

IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT
IN AND FOR LEON COUNTY, FLORIDA

NORTHWOOD ASSOCIATES, LLC,

Plaintiff,

v.

Case No.

KEN DETZNER, in his official capacity as
SECRETARY OF STATE, CHAD POPPELL,
in his official capacity as the SECRETARY OF
MANAGEMENT SERVICES, KEN
LAWSON, in his official capacity as the
SECRETARY OF BUSINESS AND
PROFESSIONAL REGULATION, MIKE
CARROLL, in his official capacity as the
SECRETARY OF CHILDREN AND
FAMILIES, CISSY PROCTOR, in her official
capacity as the EXECUTIVE DIRECTOR of
the DEPARTMENT OF ECONOMIC
OPPORTUNITY, JASON M. ALLISON, in his
official capacity as the STATE CHIEF
INFORMATION OFFICER, PAM STEWART,
in her official capacity as the Commissioner of
Education, DEPARTMENT OF STATE,
DEPARTMENT OF MANAGEMENT
SERVICES, DEPARTMENT OF BUSINESS
AND PROFESSIONAL REGULATION,
DEPARTMENT OF CHILDREN AND
FAMILIES, AND AGENCY FOR STATE
TECHNOLOGY,

Defendants.

COMPLAINT

Plaintiff, Northwood Associates, LLC, sues the Defendants, Ken Detzner, in his official capacity as Secretary of State, Chad Poppell, in his official capacity as the Secretary of Management Services, Ken Lawson, in his official capacity as the Secretary of Business and Professional Regulation, Mike Carroll, in his official capacity as the Secretary of Children and Families, Cissy Proctor, in her official capacity as the Executive Director of the Department of

Economic Opportunity, Jason M. Allison, in his official capacity as the State Chief Information Officer, Pam Stewart, in her official capacity as the Commissioner of Education, the State of Florida, Department of Management Services (“DMS”), the State of Florida, Department of Business and Professional Regulation (“DBPR”), the State of Florida, Department of Children and Families (“DCF”), and the State of Florida, Agency for State Technology (“AST”), and alleges:

GENERAL ALLEGATIONS

Parties

1. Plaintiff, Northwood Associates, LLC, is a Foreign Limited Liability Company authorized to do business in the State of Florida.

2. Defendant, Ken Detzner, is the Secretary of State and, pursuant to section 20.10, Florida Statutes, is the head of the Department of State.

3. Defendant, Chad Poppell, is the Secretary of Management Services, and pursuant to section 20.22, Florida Statutes, is the head of the Department of Management Services.

4. Defendant, Ken Lawson, is the Secretary of Business and Professional Regulation, and pursuant to section 20.165, Florida Statutes, is the head of the Department of Business and Professional Regulation.

5. Defendant, Mike Carroll, is the Secretary of Children and Families, and pursuant to section 20.19, Florida Statutes, is the head of the Department of Children and Families.

6. Defendant, Cissy Proctor, is the Executive Director of the Department of Economic Opportunity, and pursuant to section 20.60, Florida Statutes, is the head of the Department of Economic Opportunity.

7. Defendant, Jason M. Allison, is the State Chief Information Officer, and pursuant to section 20.61, is the head of the Agency for State Technology.

8. Defendant, Pam Stewart, is the Commissioner of Education, and pursuant to section 20.15, Florida Statutes, serves as the Executive Director of the Department of Education.

9. Defendant, DMS, is an agency of the State of Florida and is a Lessee under a Lease Agreement with Lessor, Northwood Associates, LLC, relating to the lease of space within the Northwood Centre, 1940 North Monroe Street, Tallahassee, Leon County, Florida 32301, as more particularly described below.

10. Defendant, DBPR, is an agency of the State of Florida and is a Lessee under a Lease Agreement with Lessor, Northwood Associates, LLC, relating to the lease of space within the Northwood Centre, 1940 North Monroe Street, Tallahassee, Leon County, Florida 32301, as more particularly described below

11. Defendant, DCF, is an agency of the State of Florida and is a Lessee under a Lease Agreement with Lessor, Northwood Associates, LLC, relating to the lease of space within the Northwood Centre, 1940 North Monroe Street, Tallahassee, Leon County, Florida 32301, as more particularly described below.

