

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

ANDREW GASSER, ET AL.,)
Plaintiffs,)
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

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

MOTION TO VACATE PRELIMINARY INJUNCTION

Now Comes Andrew Gasser, by and through his attorney, the Law Offices of Robert T. Hanlon & Associates, P.C., with his motion to vacate the TRO and Preliminary Injunction entered in this case related to Karen Lukasik's counter/cross-claim now found to have been advanced without stating a cause of action, and in support of his Motion to Vacate the TRO and Preliminary Injunction Previously entered in this case states as follows in support thereof:

- 1) On or about June 8, 2017, Karen Lukasik filed a Verified Counter-complaint and Third Party Complaint for Preliminary and Permanent Injunction. The gravamen of her claims were that she wanted an injunction and claimed that there were missing files.
- 2) On or about July 5, 2017, Karen Lukasik filed a verified second count to her verified counter-complaint. Within this verified counter-complaint, Lukaik verified that the purported missing files were not missing at all, but that she actually found them on June 17, 2017 or thereabouts. She repeated this allegation in her amended counter-complaint filed in 2019 and later asked to strike that allegation on its face.
- 3) This Court entered a Temporary Restraining Order on July 5, 2017 preliminary injunction based on Karen Lukasik's complaint. (Copy attached as Exhibit A)
- 4) On July 14, 2017, this Court entered a preliminary injunction at the request of Karen Lukasik. (Copy attached as Exhibit B)
- 5) On June 3, 2019, Andrew Gasser moved for judgment on the pleadings in relation to Karen Lukaik's Counter/Cross-complaint.
- 6) During the pendency of the motion for judgment on the pleadings, Karen Lukasik moved this Court for leave to amend her counter/cross-claim; and thereafter filed a response to Gasser's

Motion for Judgment on the Pleadings¹ with respect to the counter-claim filed by Lukasik.

Noteworthy is that Karen Lukasik initiated her claims in her official capacity.

7) On August 28 2019, this Court, upon its own motion, struck Lukasik's Amended Counter-claim for failure to state a cause of action, but granted leave to re-plead the counter-claim. The Court's motion mooted the pending Motion for Judgment on the Pleadings and the prayer for relief seeking to dissolve the prior injunctive relief was not addressed by the Court. Nevertheless, the injunctive relief obtained was predicated upon a purported likelihood of success on the merits, which at this point in time has been determined by the court insufficient on the face of the pleadings filed by Lukaik.

8) On August 28, 2019, Plaintiffs Counsel, Robert T. Hanlon informed Attorney McArdle, in open court, of the absence of any statute authorizing Karen Lukasik to bring suit in her official capacity. In particular, Plaintiffs counsel informed the Court and Mr. McArdle that 60 ILCS 1/95-10 provides:

In all suits and proceedings, the township shall sue and be sued by its name, except where township officers are authorized by law to sue in their name of office for the benefit of the township. 60 ILCS 1/95-10.

9) Despite diligent research into the powers of Township Officers, Plaintiffs counsel was unable to locate any authority authorizing a township clerk to sue in her official capacity.

¹ Despite the civility order of this court, the response was littered with various attacks on plaintiff's counsel and innuendo suggesting the motion was not brought in good faith. Nevertheless, the court struck the Amended Complaint for failure to state a cause of action.

10) In the absence of any statutory authority to allow Karen Lukaik to sue in her official capacity, there is no standing for her to advance any claim or to ultimately prevail in this case.

11) In the event that Karen Lukasik, re-files any complaint in her official capacity, she lacks standing to address the issues in this case, because there is no power for her to advance a case in her official capacity, because she is not authorized by statute to advance any case in her official capacity. The plain and clear language of 60 ILCS 1/95-10 makes it clear that the Illinois Legislature intended only those officials that had been specifically authorized by statute to be able to sue in the name of their office. In the absence of such a statute authorizing a Township Clerk to sue in her official capacity, there is no way that Karen Lukasik can advance a cause of action in her official capacity. (It is still clear that even absent that authority, Lukasik attempted to advance a cause of action in her official capacity as evidence by her prior insufficient pleadings and even attempted to bargain away for her personal pecuniary gain the act of abandoning her claims taken in her official capacity.) Accordingly, this Court ought not be an instrument for Lukaik's continued efforts to personally gain from holding an elected office. Importantly, Andrew Gasser ought not have to be subject to an injunction wrongfully entered on a preliminary basis when no cause of action was ever properly pled by a person without standing.

