

**IN THE CIRCUIT COURT OF 22<sup>ND</sup> 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,	)	Case No. 17 CH 435
<hr/>		
Karen Lukasik, Algonquin Township Clerk,	)	
Defendant/Third Party	)	
Plaintiff/Counter Plaintiff	)	
v.	)	
Charles Lutzow, in his Capacity as	)	
Supervisor of Algonquin Township	)	
Third Party Defendant and	)	
Andrew Gasser, in his capacity as Road	)	
Commissioner of Algonquin Township	)	
Counter Defendant	)	

**RESPONSE TO COUNTER DEFENDANT'S  
(AMENDED) MOTION FOR JUDGMENT ON THE PLEADINGS**

NOW COMES the Counter-Plaintiff, Karen Lukasik, as Algonquin Township Clerk, by and through her attorneys Zukowski, Rogers, Flood & McArdle, and for her Response to Counter-Defendant's Motion for Judgment on the Pleadings Pursuant to 735 ILCS 5/2-615 with Respect to the Counter-Claim (amended on its face per August 1, 2019 Order) states as follows:

**BACKGROUND**

1. On June 3, 2019, Counter-Defendant's Motion for Judgment on the Pleading Pursuant to 735 ILCS 5/2-615 With Respect to the Counter-Claim ("Motion") was filed. *See Exhibit A*, attached hereto and made a part hereof by reference.

2. The Motion claimed "no cause of action" was stated in the Counter-Claim and that there were "no facts to support that Andrew Gasser has done anything." *Id.*

3. On July 26, 2019, Counter-Plaintiff was granted Leave to File an Amended Complaint in this matter.

4. On July 31, 2019, Counter-Plaintiff filed her Amended Complaint seeking a Declaratory Judgment and Injunctive Relief. See Exhibit B, attached hereto and made a part hereof by reference.

5. On August 1, 2019, Counter-Defendant asked this Court to “amend said motion on its face to relate to the Amended Counterclaim filed by Lukasik on July 31, 2019.”

6. Counter-Defendant’s amended Motion states no argument or basis that a Declaratory Judgment “fails to state a cause of action” and fails to address any of the allegations against Counter-Defendant in the Amended Complaint.

### **STANDARD**

A motion for judgment on the pleadings tests the pleadings’ sufficiency by requiring the court to determine whether a complaint entitles the claimant to relief. *Vivify Construction LLC v. Nautilus Insurance Company*, 2017 IL App 170192. When a defendant makes a motion for judgment on the pleadings, he concedes the truth of the well-pled facts of the plaintiff’s complaint. *Nationwide Mutual Fire Ins. Co. v. T and N Master Builder Renovators*, 2011 IL App (2d) 101143.

### **ARGUMENT**

#### *I. Declaratory Judgment is a Valid Cause of Action Under Illinois Law*

Based on Counter-Defendant’s “amending” his Motion on its face without tailoring his facts or argument to the Amended Complaint, it is entirely unclear what Counter-Defendant’s position is as to the Amended Complaint. It is also questionable what good-faith basis Counter-Defendant has for bringing his Motion in its current form. In the “amended” Motion, Counter-Defendant is citing to law that is irrelevant, is citing to allegations from the original complaint, and is claiming there are no allegations pled against him when there clearly are in the Amended Complaint.

As to Counter-Defendant's claim that "no cause of action" exists in the, now, Amended Complaint, Counter-Defendant's Motion states the following, in relevant part:

9. In this case, nothing is alleged to advance any cause of action...

10. Moreover, the complaint doesn't even attempt to advance a cause of action. Rather, it is a complaint for a remedy with no underlying cause of action...

16. [First line intentionally omitted]. Moreover, Lukasik failed to plead any cause of action for which relief could be obtained from Andrew Gasser either individually or as the Highway Commissioner.

Counter-Defendant's position is without merit. In support of his claims on this point, Counter-Defendant cites cases relating to an injunction. Counter-Defendant cites no cases or law relating to a complaint for Declaratory Judgment which also includes an injunction. As such, Counter-Defendant's Motion is not well grounded in fact or warranted by existing law.

735 ILCS 5/2-701 clearly states, "Declaratory Judgments. (a) No action or proceeding is open to objection on the ground that a merely declaratory judgment or order is sought thereby." See 735 ILCS 5/2-701(a). Section 2-701 goes on to state, "The court may, in cases of actual controversy, make binding declarations of rights having the force of final judgments, whether or not consequential relief is or could be claimed, including the determination, at the instance of anyone in the controversy, of the construction of any statute, municipal ordinance, or other governmental regulation..." *Id.*

Moreover, it is well-established in Illinois, that "[w]hile it is true...that the court in its discretion may refuse to grant declaratory relief, the court has no discretion to refuse to entertain the action as against a motion to dismiss where the complaint states a cause of action." *Alderman Drugs, Inc. v. Metropolitan Life Ins. Co.*, 79 Ill.App.3d (1st Dist. 1979). When "confronted with a motion to dismiss, the trial court must sustain the Complaint unless it clearly appears no set of facts could be proved under the pleadings which would entitle the plaintiff to some type of relief." *Id.*

A complaint for declaratory judgment which recites in sufficient detail an actual and legal controversy between the parties and prays for a declaration of rights and, if desired, other legal relief, states facts sufficient to state a good cause of action.” *Id.* The “actual controversy requirement is meant merely to distinguish justiciable issues from abstract or hypothetical disputes admitting of a definitive and immediate determination of the rights of the parties.” *See Illinois Gamefowl Breeders Association v. Block*, 75 Ill.2d 443 (1979).

The Amended Complaint complies with all aspects of 735 ILCS 5/2-701, Illinois law, and states a detailed cause of action. The Amended Complaint not only sets forth all necessary elements for a Declaratory Judgment complaint, but specifically sets forth factual allegations relating to: the history between the parties, a preliminary injunction previously entered by the Court in this case that is not being fully complied with by Counter-Defendant, the legal obligations of a clerk to have full custody of records, and records being stored in Counter-Defendant’s office for which Counter-Plaintiff does not have complete unfettered access or control as required by law and Court Order. In addition to all of the facts contained therein, the Amended Complaint specifically pleads that:

48. An actual controversy exists between Lukasik, Lutzow and Gasser as despite Lukasik’s demands, despite a preliminary injunction, and despite changing locks by Lukasik to maintain access and accountability of all Algonquin Township records, Lutzow and Gasser refuse Lukasik full unfettered access and custody to all records at times and upon information and belief, Lutzow, or one of his agents removed Lukasik’s locks and replaced them with a FOB system.

There is no doubt that a Declaratory Judgment is a permissible cause of action and has been pled pursuant to Illinois law and an actual controversy has been pled.

Pursuant to 2-701, the Amended Complaint also requests a declaration of the rights of the parties and “other legal relief” in the form of an injunction. Moreover, pursuant to 2-701, a declaratory action is not “open to objection” on the grounds Counter-Defendant claims (i.e., a motion to dismiss based on failing to state a cause of action when a declaratory judgment is

sought), does not only seek an improper remedy under Illinois law, and an actual controversy is pled and exists between the parties. As such, Counter-Defendant's claim that he is entitled to judgment on the pleadings based on "no cause of action" existing in the pleadings fails and must be denied.

