the Museum's operations and management.

19. At some point, in order to formalize the relationship between the City and MOCA, and to codify MOCA's authority to act on the City's behalf, the City established by ordinance a Board of Trustees of the Museum of Contemporary Art (the "Board"). The Board is mostly comprised primarily of the same principals of MOCA and is simply a codification of MOCA's authority to run, operate, and manage the Museum on the City's behalf.

20. MOCA's unpaid volunteers have close ties and connections with the contemporary art community and national and international art world. MOCA oversees the operation and management of the Museum's physical plant/facility; however, more importantly the Board draws upon its collective resources to shape the exhibitions, programming, and events which made the Museum a first-class contemporary art museum drawing extensive interest, accolades, and attention from the South Florida community, along with artists, collectors, and art enthusiasts nationally and internationally.

21. As a result of the MOCA's involvement, oversight, and management, the Museum has been recognized nationally and internationally as a world-class contemporary art destination. The Museum has exhibited an exclusive collection of contemporary art and has drawn widespread attention among contemporary art enthusiasts from around the globe. In recent years, the Museum hosted kickoff events for Art Basel, an internationally renowned art festival held annually in Miami Beach, Florida.

22. As a result of the MOCA's oversight and management of the Museum's educational programming, the Museum has been awarded the National Medal for Museum Service by the Institute of Museum and Library Services in recognition of the Museum's

community outreach, which includes programs focusing on literacy, dropout prevention, and outreach to girls in juvenile-detention centers. This award is widely-considered to be the country's highest service honor for museums and libraries.

23. As publicly acknowledged by the City's leaders, the successful operation of the Museum, along with the Museum's national and international reputation, played a significant role in North Miami's receipt of the prestigious "All-America City Award" from the National Civic League in 2010. This honor is awarded annually to only ten (10) communities in the United States.

C: The Management Agreement

24. On December 15, 2008, the Board and the City entered into a Management Agreement (the "Agreement"), a copy of which is attached as Exhibit "A" and incorporated herein by reference. The term of the Agreement expires in December 2018.

25. The purposes of the Agreement, *inter alia*, are to (a) further codify MOCA's authority to run the Museum on the City's behalf; (b) define the respective obligations of the City and the Board as to the Museum; and (c) provide for the Board's management of the Museum, while preserving the Museum's exemption from *ad valorem* taxation and assuring the accomplishment of the Museum's cultural and educational mission. Pursuant to the Agreement, the Board (operating through MOCA) conducts, oversees, and administers the Museum's day-to-day operations while receiving limited financial support from the City's budget.

26. Pursuant to the terms of the Agreement, the Board (operating through MOCA) owns, protects, and manages the permanent collection of art, including all additions and modifications to the collection.

27. By the terms of the Agreement, the Board, *inter alia*, operates and manages the Museum's programs, physical plant/facility, and all activities conducted thereon. The Board also manages the Museum's finances and conducts fundraising activities to assist in the Museum's funding and operational and development costs.

28. The City provides the physical plant/facility for the Museum. No rent is collected from the Board or MOCA.

29. Under the Agreement, the City is also obligated to provide the Board with an operational budget covering some of the costs of maintaining the Museum's physical plant/facility, programming, and services. The City is also obligated, *inter alia*, to pay salaries of certain Museum staff members, including most notably the Museum Director and Museum Curator, who are City employees.

D. The City Breaches the Agreement

30. Notwithstanding MOCA's successful management of the Museum and outstanding contributions to North Miami, in recent years the City has failed and/or refused to carry out its obligations under the Agreement.

