

**IN THE CIRCUIT COURT OF THE 12TH JUDICIAL CIRCUIT
WILL COUNTY, ILLINOIS**

CYNTHIA BRZANA and TIM GRANT)
)
 PLAINTIFFS)
 V.)
) Case No. 19 CH 1143
 WESLEY TOWNSHIP AND WESLEY)
 TOWNSHIP ROAD DISTRICT.)
)
 DEFENDANTS.)

**Wesley Township and Wesley Township Road District’s Motion to Join Leonard
McCubbin as a Counter-plaintiff**

Now comes Wesley Township and Wesley Township Road District, through their attorneys, and respectfully request that this Court join Leonard McCubbin as a counter-plaintiff pursuant to section 2-404 of the Code of Civil Procedure, and in support of this Motion state as follows:

Introduction

1. Leonard McCubbin will file an action against Plaintiff Cynthia Brzana for intentional infliction of emotional distress. This action is included as Count IV in the proposed counterclaim attached as Exhibit A. Mr. McCubbin’s cause of action arises out of a similar set of facts as the Amended Complaint and Wesley Township’s and Wesley Township Road District’s counterclaims. Allowing Mr. McCubbin to be joined as a counter-plaintiff will promote efficiency and judicial economy and should not delay the resolution of this matter.

McCubbin’s Counterclaim

2. Mr. McCubbin is a trustee on the Wesley Township Board of Trustees. His cause of action against Ms. Brzana alleges that on November 3, 2019 Ms. Brzana called and him and threatened to file a FOIA lawsuit against the Township and Road District with damages of

\$100,000 or more if Mr. McCubbin did not vote for her preferred candidate for trustee. The vote was scheduled to take place two days later, on November 5, 2019.

3. Mr. McCubbin did not vote for Ms. Brzana's choice for trustee, and Ms. Brzana filed this lawsuit seeking damages of more than \$100,000 for unanswered FOIAs.

Wesley Township's Counterclaims

4. Wesley Township and Road District allege that Ms. Brzana committed fraud by filing FOIA requests while claiming to be co-Plaintiff Tim Grant and others.
5. She did this to avoid being labeled a recurrent requester pursuant to section 3.2 of the FOIA. She wanted to avoid being labeled a recurrent requestor so that she could inundate the Township and Road District with so many FOIA requests that they would be unable to answer all of them. This would allow her to bring a FOIA lawsuit against the Township for \$100,000 or more of damages.

Relevant Statute

6. Section 2-404 of the Code of Civil Procedure states:

“All persons may join in one action as plaintiffs, in whom any right to relief in respect of or arising out of the same transaction or series of transactions is alleged to exist, whether jointly, severally or in the alternative, whenever if those persons had brought separate actions any common question of law or fact would arise. If upon the application of any party it shall appear that joinder may embarrass or delay the trial of the action, the court may order separate trials or enter any other order that may be expedient. Judgment may be entered for any one or more of the plaintiffs who may be found to be entitled to relief, for the relief to which he or she or they may be entitled.” 735 ILCS 5/2-404.

7. “This statute is to be construed with a view toward permitting the liberal joinder of plaintiffs.” *Rodriguez v. Credit Sys. Specialists, Inc.*, 17 Ill. App. 3d 606, 612 (1st Dist. 1974). “Liberal joinder of plaintiffs, however, is different from unlimited joinder of plaintiffs with complete disregard of the statutory limitations on such joinder. Those limitations are: (1) that the various

actions arise out of the same transaction or series of transactions, and (2) that common questions of law or fact must be involved.” *Id.*

Argument

I. Leonard McCubbin’s Counterclaim Arises Out of the Same Series of Facts as the Township’s and Road District’s Counterclaims and the Amended Complaint.

8. The facts comprising Mr. McCubbin’s cause of action arise out of the same general facts as the Township’s and Road District’s counterclaims: Ms. Brzana’s abuse of the FOIA process to harm Wesley Township and Road District.
9. Mr. McCubbin has knowledge of Ms. Brzana’s misuse of the FOIA and therefore will be called as a witness in support of the Township’s and Road District’s counterclaims. He will also provide facts to support the Township’s and Road District’s argument that this Court should not impose civil penalties on them and that it should reduce Plaintiffs’ attorney fee award.
10. Joining him as a counter-plaintiff will promote judicial economy because most of the witnesses in his case will also be testifying in the instant matter. Thus, two closely related matters can be consolidated into one.
11. Adding Mr. McCubbin as a counterplaintiff will not require considerably more discovery, as he will be deposed in the instant matter regarding his knowledge of Ms. Brzana’s abuse of the FOIA. Discovery directed towards Ms. Brzana and Mr. Grant in the Township’s and Road District’s counterclaims will likely be used to support Mr. McCubbin’s cause of action, as it will relate to Ms. Brzana’s abuse of the FOIA to harm Wesley Township.
12. There are numerous common questions of law and fact between the Township’s and Road District’s counterclaim, the Amended Complaint, and Mr. McCubbin’s proposed counterclaim. Therefore, this Court should allow Mr. McCubbin to be joined as a counter-plaintiff.