## *II. Counter-Defendant is Part of the Actual Controversy in this Case*

Remarkably, without addressing any aspects of a Declaratory Judgment, Counter-Defendant asked this Court to amend his original Motion on its face to apply to the Amended Complaint. Within the Motion, Counter-Defendant also now errantly claims certain paragraphs of the original Complaint (without also addressing the additional Complaint filed in 2017) are the *only* references to Counter-Defendant in the new pleading. Counter-Defendant's Motion was not only not accurate in its original form, but it is also certainly not accurate in its current form now that an Amended Complaint has been filed.

While Counter-Defendant has not spent the time or effort to actually address the allegations in the Amended Complaint, it is clear he wants this Court to simply do the work for him. He does this while relying on an inaccurate Motion and despite all allegations being "accepted as true" under a 2-615(e) Motion. Counter-Defendant does not even cite what allegations are made. Counter-Defendant simply wants this Court to conclude that there are no allegations made in the Amended Complaint which would entitle Counter-Plaintiff to a Declaratory Judgment and injunctive relief against him without any analysis or basis in fact at all.

If Counter-Defendant had reviewed the Amended Complaint, it is clear the allegations therein not only describe the legal foundation and history for Counter-Plaintiff to have full unfettered access and custody to all records, but they also describe Counter-Defendant's role in not allowing this to occur. These allegations include, but are not limited to, prior demands on Counter-Defendant for records in his possession, records being located in Counter-Defendant's

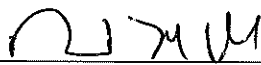
office for which Counter-Plaintiff does not have a key, a prior preliminary injunction being entered prohibiting Counter-Defendant from denying Counter-Plaintiff full unfettered access to and custody of all records of Algonquin Township and the Algonquin Township Highway Department, and that, despite this injunction, Counter-Defendant continues to have records in his office that Counter-Plaintiff does not have full unfettered access to or custody of at all times.

Clearly, the Amended Complaint sets forth the elements, allegations, and a cause of action necessary for this Court to grant a Declaratory Judgment and an injunction. As described in the Amended Complaint, Counter-Plaintiff is entitled, by law, to have custody of all township records. Despite this legal requirement and this Court's previous preliminary injunction, Counter-Plaintiff still does not have full custody and access to all township records. As stated in the Amended Complaint, Counter-Defendant continues to have a role in that outcome. Therefore, an actual controversy continues to exist that not only requires a Declaratory Judgment, but also an injunction, in this case. As such, Counter-Defendant's Motion must be denied.

WHEREFORE, for the foregoing reasons Counter-Plaintiff, Lukasik, respectfully requests that this Court:

- A. Deny Counter-Defendant's (amended) Motion for Judgment on the Pleadings.
- B. Any other relief that this court finds just and/or equitable.

KAREN LUKASIK  
ALGONQUIN TOWNSHIP CLERK  
By Zukowski, Rogers, Flood & McArdle

By   
One of her attorneys

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

IN THE CIRCUIT COURT OF THE 22<sup>ND</sup> JUDICIAL CIRCUIT  
MCHENRY COUNTY ILLINOIS

ANDREW GASSER, ALGONQUIN	)	
TOWNSHIP ROAD DISTRICT	)	
	)	
Plaintiff,	)	
V.	)	CASE NO. 17 CH 000435
	)	
KAREN LUKASIK,	)	
INDIVIDUALLY AND IN HER	)	
CAPACITY AS ALGONQUIN	)	
TOWNSHIP CLERK, ANNA MAY	)	
MILLER AND ROBERT MILLER,	)	
	)	
Defendants,	)	

**PLAINTIFFS' MOTION FOR JUDGMENT ON THE PLEADINGS  
PURSUANT TO 735 ILCS 5/2-615 WITH RESPECT TO THE COUNTER-CLAIM**

Now comes Plaintiff/Counter-Defendant Andrew Gasser, Algonquin Township Highway Commissioner, by and through his counsel, ROBERT T. HANLON of the LAW OFFICES OF ROBERT T. HANLON, AND ASSOCIATES P.C., and hereby moves, pursuant to 735 ILCS 5/2-615, for Judgment to be entered on the pleadings against Defendant Karen Lukasik on her Counter-Claim against Andrew Gasser. In support of this Motion, Plaintiff counter-defendant states as follows:

**Facts**

1. Andrew Gasser is mentioned in the Counter-complaint in seven limited paragraphs. See Exhibit A, counter-complaint paragraphs 2, 18, 22, 28, 31, 32, and 33.

**EXHIBIT A**

2. The first paragraph Andrew Gasser is mentioned in is paragraph 2 which alleges that Mr. Gasser is the Highway Commissioner.

3. In Paragraph 18, it alleges that maybe Gasser, Lutzow or their agents or maybe somebody else removed documents from the RD-'T' cabinet after it went without notice for several weeks. In other words anybody could have removed a document, but it does not articulate whom or even why Gasser is mentioned in the scope of possible "who-done-its". Importantly, it doesn't even allege any document is actually missing.

4. In paragraph 22 of the Counter-complaint there is a reference to termination of Ace Security when Gasser took office.

5. The next reference to Andrew Gasser is in paragraph 28 of the counter-claim that alleges that Lukasik read from the McHenry County Blog that she was named by Gasser as a party to this action. Mr. Skinner may be sadden to hear that his blog is not legal authority and even it was, the statements therein are not a basis to obtain relief in this court.

6. In paragraph 31, there is a reference to Gasser's allegation that Lukasik intended to destroy records, with citation to the original complaint in this case.

7. In Paragraph 32, there is a reference to Gasser's allegation that he received a package.

8. Judgment on the pleadings is appropriate where there is no genuine issue of material fact and the movant is entitled to judgment as a matter of law. 735 ILCS 5/2-



615(e); *M.A.K. v. Rush-Presbyterian-St. Luke's Medical Center*, 198 Ill.2d 249, 255 (2001).

When ruling on a motion for judgment on the pleadings, a court takes as true all well-pled facts contained in the pleadings and may also consider judicial admissions and matters subject to judicial notice. *Id.*

9. In this case, nothing is alleged to advance any cause of action, much less a cause of action that would entitle any party to injunctive relief.

10. Moreover, the complaint doesn't even attempt to advance a cause of action. Rather, it is a complaint for a remedy with no underlying cause of action.

11. The prayer for relief seeks to restrain Gasser with both preliminary injunction and permanent injunction even though there is no known cause of action for "Injunction" which Lukasik pled.

## **I. Plaintiff Is Entitled to Judgment Pursuant to 735 ILCS 5/2-615 with prejudice.**

### **A. Standard on a 2-615 Motion for Judgment on the Pleadings**

13. Judgment on the pleadings is appropriate where there is no genuine issue of material fact and the movant is entitled to judgment as a matter of law. 735 ILCS 5/2-615(e); *M.A.K. v. Rush-Presbyterian-St. Luke's Medical Center*, 198 Ill.2d 249, 255 (2001). When ruling on a motion for judgment on the pleadings, a court takes as true all well-pled facts contained in the pleadings and may also consider judicial admissions and matters subject to judicial notice. *Id.*

## B. Injunction Requirements

14. 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.