31. In particular and without limitation, the City has breached its obligations under the Agreement as follows:

- a. By failing and/or refusing to pay the salary of MOCA's interim Director, following the departure of MOCA's former director;
- b. By failing and/or refusing to take corrective action, following MOCA's numerous requests, to repair the roof, air conditioning, and other critical structural components of the Museum;
- c. By failing and/or refusing to provide minimal security for the Museum, the surrounding area, patrons, visitors, and staff, including failing to repair the parking lot closed-circuit surveillance system or provide adequate police patrols;

- d. By failing and/or refusing to expand the Museum, including failing to apply funds for the Museum's expansion, as promised, derived from the community redevelopment agency associated with the Biscayne Landing project;
- e. By failing and/or refusing to make good faith efforts to promote the Museum or improve its infrastructure, including failing to make any investment to create opportunities for the Museum in the local community;
- f. By improperly and inappropriately causing the Museum to incur and cover from its budget significant expenses for certain City and non-City events (including events and fundraisers that diminished the reputation, integrity, and brand of the museum) that were wholly unrelated to the Museum's purposes, agenda, or directive; and
- g. Failing and/or refusing to maintain the grounds, greenery, and parking lot serving the Museum.

32. As a result of the City's breaches, MOCA's ability to carry out the Museum's mission statement has been significantly hindered, diminished, and inhibited. Moreover, the reputations of the Museum, MOCA, and MOCA's permanent art collection have been damaged by the City's breaches. Consistent with the Board's obligations under the Agreement, on March 17, 2014 the Board's counsel sent the City Attorney and City Manager a notice of default detailing the City's breaches of its obligations under the Agreement. A copy of the Board's March 17, 2014 letter is attached hereto as Exhibit "B".

E. The Independent Board of Trustees Unanimously Decides to Enter Into Discussions to Collaborate With the Bass Museum of Art Based Upon the City's Breaches of Its Obligations Under the Agreement

33. Based upon the City's unfortunate refusal to comply with its obligations to the Board under the Agreement, the Board unanimously determined that in order to carry out the Board's obligations under the Agreement to further the development of MOCA, the non-profit entity, it is necessary to affiliate with and forge a collaboration with the Bass Museum of Art located in Miami Beach, Florida (the "Bass Museum"). The City's refusal to maintain the

Museum and fulfill its other contractual obligations threaten to minimize the audience for MOCA's permanent collection, which already has been diluted and undermined by the proliferation of new competing arts institutions and events.

34. Moreover, the present day arts and cultural environment in South Florida is nothing like what it was at the time that the Museum first opened in 1996. With the proliferation of new arts institutions and international arts and cultural events in the greater Miami area, MOCA faces new challenges to remaining relevant in the contemporary art world, including the increased potential that the reputation and relevance of MOCA's permanent art collection may be negatively impacted, minimized, and/or overshadowed by newer, larger, and more glamorous institutions, events, and exhibitions in the South Florida area.

35. For example, Art Basel, which is held annually in Miami Beach, has become a favorite destination for the international art world. Separately, the Pérez Art Museum Miami, which recently opened in downtown Miami, is a modern and contemporary art museum dedicated to collecting and exhibiting international art of the 20th and 21st centuries. These institutions and events, along with others, have posed new challenges to the relevancy and reputation of MOCA's permanent art collection.

36. To avoid further damage to the reputation to and relevance of MOCA's permanent art collection, MOCA has sought to collaborate with other world-class museums, including the possibility of moving its permanent art collection to the Bass Museum of Art in Miami Beach, Florida (the "Bass Museum"). MOCA's ongoing discussions with the Bass Museum have been reported in local print media.

37. Upon discovering the existence of MOCA's ongoing discussions with the Bass Museum of Art, the Mayor, City Manager, and City Council staged a public spectacle at the

March 11, 2014 City Council Meeting (the "Meeting") firmly opposing MOCA's attempts to collaborate with the Bass Museum.

38. At the Meeting (which was open to the public, televised, and attended by members of the media), the Mayor paraded the City's former mayors before the City Council to express their strong opposition to MOCA removing its permanent collection of art from the Museum. The Mayor, City Manager, and City Council attacked the Board (and, by implication, MOCA) and repeatedly threatened to remove every Board member even though nothing in the City's ordinances, the Agreement, or state or federal law prohibits MOCA from moving its own art collection to another institution.

