

IN THE CIRCUIT COURT OF THE 22ND JUDICIAL CIRCUIT
MCHENRY COUNTY ILLINOIS

ANDREW GASSER, ET AL.,)
 Plaintiff,)
 v.)
 KAREN LUKASIK,)
 INDIVIDUALLY AND IN HER)
 CAPACITY AS ALGONQUIN)
 TOWNSHIP CLERK, ANNA MAY)
 MILLER AND ROBERT MILLER,)
 Defendants.)

-----)
 KAREN LUKASIK, INDIVIDUALLY)
 AND IN HER CAPACITY AS)
 ALGONQUIN TOWNSHIP CLERK,)
 ANNA MAY MILLER AND ROBERT)
 MILLER,)
 Defendants/Counter-Plaintiffs,)
 v.)
 ANDREW GASSER,)
 Plaintiff/Counter-Defendant.)

Case No. 17 CH 000435

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 KAREN LUKASIK, INDIVIDUALLY)
 AND IN HER CAPACITY AS)
 ALGONQUIN TOWNSHIP CLERK,)
 Defendant/Third-Party Plaintiff,)
 v.)
 CHARLES LUTZOW,)
 Third-Party Defendant.)

MOTION FOR SANCTIONS PURSUANT TO IL. SUPREME CT. RULE 137

NOW COMES Plaintiff/Counter-Defendant, ANDREW GASSER, ALGONQUIN TOWNSHIP HIGHWAY COMMISSIONER (hereinafter referred to as "GASSER"), by and through his attorney, Robert T. Hanlon of the LAW OFFICES OF ROBERT T. HANLON & ASSOCIATES, P.C., seeking sanctions pursuant to Illinois Supreme Court Rule 137 against Defendant/Counter-Plaintiff/Third-Party Plaintiff, KAREN LUKASIK (hereinafter referred to as "LUKASIK"), and her counsel of record for fabricating the claims in this case and for continuing the Verified Counter-Complaint and Third-Party Complaint for Preliminary and Permanent

Injunctive Relief (hereinafter “Counter-Complaint”) knowing full well that there was no factual support for her claims that Algonquin Township Road District records were missing when they were in fact not missing and for advancing a claim that was not warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law, and in support of his motion, states as follows:

INTRODUCTION.

- 1) LUKASIK filed a Counter-Complaint alleging the destruction of public records from a RD-T cabinet.
- 2) LUKASIK’s Counter-Complaint was filed on June 8, 2017, more than two years ago.
- 3) In 2018, LUKASIK was interviewed by Laura King of the McHenry County State’s Attorney’s office.
- 4) Contained within the report of the States Attorney’s Offices’ Investigator is the following Statement:

I asked Lukasik about the computer tampering and the destruction of files that allegedly occurred. **Lukasik stated she does not believe any files were destroyed** and that many of the files are housed on a server that has restricted access. She added that she has data drives with computer files as well as boxes of emails and other computer correspondence that were kept by the Millers. Additionally she stated that she found records dating back to the 1930's and is currently working with the Illinois State Police to comply with the records destruction act in attempt to reduce the number of files kept at the office while complying with the law. (Emphasis added.)

ARGUMENT

- 5) Under Rule 137, sanctions may be granted under two different circumstances:
(1) when a pleading, motion, or other paper is not ‘well grounded in fact’ or is not ‘warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing

law,' or (2) when it is interposed for purposes such as to 'harass or to cause unnecessary delay or needless increase in the cost of litigation. See *Patton v. Lee*, 406 Ill.App.3d 195, 940 N.E.2d 802 Ill.App. 2 Dist.,2010, citing *People v. Stefanski*, 377 Ill.App.3d 548, 551, 316 Ill.Dec. 631, 879 N.E.2d 1019 (2007), quoting 155 Ill.2d R. 137; see *Penn v. Gerig*, 334 Ill.App.3d 345, 354, 268 Ill.Dec. 339, 778 N.E.2d 325 (2002).

6) If a reasonable inquiry into the facts to support the filing has not been made to ensure that the facts stated are well grounded, the party, the party's attorney or both are subject to an appropriate sanction that may include an order to pay the other party's attorney fees and costs. *Chicago Title & Trust Co. v. Anderson*, 177 Ill.App.3d 615, 621, 126 Ill.Dec. 910, 532 N.E.2d 595 (1988).