15. 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 state supreme court pointed out in *City of Chicago v. Beretta USA*,

that “issuance of an injunction is contingent on plaintiffs' prevailing at trial on the merits of their claim.”

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

WHEREFORE, this Court should enter Judgment on the pleadings against Defendant/Counter-plaintiff, Karen Lukasik, as follows:

- A. Enter Judgment on behalf of Andrew Gasser and against Karen Lukasik on her counter-claim.
- B. Dissolve any preliminary injunction directed at Andrew Gasser.
- C. Award such other and further relief as this Court may consider just and proper.

Respectfully submitted,

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

By: /s/Robert T. Hanlon

Robert T. Hanlon, One of Plaintiff's  
Attorneys

Robert T. Hanlon, ARDC #6286331  
Law Offices of Robert T. Hanlon & Assoc., P.C.  
131 East Calhoun Street  
Woodstock, IL 60098  
(815) 206-2200

**PROOF OF SERVICE**

I, Robert T. Hanlon, an attorney, state that I served a copy of **PLAINTIFFS' MOTION FOR JUDGMENT ON THE PLEADINGS PURSUANT TO 735 ILCS 5/2-615 WITH RESPECT TO THE COUNTER-CLAIM**, attached hereto, upon all attorneys of record, by e-mailing a copy to their business addresses at:

Mr. Thomas Gooch, III  
THE GOOCH FIRM  
209 South Main Street  
Wauconda, IL 60084  
E-mail: [gooch@goochfirm.com](mailto:gooch@goochfirm.com)

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and by depositing said copy in the U.S. mail with postage prepaid at the Woodstock, Illinois, U. S. Post Office, on the 3<sup>rd</sup> day of June, 2019; and also by sending a copy via e-mail to the e-mail addresses listed above.

By: /s/Robert T. Hanlon

Robert T. Hanlon

Robert T. Hanlon, ARDC #6286331  
Law Offices of Robert T. Hanlon & Assoc., P.C.  
131 East Calhoun Street  
Woodstock, IL 60098  
(815) 206-2200 (815) 206-6184 (FAX)

# Exhibit A

## (Counter-claim)

IN THE CIRCUIT COURT OF 22<sup>ND</sup> 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, )  
Third Party Defendant )

**Katherine M. Keefe**  
Clerk of the Circuit Court  
\*\*\*Electronically Filed\*\*\*  
Transaction ID: 1711182752  
17CH000435  
06/08/2017  
McHenry County, Illinois  
22nd Judicial Circuit  
\*\*\*\*\*

Case No. 17 CH 435

NOTICE OF FILING

TO: Robert T. Hanlon  
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131 E. Calhoun Street  
Woodstock, IL 60098  
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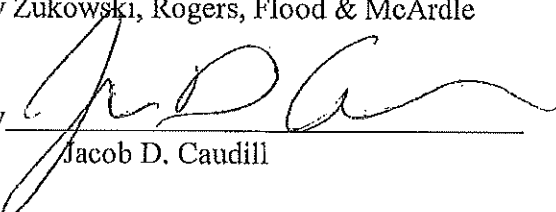
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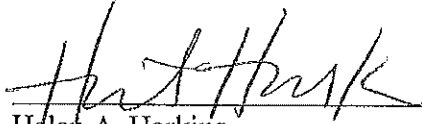
YOU ARE HEREBY NOTIFIED that we have this 8<sup>TH</sup> day of June, 2017, filed in the Office of the Circuit Clerk of McHenry County, Illinois, the attached *Verified Counter-Complaint and Third-Party Complaint for Preliminary and Permanent Injunctive Relief*.

KAREN LUKASIK  
By Zukowski, Rogers, Flood & McArdle

By   
Jacob D. Caudill

**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 notice by airmail to the addresses as shown above, depositing said envelopes in the United States mail at Crystal Lake, Illinois on June 7, 2017; and further that the statements set forth in this Proof of Service are true and correct.

  
Helen A. Harkins

Jacob D. Caudill, Atty. No. 06320420

jcaudill@zrfmlaw.com

ZUKOWSKI, ROGERS, FLOOD & McARDLE

Attorneys for: Karen Lukasik

50 Virginia Street

Crystal Lake, Illinois 60014

(815) 459-2050

**IN THE CIRCUIT COURT OF 22<sup>ND</sup> 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, )  
                     Third Party Defendant )

**Katherine M. Keefe**  
 Clerk of the Circuit Court  
 \*\*\*Electronically Filed\*\*\*  
 Transaction ID: 1711182752  
 17CH000435  
 06/08/2017  
 McHenry County, Illinois  
 22nd Judicial Circuit  
 \*\*\*\*\*

Case No. 17 CH 435

**VERIFIED COUNTER-COMPLAINT AND THIRD-PARTY COMPLAINT  
FOR PRELIMINARY AND PERMANENT INJUNCTIVE RELIEF**

NOW COMES the Counter-Plaintiff, Karen Lukasik, by and through her attorneys Zukowski, Rogers, Flood & McArdle, and complains against Counter-Defendant, Andrew Gasser, and Third Party Defendant, Charles Lutzow, as follows:

1. Counter Plaintiff, Karen Lukasik ("Lukasik"), resides in Algonquin Township, Illinois, and is the duly elected Clerk of Algonquin Township.
2. Counter Defendant, Andrew Gasser ("Gasser"), resides in Algonquin Township, Illinois, and is the duly elected Highway Commissioner of Algonquin Township.
3. Defendant, Robert Miller ("Robert"), is the former Algonquin Township Highway Commissioner and resides in Cary, McHenry County, Illinois.



4. Defendant, Anna May Miller ("Anna May"), was formerly employed by the Algonquin Township Highway Department and resides in Cary, McHenry County, Illinois.

5. Third Party Defendant, Charles Lutzow ("Lutzow"), is the duly elected Supervisor of Algonquin Township and is a resident of Illinois.

6. In preparation of assuming her role as Township Clerk, Lukasik shadowed the former Deputy Algonquin Township Clerk, Darlene Lutzow, on May 05, 2017. Her son, Jacob Lukasik, was with Lukasik due to a half day improvement day at school and he wanted to see her office. Her husband, Ron Lukasik, was on his lunch and near the Algonquin Township offices, so he stopped in to see her as well.

7. On May 05, 2017, Lukasik, along with Ron Lukasik, noticed that a filing cabinet with only two drawers marked "Road District" on one drawer and "Township" on the other drawer (hereinafter referred to as the "RD-T Cabinet") was filled with filed documents.

8. Lukasik, her husband, and her son did not look through or review any of the documents contained within the RD-T Cabinet.

9. On May 15, 2017, Lukasik was next present at the Algonquin Township offices solely for her swearing-in and took no notice of the RD-T Cabinet.

10. Third Party Defendant, Lutzow, has refused to give Lukasik access to the records of Algonquin Township.

11. After assuming her role as Clerk, Lukasik has made various demands to be allowed access to all of the records of Algonquin Township.