39. Among other things, the Mayor threatened to bring a "delegation" to visit the mayor of the City of Miami Beach to voice the City's opposition to MOCA's contemplated collaboration with the Bass Museum. The Mayor also threatened staging a public demonstration outside of the Bass Museum.

40. The Mayor's proposals have been unanimously supported without opposition by the City Manager and the City Council.

41. Additionally, at the Meeting the Mayor falsely stated that MOCA's collection belongs to the City and residents of North Miami, calling MOCA's collection "our heritage." The Mayor also falsely stated that the "partnership" between the City and the Board (and, by implication, MOCA) required that the Board advise the City of the existence of MOCA's discussions with the Bass Museum moving forward with "final steps" of any formal agreement with the Bass Museum.

42. The City's actions proposed by the Mayor, which are supported by the City Manager and City Council, along with the Mayor's defamatory comments, have damaged and

are continuing to damage MOCA's entirely legal, legitimate, and appropriate actions to protect and enhance the integrity, reputation, relevance, and value of MOCA's collection by, among other things, attempting to cause negative public opinions to be formed regarding MOCA's ongoing discussions with the Bass Museum.

43. At all times material, the City, Mayor, City Manager, and City Council knew or should have known that MOCA's permanent art collection does not belong to the City or the residents of North Miami. By calling into question the legal ownership of MOCA's permanent collection of art, MOCA's reputation and the value of MOCA's collection has been damaged.

44. Moreover, the City, Mayor, City Manager, and City Council knew or should have known that MOCA is well within its legal rights to pursue discussions with the Bass Museum to move MOCA's permanent art collection to the Bass Museum. MOCA's reputation and the value of MOCA's permanent collection of art have been damaged by the implication in a public forum that MOCA is somehow acting improperly.

F. The City Shockingly Attempts to Terminate the Board's Members Instead of Engaging the Board's Good-Faith Attempts to Resolve the Parties' Differences By Developing a Plan Whereby MOCA Would Have a Dual Presence in North Miami and Miami Beach

45. Notwithstanding the public spectacle at the Meeting, thereafter the Board attempted in a series of meetings to engage discussions with the City to amicably resolve the parties differences. The Board proposed to the City the development of a plan whereby MOCA would have a dual presence in North Miami (at the existing Museum facility) and at the Bass Museum in Miami Beach. A copy of the Board's proposal to the City is attached hereto as Exhibit "C" and is incorporated by reference.

46. Shockingly, instead of engaging the Board's attempts at good-faith negotiations to amicably resolve the parties' differences, the Board and MOCA have learned that the City and its

elected leaders are now attempting to terminate some or all of the Board's current members as part of the City's strategic attempt to destroy any alliance between MOCA and the Bass Museum, and to keep MOCA in North Miami.

47. After the Board transmitted the Default Letter to the City Attorney, the Board and MOCA became aware of the City's agenda for the upcoming April 8, 2014 City Council Meeting. A copy of the Agenda is attached hereto as Exhibit "D". Tab "K" of the Agenda states:

PROPOSED ORDINANCE (SECOND READING) OF THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI, FLORIDA, AMENDING CHAPTER 2 OF THE CODE OF CITY ORDINANCES OF THE CITY OF NORTH MIAMI, ENTITLED "ADMINISTRATION", ARTICLE III, ENTITLED "BOARDS, COMMITTEES, COMMISSIONS", DIVISIONS 2 THROUGH 10, SPECIFICALLY AT SECTIONS 2-61, 2-82, 2-158, 2-201, 2-217, 2-231, 2-238 AND 2-249, BY AMENDING THE BOARD COMPOSITION FOR THE BOARD OF TRUSTEES OF THE NORTH MIAMI MUSEUM OF CONTEMPORARY ART (MOCA) AND BY REVISING THE TERMS OF OFFICE TO ALLOW FOR THE TERMS OF BOARD AND COMMISSION MEMBERS TO BE COTERMINOUS WITH THE TERM OF THE APPOINTING COUNCILMEMBER; PROVIDING FOR CONFLICTS, SEVERABILITY, CODIFICATION AND AN EFFECTIVE DATE. *Sponsored By: Mayor Lucie M. Tondreau*