12. Defendant, AST, is an agency of the State of Florida and is a Lessee under a Lease Agreement with Lessor, Northwood Associates, LLC, relating to the lease of space within the Northwood Centre, 1940 North Monroe Street, Tallahassee, Leon County, Florida 32301, as more particularly described below.

Lease No: 720:0139

13. On or about November 12, 2004, Northwood Associates, LLC, as lessor, through its predecessor in interest 1940 Monroe Street LLC, entered into Lease No.: 720:0139 with DMS for the lease of those certain premises in the Northwood Centre, 1940 North Monroe Street, Tallahassee, Leon County, Florida 32301 as more particularly described in Lease No.: 720:0139,

as amended. (A copy of the Lease Agreement, Lease No.: 720:0139, as amended, is attached as Exhibit A.)

14. The lessees under Lease No.: 720:0139 are the State of Florida, pursuant to a single master lease executed by DMS, and each of the agency occupants that shall have budget authority with respect to Lease No.: 720:0139. (See Exhibit A, at § XXXI.)

15. Lease No.: 720:0139, as amended, is currently set to expire April 30, 2020.

16. Pursuant to the terms of Lease No.: 720:0139, as amended, certain state agencies currently occupy space within the Northwood Centre, including DBPR, DCF and AST.

17. As more specifically set forth in Lease No.: 720:0139, payments are due from lessees to lessor on a monthly basis.

Lease No.: 790:0098

18. On or about November 13, 2012, Northwood Associates, LLC, as lessor, entered into Lease No.: 790:0098 with DBPR, as lessee, for the lease of those certain premises in the Northwood Centre, 1940 North Monroe Street, Tallahassee, Leon County, Florida 32301 as more particularly described in Lease No.: 790:0098, as amended. (A copy of the Lease Agreement, Lease No.: 790:0098, as amended, is attached as Exhibit B.)

19. Lease No.: 790:0098, as amended, is currently set to expire October 31, 2017.

20. As more specifically set forth in Lease No.: 790:0098, payments are due from lessee to lessor on a monthly basis.

21. Collectively, Lease Nos.: 720:0139, 790:0098, are referred to as the “Northwood Centre Leases.”

Ongoing Efforts by Plaintiff to Address Issues Raised by State Lessees

22. Northwood Associates, LLC, at all times pertinent hereto, has performed its obligations under the Northwood Centre Leases, and additionally, performed periodic air quality testing in its facility, reports of which were regularly furnished to the respective tenants.

23. In June 2015, DBPR advised Northwood Associates, LLC, of various issues of concern with respect to Suite 60, which is covered under Lease No.: 720:0139, and requested a collaborative effort between the parties to assess the issues.

24. Within one week the parties met and Northwood Associates, LLC, confirmed it was employing two expert consulting firms to address all issues, which experts were employed and initiated their work immediately thereafter.

25. Since then, Northwood Associates, LLC's consultants and contractors have: a—performed air testing and made assessments of all issues raised by the defendants; b—developed ductwork testing and assessment protocols, approved by the defendants and their consultants; c—conducted ductwork testing on nights and weekends to accommodate the defendants and their consultants; d—developed as-built drawings of portions of the premises for the joint use of Northwood Associates, LLC and its tenants; e—evaluated the HVAC system performance and developed plans for modification of the system.

26. These activities were continuing in earnest into March 2016 when, on March 3, Northwood Associates, LLC received a letter from DBPR and DMS dated March 2, 2016, demanding that certain work and work plans be accomplished in order to meet DMS and DBPR's expectation of Northwood Associates, LLC's compliance with its obligations under the lease.

27. Since receipt of this letter Northwood Associates, LLC has continued its affirmative activities, described above, in direct coordination with defendants and their agents and advised defendants of its intentions to fully address the issues set out in the letter.