12. To date, Lukasik has not had access to all of the records of Algonquin Township.

13. On May 16, 2017, Lukasik was present at the Algonquin Township offices for a couple hours and took no notice of the RD-T Cabinet.

14. On May 19, 2017, Lukasik was present at the Algonquin Township offices for a couple hours and took no notice of the RD-T Cabinet.

15. On May 23, 2017, Lukasik was present at the Algonquin Township offices for a couple hours and took no notice of the RD-T Cabinet.

16. On May 26, 2017, Lukasik was present at the Algonquin Township offices for a couple hours and took no notice of the RD-T Cabinet.

17. On June 1, 2017, Lukasik was present at the Algonquin Township office for a couple hours and noticed, for the first time, that the RD-T Cabinet was completely empty.

18. Upon information and belief, Gasser, Lutzow, one of their agents, or some unknown party, removed these records from the RD-T Cabinet without the knowledge of Lukasik.

19. Upon information and belief from a witness, Tim Shepherd, on May 12<sup>th</sup> and 13<sup>th</sup> 2017, Lutzow and his assistant Ryan Provenzano had borrowed a Cabota from the Highway Department and were loading banker boxes from the Township offices and dumping them into the dumpster. Shepherd was unsure of what type of items were within the boxes but saw binders, books and several unknown documents in the dumpster.

20. The Township has a video security system monitoring the Township's office.

21. The security system was installed and previously maintained by Chris Welky of Ace Security Works.

22. Ace Security Works was replaced as the entity in charge of maintaining the Township offices' security systems when Gasser took office.

23. Lukasik spoke to Judy Kreklow, the former Township Supervisor's assistant, who confirmed that the file drawers in the RD-T Cabinet were full of bills and were there on her last

day of employment May 12, 2017 and that there was no reason why those documents should be missing.

24. Lukasik confirmed Judy Kreklow's information with Anna May, former secretary for the past Highway Commissioner, Robert, that those files were stored there by Judy Kreklow and that she had the practice of keeping the end of the previous fiscal years' documents in that filing cabinet to be easily accessible for the auditors.

25. The security system would provide material evidence of any documents, including the RD-T Cabinet documents, removed from the Township's office between May 12, 2017, the date Lukasik was told and noticed that the documents were within the RD-T Cabinet, and June 1, 2017, the date Lukasik noticed that documents had been removed from the RD-T Cabinet.

26. On information and belief, after thirty (30) days, the Township's recorded security footage is automatically deleted.

27. Thirty (30) days from May 12, 2017, is **June 11, 2017**.

28. On June 2, 2017, Lukasik was informed, by way of mchenrycountyblog.com, that she had been named as a defendant in a suit brought by Gasser.

29. On June 5, 2017, Lukasik was served by the McHenry County Sheriff's department through substitute service on her husband, Ron Lukasik. Lukasik was at work.

30. Upon information and belief, in or about 2013, the Township began scanning bills and other records on a stand-alone scanner in Lutzow's office. The scanned documents were subsequently stored on a server in Lutzow's office that Lukasik does not have access to.

31. The lawsuit alleges that Lukasik intends to destroy various records of Algonquin Township. Gasser's complaint presumes that Lukasik intends to destroy records relating to

Robert's use of the Township's "credit card, as well as other schemes and artifices." See a copy of the Gasser's complaint attached as **Exhibit A**, ¶19.

32. Gasser's complaint indicates that Gasser received an anonymous package from the Algonquin Township office. See **Exhibit A** at ¶15.

33. The anonymous package apparently contained various bills and credit card records of Algonquin Township.

34. Upon information and belief, the records contained in the "anonymous package" may have originated from the RD-T Cabinet.

35. Upon information and belief, the Township's photocopy machine was likely used to make copies of the records, given the fact that the anonymous letter has an Algonquin Township return address.

36. The Township photocopy machine may be altered, destroyed, or removed by anyone with access to the Township's offices.

37. To date, Lukasik has not destroyed, removed, or altered any records of Algonquin Township.

38. The public and Lukasik have a right to know who removed the RD-T Cabinet records and where those records were moved.

39. Lukasik has no adequate remedy at law to preserve the records without the intervention of the court.

40. If these records are destroyed, Lukasik and the public will both suffer irreparable harm, as it will be impossible to identify who took the records and what/if any records may have been copied before records were removed.

41. An injunction should be granted as Lukasik, for the reasons described above, would be likely to succeed on the merits of this complaint.

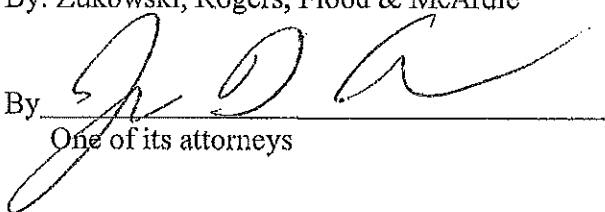
WHEREFORE, for the foregoing reasons Counter-Plaintiff, Lukasik, respectfully requests that this Court grant Lukasik the following relief:

- A. Issue a Preliminary and Permanent Injunction pursuant to 735 ILCS 5/11-102 prohibiting Counter-Defendant, Gasser, Third Party Defendant, Lutzow, and Unknown Parties from destroying the security footage of the Algonquin Township offices between May 12, 2017 and June 1, 2017.
- B. Allow Chris Welky of Ace Security Works, or any other independent computer technician approved by the court, to extract the footage from the Algonquin Township security system for the dates between May 12, 2017 and June 1, 2017.
- C. Issue a Preliminary and Permanent Injunction pursuant to 735 ILCS 5/11-102 prohibiting Counter-Defendant, Gasser, Third Party Defendant, Lutzow, and Unknown Parties from destroying any and all Algonquin Township copier hard drives and the data contained thereon for the dates between May 12, 2017 and June 1, 2017
- D. Issue a Preliminary and Permanent Injunction pursuant to 735 ILCS 5/11-102 prohibiting Counter-Defendant, Gasser, Third Party Defendant, Lutzow, and Unknown Parties from destroying any and all Algonquin Township servers that contain scanned Township bills or other records and the stand-alone scanner in Lutzow's office.
- E. For summons to issue to Third Party Defendant, Lutzow.
- F. That this Court award the Lukasik her costs in this matter.

KAREN LUKASIK

By: Zukowski, Rogers, Flood & McArdle

By

  
One of its attorneys

Jacob D. Caudill, Attorney No. 06320420

[jcaudill@zrfmlaw.com](mailto:jcaudill@zrfmlaw.com)

David W. McArdle, Attorney No. 06182127

[dmcardle@zrfmlaw.com](mailto:dmcardle@zrfmlaw.com)

R. Mark Gummerson

[mgummerson@zrfmlaw.com](mailto:mgummerson@zrfmlaw.com)

Zukowski, Rogers, Flood & McArdle

Attorneys for Counter-Plaintiff Karen Lukasik

50 Virginia Street

Crystal Lake, Illinois 60014

(815) 459-2050

**VERIFICATION**

Under penalties as provided by law pursuant to section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this Verified Complaint for Preliminary and Permanent Injunctive Relief are true and correct, except as to matter therein stated to be on information and belief and as to such matter the undersigned certifies as aforesaid that the undersigned verily believe the same to be true.