48. The aforementioned proposed ordinance has been introduced even though the Board was acting entirely within its legal rights and consistent with its obligations to the City under the Agreement in putting the City on notice of the City's defaults under the Agreement, and in pursuing discussions to affiliate and collaborate with the Bass Museum.

49. Defendants' attempts to oust some or all of the Board's current members is an arbitrary, capricious, and improper exercise of the City's lawful powers.

50. All conditions precedent to the maintenance of this action have occurred, been performed, or have otherwise been satisfied or waived.

COUNT I
BREACH OF CONTRACT
(Against the City)

Plaintiff, MOCA readopts and realleges its allegations set forth in paragraphs 1 through 50 above as if fully set forth herein.

51. This is an action by MOCA against the City for Breach of Contract arising from the City's breach of its obligations to MOCA under the Agreement.

52. At all times material, the written Agreement constituted a valid and binding contract between the Board and the City.

53. As the entity through which the Museum's operations and management were carried out, MOCA was an intended third-party beneficiary of the Agreement.

54. The City breached its contractual obligations to the Board (and, consequently, to MOCA) under the Agreement as follows:

- a. By failing and/or refusing to pay the salary of MOCA's interim Director, following the departure of MOCA's former director;
- b. By improperly and inappropriately attempting to secure the appointment of the City Manager's friend as "Deputy Director," to be paid a salary without defining or setting the parameters of the individual's job description or responsibilities;
- c. By failing and/or refusing to take corrective action, following MOCA's numerous requests, to repair the roof, air conditioning, and other critical structural components of the Museum;
- d. By failing and/or refusing to provide minimal security for the Museum, the surrounding area, patrons, visitors, and staff, including failing to repair the parking lot closed-circuit surveillance system or provide adequate police patrols;

- e. By failing and/or refusing to expand the Museum, including failing to apply funds for the Museum's expansion, as promised, derived from the community redevelopment agency associated with the Biscayne Landing project;
- f. By failing and/or refusing to make good faith efforts to promote the Museum or improve its infrastructure, including failing to make any investment to create opportunities for the Museum in the local community;
- g. By improperly and inappropriately causing the Museum to incur and cover from its budget significant expenses for certain City and non-City events (including events and fundraisers that diminished the reputation, integrity, and brand of the museum) that were wholly unrelated to the Museum's purposes, agenda, or directive; and
- h. Failing and/or refusing to maintain the grounds, greenery, and parking lot serving the Museum.

55. As a proximate result of the City's breaches of its contractual obligations to MOCA under the Agreement, as an intended third-party beneficiary of the Agreement MOCA has been damaged. MOCA's damages include, but are not limited to, diminution in value of MOCA's permanent art collection.

WHEREFORE, Plaintiff, Museum of Contemporary Art, Inc. demands judgment against Defendant, The City of North Miami, Florida for damages plus interest and costs, along with such other and further relief this Court deems just and proper.

COUNT II
INJUNCTIVE RELIEF

(Against the City, the Mayor, the City Manager, and City Council)

Plaintiff, MOCA readopts and realleges its allegations set forth in paragraphs 1 through 50 above as if fully set forth herein.

56. This is an action by MOCA to enjoin Defendants, the City, the Mayor, the City Manager, and the City Council from taking any unilateral action to terminate some or all of the Board's membership until such time as the Court makes a determination on the underlying merits

of whether (a) the Board has the right and/or obligation to declare the City in breach of its obligations under the Agreement; and (b) the City, in fact, breached its obligations under the Agreement.