DMS and DBPR's Scheme to Legislatively Circumvent the Northwood Centre Leases

28. Unbeknownst to Northwood Associates, LLC, well before DMS and DBPR's March 2, 2016 letter was issued, DMS and DBPR were proceeding with a scheme to circumvent their lease obligations to Northwood Associates, LLC, in total disregard of their obligations or rights under the Northwood Centre Leases.

29. This scheme was obviously hatched and ongoing at the time that DMS and DBPR intended it to appear to Northwood Associates, LLC, that they were operating within the terms of the lease agreements.

30. The first phase of the scheme involved the drafting of legislative proviso language declaring that no funds were appropriated to pay for the Northwood Centre Leases, or any other state leases concerning the Northwood Centre, and expressly prohibiting any state entity from using any of their funds to pay the Northwood Centre Leases, or any other state leases concerning the Northwood Centre.

31. DMS and DBPR then proceeded with the second phase of the scheme—lobbying legislative leaders to approve the language for insertion in the 2016-2017 General Appropriations Act, HB 5001, which they succeeded in doing on Sunday, March 6, 2016.

32. The specific proviso language that DMS and DBPR had inserted into the 2016-2017 General Appropriations Act provides that “no funds are appropriated . . . for the payment of rent, lease or possession of space for offices or any other purpose or use at Northwood Centre, 1940 North Monroe Street, Tallahassee, Florida, pursuant to the [Northwood Centre Leases], or

any other lease . . . notwithstanding any lease or contract to the contrary” and that the Lessees are “prohibited from expending any specific appropriation from the General Revenue Fund, any trust fund or from any other source for the rent, lease or possession of any space for office or other purpose or use at Northwood Centre, 1940 North Monroe Street, Tallahassee, Florida, pursuant to [the Northwood Centre Leases], or any other lease, except State of Florida Lease No.: 400.0070.” (collectively, the “Subject Proviso”) (Portions of the 2016-2017 General Appropriations Act containing the Subject Proviso are attached hereto as Exhibit C.)

33. On March 11, 2016, the Florida Legislature passed the 2016-2017 General Appropriations Act, HB 5001, for the annual period beginning July 1, 2016, and ending on June 30, 2017. The 2016-2017 General Appropriations Act was approved and signed in relevant part by the Governor on March 17, 2016, when it became law. (*See* Ch. 2016-66, Laws of Florida.)

34. Simultaneously with its legislative maneuvers to circumvent the lease, in February and March 2016 DMS and DBPR were already making arrangements with other private lessors to move state employees and operations from the Northwood Centre to other facilities in Tallahassee.

35. In fact, leases were signed as early as March 9 and 12, 2016, even before the 2016-2017 General Appropriations Act became law. (A copy of the lease agreements are attached as Exhibit D.)

36. This scheme, effectuated by DMS and DBPR, has now resulted in numerous state lessees, including DMS and DBPR, among others (the “Northwood Centre Lessees”), sending Northwood Associates, LLC, notices of termination of their leases based upon the Subject Proviso, stating that the Northwood Centre Lessees are terminating their leases effective June 30, 2016, and will be vacating the premises in the interim.

DMS and DBPR's Subject Proviso is Invalid and Unconstitutional

37. As part of the budget process for the 2016 Florida Legislative Session, each of the Northwood Centre Lessees submitted legislative budget requests to the Florida Legislature in the latter part of 2015.

38. As required by their lease agreements, including the Northwood Centre Leases, each Northwood Centre Lessee's legislative budget request sought the appropriation of amounts to fund their obligations under the respective lease agreements.

39. Prior to March 6, 2016, the Legislature included amounts sufficient to fund each Northwood Centre Lessee's obligations under the respective leases, and specifically for that purpose, in the proposed 2016-2017 General Appropriations Act, HB 5001.

40. Despite the insertion of the Subject Proviso on March 6, 2016, the Legislature did not, either contemporaneously or thereafter, remove from the 2016-2017 General Appropriations Act the funds previously included in the proposed 2016-2017 General Appropriations Act specifically for the purpose of funding each Northwood Centre Lessee's obligations under the respective leases.