Karen Lukasik

Karen Lukasik

Signed and Sworn before me

This 7<sup>th</sup> Day of June, 2017

[Signature]

Notary Public



IN THE CIRCUIT COURT OF THE 22<sup>ND</sup> JUDICIAL CIRCUIT  
MCHENRY COUNTY ILLINOIS

FILED

JUN -1 2017

KATHERINE M. KEEFE  
MCHENRY CTY. CIR. CLK.

ANDREW GASSER,

Plaintiff,

V.

KAREN LUKASIK,  
INDIVIDUALLY AND IN HER  
CAPACITY AS ALGONQUIN  
TOWNSHIP CLERK, ANNA MAY  
MILLER AND ROBERT MILLER,

Defendants,

CASE NO. 17CH435

COMPLAINT FOR INJUNCTIVE RELIEF

NOW COMES Plaintiff, ANDREW GASSER, with his Complaint seeking injunctive relief against Defendants, KAREN LUKASIK, INDIVIDUALLY AND IN HER CAPACITY AS ALGONQUIN TOWNSHIP CLERK, ANNA MAY MILLER AND ROBERT MILLER, states as follows:

PARTIES VENUE AND JURISDICTION

1. Plaintiff is a resident of McHenry County, Illinois, and is the duly elected Algonquin Township Road Commissioner.
2. Defendant, KAREN LUKASIK ("LUKASIK"), resides in Algonquin Township, Illinois, and is the duly elected Clerk of Algonquin Township. LUKASIK is also known as Karen Miller Lukasik and Karen Miller.
3. Defendant, ROBERT MILLER ("MILLER"), is the former Algonquin Township Highway Commissioner and resides in Cary, McHenry County, Illinois.
4. Defendant, ANNA MAY MILLER ("ANNA MAY"), was formerly employed by the Algonquin Township Highway Department and resides in Cary, McHenry County, Illinois.

EXHIBIT A to Countercomplaint  
and Third Party Complaint

NOTICE  
BY ADMINISTRATIVE ORDER 94-9

THIS CASE IS HEREBY SET FOR SCHEDULING  
CONFERENCE IN COURT ROOM 202 ON  
8-31 2017 AT 9:00 AM

FAILURE TO APPEAR MAY RESULT IN THE CASE  
BEING DISMISSED OR AN ORDER OF  
JUDICIAL INTERPLEADER

## FACTS

5. On or about May 15, 2017, Plaintiff began reviewing physical and electronic records of the Algonquin Township Highway Department.

6. No electronic records of the Algonquin Township Highway Department are known to exist. In particular, despite MILLER having served for over 20 years as the Algonquin Township Highway Commissioner, there is not a single e-mail in the records of the Algonquin Township Highway Department. However, Plaintiff ordered bit by bit mirror images of all hard drives and the computer network before accessing any computer at the Algonquin Township Highway Department.

7. Plaintiff made demand upon MILLER to turn over all of the records of the Algonquin Township Highway Department. To date, MILLER has turned over absolutely no substantive records of the Algonquin Township Highway Department.

8. MILLER used a private e-mail account to conduct the business of the Algonquin Township Highway Department.

9. ANNA MAY used a private e-mail account to conduct the business of the Algonquin Township Highway Department.

10. None of the computers belonging to Algonquin Township contain any e-mails of either MILLER or ANNA MAY. (Investigation into the unallocated space continues.)

11. No correspondences between Business Agents of the International Union of Operating Engineers, Local 150 AFL-CIO ("Local 150") and MILLER exist in the records of the Algonquin Township Highway Department.

12. No records related to bargaining with Local 150 exist within the records of Algonquin Township Highway Department or that of Algonquin Township.



13. Upon Plaintiff's taking office, Local 150 began issuing grievances related to a purported labor agreement.

14. No expense records associated with MILLER's use of credit cards are contained in the records of the Algonquin Township Highway Department.

15. On or about May 30, 2017, an anonymous package arrived at Algonquin Township addressed to: "Highway Dept., c/o Andrew Gasser, 3702 N.W. Hwy 14, Algonquin Twp., Crystal Lake, IL 60014." The return address was the Algonquin Township offices. Contained within the package were various records of credit card purchases on a Capital One credit card and an American Express Platinum Business Credit Card. The total balance shown on the respective cardholder statements were expensed to the Algonquin Township Highway Department. However, numerous purchases were for women's clothing (including , dresses, purses, and non-uniform outfits) from various online retailers including but not limited to Prada, Lands' End, Levenger, and Orvis, another retailer of high end quality women's fashions.

16. The American Express Platinum Business Credit Card statements are addressed to "Algonquin Twnshp Hwy Robert Miller."

17. For example, as shown in Exhibit A, there are records of the use of the Algonquin Township American Express Platinum Business Credit Card for the purchase of an item from Levenger Catalog/Webdelray BCH in the amount of \$384.52, dated November 7, 2014. On the following page is a search result dated December 9, 2014, identifying a purse with a price of \$329.00 and the name MILLER written in by hand. Also included is a specific invoice matching the \$384.52 purchase with the item number AL 13100 GPBK. This item number and invoice match the credit card charge of \$384.52 after tax and shipping were added.

18. The stack of credit card charges and invoice documents link specific charges to specific items of women's clothing based upon UPC codes and item numbers.

19. Contained in the packages are over 200 pages of statements and identified purchases as well as other items suggesting financial misconduct at Algonquin Township via the use of MILLER's credit card as well as other schemes and artifices.

20. LUKASIK has articulated that she intends to destroy various records of Algonquin Township, presumably including records of MILLER's use of official credit cards for personal use.

21. Upon information and belief, credit cards were used by employees of Algonquin Township to purchase gift cards that were in turn used to purchase personal goods unrelated to the business of government at Algonquin Township.

22. Upon information and belief, a scheme and artifice was utilized by employees of Algonquin Township to receive additional compensation beyond salaries as well as "bonuses". These expenditures ought to have a corresponding document showing the proper approval for the expenditures.

23. Upon information and belief, the pattern and practice of the use of credit cards as described herein extends many years into the past. Documents provided in the aforementioned anonymous package date back to 2012 and end in December, 2016.

24. Plaintiff seeks to preserve the records to ascertain if the amounts charged to the Algonquin Township Highway Department served any lawful purpose.

25. Preserving the records of MILLER's and ANNA MAY's e-mails may aid in the investigation and identification of potential criminal conduct (i.e. the misuse of government money).

26. Authorization and Instigation: The aforementioned breach of the public trust has occurred with and at the authorization, sanction, advice, encouragement, and/or instigation of MILLER. LUKASIK has articulated that she intends to have public records destroyed. At present, it is unknown to what extent the conduct referenced herein has taken place. Moreover, the authenticity of the documents delivered is currently being examined.

27. Damages, Irreparable Injury and Need for Injunctive Relief: If Defendants, LUKASIK, ANNA MAY AND MILLER, and their agents and employees are not restrained from destroying any records related to Algonquin Township and the Algonquin Township Highway Department, there is no adequate remedy at law and the People of Algonquin Township, including Plaintiff, will suffer irreparable harm. Plaintiff will suffer additional irreparable harm in that he will be deprived of the very protections afforded under state law for the delivery of records associated with his office.

