

**IN THE CIRCUIT COURT FOR THE SEVENTH JUDICIAL CIRCUIT
MACOUPIN COUNTY, ILLINOIS**

CAMILLE MAYFIELD COOPER BROTZE)
and WAYNE BROTZE, husband and wife,)
)
Plaintiffs,)
)
v.) Case No. 2019-MR-000092
)
CITY OF CARLINVILLE, ILLINOIS, a)
Municipal Corporation,)
)
Defendant.)

DEFENDANT’S MOTION TO STAY PENDING APPEAL

NOW COMES Defendant, the CITY OF CARLINVILLE, a Municipal Corporation, by and through its attorneys, Giffin, Winning, Cohen & Bodewes, P.C., and Dan O’Brien appearing of record, pursuant to Supreme Court Rule 305(b), request that this Honorable Court stay its July 7, 2020 Order granting Plaintiffs’ motion for summary judgment on their Second Amended Complaint and issuing a Writ of Mandamus to compel Defendant to withdraw from and cease any further participation, funding, or operation of Illinois Alluvial Rural Water Company Alluvial (“Alluvial”) and finding “Alluvial was created in violation of the law and is a void corporation.”

1. On August 7, 2019, Plaintiffs filed a Second Amended Complaint alleging a single count for mandamus relief. According to Plaintiffs’ Second Amended Complaint, they “have no other mechanism to challenge [Defendant’s] abuse of authority regarding [its] participation in the creation, funding, or operation of Illinois Alluvial [Rural Water Company].” Plaintiffs’ pleading requested the Court “issue a Writ of Mandamus compelling the Carlinville Aldermen and Alderwomen, in their official capacities, to take the actions necessary to withdraw

from and cease any further participation in the creation, funding, or operation of Illinois Alluvial”.

2. Thereafter, the parties filed their respective motions for summary judgment.

3. On June 9, 2020, this Court held a hearing on the parties’ motions for summary judgment.

4. In its July 7, 2020 written Order, this Court granted Plaintiffs’ motion for summary judgment on their Second Amended Complaint, denied Defendant’s motion for summary judgment, and issued a Writ of Mandamus to compel Defendant to withdraw from and cease any further participation in, funding of, or operation of Alluvial. The Court further found “Alluvial was created in violation of the law and is a void corporation.” Circuit Court’s July 7, 2020 Order, at 17.

5. Defendant will file a timely notice of appeal following the filing of this Motion to Stay Pending Appeal.

6. Illinois Supreme Court Rule 305(b) allows a party to seek a stay of enforcement of any judgment, other than a money judgment. Such stay shall be conditioned upon just terms.

7. Pursuant to Illinois Supreme Court Rule 305(i), when the appeal is prosecuted by a governmental body, such as Defendant, the circuit court may stay the judgment pending appeal without requiring that any bond or any other form of security be given.

8. A stay is appropriate in this case because it will (a) reduce the uncertainty of Defendant’s ability to participate in Alluvial, (b) allow Alluvial to continue as a valid Illinois Corporation, and (c) avoid and prevent unnecessary and unfortunate (i) disruption to the financial position of Defendant, (ii) interference with Defendant’s contractual obligations, (iii) risk to the

safety of the public water supply, and (iv) disruption to Defendant's two-thousand nine-hundred and twenty-six (2,926) customers while the appeal is pending.

WHEREFORE, Defendant, the CITY OF CARLINVILLE, hereby respectfully requests this Court to stay the enforcement, without the requirement that bond or any other form of security be given, of its Order entered July 7, 2020, pending appeal, and for such other relief the Court deems just and proper.

Respectfully submitted,

**CITY OF CARLINVILLE, ILLINOIS,
A Municipal Corporation**, Defendant

BY: /s/ John M. Gabala

One of Its Attorneys

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