12) Moreover, as an individual, Lukasik lacks any power to advance a cause of action because she has no personal stake in the litigation involving the records of Algonquin Township. Accordingly, she can neither sue in her own name or in her official capacity as it relates to township records. Thus, the prior relief wrongfully granted ought to be dissolved.

Wherefore, Andrew Gasser, prays that this honorable court grant the following relief

- A) Dissolve the Temporary Restraining Order entered July 5, 2017 shown in Exhibit A.
- B) Dissolve the Preliminary Injunction shown in Exhibit B attached hereto.
- C) For any and such other and further relief this court deems just and equitable.

ANDREW GASSER & ALGONQUIN TOWNSHIP
ROAD DISTRICT, Plaintiffs

By: /s/Robert T. Hanlon
Robert T. Hanlon, One of Plaintiffs' Attorneys

PROOF OF SERVICE

I, Robert T. Hanlon, an attorney, depose and state that I served a copy of MOTION TO VACATE TRO & PRELIMINARY INJUNCTION upon the attorneys of record, referenced above, at their respective addresses, by e-mailing a true and correct copy of same to the e-mail addresses shown on attached Service List and by automatic notice in the I2File system on this **30st** day of **August, 2019**.

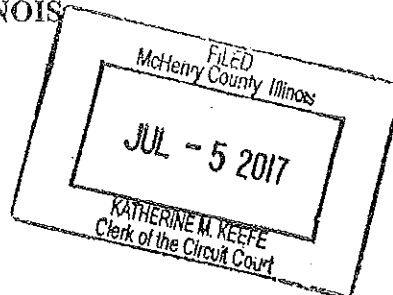
/s/Robert T. Hanlon

Robert T. Hanlon, ARDC #6286331
Law Offices of Robert T. Hanlon & Associates P.C.
131 East Calhoun Street
Woodstock, IL 60098
(815) 206-2200
(815) 206-6184 (Fax)
Email: robert@robhanlonlaw.com

Exhibit A

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

Andrew Gasser,)	
Plaintiff)	
v.)	
Karen Lukasik, Individually and in her)	
Capacity as Algonquin Township Clerk;)	
Anna May Miller; and Robert Miller)	
Defendants,)	
<hr style="border: 0.5px solid black;"/>		
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,)	
<hr style="border: 0.5px solid black;"/>		
Karen Lukasik, Individually and in her)	
Capacity as Algonquin Township Clerk,)	
Defendant/Third Party Plaintiff)	
v.)	
Charles Lutzow in his capacity as Algonquin)	
Township Supervisor,)	
Third Party Defendant)	



Case No. 17 CH 435

TEMPORARY RESTRAINING ORDER, WITH NOTICE

This matter coming before the Court on Counter-Plaintiff's Motion for leave to File her Count II to her Counter-Complaint and Third Party Complaint filed on June 8, 2017 and her Motion for Issuance of a Second Temporary Restraining Order and Preliminary Injunction, and the Court having been fully advised in the premises, hereby finds that:

1. Notice of Karen Lukasik's Motion for Temporary Restraining Order was provided to counsel for all Counter Defendants and Third-Party Defendants during the morning July 5, 2017 and all counsel were present in court.
2. If a Temporary Restraining Order is not granted in this matter, Township Records that are not within the full custody and control of the duly elected clerk, Lukasik, may be removed, altered, lost or destroyed.
3. If the above-referenced public records are removed, altered, or destroyed, irreparable harm will occur as those records may be lost forever.
4. The court having read the pleadings, heard arguments from all counsel and being otherwise advised.

5. It is Hereby Ordered as Follows:

A. Counter-Plaintiff, Karen Lukasik is given leave to file her proposed Count II to her Counter-Complaint and Third Party Complaint filed on June 8, 2017, instant;

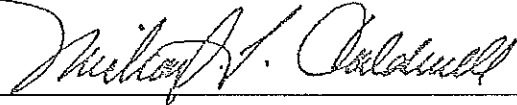
B. That a Temporary Restraining Order and Preliminary Injunction is hereby entered against Counter Defendants Gasser and Lutzow pursuant to 735 ILCS 5/11-102 prohibiting ^{CAS 5/12} each of them and ^{his} their employees from denying Lukasik full unfettered access to and custody of all records of Algonquin Township and the Algonquin Township Highway Department at all times for purposes of inventory and security as required by law; and

C. That Counter Defendants Gasser and Lutzow, and ^{his} their employees, shall cooperate in producing files to Lukasik that are out of her reach.