28. Injunction is in the Public Interest: An injunction is in the public interest because Defendants, LUKASIK, ANNA MAY AND MILLER, have a public duty to preserve the records that they either have had control over or continue to have control over. If they were not so enjoined, the destruction of public records would undermine the rule of law and create a threat to the enforcement of the right of the People to open government.

29. No Adequate Remedy at Law: The named Plaintiff has no adequate remedy at law. Although there are laws to prevent the destruction of public records, Plaintiff cannot without the intervention of the court protect and preserve the government records and the dispute cannot be remedied solely by remedies at law. Further, in the event further government records are either destroyed or concealed, Plaintiff and the People of the State of Illinois and the Citizens

of the United States will not be able to ensure the integrity of the records of Algonquin Township.

30. Balancing of the Rights, Interests and Injuries: The balancing of the interests of the parties is entirely in favor of Plaintiff. This is because the activities which the Plaintiff seeks to restrain are unlawful acts to begin with, and the denial of injunctive relief would serve to require Plaintiff and the people of Algonquin Township to suffer additional injury. In fact, Defendants, LUKASIK, ANNA MAY AND MILLER, will suffer no injury if restrained from destroying government records because Defendants do not possess the right to destroy government records.

31. Prior Application: There has been no prior application for injunctive relief to this Court or any other court for or in connection with the contractual violations set forth herein.

32. Need for Temporary Relief: Plaintiff has suffered and will continue to suffer irreparable harm and irreparable injury, as described herein above, unless a restraining order is issued restraining Defendants, MILLER and LUKASIK, from destroying any records rightfully belonging to Algonquin Township. Moreover, Plaintiff requires time to examine the records of Algonquin Township and the Algonquin Township Highway Department.

WHEREFORE, Plaintiff prays that this Honorable Court grant the following relief:

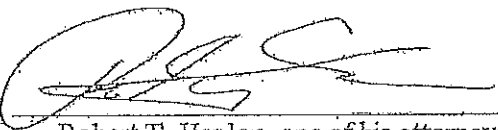
- A) Issue a preliminary injunction restraining Defendants, LUKASIK, ANNA MAY AND MILLER, from destroying any records of Algonquin Township or destroying any records of the Algonquin Township Highway Department without bond. To the extent that this Court requires a bond, the bond be posted after notice of a public meeting of the Algonquin Township Trustees that will afford Plaintiff time to make the appropriate requests for the posting of bond in this case.
- B) Issue an injunction prohibiting Defendants, LUKASIK, ANNA MAY AND MILLER, from destroying any records of either Algonquin Township or the Algonquin Township Highway Department.

C) For such other and further relief as this Court deems just and equitable.

Respectfully submitted,

ANDREW GASSER, Plaintiff

By:



Robert T. Hanlon, one of his attorneys

Robert T. Hanlon, ARDC #6286331  
LAW OFFICES OF ROBERT T. HANLON  
& ASSOCIATES, P.C.  
131 East Calhoun Street  
Woodstock, IL 60098  
(815) 206-2200

# Exhibit A



Platinum Business Credit Card  
ALGONQUIN TOWNSHIP HWY  
ROBERT J MILLER  
Closing Date 11/27/14

OPEN

p. 3/16

Account Ending 5-21007

- ① Effective March 1, 2015, Carey will no longer participate in the OPEN Savings program. Any amounts that are charged to your account for Carey purchases on or after March 1, 2015, will not be eligible for the OPEN Savings benefit.

## Payments and Credits

### Summary

	Total
Payments	\$2,085.49
Credits	\$0.00
Total Payments and Credits	\$2,085.49

### Detail

\*Indicates posting date

Payments	Amount
11/16/14* PAYMENT RECEIVED - THANK YOU	\$2,085.49

## New Charges

### Summary

	Total
Total New Charges	\$2,120.30

### Detail

ROBERT J MILLER  
Card Ending 5-21007

	Amount
10/29/14 AMAZON MKTPLACE PMTSAMZN.COM/BILL WA BOOK STORES	\$209.00 ✓
10/31/14 AROUND THE CLOCK 103CRYSTAL LAKE IL 815-459-2100	\$47.39 ✓
11/01/14 AMAZON.COM AMZN.COM/BILL WA MERCHANDISE	\$79.00 ✓
11/01/14 MCDONALD'S M723 OF CAREY IL 8476391181	\$34.66
11/04/14 WHITEPAGES.COM 800-336-1327 WA 800-336-1327	\$19.95
11/07/14 HARBOR FREIGHT TOOLS CRYSTAL LAKE IL 805-388-1000 Description HARDWARE/TOOLS	\$121.90 ✓
11/07/14 LEVINGER CATALOG/WEB DELRAY BCH FL BOOKS/SUPPLIES/GIFTS	\$384.52 ✓
11/10/14 CHESAPEAKE SEAFOOD HS SPRINGFIELD IL 217-522-5220 TIP	\$81.57 ✓ \$15.00

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 International: 561-276-4141 • Fax: 561-274-0263  
 Levenger.com  
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COUNT # 0072902034 ORDER # P592247700016  
 D TO BOB MILLER  
 3702 HWY 14  
 CRYSTAL LAKE, IL 60014

SHIP TO BOB MILLER  
 3702 HWY 14  
 CRYSTAL LAKE, IL 60014



Shipping charges on partial shipments and back orders are prorated so that you pay no additional shipping.  
 ship back orders as soon as they're available, and charge credit card orders only when the merchandise ships.

WHSE LOC	QTY	ITEM #	DESCRIPTION	PRICE EACH	TOTAL PRICE
AD80002	1	AL13100 GPK	Your Bag, Your Way Tote - Grape/Black	329.00	329.00
SIFT50	1	LEVGC 50 GWP	Levenger Gift Card - \$50 GWP	0.00	0.00

11/07/14 408A002N4JAB05A 11/09/14 0001797329 03 01

Net Product \$ 329.00  
 Sales Tax 22.62  
 P & H 32.90  
 Total Shipment \$ 384.52  
 Amt. Charged to AX 384.52

CA GI

See Important sales tax information on back



FREE HOLIDAY SHIPPING \$100 Purchase

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OUTLET

LEVENGER

What can we help you find?

