

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

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

Plaintiffs,)

v.)

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

Defendant.)

Case No. 14-cv-9851

Hon. Edmond E. Chang

**PLAINTIFFS' ANSWER AND AFFIRMATIVE DEFENSES TO
DEFENDANT'S COUNTERCLAIM**

Plaintiffs Robert Peterson and Leibundguth Storage & Van Service, Inc. answer Defendant's Counterclaim as follows:

PARTIES

1. The Village of Downers Grove ("Village") is a home rule Illinois municipal corporation, with its principal place of business located at 801 Burlington Avenue, Downers Grove, Illinois 60515.

ANSWER: Plaintiffs admit the allegations contained in Paragraph 1 of the Counterclaim.

2. According to paragraphs 10 and 11 of the Verified First Amended Complaint, Plaintiff, Robert Peterson resides in Downers Grove, Illinois, and is the sole owner of Plaintiff, Leibundguth Storage & Van Service, Inc., and Illinois corporation located in Downers Grove, Illinois.

ANSWER: Plaintiffs admit the allegations contained in Paragraph 2 of the Counterclaim.

JURISDICTION

3. The Court has jurisdiction over the subject matter of this counterclaim as Plaintiffs have submitted to jurisdiction by commencing this action, and the nature of this counterclaim stems directly from the action submitted by Plaintiffs.

ANSWER: Plaintiffs deny the allegations contained in Paragraph 3 of the Counterclaim.

4. The Village further adopts and re-alleges its answers to paragraphs 4, 5 and 9 of Plaintiffs' Verified First Amended Complaint as if fully set forth herein.

ANSWER: Plaintiffs deny the allegations contained in Paragraph 4 of the Counterclaim and the allegations contained in Defendant's answers to paragraph 4, 5, and 9 of the Verified First Amended Complaint.

COUNT I

5. The Village incorporates and re-alleges the allegations within paragraphs 1 – 4 of this counterclaim as if though fully set forth herein.

ANSWER: Plaintiffs incorporates and re-alleges their answers to paragraphs 1 through 4 of this counterclaim.

6. After a public hearing, significant deliberation by multiple Village sub committees and referral to a Joint Commission, consultation with the Downers Grove Chamber of Commerce, consultation with the Downtown Downers Grove Management Corp., public meetings with both commercial and residential property owners, active and repeated solicitation of Village business owners and other investigation over the course of approximately one year, on May 3, 2005, the Village Council adopted an amendment to the then existing sign ordinance under Village Ordinance No. 4668. Exhibit A to Plaintiffs' Verified First Amended Complaint is the current "clean" version of the sign ordinance as amended on May 3, 2005, and said Exhibit A is hereby incorporated into this counterclaim.

ANSWER: Plaintiffs admit that the Village Council adopted an amendment to the then-existing sign ordinance on May 3, 2005 and that Exhibit A to Plaintiffs' Verified First Amended Complaint is the current version of the sign ordinance as

amended on May 3, 2005. Plaintiffs lack knowledge or information sufficient to form a belief about the truth of the remaining allegations in Paragraph 6.

7. The sign ordinance originally provided a seven year, later extended to a nine year, amortization schedule to permit all owners of then existing non-conforming signs with nine years, up through 2014, to eliminate non-conformities and bring their signs into lawful compliance with the sign ordinance.

ANSWER: Plaintiffs admit the allegations contained in Paragraph 7 of the Counterclaim.

8. Plaintiffs have failed to bring the signs on their building located at 1301 Warren Avenue, Downers Grove, Illinois 60515, into conformity with the sign ordinance.

ANSWER: Plaintiffs admit the allegations contained in Paragraph 8 of the Counterclaim.

9. The wall sign located on the back of Plaintiffs' building is currently, and has been as of the expiration of the nine year amortization period, illegal and in violation of Sections 9.050.A, 9.020.P and 9.050.C.1, in that the sign: (1) is too large (400 square feet when a maximum total allowable signage for the whole building is 159 square feet); (2) is hand-painted on the exterior of the building; and (3) is a wall sign that does not face a public roadway or drivable right-of-way.

ANSWER: Plaintiffs admit that the wall sign located on the back of Plaintiffs' building is currently in violation of Sections 9.050.A, 9.020.P and 9.050.C.1, and has been as of the expiration of the nine year amortization period, for the reasons given. Plaintiffs deny the remaining allegations contained in Paragraph 9.

10. The signs on the front of Plaintiffs' building are currently, and have been as of the expiration of the nine year amortization period, in violation of Sections 9.020.P, 9.050.C.1 and 9.050.A of the sign ordinance in that: (1) one of the signs is hand-painted on the exterior of the building; and (2) collectively, the signs exceed both the number of walls signs allowed and the maximum allowable signage of 159 square feet for the whole building.

ANSWER: Plaintiffs admit the allegations contained in Paragraph 10 of the Counterclaim, except that Plaintiffs deny the allegation that collectively, the three signs on the front of the building exceed the maximum allowable signage of 159 square feet for the whole building.

11. The regulations at issue which prohibit Plaintiffs current non-conforming signs are constitutional and valid content neutral time, place and manner restrictions, and are fully and legally enforceable against Plaintiffs.

ANSWER: Plaintiffs deny the allegations contained in Paragraph 11 of the Counterclaim.

12. No variations or text amendments from the sign ordinance have been granted by the Village to Plaintiffs to cure any of the sign non-conformities.

ANSWER: Plaintiffs admit the allegations contained in Paragraph 112 of the Counterclaim.