D. Hearing on this Temporary Restraining Order is set for July 14, 2017 at 1:30 p.m.

Date Entered: July 5, 2017

Time Entered: 2:05 pm



Judge

Prepared by:

David W. McArdle, Atty. No. 06182127

dmcardle@zrfmlaw.com

Zukowski, Rogers, Flood & McArdle

Attorneys for Counter-Plaintiff Karen Lukasik

50 Virginia Street

Crystal Lake, Illinois 60014

(815) 459-2050

Z:\ALA\LukasikKaren\Pleadings\TRO OrderAmCmplt.1.docx

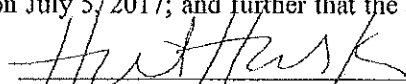
**IN THE CIRCUIT COURT OF 22ND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS**

Andrew Gasser,)	
Plaintiff)	
v.)	
Karen Lukasik, Individually and in her)	
Capacity as Algonquin Township Clerk;)	
Anna May Miller; and Robert Miller)	
<u>Defendants,</u>)	
Karen Lukasik, Individually and in her)	
Capacity as Algonquin Township Clerk;)	
Anna May Miller; and Robert Miller)	Case No. 17 CH 435
Defendants/Counter-Plaintiffs,)	
v.)	
Andrew Gasser,)	
<u>Plaintiff/Counter-Defendant,</u>)	
Karen Lukasik, Individually and in her)	
Capacity as Algonquin Township Clerk,)	
Defendant/Third Party Plaintiff)	
v.)	
Charles Lutzow, not individual, but in his Official)	
Capacity as Township Highway Supervisor)	
Third Party Defendant)	

<p>TO: Robert T. Hanlon Law Offices of Robert T. Hanlon & Associates, P.C. 131 E. Calhoun Street Woodstock, IL 60098 rob@rhanlonlaw.com robert@robhanlonlaw.com</p> <p>James P. Kelly 101 N. Virginia Street Crystal Lake, IL 60014 jpkelly@mkm-law.com</p>	<p>Thomas W. Gooch, III The Gooch Firm 209 S. Main Street Wauconda, IL 60084 office@goochfirm.com</p> <p>Steven J. Brody Steven J. Brody & Associates, Ltd. 15 W. Woodstock Street Crystal Lake, IL 60014 steve@sjbrodylaw.com service@sjbrodylaw.com</p>
---	---

PROOF OF SERVICE

The undersigned, a non-attorney, certifies, under penalties as provided by law pursuant to Section 1-109 of the Illinois Code of Civil Procedure, that she served this July 5, 2017 Order by email transmission to the addresses, at the email addresses shown above on July 5/2017; and further that the statements set forth in this Proof of Service are true and correct.



 Helen A. Harkins

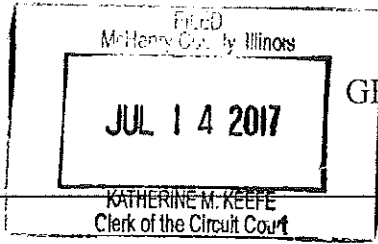
David W. McArdle, Atty. No. 06182127
dmcardle@zrfmlaw.com
 Zukowski, Rogers, Flood & McArdle
 Attorneys for Counter-Plaintiff Karen Lukasik
 50 Virginia Street, Crystal Lake, Illinois 60014
 (815) 459-2050

Exhibit B

IN THE CIRCUIT COURT OF THE 22ND JUDICIAL CIRCUIT

SCANNED
Date 7-0024

STATE OF ILLINOIS)
) SS
COUNTY OF MCHENRY)



GEN. NO. 17 CH 435
 Jury Non-Jury

Gasser vs Lukasik et al vs Gasser et al

Date: 7-14-17 Plaintiff's Attorney HANLON Defendant's Attorney ZRF & Mc

ORDER

Goach
Brady

This Cause coming on to be heard for hearing for a Preliminary INJUNCTION and the Court making a Finding for purposes of issuing a Preliminary INJUNCTION that irreparable harm to the public may occur without the issuance of a Preliminary INJUNCTION and that there is a likelihood of success on the merits and there is no adequate remedy at law and the bond is waived and therefore the preliminary injunction shall issue until further Order of Court → cont'd p. 2

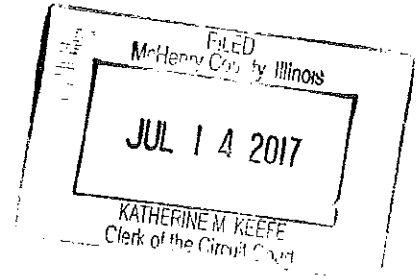
Prepared by: _____

Attorney for: _____

Attorney Registration No.: _____ Judge: MTC

(P. 1 of 2)