57. MOCA has a substantial likelihood of success on the merits as the Board is a party to the written Agreement under which the City owes the Board certain obligations. The City, in fact, breached its obligations under the Agreement.

58. MOCA will suffer irreparable harm unless this Court issues an injunction barring Defendants, the City, the Mayor, the City Manager, and the City Council from taking any unilateral action to terminate some or all of the Board's membership until such time as the Court makes a determination on the underlying merits of whether (a) the Board has the right and/or obligation to declare the City in breach of its obligations under the Agreement; and (b) the City, in fact, breached its obligations under the Agreement.

59. The threatened harm to MOCA outweighs any threatened harm than an injunction may cause to any of the Defendants.

60. Such an injunction, if issued, will not disserve the public interest but will, on the contrary, serve the public interest by ensuring that MOCA's permanent art collection is made available for viewing to the South Florida community, along with visitors to the South Florida region from around the country and the globe.

WHEREFORE, Plaintiff, Museum of Contemporary Art, Inc. requests that this Court issue an injunction precluding Defendants, The City of North Miami, Florida; Lucie Tondreau, Stephen E. Johnson; Scott Galvin; Carol Keys; Philippe Bien-Aime; and Marie Steril from taking any unilateral action to terminate some or all of the Board's membership until such time as the Court makes a determination on the underlying merits of whether (a) the Board has the right

and/or obligation to declare the City in breach of its obligations under the Agreement; and (b) the City, in fact, breached its obligations under the Agreement, along with such other relief as deemed just and proper.

COUNT III
DECLARATORY RELIEF
(Against the City)

Plaintiff, MOCA readopts and realleges its allegations set forth in paragraphs 1 through 50 above as if fully set forth herein.

61. This is an action by MOCA against the City seeking a declaratory judgment.

62. Pursuant to the Agreement, the Board has the obligation to further the development of MOCA, the non-profit entity. The Board also has the obligation to operate and manage the physical plant and facilities of the Museum and all activities conducted thereon.

63. Under the Agreement, the City is obligated to, among other things, (a) cooperate with the Board in assuring the development of MOCA's programs and activities; (b) use best efforts to respond to maintenance and repair requests from MOCA; and (c) provide and certain staff resources to MOCA.

64. Consequently, as a party to the written Agreement, and consistent with the Board's obligations under the City's own ordinances, the Board has the right and the obligation to put the City on notice in the event of the City's breaches of its obligations under the Agreement.

65. Consistent with the Board's obligations under the Agreement, on March 17, 2014 the Board's counsel sent the City Attorney and City Manager a notice of default detailing the City's breaches of its obligations under the Agreement.

66. An actual case or controversy exists between the parties concerning the Board's right and/or obligation to declare the City in breach of its obligations under the Agreement.

67. Accordingly, there is a bona fide, actual, present practical need for the declaration sought herein.

68. To prevent irreparable harm, MOCA respectfully requests a declaration from this Court that the Board has the right and/or the obligation to declare the City in breach of its obligations under the Agreement.

69. MOCA's rights are dependent on the facts and/or the law applicable to the facts recited herein.

70. The City has an actual, present, adverse, and antagonist interest in the subject matter hereof, either in fact or law.

71. The antagonistic and adverse interests are all before this Court by proper process, and the relief sought herein is not merely the giving of legal advice by the courts or the answer to questions propounded from curiosity.

WHEREFORE, Plaintiff, Museum of Contemporary Art, Inc. demands judgment against Defendant, City of North Miami, Florida as follows:

- a. An Order declaring that the Board has the right and/or the obligation to declare the City in breach of its obligations under the Agreement; and
- b. Such other and further relief this Court deems just and proper.

COUNT IV
DECLARATORY RELIEF
(Against the City)

Plaintiff, MOCA readopts and realleges its allegations set forth in paragraphs 1 through 50 above as if fully set forth herein.