7) While Rule 137 does not expressly state that an attorney has a continuing duty of inquiry throughout the pendency of litigation, the Illinois Appellate Court has followed the lead of the Seventh Circuit and implied such an obligation. See *Cmarko v. Fisher*, 208 Ill.App.3d 440, 153 Ill.Dec. 394, 567 N.E.2d 352 (1990). The 2nd District Appellate Court held that an attorney is duty bound to promptly dismiss a lawsuit or withdraw an erroneous pleading once it becomes evident it is unfounded. See *Walsh v. Capital Engineering and Manufacturing Co.*, No. 1-98-3324 (cons. with 1-98-3463), citing to *Shea, Rogal & Associates, Ltd. v. Leslie Volkswagen, Inc.*, 250 Ill.App.3d at 153, 190 Ill.Dec. 208, 621 N.E.2d 77; *Cmarko v. Fisher*, 208 Ill.App.3d 440, 446, 153 Ill.Dec. 394, 567 N.E.2d 352 (1990); *In re Custody of Caruso*, 185 Ill.App.3d 739, 744, 134 Ill.Dec. 196, 542 N.E.2d 375 (1989). Because an attorney's first duty is to the administration of justice, he is obligated to dismiss a claim which is ultimately revealed to be unfounded in its entirety, even over objections from his client. *In re Custody of Caruso*, 185 Ill.App.3d at 744-45, 134 Ill.Dec. 196, 542 N.E.2d 375. Moreover, an

attorney may not shield a breach of his Rule 137 obligations behind the simplistic plea that he was merely following his client's directions or that he was merely exercising his right to a trial. *In re Custody of Caruso*, 185 Ill.App.3d at 744-45, 134 Ill.Dec. 196, 542 N.E.2d 375. See Also, *Hernandez v. Williams*, 258 Ill.App.3d 318, 197 Ill.Dec. 980, 632 N.E.2d 49 (1994) (Law firm sanctioned for filing jury demand in small claims case without adequate factual basis).

8) Notably, counsel for LUKASIK must be clearly aware of the requirement that unfounded pleadings need to be dismissed because Attorney Gummerson was the attorney of record in *Walsh v. Capital Engineering and Manufacturing Co.*, No. 1-98-3324 (cons. with 1-98-3463) wherein Attorney Gummerson was sanctioned for advancing false claims all the way to the Appellate Court.

9) In this case, it is impossible that any reasonable inquiry into the facts was made because LUKASIK has admitted to criminal investigators that no record is missing from the Algonquin Township Road District, yet her entire Counter-Complaint was based upon the contention that records were missing.

10) At some point in the course of this case it became known to LUKASIK that she knew no records were missing because she admitted to the State's Attorney's Investigator that no records were missing. Yet, this case remains outstanding and there has been an attempt to extract a settlement sum from a party to this case.

11) The pleading containing the Counter-Complaint is neither warranted by existing law, nor a good-faith argument for the extension, modification, or reversal of existing law.

12) A party seeking a permanent injunction must first succeed on the merits. *City of Chicago v. Beretta U.S.A. Corp.*, 213 Ill. 2d at 431. This necessarily means that there must be a recognized cause of action underlying the request for injunctive relief and that the party seeking

such relief must first prevail on the merits of that underlying cause of action. See 42 Am. Jur. 2d Injunctions § 18 (2010) ("a permanent injunction will be granted only when liability has been established"); Black's Law Dictionary [**37] 1003 (7th ed. 1999) (defining "merits" as "[t]he elements or grounds of a claim or defense"). A permanent injunction, however, is not a separate cause of action. *Walker v. Bankers Life & Casualty Co.*, No. 06 C 6906, 2007 U.S. Dist. LEXIS 22818, 2007 WL [****137] [*415] 967888, at *4 (N.D. Ill. Mar. 28, 2007) (citing *Shell Oil Co. v. Richter*, 52 Cal. App. 2d 164, 125 P.2d 930, 932 (1942) ("Injunctive relief is a remedy and not, in itself, a cause of action, and a cause of action must exist before injunctive relief may be granted.")). Instead, it is an equitable remedy that a court can provide when a party succeeds on the merits of its underlying **cause of action** but the available legal remedy is inadequate. *Town of Cicero v. Metro. Water Reclamation Dist.*, 976 N.E.2d 400, 414-415, 2012 Ill. App. LEXIS 647, *36-37, 2012 IL App (1st) 112164, P46, 364 Ill. Dec. 122, 136-137.

13) In *Town of Cicero v Metro. Water Reclamation Dist*, the court examined a complaint which like the subject complaint sounded solely in injunction. There the court pointed out that our Illinois Supreme Court pointed out in *City of Chicago v Baretta USA*, that "issuance of an injunction is contingent on plaintiffs' prevailing at trial on the merits of their claim."

14) In this case, the entire Counter-Complaint sounds in a remedy without any facts to support that GASSER has done anything. Many of the allegations relate to events taking place before GASSER was even sworn in as Algonquin Township Highway Commissioner. Moreover, LUKASIK failed to plead any cause of action for which any relief could be obtained from GASSER either individually or as the Algonquin Township Highway Commissioner.

WHEREFORE, Plaintiff/Counter-Defendant, ANDREW GASSER, ALGONQUIN TOWNSHIP HIGHWAY COMMISSIONER, respectfully prays that this Court enter an order

sanctioning Defendant/Counter-Plaintiff/Third-Party Plaintiff, KAREN LUKASIK, and her counsel of record for knowingly advancing the Counter-Complaint in this case without a basis in fact; for continuing this cause of action knowing that the factual allegations in this case were meritless; for failing to dismiss this cause of action after it was clear that there were no missing records; and for advancing the Counter-Complaint without any legal basis that was not warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law, in an amount this Court deems just and equitable.

