

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

Case No. 17 CH 000435

**PLAINTIFFS' RESPONSE TO LUKASIK'S
MOTION FOR JUDGMENT ON THE PLEADINGS**

NOW COME Plaintiffs/Counter-Defendant, ANDREW GASSER, ALGONQUIN TOWNSHIP HIGHWAY COMMISSIONER, AND ALGONQUIN TOWNSHIP ROAD DISTRICT (hereinafter referred to as "Plaintiffs", "Gasser" and the "Road District", respectively), by and through their attorney, Robert T. Hanlon of the LAW OFFICES OF ROBERT T. HANLON & ASSOCIATES, P.C., and in response to Defendant's/Counter-Plaintiff's, KAREN LUKASIK'S (hereinafter "Lukasik"), Motion for Judgment on the Pleadings, states as follows:

Introduction

This may be a first in Illinois civil procedure history where a party having had their Counter/Cross-Complaint dismissed asks for a judgment with nothing pending involving that litigant. Lukasik has filed a motion pursuant to Illinois Code of Civil Procedure 2-615(e) seeking judgment on the pleadings. This, of course, begs the examination as to what pleading or pleadings is or are directed at Lukasik or from Lukasik for which she would be entitled judgment as a matter of law at this point in the litigation. The answer to that question is apparently nothing. Lukasik's motion is a nullity at this point in the proceedings and is not well grounded in fact or in law. As pointed out in Lukasik's opening motion, judgment on the pleadings is appropriate when no genuine issue of material fact exists and the movant is entitled to judgment as a matter of law. However, Lukasik is not entitled to a judgment as a matter of law because there remains nothing to which she is a party in this action. Thus, she is not entitled to judgment as a matter of law. Lukasik's counsel was forewarned that she lacks standing to advance a Second Amended Counter/Cross-Complaint in her official capacity. Recognizing her lack of standing, Lukasik did not file a Second Amended Counter/Cross-Complaint. Lukasik, in essence, abandoned her claims after more than two years and having improperly obtained the issuance of an erroneous Temporary Restraining Order (hereinafter "TRO") and an erroneous injunction. She has now conceded that she cannot advance any of her claims as previously pled and is without standing to advance any claim. Accordingly, after this Court struck Lukasik's Amended Counter/Cross-Complaint on this Court's own motion for failure to state a cause of action, nothing remained and now Lukasik desires to claim victory in her own failure to file an Amended Counter/Cross-Complaint in her pleading seeking judgment on the pleadings.

Procedural History - What's Left for Lukasik to Demand Judgment Upon?

Procedurally, this is a civil procedure anomaly at best, and at worst sanctionable. After Plaintiffs filed their Fourth Amended Complaint and this Court heard argument on the Fourth Amended Complaint, this Court ruled on the counts that remain.

At that time, all that remained related to Lukasik was her purported Counter/Cross-Complaint and the existence of the TRO and Preliminary Injunction. Is Lukasik seeking judgment on her demand for injunctive relief? Obviously not, because the oral motion of Gasser to vacate the TRO and Preliminary Injunction ab initio was granted without objection by Lukasik's counsel.

Based on Lukasik's original Counter/Cross-Complaint, Gasser filed a Motion for Judgment on the Pleadings. The rationale being that Lukasik's then active complaint did not advance an actual cause of action because her claims against Gasser sounded in "Injunction" which is a remedy and not a cause of action. Before Gasser could be heard on his Motion for Judgment on the Pleadings, Lukasik sought leave to amend despite not having attached a proposed amendment to her motion, which signaled Lukasik's failure to actually have a proper amendment at the time of her request for leave to amend. Lukasik, thereafter, with leave of court filed an Amended Counter/Cross-Complaint under a new theory that she was entitled to relief under the Declaratory Judgment Act. Counsel for Gasser and the Road District informed the court that the Amended Counter/Cross-Complaint did not contain a cause of action for declaratory relief and this Court did not require Gasser or the Road District to file another motion given that it was the contention that Lukasik's Amended Counter/Cross-Complaint did not contain facts setting forth a cause of action under the newly devised theory of declaratory judgment. This Court rejected the claims of Lukasik's Amended Counter/Cross-Complaint.