41. Rather, the funds previously included in the proposed 2016-2017 General Appropriations Act specifically for the purpose of funding each Northwood Centre Lessee's obligations under the respective leases, in fact, remained in and were included in the final 2016-2017 General Appropriations Act as passed by the Legislature and signed into law by the Governor on March 17, 2016.

42. The Subject Proviso is simply incorrect, invalid, and contrary to the actual funds appropriated as set forth in the 2016-2017 General Appropriations Act.

43. Because the 2016-2017 General Appropriations Act included funds specifically for the purpose of funding the Northwood Centre Leases, as well as other state leases relating to Northwood Centre, any attempt by the Legislature to forbid payment of the Northwood Centre Leases or any other state leases relating to Northwood Centre, including through the Subject Proviso, is an unconstitutional impairment of the Northwood Centre Leases, or any other lease agreement by the state for space within the Northwood Centre.

44. Plaintiff has performed all conditions precedent to be performed by Plaintiff, or the conditions have otherwise occurred or have been waived.

COUNT I – DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF

45. Plaintiff re-alleges paragraphs 1-44, as if specifically set forth herein.

46. This is an action for declaratory judgment and injunctive relief pursuant to Chapter 86, Florida Statutes. This Court has jurisdiction under Article V, Section 5(b), Florida Constitution; and sections 26.012, 86.011 and 86.021, Florida Statutes.

47. Venue is proper in Leon County, Florida, where Defendants maintain agency headquarters.

48. The Subject Proviso stating that “no funds are appropriated . . . for the payment of rent, lease or possession of space for offices or any other purpose or use at Northwood Centre, 1940 North Monroe Street, Tallahassee, Florida, pursuant to the [Northwood Centre Leases], or any other lease . . . notwithstanding any lease or contract to the contrary” is invalid because the Legislature did, in fact, appropriate such funds at the request of the various Northwood Centre Lessees for the specific purpose of funding the leases at Northwood Centre, including the Northwood Centre Leases.

49. Because the Legislature did, in fact, appropriate funds at the request of the various Northwood Centre Lessees to fund the leases at Northwood Centre, including the Northwood Centre Leases, the Subject Proviso stating that the Northwood Centre Lessees are “prohibited from expending any specific appropriation from the General Revenue Fund, any trust fund or from any other source for the rent, lease or possession of any space for office or other purpose or use at Northwood Centre, 1940 North Monroe Street, Tallahassee, Florida, pursuant to [the Northwood Centre Leases], or any other lease, except State of Florida Lease No.: 400.0070” is an unconstitutional impairment of the Northwood Centre Leases, or any other lease agreement by the state for space within the Northwood Centre, in violation of Article I, Section 10, of the Florida Constitution.

50. In reliance on the Subject Proviso, the Northwood Centre Lessees have given notice of termination of their lease agreements, or have otherwise indicated that they do not intend to comply with their payment obligations under their respective lease agreements, including under the Northwood Centre Leases, beyond that date.

51. As a result of the Subject Proviso, Plaintiff is in doubt as to its rights and obligations under the Northwood Centre Leases.

52. There is an actual controversy and a bona fide, present need for a declaration that the Subject Proviso is invalid and unconstitutional.

53. Plaintiff has standing to challenge the validity of the Subject Proviso, and to have assurances that it does not affect the obligations of the Northwood Centre Lessees to make payments to Plaintiff, including under the Northwood Centre Leases.

54. The relief sought herein is not merely the giving of legal advice, or to answer questions propounded from curiosity.

55. Because circumstances of direct and immediate adverse effect on the Plaintiff's rights and the Northwood Centre Lessees' obligations under their respective leases, including the Northwood Centre Leases, are involved, speedy determination should be made pursuant to section 86.111, Florida Statutes (expedited consideration of actions for declaratory relief).

