

**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

**PLAINTIFF’S COMBINED MOTION FOR SUMMARY JUDGMENT AND
RESPONSE TO DEFENDANT’S MOTION FOR SUMMARY JUDGMENT**

Pursuant to Fed. R. Civ P. 56, Plaintiff Leibundguth Storage & Van Service, Inc. (“Leibundguth”) moves for summary judgment in its favor and against Defendant Village of Downers Grove. In support, Leibundguth states as follows:

1. Leibundguth is located at the property and building at 1301 Warren Avenue in Downers Grove. The back wall of the building runs parallel to the BNSF railroad tracks. (Pl. SOF 5.) The building bears four signs advertising Leibundguth’s business. (Pl. SOF 6.)

2. The back of the building bears a sign that is painted directly on the wall of the building that advertises to train commuters riding Metra along the BNSF railway. (Pl. SOF 7.) The front of the building bears a smaller similar sign that is also painted directly on the wall of the building. (Pl. SOF 9.) These painted signs predate the ownership interest of Robert Peterson, the sole owner of Leibundguth,

who believes that these signs were erected shortly after the building was built in the 1930s. (Pl. SOF 10.)

3. The front of the building also contains a sign with “Leibundguth Storage & Van Service” in red and white hand-painted block letters. This sign was erected in 1965. (Pl. SOF 11.) Directly under that sign is a sign that says “Wheaton World Wide Moving,” which advertises Leibundguth’s relationship with its long-distance mover. That sign was erected in 1987, replacing a similar sign with the previous business name of Wheaton. (Pl. SOF 12.)

4. These signs were jeopardized when, on May 3, 2005, the Village Council adopted an amendment to its sign ordinance, which became enforceable in May 2014. The amended sign ordinance included provisions that prohibited signs painted on the wall of a building (except for in certain zoning districts), prohibited wall signs on buildings with tenant frontage along a railway, limited the number of wall signs per tenant frontage along a road to one, and limited the total aggregate size of signs. (Pl. SOF 8, 13; Def. SOF 2, 5-9.)

5. After Leibundguth’s owner unsuccessfully sought an amendment to the sign ordinance or a variance to accommodate the business’s signs (Pl. SOF 17-18), Leibundguth filed this lawsuit on December 12, 2014. (Dkt. 1, Compl.) On January 30, 2015, Leibundguth filed a Verified First Amended Complaint. (Dkt. 10.)

6. Leibundguth’s Complaint consists of four counts. Count I alleges that the ordinance’s restrictions described above are content-based restrictions on speech that violate the First Amendment. (Dkt. 10, ¶¶ 65-74.) Count II alleges that the

restriction on signs painted directly on the wall violates Leibundguth's First Amendment rights, as applied and on its face. (Dkt. 10, ¶¶ 75-81.) Count III alleges that the restriction on wall signs on a building that is along a railway violates Leibundguth's First Amendment rights, as applied and on its face. (Dkt. 10, ¶¶ 82-88.) Count IV alleges that the limits on the number of wall signs and total size of signs violates Leibundguth First Amendment rights, as applied and on their face. (Dkt. 10 ¶¶ 89-95.)

7. On February 5, 2015, the Village filed a motion to dismiss, (Dkt. 13), which the Court denied on April 27, 2015. (Dkt. 29). The parties completed discovery, including the disclosure and depositions of their experts, on or before June 2, 2015.

8. On July 21, 2015, after the close of discovery and three days before the Village filed its Motion for Summary Judgment, the Village amended two of the challenged provisions of its sign ordinance. (Def. SOF 5-6, 9; Pl. Resp. Def. SOF 5-6, 9; Pl. SOF 36-38.) The Village amended Section 9.050(C) to allow a wall sign on a building with frontage along the BNSF railroad right-of-way, but limited the size of any such wall sign. (Def. SOF 9; Pl. Resp. Def. SOF 9.) In addition, the amendment removed the provision in the sign ordinance which allowed painted wall signs in Downtown Transitional, Downtown Business and Fairview Concentrated Business District, by extending the prohibition of painted wall signs throughout the Village. (Def. SOF 5, 6; Pl. Resp. Def. SOF 5-6.)

9. Because neither of these changes to the Village sign ordinance permits any of Leibundguth's existing signs, Leibundguth's challenge is not moot and Leibundguth maintains its claim against the sign ordinance provisions.

10. On July 24, 2015, the Village filed its Motion for Summary Judgment. (Dkt. 35.)

11. This motion serves as both Leibundguth's Motion for Summary Judgment and Leibundguth's Response to Defendant's Motion for Summary Judgment and is accompanied by a Statement of Facts and Response to Defendant's Statement of Facts, a Memorandum of Law, and Exhibits.

12. As explained in the accompanying Memorandum of Law, the painted sign ban and the restrictions on the size and number of signs found in the Village's sign ordinance do not further the Village's interests in traffic safety or aesthetics, nor are they narrowly tailored to do so, and the Village has not met its burden to show otherwise. Additionally, in the alternative, the sign ordinance contains content-based restrictions on speech that render it unconstitutionally overbroad. Therefore, the Court should grant Leibundguth's Motion for Summary Judgment and deny the Village's Motion for Summary Judgment.

WHEREFORE, Leibundguth requests that the Court enter summary judgment in its favor and against the Village and provide it the following relief:

A. A declaratory judgment stating that Section 9.020(P) of the Village of Downers Grove sign ordinance prohibiting a sign painted directly on a wall violates the First and Fourteenth Amendments to the United States Constitution and

Article I, Section 4 of the Illinois Constitution, both on its face and as applied to Leibundguth;

B. A declaratory judgment stating that Section 9.050(C)(5) of the Village of Downers Grove sign ordinance limiting the size of a wall sign that are along the railway violates the First and Fourteenth Amendments to the United States Constitution and Article I, Section 4 of the Illinois Constitution, both on its face and as applied to Leibundguth;

C. A declaratory judgment stating that the limits on the maximum allowable sign area on a property and the number of wall signs on a property contained in Sections 9.050(A) and 9.050(C)(1) of the Village of Downers Grove sign ordinance, respectively, violate the First and Fourteenth Amendments to the United States Constitution and Article I, Section 4 of the Illinois Constitution, on their face and as applied to the signs on Leibundguth's building;

D. A permanent injunction restraining enforcement of the Village's sign ordinance sections 9.020(P), 9.050(C) and 9.050(A) against Leibundguth; and

E. An award of nominal damages in the amount of \$1.00 for the violation of Leibundguth's constitutional rights.

Dated: August 24, 2015

Respectfully submitted,

**LEIBUNDGUTH STORAGE & VAN SERVICE,
INC.**

By: /s/ Jeffrey M. Schwab

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CERTIFICATE OF SERVICE

I, Jeffrey M. Schwab, an attorney, hereby certify that on August 24, 2015, I served Plaintiff's Combined Motion for Summary Judgment and Response to Defendant's Motion for Summary Judgment on Defendant's counsel by filing it through the Court's electronic case filing system.

/s/ Jeffrey M. Schwab