Upon its' own motion, this Court struck the Amended Counter/Cross-Complaint on the basis that it too failed to state a cause of action. Lukasik was again granted leave to file a Second Amended Counter/Cross-Complaint. At the point in time that this Court allowed Lukasik additional time to file a Second Amended Counter/Cross-Complaint, counsel for Plaintiffs alerted Lukasik's counsel and this Court of the statutory provisions concerning Lukasik's lack of standing to do so. Moreover, this Court cautioned Lukasik's counsel that such a filing would be subject to a challenge on standing and the subsequent filing would be scrutinized pursuant to Rule 137 in light of the statutory provision provide by Plaintiffs' counsel at hearing.

Lukasik thereafter failed to file a Second Amended Counter/Cross-Complaint. Lukasik's counsel noticed up the subject motion for 9:00 a.m., but failed to appear at 9:00 a.m. Rather, in disregard to Plaintiffs' counsel having been noticed up at 9:00 a.m., Lukasik's counsel arrived approximately 45 minutes late without even attempting to notify opposing counsel. The court inquired about the failure to file the Second Amended Counter/Cross Complaint and Lukasik's counsel acknowledged that he would not be filing a Second Amended Counter/Cross-Complaint. Accordingly, upon Gasser's motion, this Court then vacated the erroneously issued TRO and the erroneously issued Preliminary Injunction ab initio because it was not supported by a cause of action or by a claimant with standing.

This then begs the question: What exactly is the pleading or pleadings that Lukasik demands judgment upon that she contends that she is entitled to judgment as a matter of law? Lukasik acknowledges that no cause remains against her and she voluntarily elected not to file a Second Amended Counter/Cross-Complaint. Under this set of circumstances, Lukasik's Motion for Judgment on the Pleadings is really a prayer that this Court will bestow upon her the title of victor for media purposes. However, it is not the function of the courts to decide hypothetical

issues which are not properly before it. Thus, Lukasik's Motion for Judgment on the Pleadings does not address a fundamental issue of fact or law in the Fourth Amended Complaint or her own now dismissed pleadings. Accordingly, the Motion for Judgment on the Pleadings is moot on its face.

Lukasik's Motion for Judgment on the Pleadings boils down to this: nothing is pending against her and she has nothing pending. Nevertheless, Lukasik asks to be dismissed from the case and have a judgment entered in her favor. Yet, there is nothing to dismiss her from because she abandoned all of her claims which were all that remained up until she failed to file a Second Amended Counter/Cross-Complaint.

Mootness

A moot question has been defined as one that once existed but, because of the happening of some event, has ceased to exist and no longer presents an issue or controversy. (*People v. Dawson* (1972), 5 Ill. App. 3d 975, 976, 284 N.E.2d 391, 392.) cited approvingly in *In re J.A.*, 108 Ill. App. 3d 426, 428-429, 439 N.E.2d 72, 74, 1982 Ill. App. LEXIS 2159, *5, 64 Ill. Dec. 143, 145. The exercise of judicial power is limited to "cases" and "controversies." *Aetna Life Ins. Co. v. Haworth*, 300 U.S. 227, 239, 57 S. Ct. 461, 463, 81 L. Ed. 617, 620, 1937 U.S. LEXIS 1147, *20, 108 A.L.R. 1000. A "controversy" in this sense must be one that is appropriate for judicial determination. *Osborn v. United States Bank*, 9 Wheat. 738, 819. A justiciable controversy is thus distinguished from a difference or dispute of a hypothetical or abstract character; from one that is academic or moot. *United States v. Alaska S. S. Co.*, 253 U.S. 113, 116. The controversy must be definite and concrete, touching the legal relations of parties having adverse legal interests. *South Spring Gold Co. v. Amador Gold Co.*, 145 U.S. 300, 301; *Fairchild v. Hughes*, 258 U.S. 126, 129; *Massachusetts v. Mellon*, 262 U.S. 447, 487, 488.