72. This is an action by MOCA against the City seeking a declaratory judgment.

73. An actual case or controversy exists between the parties concerning the Board's right and/or obligation under the Agreement to engage in discussions with the Bass Museum relating to forming an affiliation between MOCA and the Bass Museum and relocating the Board's permanent collection of art to the Bass Museum in Miami Beach, Florida.

74. Accordingly, there is a bona fide, actual, present practical need for the declaration sought herein.

75. To prevent irreparable harm, MOCA respectfully requests a declaration from this Court that the Board has the right and/or obligation under the Agreement to engage in discussions with the Bass Museum relating to forming an affiliation between MOCA and the Bass Museum and relocating the Board's permanent collection of art to the Bass Museum in Miami Beach, Florida.

76. MOCA's rights are dependent on the facts and/or the law applicable to the facts recited herein.

77. The City has an actual, present, adverse, and antagonist interest in the subject matter hereof, either in fact or law.

78. The antagonistic and adverse interests are all before this Court by proper process, and the relief sought herein is not merely the giving of legal advice by the courts or the answer to questions propounded from curiosity.

WHEREFORE, Plaintiff, Museum of Contemporary Art, Inc. demands judgment against Defendant, City of North Miami, Florida as follows:

- a. An Order declaring that the Board has the right and/or obligation under the Agreement to engage in discussions with the Bass Museum relating to forming an affiliation between MOCA and the Bass Museum and relocating the Board's permanent collection of art to the Bass Museum in Miami Beach, Florida; and

b. Such other and further relief this Court deems just and proper.

**COUNT V
CONVERSION**

(Against the City, the Mayor, the City Manager, and City Council)

Plaintiff, MOCA readopts and realleges its allegations set forth in paragraphs 1 through 50 above as if fully set forth herein.

79. This is an action by MOCA against the City, the Mayor, the City Manager, and City Council for Conversion.

80. Defendants wrongfully and intentionally exercise (and continue to exercise) dominion and control over MOCA's permanent collection of art.

81. Defendants wrongfully asserted at the March 11, 2014 Meeting that MOCA's permanent collection of art belongs to the City and the residents of North Miami when, in fact, the collection is owned solely by MOCA.

82. Defendants' actions have been and remain inconsistent with MOCA's ownership of the collection.

83. MOCA has been damaged, and continues to be harmed, as a direct and proximate result of Defendants' unlawful conversion, which is ongoing.

WHEREFORE, Plaintiff, Museum of Contemporary Art, Inc. demands judgment against Defendants, The City of North Miami, Florida; Lucie Tondreau, Stephen E. Johnson; Scott Galvin; Carol Keys; Philippe Bien-Aime; and Marie Steril for damages plus interest, attorneys' fees, and costs, along with such other and further relief this Court deems just and proper.

COUNT VI
TORTIOUS INTERFERENCE
(Against the City, the Mayor, the City Manager, and City Council)

Plaintiff, MOCA readopts and realleges its allegations set forth in paragraphs 1 through 50 above as if fully set forth herein.

84. This is an action for Tortious Interference With a Business Relationship against the City, the Mayor, the City Manager, and the City Council.

85. At all times material, MOCA had a business relationship with the Bass Museum, which included discussions concerning moving MOCA's permanent collection to the Bass Museum.

86. Defendants knew that MOCA had a business relationship with the Bass Museum, which included discussions concerning moving MOCA's permanent collection to the Bass Museum.

87. Defendants engaged in intentional and unjustified interference with MOCA's business relationship with the Bass Museum, as follows:

- a. By making public false statements to the effect that the City and/or residents of North Miami owned the permanent art collection when, in fact, the collection is owned solely by MOCA;
- b. By making public threats against MOCA and the Board that city leaders would protest MOCA's contemplated relationship with the Bass Museum: by (a) sending a delegation to meet with the mayor of the City of Miami Beach, Florida; and (b) staging a public protest outside of the Bass Museum;
- c. By making public false statements that MOCA and/or the Board were first required to apprise the City of their intention to move MOCA's permanent collection to the Bass Museum prior to undertaking "final steps" to do so; and
- d. By threatening to discharge the current members of the Board in order to replace the Board's membership with North Miami residents.