WHEREFORE, Plaintiff respectfully requests this Court: a.) issue a declaration that the Subject Proviso is invalid and unconstitutional; b.) issue an injunction precluding Defendants from relying upon the Subject Proviso for any purpose whatsoever; and c.) grant such further relief as this Court deems just and proper.

COUNT II – BREACH OF CONTRACT
(Lease No.: 720:0139)

56. Plaintiff re-alleges paragraphs 1-44, as if specifically set forth herein.

57. This is an action for breach of contract against Defendants, DMS, DBPR, DCF and AST under Lease No.: 720:0139.

58. This is an action for damages that exceed \$15,000. This Court has jurisdiction pursuant to section 26.012, Florida Statutes.

59. Venue is proper in Leon County, Florida, where Defendants maintain agency headquarters.

60. As required by section 255.2502, Florida Statutes, the State of Florida's, and therefore Defendants', performance and obligation to pay under Lease No.: 720:0139 is contingent upon an annual appropriation by the Legislature.

61. Defendants have specifically stated that, in reliance on the Subject Proviso, they will cease making rental payments due under Lease No.: 720:0139 as of June 30, 2016.

62. Defendants have also specifically stated that they will vacate the premises covered by Lease No.: 720:0139, and have entered into lease agreements for alternative space, further evidencing their repudiation of their obligations under Lease No.: 720:0139.

63. At the time Plaintiff was made aware of Defendants' breach and subsequent repudiation of its remaining payment obligations under Lease No.: 720:0139, Plaintiff had performed all obligations under Lease No.: 720:0139 that were due as of that time, and was ready, willing and able to perform any remaining obligations to complete its performance as required by Lease No.: 720:0139.

64. The Subject Proviso is invalid and unconstitutional, as the Legislature specifically appropriated the funds requested by Defendants for the purpose of funding their obligations under Lease No.: 720:0139.

65. Because the Legislature appropriated funds sufficient to fund Defendants' obligations under Lease No.: 720:0139, and specifically for that purpose, Defendants' failure or refusal to make such payments is a breach of their obligations under Lease No.: 720:0139.

66. Defendants' breach of Lease No.: 720:0139, by virtue of their failure and refusal to perform their remaining obligations under Lease No.: 720:0139, has damaged Plaintiff, including but not limited to loss of rental payments due through the remaining term of Lease No.: 720:0139.

67. In the alternative, inherent in each of the Northwood Centre Leases, including Lease No.: 720:0139, is an implied covenant of good faith and fair dealing requiring each lessee thereunder to seek an annual appropriation from the Legislature sufficient to fund the lessee's obligations.

68. At minimum, Defendants must not interfere with or otherwise cause the failure of the Legislature to appropriate such funds.

69. Though each Defendant initially requested an annual appropriation sufficient to fund its obligations under Lease No.: 720:0139 for the 2016-2017 fiscal year, on or before March 6, 2016, Defendants, through DMS and DBPR, specifically requested that the Legislature include the Subject Proviso, or that it otherwise fail or refuse to appropriate funds for the purposes of funding the Northwood Centre Leases, including Lease No.: 720:0139, in an attempt to avoid Defendants' obligations to pay under Lease No.: 720:0139.

70. Defendants' actions in seeking the inclusion of the Subject Proviso, or in otherwise requesting that the Legislature fail or refuse to appropriate funds for the purpose of funding the Northwood Centre Leases, constitutes a breach of Defendants' obligations under Lease No.: 720:0139.

71. To the extent the Legislature did, in fact, fail to appropriate funds for the purposes of payment of the amounts due Plaintiff pursuant to the Northwood Centre Leases, such failure is the direct result of Defendants' actions requesting that the Legislature fail or otherwise refuse to appropriate funds for that specific purpose.

72. Plaintiff has been damaged by Defendants' breach of their lease obligations, including but not limited to loss of rental amounts due through the remaining term of Lease No.: 720:0139.

73. Pursuant to Lease No.: 720:0139, Plaintiff is entitled to recover costs, including reasonable attorney's fees, incurred in pursuing this action.