13. There are 67 parcels of property within the Village that are located adjacent to the Burlington Northern Santa Fe right-of-way, as is Plaintiffs' property. There are 33 buildings located on those 67 parcels. As of the filing of this counterclaim, Plaintiffs' property is the only remaining property with a wall sign facing onto the Burlington Northern Santa Fe right-of-way in violation of the sign ordinance.

ANSWER: Plaintiffs admit that their property is located adjacent to the Burlington Northern Santa Fe right-of-way, and that Plaintiffs' property is the only remaining property with a wall sign facing onto the Burlington Northern Santa Fe right-of-way in violation of the sign ordinance. Plaintiffs lack knowledge or information sufficient to form a belief about the truth of the remaining allegations in Paragraph 13.

14. As of the filing of this counterclaim, 97% of all properties with non-conforming signs as of the adoption of the sign ordinance have come into lawful compliance with the sign ordinance.

ANSWER: Plaintiffs lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 14.

15. The Village has notified Plaintiffs of the foregoing violations, and on November 26, 2014 sent correspondence to Plaintiffs requiring that all signs on the property be brought into conformity no later than April 17, 2015, or Plaintiffs would be subject to further enforcement action by the Village (see Exhibit D to Plaintiffs' Verified First Amended Complaint).

ANSWER: Plaintiffs admit the allegations contained in Paragraph 15 of the Counterclaim.

16. Section 9.120 of the sign ordinance vests the community development director of the Village to enforce all provisions of the sign ordinance.

ANSWER: Plaintiffs admit the allegations contained in Paragraph 16 of the Counterclaim.

17. Section 13.020 of the Village Zoning Ordinance authorizes the Village to impose fines against Plaintiffs for each day their sign violations remain uncorrected after receiving notice of the violations.

ANSWER: Plaintiffs admit that Section 13.020 of the Village Zoning Ordinance authorizes the Village to levy fines in accordance with the Village's User-Fee, License & Fine Schedule. Plaintiffs deny the allegations contained in Paragraph 18 to the extent they are inconsistent with the text of Section 13.020. Plaintiffs deny that the Village is authorized to impose fines against Plaintiffs.

18. Under Section 13.020, the Village is also entitled to file a lien against Plaintiffs' property for their failure to pay levied fines, and for fees to cover any expenses incurred by the Village for remedying the violations.

ANSWER: Plaintiffs admit that Section 13.020 authorizes the Village to file a lien against a property owner who fails to pay levied fines or fees and to cover any

expenses incurred by the Village for remedying violations of the sign ordinance. Plaintiffs deny the allegations contained in Paragraph 18 to the extent they are inconsistent with the text of Section 13.020. Plaintiffs deny that the Village is entitled to a lien against Plaintiffs' property for failure to pay levied fines or fees and to cover any expenses incurred by the Village for remedy violations of the sign ordinance. Further, Plaintiffs deny that the Village is entitled to fees against Plaintiffs to cover any expenses incurred by the Village for remedying the violations.

19. Pursuant to the order entered with this Court on January 30, 2015, the Village has agreed to withhold imposing fines and enforcement against Plaintiffs' for the existing violations until after ruling on the anticipated cross-motions for summary judgment.

ANSWER: Plaintiffs admit the allegations contained in Paragraph 19 of the Counterclaim.

20. By the filing of this counterclaim, the Village seeks to preserve its right to seek enforcement, fines and any other remedies allowed under the sign ordinance and the Village Zoning Ordinance, if needed, after the anticipated rulings on the cross-motions for summary judgment.

ANSWER: Plaintiffs lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 20 stating that the Village seeks to preserve its right to seek enforcement of the sign ordinance. Further answering Paragraph 20, Plaintiffs deny that Defendant has a basis before this Court to allege a counterclaim for the purpose of preserving its right to enforce the sign ordinance against Plaintiffs.

PLAINTIFFS' AFFIRMATIVE DEFENSES TO COUNTERCLAIM

1. Defendant's Counterclaim must be denied if Plaintiffs prevail on the claims alleged in the First Amended Complaint.

2. Defendant asserts that the Court has supplemental jurisdiction over its Counterclaim, but if Plaintiffs do not prevail on their claims, then the only basis for federal jurisdiction will be removed from this case.

3. Defendant is not required to file a Counterclaim to preserve its right to enforce the sign ordinance against Plaintiffs because, if Plaintiffs do not prevail, Defendant may simply enforce the sign ordinance in state court as provided by the Village Municipal Code, §§ 1.15(e), 1.18.

4. If Plaintiffs do not prevail, Defendant cannot retroactively enforce the sign ordinance against Plaintiffs because of the Court's order in which Defendant agreed not to enforce the sign ordinance until a ruling on the cross motions for summary judgment, including daily fines during the pendency. (Doc. 11).

5. The Village Municipal Code provides an enforcement mechanism and procedures which the Village must follow to enforce violations of the sign ordinance. Defendant's Counterclaim seeks to avoid following such procedures. Village Zoning Ordinance, Article 13.020.

Dated: February 27, 2015

Respectfully submitted,

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

By: /s/ Jeffrey M. Schwab

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VERIFICATION

I, Robert Peterson, declare under penalty of perjury that the allegations in this Answer and Affirmative Defenses to Defendant's Counterclaim are true and correct to the best of my knowledge, except as to matters stated to be on information and belief, and as to such matters I certify that I verily believe the same to be true.

A handwritten signature in black ink, appearing to read "Robert Peterson", written over a horizontal line.

Robert Peterson

Dated: February 27, 2015

CERTIFICATE OF SERVICE

I, Jeffrey M. Schwab, an attorney, hereby certify that on February 27, 2015, I served Plaintiffs' Answer and Affirmative Defenses to Defendant's Counterclaim on Defendant's counsel by filing it through the Court's electronic filing system.

/s/Jeffrey M. Schwab