WHEREFORE, Wesley Township and Wesley Township Road District respectfully request that, pursuant to 2-404 of the Code of Civil Procedure, this Court join Leonard McCubbin as a counter-plaintiff and grant any other relief that it finds to be just.

Respectfully submitted,

Matthew DiCianni

Attorney for Wesley Township and the
Wesley Township Road District

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EXHIBIT A
IN THE CIRCUIT COURT OF THE 12TH JUDICIAL CIRCUIT
WILL COUNTY, ILLINOIS

CYNTHIA BRZANA and TIM GRANT)	
)	
PLAINTIFFS)	
V.)	
)	Case No. 19 CH 1143
WESLEY TOWNSHIP AND WESLEY)	
TOWNSHIP ROAD DISTRICT.)	
)	
DEFENDANTS.)	

WESLEY TOWNSHIP, WESLEY)
TOWNSHIP ROAD DISTRICT, AND LEONARD)
MCCUBBIN,)
)
COUNTERPLAINTIFFS)
)
V.)
)
CYNTHIA BRZANA,)
)
COUNTERDEFENDANT.)

COUNTERCLAIMS

For their counterclaims against Cynthia Brzana and Tim Grant, Wesley Township and Wesley Township Road District allege as follows:

1. Cynthia Brzana knowingly submitted FOIA requests to Wesley Township and Wesley Township Road District while **claiming to be Plaintiff Tim Grant** and others. She did this in order to avoid being classified as a recurrent requester pursuant to section 3.2 of the FOIA. *See* 5 ILCS 140/3.2.
2. Ms. Brzana admitted in a text message to another Wesley Township resident that she had submitted the maximum number of FOIA requests permitted by the FOIA and began to submit

FOIA requests using the names of others. A copy of that message is attached to these counterclaims as Exhibit 1.

3. Ms. Brzana stated, “Someone needs to keep FOIA them [Wesley Township and Wesley Township Road District] all the time. And keep the FOIA papers coming...I hit my limit. So I started under tim! And I have jeff and fran Bescia and Sue Wunsch....I have carols daughter and hubby and carol and her mom and dad. Oh we just spread the love.”
4. Ms. Brzana organized a campaign to overwhelm the Township and Road District with FOIA requests. In one weekend, the Township and Road District received more than fifty FOIA requests from Ms. Brzana and others.
5. The purpose of this campaign, upon information and belief, was to make it impossible for the Township and Road District to respond to these FOIA requests so that she and others could bring FOIA lawsuits against them.
6. By submitting FOIA requests to the Township and Road District under the guise of Tim Grant and others, Ms. Brzana made statements of material fact that she knew to be untrue.

Count I—Fraud

Wesley Township and Wesley Township Road District vs. Cynthia Brzana

7. The Township and Road District reallege paragraphs 1-6 as though fully set forth herein.
8. The Township and Road District believed at the time that these FOIA requests were submitted that they were submitted by Tim Grant and others and therefore the Township needed to respond to them within five days. This belief was reasonable, as the Township had no information at the time that Ms. Brzana was submitting these FOIA requests under false identities.

9. Ms. Brzana submitted these FOIA requests using the names of others for the purpose of inducing the Road District and the Township to believe that they were FOIA requests submitted by Tim Grant and others and therefore needed to respond to them.
10. The Road District and Township were damaged by the FOIA requests submitted by Ms. Brzana under the names of others. The Township and Road District were forced to allocate resources towards responding to these FOIA requests. These resources should have been used to provide services to the Township's residents.
11. The Township and Road District were also damaged by the submission of these FOIA requests because Ms. Brzana's strategy to overwhelm the Township with FOIA requests was successful. The Township was unable to respond to all of these FOIA requests, and as a result has been sued by Ms. Brzana and Mr. Grant. The Township has already incurred several thousand dollars in legal fees and will likely incur many thousands of dollars in additional legal fees.