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



Andrew Gasser,)
 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,)
 Karen Lukasik, Individually and in her)
 Capacity as Algonquin Township Clerk,)
 Defendant/Third Party Plaintiff)
 v.)
 Charles Lutzow in his capacity as Algonquin)
 Township Supervisor,)
 Third Party Defendant)

Case No. 17 CH 435

PRELIMINARY INJUNCTION ORDER

This matter coming before the Court on Counter-Plaintiff's Motion for Preliminary Injunction, and the Court having been fully advised in the premises, hereby orders as follows:

1. A Preliminary Injunction is hereby entered against Counter Defendants Gasser and Lutzow pursuant to 735 ILCS 5/11-102 prohibiting each of them and their employees from a) denying Lukasik full unfettered access to and custody of all records of Algonquin Township and the Algonquin Township Highway Department at all times for purposes of inventory, storage and security as required by law; and b) prohibiting Gasser and Lutzow from changing Township building access keys or codes to buildings/rooms where Township records are located.

2. That Counter Defendants Gasser and Lutzow, and their employees, shall cooperate in producing files to Lukasik that are out of her reach.

3. Lutzow shall recommend to the Board of Trustees of Algonquin Township that it provide to Lukasik a building or an areas within one or more Township buildings to reasonably secure the township records within her jurisdiction to which only the Clerk and her designee(s) shall have access.

Date Entered:

July 14, 2017

Michael H. McArdle

 Judge

Prepared by:

David W. McArdle, Atty. No. 06182127
dmcardle@zrfmlaw.com
 Zukowski, Rogers, Flood & McArdle
 Attorneys for Counter-Plaintiff Karen Lukasik
 50 Virginia Street, Crystal Lake, Illinois 60014

P. 2 of 2

without providing duplicate keys and code numbers to LUKASIK immediately.

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

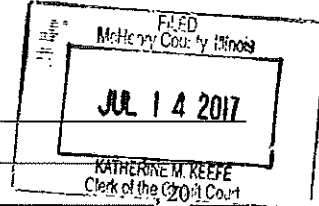
Grasser, Andrew
Plaintiff

Circuit Clerk Use Only	
<input checked="" type="checkbox"/>	ORD
<input type="checkbox"/>	ORDJ
<input type="checkbox"/>	ORDDWP

Lukasik, Karen et al
vs
Defendant

Case Number 17CH 435

ORDER



- Plaintiff(s) appear in person/by attorney Flanzer
- Defendant(s) appear in person/by attorney Reedy / Gwinn
- Summons not served; alias summons to issue; return date _____
- Summons has been properly served on Defendant(s) _____
- Defendant(s) appear and admit liability. Judgment for Plaintiff(s) against Defendant(s) for \$ _____ plus interest of \$ _____ plus attorney fees of \$ _____ for a total of \$ _____ plus court costs.
- Defendant(s), having failed to appear or otherwise respond to the summons, is found in default. Judgment for Plaintiff(s) against Defendant(s) for \$ _____, plus interest of \$ _____ plus attorney fees of \$ _____ for a total of \$ _____ plus court costs.
- Case set for trial arbitration on _____, 20__ at _____ m. in Courtroom _____
- Defendant(s) shall file an Appearance within _____ days of today's date, or without further Notice to Defendant(s), the trial date will be stricken and a judgment by default will be entered against Defendant(s) and in favor of Plaintiff(s).

NOTICE TO DEFENDANT(S): THIS IS THE ONLY NOTICE YOU WILL RECEIVE OF THE TRIAL, OR ARBITRATION DATE AND YOUR OBLIGATION TO FILE AN APPEARANCE.

- Defendant(s) shall file an answer or other pleading within _____ days of today's date.
- This case is continued on Motion of Plaintiff; Defendant; By Agreement; Court; to _____, 20__ at _____ m. for _____.
- Case called, Plaintiff(s) fail to appear. Case dismissed for Plaintiff's failure to prosecute.
- Case dismissed with/without prejudice on Plaintiff's motion.
- After trial of this case, the Court enters a Judgment for Plaintiff(s) against Defendant(s) for \$ _____ plus interest of \$ _____ plus attorney fees of \$ _____ for a total of \$ _____ plus court costs.
- After trial of this case, the Court enters a Judgment for Defendant(s) against Plaintiff(s).

COURT FURTHER ORDERS: Defendant Anna May Miller granted an additional 21 days to answer or otherwise plead. *AND Robert Miller care*

Date: 7/14/17

[Signature]
Judge