

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

ROBERT PETERSON and)
LEIBUNDGUTH STORAGE)
& VAN SERVICE, INC.)

Plaintiffs,)

v.)

Civil Action No. 14-cv-9851

VILLAGE OF DOWNERS GROVE,)
ILLINOIS, an Illinois municipal)
corporation)

Judge: Honorable Edmond E. Chang
Magistrate Judge: Honorable Young B. Kim

Defendant.)

DEFENDANT’S MOTION TO DISMISS

NOW COMES Defendant, VILLAGE OF DOWNERS GROVE, ILLINOIS, an Illinois municipal corporation, by and through its attorneys, DAY & ROBERT, P.C., and for its Motion to Dismiss Count I and its Motion to Dismiss the as-applied constitutional claims within Counts II, III and IV of Plaintiffs’ Verified First Amended Complaint pursuant to Fed. R. Civ. P. 12(b)(6), states as follows:

1. On January 30, 2015, Robert Peterson and Leibundguth Storage & Van Service, Inc. (“Plaintiffs”) filed a Verified First Amended Complaint (“Complaint”) against the Village of Downers Grove (“Village”). The Complaint contains four separate Counts, each of which challenges the Village sign ordinance as being an unconstitutional infringement upon Plaintiffs’ free speech in violation of both the U.S. and Illinois Constitutions.

2. In Count I, Plaintiffs improperly attempt to bring a general facial constitutional challenge to the entire Village sign ordinance which covers not only commercial wall signs, but

political, non-commercial, governmental, memorial, and other signs that are exempt from the permitting requirements for commercial wall signs.

3. Plaintiffs lack standing to bring Count I because the only injury they assert results from the commercial sign regulations which: (1) restrict the number and size of permitted commercial wall signs; (2) require that a commercial wall sign must face a public roadway or drivable right-of-way; and (3) restrict hand-painted signs on the exterior of buildings, all of which are addressed in the facial challenges raised in Counts II-IV. Plaintiffs also fail to seek any relief specific to Count I. Because Plaintiffs lack standing to bring Count I, it should be dismissed.

4. Counts II, III and IV improperly combine both facial and as-applied constitutional challenges to three individual specific regulations within the sign ordinance when only a facial challenge can be asserted by Plaintiffs. The as-applied challenges should be dismissed because each improperly seeks judicial scrutiny of content neutral time, place and manner restrictions. Such restrictions are not subject to judicial examination as to how they apply to Plaintiffs' specific signs, or how they allegedly impact Plaintiffs individual advertising desires.

5. The scope of this Court's review of Counts II, III and IV is limited to making a determination as to whether the three specific sign regulations are content neutral time, place and manner restrictions which address the health, welfare, safety and aesthetics in the Village, and this ruling of law must be completed on the face of the Village sign ordinance alone (the facial challenge asserted by Plaintiffs).

6. Because, as a matter of law, the three challenged sign regulations are, in fact, content neutral time, place and manner restrictions regulating aesthetics and safety, the only remaining question is for this Court to determine if each challenged restriction is narrowly

tailored to serve a significant governmental interest, and leaves ample alternative channels for Plaintiffs to communicate their commercial message (the “*Clark* test”; see *Clark v. Community for Creative Non-Violence*, 468 U.S. 288 (1984)).

7. The *Clark* test analysis must be done without regard as to how the Village’s significant governmental interest is served in relation to Plaintiffs’ specific signs or Plaintiffs’ advertising desires. Rather, this Court will rule that the regulations are either facially valid or facially invalid as they apply to all properties with the Village.

8. The Illinois statute of limitations has run for both judicial review of the denial of Plaintiffs’ request that the Village Council amend the text of the Village sign ordinance (90 days), and on the Village’s Zoning Board of Appeals denial of Plaintiffs’ application for three variations from the sign regulations at issue (35 days). Therefore, any as-applied judicial review of the denials from the Village Council and the Zoning Board of Appeals are also time barred and beyond the purview of this Court.

WHEREFORE, Defendant, VILLAGE OF DOWNERS GROVE, an Illinois municipal corporation, respectfully requests this Court to enter an order pursuant to Fed. R. Civ. P. 12(b)(6), as follows:

- A. Dismissing Count I of Plaintiffs’ Verified First Amended Complaint in its entirety; and
- B. Dismissing the as-applied claims within Counts II, III and IV of Plaintiffs’ Verified First Amended Complaint; and
- C. For such other and further relief this Court deems equitable and just.

Respectfully Submitted,

VILLAGE OF DOWNERS GROVE, ILLINOIS, an
Illinois municipal corporation, Defendant

BY: /s/ Scott M. Day

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CERTIFICATE OF SERVICE

I, Scott M. Day, an attorney, certify that on February 5, 2015, I filed Defendant's Motion to Dismiss with the Clerk of the Court, United States District Court for the Northern District of Illinois using the CM/ECF System, which also served same upon all parties of record by the CM/ECF System.

/s/ Scott M. Day
Scott M. Day