



2. On December 14, 2015, the Court issued its Memorandum Opinion and Order (Doc. 51) granting Defendant Village of Downers Grove's motion for summary judgment and denying Leibundguth's motion for summary judgment.

3. Defendant Village of Downers Grove (the "Village") has indicated that during appeal it "will stay the numerous remedies it has under the Zoning Ordinance, including suspending or revoking [Leibundguth's] business license or occupancy permit" but "will not agree to a stay of the accrual of daily fines, or the costs of collection for the continuing sign ordinance violations during the appeal." (Dec. 18, 2015 Letter, attached as **Exhibit A**.)

4. The Village informed Leibundguth that it would "not seek to impose daily fines for each of the three current violations until . . . January 14, 2016," (Dec. 21, 2015 Letter, attached as **Exhibit B**), and the parties agreed to discuss how to proceed on enforcement with the Court at the January 7, 2016 status hearing. (Dec. 23, 2015 Letter, attached as **Exhibit C**.)

5. On January 7, 2016, the Court entered an order (Doc. 52) instructing the parties to file position papers on whether the Court should retain supplemental jurisdiction over the state law issues contained in the Village's counterclaim (Doc. 12), which consists of the Village's request that the Court order Leibundguth to bring its signs into compliance with the sign ordinance and award the Village fines and other relief under its Zoning Ordinance.

6. Subsequently, on January 11, 2016, the parties sent a letter to the Court explaining their agreement that Leibundguth would file this Motion To Stay

Enforcement of the Sign Ordinance by January 21, 2016; that the Village would file a pleading in opposition to the stay by January 28, 2016; and that the parties would ask the Court to rule on Leibundguth's motion at the status hearing on February 4, 2016. The Village agreed "to waive the right to prosecute daily violations of the sign regulations up to and including February 4, 2016" to allow the Court to decide this Motion on that day. (January 11, 2016 Letter, attached as **Exhibit D.**)

7. Leibundguth's inquired whether the Village would agree to stay the enforcement of the Sign Ordinance and accumulation of fines to account for the fact that the cold weather makes it impossible to paint over the painted signs on the front and back of the building, as the Village had allowed prior to Leibundguth filing the lawsuit. (Doc. 40-5, Letter from Patrick Ainsworth, November 26, 2014.) The Village, in a letter dated January 18, 2016, declined to grant Leibundguth time to comply with the Sign Ordinance until the weather makes it possible, stating that Leibundguth, barring an order from this Court, must comply with the Sign Ordinance by the February 4, 2016 deadline. (January 18, 2016 Letter, attached as **Exhibit E.**)

8. Under Fed. R. Evid. 201, the Court can take judicial notice of the following: Paint cannot be removed from an exterior brick wall during the winter months with paint-stripping products because use of such products below freezing could result in damage to the brick. (<http://www.bobvila.com/articles/how-to-remove-paint-from-brick> ("Do not attempt to remove paint from brick if, within a month or so, there's any chance that the temperature is going to fall below freezing. If the brick doesn't

dry completely before the frost, it will be especially likely to succumb to damage.”))

Additionally, particularly for older brick buildings – Leibundguth’s building was built in the 1930s – sandblasting, power-washing the paint, and caustic chemical-based paint-removal solutions will leave the brick in a vulnerable condition. *Id.*

While modern technology allows brick to be painted in colder temperatures, those temperatures must remain above 35 degrees Fahrenheit for at least 48 hours – unlikely during a Chicago winter. (<http://www.bobvila.com/articles/painting-in-cold-weather/>; <http://www.sherwin-williams.com/home-builders/products/resources/faqs/exterior-product-application-faqs/>; [http://www.paintpro.net/articles/pp201/pp201-cold\\_weather.cfm](http://www.paintpro.net/articles/pp201/pp201-cold_weather.cfm).)

9. This motion seeks to preserve Leibundguth’s free speech rights to display its signs, which have been on its building for decades, while this Court decides Leibundguth’s Motion to Alter and Amend and (if the Court does not alter its judgment) during the appeal. Although the Village has generally agreed not to enforce the sign ordinance during appeal, it has stated that it will begin the accumulation of fines against Leibundguth after February 4, 2016, even during appeal. The accrual of daily fines against Leibundguth during appeal would force it to decide between losing its free speech rights during the appeal on the one hand and risking significant fees that would threaten the survival of its business on the other. Leibundguth should not be forced to make that choice to exercise its right to appeal this Court’s judgment.

10. Leibundguth's accompanying Memorandum of Law further explains the reasons why the Court should grant this Motion.

WHEREFORE, Plaintiff Leibundguth Storage & Van Service, Inc. respectfully requests that this Court:

- A. Stay the enforcement of the Sign Ordinance, including the accumulation of fines, during the post-judgment motions, including Leibundguth's Motion to Alter or Amend the Judgment;
- B. Stay enforcement of the Sign Ordinance, including the accumulation of fines, during appeal;
- C. In the event the Court denies this Motion, stay the enforcement of the Sign Ordinance, including the accumulation of fines, to allow Leibundguth to file an emergency motion for a stay in the appellate court;
- D. Grant other just relief.

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 January 21, 2016, I served Plaintiff's Motion to Stay Enforcement of the Sign Ordinance During Post-Judgment Motions and Pending Appeal on Defendant's counsel by filing it through the Court's electronic case filing system.

/s/ Jeffrey M. Schwab