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800-544-0880

Bag 0 Items | \$0.00

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[Pens & Refills](#)
[Bags](#)
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## MORE OPTIONS

Color:

Brown/Black (1)  
 Grape/Black (1)  
 Oxblood/Black (1)

Select a Category

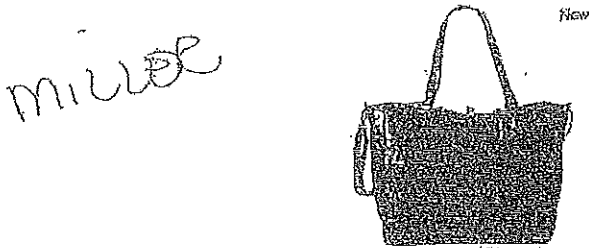
Woman's Bags (1)

We found 1 products for \$13100

Results per page: 36/48/72

Sort by: Relevancy

Page: 1



Your Bag, Your Way Tote

Price: \$329.00



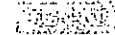
Page: 1

 Submit

Make an  
 IMPRESSION  
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 personalized items



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 CATALOG



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 GIFT CARD  
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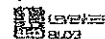
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**IN THE CIRCUIT COURT OF 22<sup>ND</sup> JUDICIAL CIRCUIT**  
**MCHENRY COUNTY, ILLINOIS**

Andrew Gasser,	)	
Plaintiff	)	
v.	)	
Karen Lukasik, Individually and in her	)	
Capacity as Algonquin Township Clerk;	)	
Anna May Miller; and Robert Miller	)	
Defendants,	)	Case No. 17 CH 435
Karen Lukasik, Algonquin Township Clerk,	)	
Defendant/Third Party	)	
Plaintiff/Counter Plaintiff	)	
v.	)	
Charles Lutzow, in his Capacity as	)	
Supervisor of Algonquin Township	)	
Third Party Defendant and	)	
Andrew Gasser, in his capacity as Road	)	
Commissioner of Algonquin Township	)	
Counter Defendant	)	

**AMENDED COUNTER-CLAIM AND THIRD-PARTY COMPLAINT**  
**FOR DECLARATORY AND INJUNCTIVE RELIEF**

NOW COMES the Third-Party Plaintiff and Counter Plaintiff, Karen Lukasik, as Algonquin Township Clerk, by and through her attorneys Zukowski, Rogers, Flood & McArdle, and fully amended her Complaints previously filed herein on June 1, 2017 and July 5, 2017 by making the following complaint allegations against Third-Party Defendant, Charles Lutzow, as Supervisor of Algonquin Township, and Andrew Gasser, as Road Commissioner of Algonquin Township:

1. Third-Party Plaintiff, Karen Lukasik ("Lukasik"), resides in Algonquin Township, Illinois, and is the duly elected Clerk of Algonquin Township.
2. Third-Party Defendant, Charles Lutzow ("Lutzow"), is the duly elected Supervisor of Algonquin Township and is a resident of Illinois.

**EXHIBIT B**

3. Counter Defendant, Andrew Gasser, is the duly elected Algonquin Township Road Commissioner.

### **Background**

#### **Missing RD-T Cabinet Files**

4. In preparation of assuming her role as Township Clerk, Lukasik shadowed the former Deputy Algonquin Township Clerk, Darlene Lutzow, on May 05, 2017. Her son, Jacob Lukasik, was with Lukasik due to a half day improvement day at school and he wanted to see her office. Her husband, Ron Lukasik, was on his lunch and near the Algonquin Township offices, so he stopped in to see her as well.

5. On May 05, 2017, Lukasik, along with Ron Lukasik, noticed that a filing cabinet with only two drawers marked "Road District" on one drawer and "Township" on the other drawer (hereinafter referred to as the "RD-T Cabinet") was filled with filed documents.

6. Lukasik, her husband, and her son did not look through or review any of the documents contained within the RD-T Cabinet.

7. On May 15, 2017, Lukasik was next present at the Algonquin Township offices solely for her swearing-in and took no notice of the RD-T Cabinet.

8. On May 15, 2017, and on each day thereafter until May 26, 2017, Lukasik was present at the Algonquin Township offices and took no notice of the RD-T Cabinet.

9. On June 1, 2017, Lukasik was present at the Algonquin Township office for a couple hours and noticed, for the first time, that the RD-T Cabinet was completely empty ("Missing Files").

10. Judy Kreklow, the former Township Supervisor's assistant, confirmed to Lukasik that the file drawers in the RD-T Cabinet were full of bills and were there on her last day of employment, May 12, 2017, and that there was no reason why those documents should be missing.

11. Lukasik confirmed Judy Kreklow's information with Anna May, former secretary for the past Highway Commissioner, Robert, that those files were stored there by Judy Kreklow and that she had the practice of keeping the end of the previous fiscal years' documents in that filing cabinet to be easily accessible for the Township auditors.

12. Lukasik informed Lutzow and Lutzow's employee, Ryan Provanzano, of the Missing Files and each denied knowledge of what happened to the Missing Files or where they could be found.

13. On Saturday, June 17, 2017, in the morning, Lukasik observed the Missing Files in file drawers located in the area occupied by Ryan Provenzano, Lutzow's employee. Lukasik immediately reported this fact to her attorney, the Township attorney, Jim Kelly and the McHenry County Sheriff.

14. At no time between June 1 and June 17 did Lutzow or any of his staff advise Lukasik that they were in possession of the Missing Files.

15. Upon information and belief, Lutzow, one of their agents, or some unknown party, removed these records from the RD-T Cabinet without the knowledge of Lukasik.

**Missing 2008-2010 Invoice Files**

16. In addition to the Missing Files in the RD-T Cabinet, Lukasik, after a diligent search of the Township Property that she has access to, has determined and observed that Town Fund and Road and Bridge invoices from 2008-2010 are missing from the Township office ("Missing 2008-2010 Files").

17. Lukasik spoke to Judy Kreklow, the former Township Supervisor's assistant, who confirmed that the file drawers in the RD-T Cabinet were full of bills and were there on her last day of employment May 12, 2017 and that there was no reason why those documents should be missing.

18. Lukasik confirmed Judy Kreklow's information with Anna May, former secretary for the past Highway Commissioner, Robert, that those files were stored there by Judy Kreklow and that she had the practice of keeping the end of the previous fiscal years' documents in that filing cabinet to be easily accessible for the auditors.

19. Upon information and belief, in or about 2013, the Township began scanning bills and other records on a stand-alone scanner in Lutzow's office. The scanned documents were subsequently stored on a server in Lutzow's office that Lukasik does not have access to.

*Records Found in the Trash*

20. On June 19, 2017, Lukasik discovered unsecured Township records in the trash.

21. Upon information and belief from a witness, Tim Shepherd, on May 12<sup>th</sup> and 13<sup>th</sup> 2017, Lutzow and his assistant Ryan Provenzano had borrowed a Cabota from the Highway Department and were loading banker boxes from the Township offices and dumping them into the dumpster. Shepherd was unsure of what type of items were within the boxes but saw binders, books and several unknown documents in the dumpster.

22. The records of Algonquin Township and the Algonquin Township Highway Department, accessible to Lukasik, but not solely within her custody, are located in four separate locations on Algonquin Township Property: Lukasik's office in the main township building, a downstairs storage room in the main township building, and two separate areas in building 6, hereinafter "the Storage Areas." On information and belief, other records of Algonquin Township

and the Algonquin Township Highway Department, not within Lukasik's custody, are located in the offices of Gasser and Lutzow.

23. On July 14, 2017, the Court entered a preliminary injunction order in this case as follows:

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 without providing duplicate keys and code numbers to Lukasik immediately.

24. Subsequent to the entry of the above order, on or about September 2017, Lukasik installed key locks on the Storage Areas so as to keep control and custody of all of Algonquin Township and the Algonquin Township Highway Department records as per the Court's July 14, 2017, injunctive order.