It must be a real and substantial controversy admitting of specific relief through a decree of a conclusive character, as distinguished from an opinion advising what the law would be upon a hypothetical state of facts. See *Muskrat v. United States*, *supra*; *Texas v. Interstate Commerce Comm'n*, 258 U.S. 158, 162; *New Jersey v. Sargent*, 269 U.S. 328, 339, 340; *Liberty Warehouse Co. v. Grannis*, 273 U.S. 70; *New York v. Illinois*, 274 U.S. 488, 490; *Willing v. Chicago Auditorium Assn.*, 277 U.S. 274, 289, 290; *Arizona v. California*, 283 U.S. 423, 463, 464; *Alabama v. Arizona*, 291 U.S. 286, 291; *United States v. West Virginia*, 295 U.S. 463, 474, 475; *Ashwander v. Tennessee Valley Authority*, 297 U.S. 288, 324. As quoted in *Aetna Life Ins. Co. v. Haworth*, 300 U.S. 227, 240-241, 57 S. Ct. 461, 464, 81 L. Ed. 617, 621, 1937 U.S. LEXIS 1147, *23-24, 108 A.L.R. 1000.

In this case, Lukasik's Motion for Judgment on the Pleadings seeks a determination about nothing at this point. This matter is in a court of law, not a Seinfeld¹ episode. There is no question concerning the legal relationship between the parties or their legal interests that would be impacted by Lukasik's Motion for Judgment on the Pleadings; there is no real and substantial controversy to be determined by this Court related to Lukasik. Up until the time that this Court struck Lukasik's Amended Counter/Cross-Complaint there was a real controversy. However, at this point in time, there is no justiciable controversy requiring the intervention of the court. Simply put, when this Court struck the Amended Counter/Cross-Complaint directed at Gasser and Lutzow, there was no longer a justiciable controversy between Lukasik and either Gasser, Lutzow, or the Road District. Noteworthy in the absence of a controversy, Lutzow was even dismissed from Lukasik's cross-claim based on the arguments made by Gasser without Lutzow being required to file anything. In the absence of a justicable controversy, Lukasik's Motion for Judgment on the Pleadings is moot and not well grounded in law or fact.

¹ A television show about nothing.

What are the Merits to be Considered on Defendant's Motion?

In first reading and assessing Lukasik's Motion for Judgment on the Pleadings, the initial question of: "What are the elements that judgment could be obtained by Lukasik?" was a complete loss to Plaintiffs' Counsel. The reality is that there are no elements to a claim that everything is over for Lukasik in this case. There is no simple way to put it. Lukasik seeks dismissal of nothing at this point in the litigation because there is nothing pending to which she is a party. So it is probably accurate that Lukasik has the burden to establish nothing because there is nothing for the court to decide. Can this Court gain direction from the higher courts concerning the lack of the existence of a claim by or against Lukasik? Should the court grant "Judgment" for Gasser as he previously sought judgment because Lukasik had no claim after it already struck Lukasik's Amended Counter/Cross-Complaint? Should the court grant "Judgment" as a matter of law to Gasser because no cause of action for either injunction or declaratory relief was already decided by this Court? Lukasik doesn't have standing to raise her claims and she does not seek a determination of a matter in controversy. Can "judgment" enter when nothing remains? In short, there is no legal standard when the legal issues have been adjudicated.

Prejudice to Plaintiffs

Despite there being nothing to adjudicate, Lukasik filed a Motion for Judgment on the Pleadings that was not well grounded in either fact or law. This in turn required Plaintiffs' Counsel to expend the time to respond to the frivolous motion when the basic fundamental requirements of pleading were not and could not be accomplished by her motion. Thus, Lukasik burdened Plaintiffs with unnecessary pleading in violation of Rule 137.

Conclusion

WHEREFORE, Plaintiffs/Counter-Defendant, ANDREW GASSER, ALGONQUIN TOWNSHIP HIGHWAY COMMISSIONER, AND ALGONQUIN TOWNSHIP ROAD DISTRICT pray that this Honorable Court deny Karen Lukasik's Motion for Judgment on the Pleadings or in the alternative strike her motion as moot.

Respectfully submitted,

ANDREW GASSER, ALGONQUIN TOWNSHIP
HIGHWAY COMMISSIONER, AND
ALGONQUIN TOWNSHIP ROAD DISTRICT,
Plaintiffs'/Counter-Defendant

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

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