88. As a result of the breach of MOCA's relationship with the Bass Museum, MOCA has been damaged and continues to be damaged.

WHEREFORE, Plaintiff, Museum of Contemporary Art, Inc. demands judgment against Defendants, The City of North Miami, Florida; Lucie Tondreau, Stephen E. Johnson; Scott Galvin; Carol Keys; Philippe Bien-Aime; and Marie Steril for damages plus interest and costs, along with such other and further relief this Court deems just and proper.

COUNT VII
CIVIL CONSPIRACY
(Against the Mayor, the City Manager, and City Council)

Plaintiff, MOCA readopts and realleges its allegations set forth in paragraphs 1 through 50 above as if fully set forth herein.

89. This is an action for Civil Conspiracy against Defendants, the Mayor, the City Manager, and the City Council.

90. At all times material, the Mayor, the City Manager, and City Council had an agreement to (a) prevent MOCA from relocating its permanent collection of art to a museum located outside the geographical boundaries of North Miami including, in particular, the Bass Museum, even though MOCA had every legal right to do so; and (b) interfere with MOCA's ongoing discussions and/or negotiations with other arts and cultural institutions (including the Bass Museum) to merge MOCA's permanent art collection into another institution's collection by making public false statements and threatening to undertake adverse public relations activity and demonstrations against MOCA's interests.

91. Defendants, the Mayor, the City Manager, and City Council took overt acts in pursuance of the conspiracy at the March 11, 2014 Meeting. In particular, the following overt acts were taken:

- a. Making public false statements to the effect that the City and/or residents of North Miami owned the permanent art collection when, in fact, the collection is owned solely by MOCA;
- b. Making public threats against MOCA and the Board that city leaders would protest MOCA's contemplated relationship with the Bass Museum by (a) sending a delegation to meet with the mayor of the City of Miami Beach, Florida; and (b) staging a public protest outside of the Bass Museum;
- c. Making public false statements that MOCA and/or the Board were first required to apprise the City of their intention to move MOCA's permanent collection to the Bass Museum prior to undertaking "final steps" to do so; and
- d. Threatening to discharge the current members of the Board in order to replace the Board's membership with North Miami residents.

92. As a proximate result of the Defendants' overt acts done under the conspiracy, MOCA has been damaged and continues to be damaged.

WHEREFORE, Plaintiff, Museum of Contemporary Art, Inc. demands judgment against Defendants, Lucie Tondreau, Stephen E. Johnson; Scott Galvin; Carol Keys; Philippe Bien-Aime; and Marie Steril for damages plus interest and costs, along with such other and further relief this Court deems just and proper.

COUNT VIII
DEFAMATION
(Against the Mayor)

Plaintiff, MOCA readopts and realleges its allegations set forth in paragraphs 1 through 50 above as if fully set forth herein.

93. This is an action for Defamation against Defendant, the Mayor.

94. At the March 11, 2014 Meeting, the Mayor, knowingly published in a public forum false statements about MOCA, as follows:

- a. False statements to the effect that the City and/or residents of North Miami owned the permanent art collection when, in fact, the collection is owned solely by MOCA; and
- b. False statements that MOCA and/or the Board were first required to apprise the City of their intention to move MOCA's permanent collection to the Bass Museum prior to undertaking "final steps" to do so.

95. The Mayor's false statements were made to a public audience, including former city leaders and members of the media.

96. The falsity of the Mayor's statements has injured and is continuing to injure MOCA.

WHEREFORE, Plaintiff, Museum of Contemporary Art, Inc. demands judgment against Defendant, Lucie Tondreau for damages plus interest and costs, along with such other and further relief this Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand trial by jury on all issues so triable as of right.

Dated: April 7, 2014.

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