WHEREFORE, Plaintiff demands judgment against Defendants for compensatory damages, reasonable attorney's fees, costs of suit, pre- and post-judgment interest, and such further relief as this Court may deem proper.

**COUNT III – BREACH OF CONTRACT
(Lease No.: 790:0098)**

74. Plaintiff re-alleges paragraphs 1-44, as if specifically set forth herein.

75. This is an action for breach of contract against Defendant, DBPR, under Lease No.: 790:0098.

76. This is an action for damages that exceed \$15,000. This Court has jurisdiction pursuant to section 26.012, Florida Statutes.

77. Venue is proper in Leon County, Florida, where Defendant maintains agency headquarters.

78. As required by section 255.2502, Florida Statutes, the State of Florida's, and therefore Defendant's, performance and obligation to pay under Lease No.: 790:0098 is contingent upon an annual appropriation by the Legislature.

79. Defendant has specifically stated that Defendant, in reliance on the Subject Proviso, will cease making rental payments due under Lease No.: 790:0098 as of June 30, 2016.

80. Defendant has also specifically stated that it will vacate the premises covered by Lease No.: 790:0098, and has entered into lease agreements for alternative space, further evidencing its repudiation of its obligations under Lease No.: 790:0098.

81. At the time Plaintiff was made aware of Defendant's breach and subsequent repudiation of its remaining payment obligations under Lease No.: 790:0098, Plaintiff had performed all obligations under Lease No.: 790:0098 that were due as of that time, and was ready,

willing and able to perform any remaining obligations to complete its performance as required by Lease No.: 790:0098.

82. The Subject Proviso is invalid and unconstitutional, as the Legislature specifically appropriated the funds requested by Defendant for the purpose of funding its obligations under Lease No.: 790:0098.

83. Because the Legislature appropriated funds sufficient to fund Defendant's obligations under Lease No.: 790:0098, and specifically for that purpose, Defendant's failure or refusal to make such payments is a breach of its obligations under Lease No.: 790:0098.

84. Defendant's breach of Lease No.: 790:0098, by virtue of its failure and refusal to perform its remaining obligations under Lease No.: 790:0098, has damaged Plaintiff, including but not limited to loss of rental payments due through the remaining term of Lease No.: 790:0098.

85. In the alternative, inherent in each of the Northwood Centre Leases, including Lease No.: 790:0098, is an implied covenant of good faith and fair dealing requiring each lessee thereunder to seek an annual appropriation from the Legislature sufficient to fund the lessee's obligations.

86. At minimum, lessees must not interfere with or otherwise cause the failure of the Legislature to appropriate such funds.

87. Though DBPR initially requested an annual appropriation sufficient to fund its obligations under Lease No.: 790:0098 for the 2016-2017 fiscal year, on or before March 6, 2016, DBPR specifically requested that the Legislature include the Subject Proviso, or that it otherwise fail or refuse to appropriate funds for the purposes of funding the Northwood Centre Leases, including Lease No.: 790:0098, in an attempt to avoid Defendant's obligations to pay under Lease No.: 790:0098.

88. Defendant's actions in seeking the inclusion of the Subject Proviso, or in otherwise requesting that the legislature fail or refuse to appropriate funds for the purpose of funding the Northwood Centre Leases, constitutes a breach of Defendant's obligations under Lease No.: 790:0098.

89. To the extent the Legislature did, in fact, fail to appropriate funds for the purposes of payment of the amounts due Plaintiff pursuant to the Northwood Centre Leases, such failure is the direct result of Defendant's actions requesting that the Legislature fail or otherwise refuse to appropriate funds for that specific purpose.

90. Plaintiff has been damaged by Defendant's breach of its lease obligations, including but not limited to loss of rental amounts due through the remaining term of Lease No.: 790:0098.

WHEREFORE, Plaintiff demands judgment against Defendant for compensatory damages, costs of suit, pre- and post-judgment interest, and such further relief as this Court may deem proper.

/s/
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D. Ty Jackson (Fla. Bar No. 41216)
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