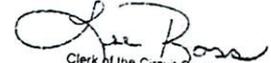


IN THE CIRCUIT COURT  
FOR THE SEVENTH JUDICIAL CIRCUIT  
CARLINVILLE, MACOUPIN COUNTY, ILLINOIS

**FILED**

AUG 03 2020

CAMILLE MAYFIELD COOPER BROTZE, )  
And WAYNE BROTZE, husband and wife, )  
 )  
Plaintiffs, )  
 )  
vs )  
 )  
CITY OF CARLINVILLE, ILLINOIS, a )  
Municipal Corporation, )  
 )  
Defendant. )

  
Clerk of the Circuit Court  
Macoupin County, Illinois

No. 2019 MR 92  
(formerly filed as 18 L 5)

**ORDER**

**Re: Defendant City of Carlinville's Motion to Stay Pending Appeal**

Case called for consideration of Defendant's Motion to Stay Pending Appeal and waiver of bond pursuant to Illinois Supreme Court Rule 305(b) and (i), Plaintiffs' response, and the parties' supplemental legal authority. Based on the foregoing, the Court finds as follows:

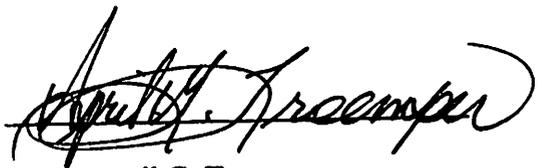
- 1) A trial court may stay a judgment pending appeal. If a stay is granted, it shall be conditioned upon just terms.
  
- 2) Here, as part of the Motion to Stay, Defendant asks this Court to declare Illinois Alluvial a valid Illinois Corporation. The Court finds this request inappropriate. This Court found the City of Carlinville, as a non-home-rule municipality, exceeded and circumvented its constitutional and statutory authority when it participated in the creation of Illinois Alluvial, a non-for-profit corporation, which deprived Plaintiffs and the Citizens of Carlinville the right to an open and transparent government (as illustrated in the notice of criminal trespass issued by Illinois Alluvial). The Court further found that since the City of Carlinville had no authority to act in the manner it did, Illinois Alluvial, by default, is a void corporation. Keep in mind, Illinois Alluvial was not a corporation already in existence, and the City of Carlinville and the Village of Dorchester did not enter into a written inter-governmental/cooperative agreement or enter into a contract with Jersey County Rural Water Company for purposes of creating Illinois Alluvial. It would be improper and not just for this Court to now declare Illinois Alluvial a valid corporation while this case is on appeal. As such, the Court denies that portion of Defendant's request.

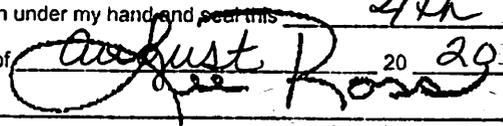
- 3) Next, the City of Carlinville argues that the Court's order will interfere with Defendant's contractual obligations and cause disruption to Carlinville's 2,926 water customers. No evidence was presented by way of affidavits as to any contractual obligations or the number of current water customers or how this Court's ruling will disrupt their current water supply; and in fact, the City of Carlinville stated on the record, no contract existed. Thus, it would be improper and not just for this Court to now consider evidence and arguments that were not presented and fully briefed during the summary judgment stage. *See generally, Vantage Hosp. Group, Inc. v. Q Ill Development, LLC.*, 2016 IL App (4th) 160271, 71 N.E.3d 1 and *Gardner v. Navistar Intern. Transp., Corp.*, 213 Ill. App. 3d 242, 571 N.E.2d 1107 (4th Dist. 1991). As pointed out during oral arguments on the Motion to Stay, the City of Carlinville could have presented alternative arguments (such as the arguments raised in the Motion to Stay Pending Appeal) for the Court's consideration as to why a *writ of mandamus* should not be issued even if the Court found the City exceeded its legal authority, but no additional arguments were raised, and the Court finds it improper to consider new evidence and new arguments following a final Order to justify a stay.
- 4) The Court agrees with Defendant's argument that a stay would eliminate the City of Carlinville's uncertainty as to whether it can still participate as a water customer of Illinois Alluvial. However, this uncertainty has existed since Plaintiffs filed their original Complaint in February 2018 when Plaintiffs raised the validity of that corporation and questioned the City of Carlinville's actions in creating that separate entity.
- 5) As pointed out in Plaintiffs' response, Defendant must establish that the stay is necessary to secure the fruits of the appeal if the appellant is successful and/or also must establish third parties will suffer a hardship if the stay is not granted.
- 6) Here, the Court has viewed this issue through a very careful lens. On one hand, the Court recognizes that if the Appellate Court were to reverse this Court's decision and find the City of Carlinville acted within its constitutional and statutory authority and this Court did not issue the stay, then the City's efforts at obtaining a potable water supply for its citizens will have been delayed. Yet on the other hand, if the Appellate Court affirms this Court's decision and finds the City, as a non-home-rule municipality, circumvented and exceeded its legal authority, then the City of Carlinville will be years away from creating a viable water source for its citizens that conforms with the options the Legislature specifically carved out because it chose to stay the course and tread into a territory that has never been done before (according to the City of Carlinville's attorney). Either way, the Citizens of Carlinville will suffer, but they do and always have deserved to know what decisions are being made by their elected officials. That is the purpose of open government, yet they have been deprived transparency because the Open Meetings Act does not apply to non-for-profit corporations, such as Illinois Alluvial, and various citizens have been threatened with being charged with criminal trespass for appearing at Illinois Alluvial's meetings.
- 7) What this Court did learn, though, is that the City of Carlinville took out a loan during the pendency of this case to secure an emergency back-up water supply source depending upon the outcome of this case, and Illinois Alluvial is not providing water to Carlinville's

customers because it is still in the planning stages. These points weigh in favor of denying the stay.

- 8) The Court understands the City of Carlinville's desperate need to find a potable water supply for its citizens. The Court's Order merely instructs the City to go about it the right way. The manner it chose does not comply with the Constitution or the statutory options available, and Courts around this State must ensure non-home-rule municipalities do not exceed their authority; otherwise, a staggering precedent will be set for generations to come. (If certain non-home-rule municipalities wish to have more leeway and fewer restrictions, they can take appropriate steps to become home-rule.)
- 9) As such, the Court denies the City of Carlinville's Motion to Stay Pending Appeal.
- 10) The Court's July 7, 2020 Order remains final and appealable and there is no just reason to delay its enforcement or appeal.

Entered: August 3, 2020

By:   
April G. Troemper  
Circuit Court Judge, 7<sup>th</sup> Judicial Circuit

State of Illinois  
County of Macoupin  
I, Lee Ross, Clerk of the Circuit Court in and for the county of Macoupin State of Illinois do hereby certify that the foregoing is a true copy of the original instrument filed in my office.  
Given under my hand and seal this 4<sup>th</sup>  
day of August 20 20  
  
Clerk of the Circuit Court