**FOB System Installed**

25. On information and belief, in January 2018, Lutzow or one of his employees or agents removed the locks installed by Lukasik without her consent and replaced the locks with the FOB system that secures the Algonquin Township Property as a whole.

26. A FOB allows each FOB holder to access particular areas on the Algonquin Township Property.

27. Lukasik was given a FOB by Lutzow that allows access to the Storage Areas.

28. However, on information and belief, there are other Algonquin Township and Algonquin Township Highway Department elected officials and/or employees to whom Lutzow also gave FOBs that allow access to the Storage Areas.

29. On information and belief, Lutzow or his agent is in control of who receives a FOB that allows access to the Storage Areas.

30. On information and belief, Lutzow or his agent is in possession and control of the master program that controls the FOB system.

31. On information and belief, the master program keeps a record each time a particular FOB is used to enter a particular area, including the Storage Areas.

32. The person in possession of the master program, on information and belief Lutzow or his agent, is able to delete or change these records.

33. Since the FOB system was installed, records have both disappeared and appeared.

34. Shortly after the FOB system was installed, Lukasik observed that one of the boxes of Anna May Miller's time sheets were missing from building 6.

35. In April 2018, Lukasik noticed that the missing box containing Anna May Miller's time sheets had appeared in the downstairs storage area.

#### Gasser and Lutzow possession of Township Records

36. Gasser and Lutzow have offices for themselves and their staff in the Algonquin Township office building. These offices are locked by the FOB system over which Lukasik has no access when locked, without permission from Gasser or Lutzow.

37. On information and belief, the offices of Gasser and Lutzow contain numerous original records to which Lukasik does not have unfettered access and custody ("Restricted Records").

38. Lukasik made prior demands on Gasser and Lutzow regarding Township records in their possession, however, Township records continue to remain in possession of Gasser and Lutzow. Some of the Restricted Records, on information and belief, include the following: bank statements since May, 2017, FOIA requests and responses, other than one dated July 11, 2019 from Local 150, subpoena for documents, current vehicle titles, registration and insurance records,

video of Lukasik and Jen Curtiss, time sheets/cards (other than October 28, 2018-November 10, 2018) of various current and past employees and their personnel files, documentation regarding the MFT fund and non-dedicated road programs since Gasser was elected and certified payroll for vendors that have done business with the road district.

39. The current FOB system strips Lukasik of *“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 is in contravention to the Court’s July 14, 2017 Preliminary Injunction Order.

40. While the FOB system may provide Lukasik with access to records in the Storage Areas, it does not provide her with exclusive custody of the records as she is left with no control of who accesses the Storage Areas and does not allow her to secure the records.

41. The Storage Areas needs to be secured with a physical key lock to which Lukasik controls the key, as was the case in January 2018, before the locks were removed without her consent.

#### Legal Mandate

42. On or about June 26, 2017, Lukasik received a legal mandate to produce certain Township Records that should be in her possession, pursuant to her statutory duties, and because of the restricted access to the records by Lutzow, she was prevented from fulfilling that mandate. Illinois law prohibits disclosure of the underlying document evidencing the referenced legal mandate.

#### Inability to Respond to FOIA Requests

43. Lukasik has received numerous requests to produce Township records pursuant to the Freedom of Information Act but cannot comply because she does not have full access to the Township Records.



44. Lutzow is prohibiting Lukasik from taking full and unfettered custody of the records of Algonquin Township and the Algonquin Township Highway Department.

**COUNT I – DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF**

45. Lukasik restates Paragraphs 1-44 as if fully set forth herein.

46. As the duly elected Clerk of Algonquin Township, Lukasik has legal tangible interest to protect in relation to all Algonquin Township documents including, but not limited to:

- a) Lukasik *“shall have the custody of all records, books, and papers of the township and shall duly file all certificates or oaths and other papers required by law to be filed in the clerk's office.”* 60 ILCS 1/75-5;
- b) Lukasik, as the duly elected Algonquin Township Clerk, is the *ex-officio clerk* for the highway district. 605 ILCS 5/6-113.
- c) As the Clerk of the highway district, Lukasik shall *“[h]ave the custody of all records, books, and papers of the road district, and [s]he shall duly file all certificates or oaths and other papers required by law to be filed in [her] office.”* 605 ILCS 5/6-113 and 6-202.1.

47. Lutzow and Gasser are opposing Lukasik's legal interest by denying her full, unfettered, access to and custody of all Algonquin Township records and by allowing others access to records without Lukasik's oversight.

48. An actual controversy exists between Lukasik, Lutzow and Gasser as despite Lukasik's demands, despite a preliminary injunction, and despite changing locks by Lukasik to maintain access and accountability of all Algonquin Township records, Lutzow and Gasser refuse Lukasik full unfettered access and custody to all records at times and upon information and belief, Lutzow, or one of his agents removed Lukasik's locks and replaced them with a FOB system.

49. All of the records of Algonquin Township and the Algonquin Township Highway Department must be secured in the custody of Lukasik to avoid potential destruction, alteration, tampering or loss.

50. Because she is being denied full unfettered access to all Township Records and others have had and continue to have access to said records through a FOB system, Lukasik has no adequate remedy at law to preserve the records without the intervention of the court.

51. If all Township records are not inventoried and secured by Lukasik, they could be altered, tampered with, lost or destroyed, causing Lukasik and the public to suffer irreparable harm, as it will be impossible to identify who took the records and what, if any, records may have been copied before records were removed.

52. An injunction should be granted in favor of Lukasik, requiring Lutzow and Gasser to provide her with full, unfettered access to all Storage Areas, custody of all records of the Township, including records in the offices of Gasser and Lutzow (for purposes of inventory and security) and replacement of all FOB systems with Lukasik controlled key locks.

53. The harm to the public by not entering an injunction preventing Lutzow and Gasser from allowing Lukasik full unfettered access to all Township records for purposes of inventory and security outweighs any harm or complaint Lutzow and Gasser may have by entry of such an order because the records they need will be available upon request to Lukasik.

54. No hardship would be caused to Lutzow and Gasser should they be enjoined from removing Lukasik's locks on the Storage Areas

55. Lukasik has no adequate remedy at law to preserve the records without the intervention of the court.

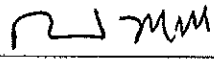
56. For the reasons described herein, Lukasik would be likely to succeed on the merits of this complaint.

WHEREFORE, for the foregoing reasons Third-Party Plaintiff, Lukasik, respectfully requests that this Court grant Lukasik the following relief against Lutzow and Gasser:

- A. Determine and adjudicate the rights of the parties pursuant to 735 ILCS 5/2-701 as described herein.
- B. Issue a Permanent Injunction pursuant to 735 ILCS 735 ILCS 5/2-701 and 5/11-102 prohibiting Third-Party Defendant Lutzow and Counter Defendant Gasser and their employees and agents, from denying Lukasik complete access, custody and control over Algonquin Township records, allowing access to others through a FOB system, and removing Lukasik's locks on the Storage Areas.
- C. Any other relief that this court finds just and/or equitable.

KAREN LUKASIK

By Zukowski, Rogers, Flood & McArdle

By  \_\_\_\_\_  
One of her attorneys

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