Dated: June 21, 2019

Respectfully submitted,

ANDREW GASSER, ALGONQUIN TOWNSHIP
HIGHWAY COMMISSIONER, Plaintiff/Counter-
Defendant

By: /s/ Robert T. Hanlon
One of the Plaintiff/Counter-Defendant's Attorneys

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Exhibit A

(McHenry County State's Attorney's Office
Investigation Report dated 5/21/2018)

NARRATIVE SUPPLEMENT

Case No. 2018-001

Original Report Date 05/21/2018

Supplement Date N/A

Time 1440 Hrs.

An allegation was brought to the attention of the McHenry County State's Attorney's (MCSA) Office about official misconduct conducted by Robert Miller while he was sitting as Algonquin Township Highway Commissioner. Specifically that Miller was involved in the inappropriate conduct while holding the office of Highway Commissioner for Algonquin Township. MCSA is investigating this matter at the request of the Illinois State Police.

This report is being written after I stopped into the business offices of Algonquin Township as a follow up to my phone interview with Karen Lukasik. Lukasik indicated that she was in possession of files showing records retention was done in accordance with the law as well as the purple (grape) Levinger bag that was purchased on 11/7/2014.

When I arrived at Algonquin Township at approximately 1030 hours on 05/18/2018, I met with Jack Barrett, a part-time employee of the Algonquin Township Clerk's Office. Jack had a conversation with Lukasik prior to my arrival and was prepared to show me the documents and items I was inquiring about.

I asked Jack about the Levinger bag. He produced a purple color handbag with a zipper closure. This bag was worn from use and is purported to be the bag purchased and used by Anna May Miller. I took a photo of this bag, which is attached to this report.

I then asked Jack to show me e-mail files from business correspondences between Robert Miller and persons doing official township business. Jack stated that he believed Robert Miller was quite "old school" so that he printed documents and placed them in a file for records retention purposes. Jack showed me several boxes of documents containing business files and a large amount of printed emails between Robert Miller and Anna May Miller and various persons. I selected multiple random samplings from the boxes and all the documents appeared to be authentic on their face. I took photos of three documents to attach to this report. These documents are of no specific significance, just a random sampling showing the business e-mails were retained as required.

I also observed several small cameras in the office. None of the cameras specifically were labeled with the words "Blink for Home". I asked Jack about the cameras and he stated he was not sure, he thought they might be the ones in current use by the clerk's office for meetings. I asked Jack if he knew the whereabouts of any cameras that might have come from the Road District and he stated he believed some had been sent to "IT" but he was unaware of any currently being held in the possession of the clerk's office.

I left Algonquin Township at approximately 1045 hours.

End of report.

Reporting Officer Signature: _____

Star # 7047

NARRATIVE SUPPLEMENT

Case No. 2018-001Original Report Date 05/16/2018Supplement Date N/ATime 1440 Hrs.

I asked about "above and beyond" pay and she stated that for a short time, she worked as a senior bus driver. She stated at the end of the year, if the drivers would provide exceptional service they would get a stipend for going above and beyond the basic duties of the job. She offered examples of helping people carry groceries into the house as something that would be considered above and beyond. Lukasik stated that was what the miscellaneous pay she received was for.

I asked Lukasik about Anna May's rule during storm call outs and she stated she had no idea because she was not working during those events. I also asked if there were any extra duties that Anna May was responsible for that other employees might not be involved in. Lukasik stated Anna May was always present at the Chamber of Commerce Business Expos, working the booth for the Road District. Lukasik stated she would see Anna May at these events, but she was sure there were other events that Lukasik was not in attendance at where Anna May had similar responsibilities.

I asked Lukasik about the computer tampering and the destruction of files that allegedly occurred. Lukasik stated she does not believe any files were destroyed and that many of the files are housed on a server that has restricted access. She added that she has data drives with computer files as well as boxes of emails and other computer correspondence that were kept by the Millers. Additionally she stated that she found records dating back to the 1930's and is currently working with the Illinois State Police to comply with the records destruction act in attempt to reduce the number of files kept at the office while complying with the law.

I asked Lukasik if there was anything else she would like to add to the interview and she offered that Gasser was also paying employees miscellaneous pay and that she is aware of a formal document that was in an employees personnel file that went missing after Gasser had asked to see the file. This document was reference to a sick time benefit for Randall Voss, a long time employee, who should be receiving a sick time pay out upon retirement. Lukasik stated Gasser is changing the policy and intentionally removed this letter, written to Voss from Miller detailing the benefit he was entitled to under the standing policy. She stated this act was a destruction of public records and should be investigated. Lukasik also stated she and her family were unlawfully video and audio recorded by Gasser and Ryan Provansano and that no law enforcement entity will conduct an investigation. I explained the process of requesting an investigation to Lukasik.

Lukasik stated she would make arrangements for me to go to Algonquin Township and view the records that were allegedly destroyed and she would send me a photo of the Levinger bag.

The interview ended at 1753 hours.

Reporting Officer Signature: _____ Star # 7047