WHEREFORE, as to Plaintiff/Counter-Defendant Cynthia Brzana, Defendants/Counter-Plaintiffs Wesley Township and Wesley Township Road District respectfully request that this Court:

- A. Award Wesley Township and Wesley Township Road District such damages as may be proven at trial, but, in any event, an amount greater than \$50,000;
- B. Award Wesley Township and Wesley Township Road District punitive damages in an amount sufficient to punish Ms. Brzana for her willful, wanton, and malicious conduct;
- C. Award Wesley Township and Wesley Township Road District its costs incurred this matter; and
- D. Award Wesley Township and Wesley Township Road District such other and further relief as this Court deems just and proper.

Count II—Civil Conspiracy

Wesley Township and Wesley Township Road District vs. Cynthia Brzana and Tim Grant

12. The Township and Road District re-allege paragraphs 1-6 as though fully set forth herein.

13. Tim Grant knew that Ms. Brzana was submitting FOIA requests to the Township and Road District while using his name.
14. Mr. Grant knew about this fraud and agreed to participate in it by allowing Ms. Brzana to file FOIA requests while using his name. He did so to help Ms. Brzana accomplish her goal of inundating the Township with FOIA requests.
15. But for Mr. Grant's aid, Ms. Brzana would not have been able to perform the fraud referenced in Count I.
16. Ms. Brzana and Mr. Grant's scheme damaged the Township and Road District by forcing them to allocate resources to respond to fraudulent FOIA requests, resources that should have been used to serve the Township's residents. The scheme also damaged the Township and Road District because it caused them to incur significant liability due to their inability to respond to all of the FOIA requests submitted by Ms. Brzana.

WHEREFORE, as to Plaintiffs/Counter-Defendants Cynthia Brzana and Tim Grant, Defendants/Counter-Plaintiffs Wesley Township and Wesley Township Road District respectfully request that this Court:

- A. Award Wesley Township and Wesley Township Road District such damages as may be proven at trial, but, in any event, an amount greater than \$50,000;
- B. Award Wesley Township and Wesley Township Road District punitive damages in an amount sufficient to punish Ms. Brzana and Mr. Grant for their willful, wanton, and malicious conduct;
- C. Award Wesley Township and Wesley Township Road District their costs incurred this matter; and

D. Award Wesley Township and Wesley Township Road District such other and further relief as this Court deems just and proper.

Count III—Abuse of FOIA
Wesley Township and Wesley Township Road District vs. Cynthia Brzana

17. The Township and Road District re-allege paragraphs 1-6 as though fully set forth herein.

18. In addition to personally inundating the Township with FOIA requests submitted under false identities, Ms. Brzana, upon information and belief, organized a campaign to submit so many FOIA requests to the Township and Road District so that it would be impossible to respond to all of them.

19. This would then allow Ms. Brzana and others to file FOIA lawsuits against the Township and recover hundreds of thousands of dollars of attorneys' fees and civil penalties.

20. The purpose of the FOIA is to facilitate access to public records. The purpose is not to allow members of the public to enrich themselves through FOIA lawsuits by organizing campaigns to overwhelm public bodies with FOIA requests that they cannot respond to. Every person has a duty to refrain from abusing the FOIA in this way.

21. Ms. Brzana breached this duty by organizing a campaign where Township residents submitted dozens of FOIA requests for the purpose of overwhelming those public bodies and making it impossible for them to respond to those FOIA requests for the purpose of bringing lawsuits through which she could enrich herself.

22. Ms. Brzana's abuse of the FOIA proximately caused the Township and Road District significant damages. It was impossible for them to respond to all of the FOIA requests they received. As a result, they have been made defendants in the instant matter, forcing them to incur significant legal fees and expend a considerable percentage of their very limited resources defending this suit.

WHEREFORE, as to Plaintiffs/Counter-Defendants Cynthia Brzana, Defendants/ Counter-Plaintiffs Wesley Township and Wesley Township Road District respectfully request that this Court:

- A. Award Wesley Township and Wesley Township Road District such damages as may be proven at trial, but, in any event, an amount greater than \$50,000;
- B. Award Wesley Township and Wesley Township Road District punitive damages in an amount sufficient to punish Ms. Brzana for her willful, wanton, and malicious conduct;
- C. Award Wesley Township and Wesley Township Road District their costs incurred this matter; and
- D. Award Wesley Township and Wesley Township Road District such other and further relief as this Court deems just and proper.

**Count IV—Intentional Infliction of Emotional Distress
Leonard McCubbin vs. Cynthia Brzana**

- 23. On November 5, 2019, the Wesley Township Board of Trustees was scheduled to vote to appoint a new trustee to the Board. The Sunday evening before this meeting, November 3, 2019, Ms. Brzana made a phone call to Leonard McCubbin, a trustee on the Wesley Township Board.
- 24. During the phone call, she told him that if he did not vote to appoint Wesley Township resident Sue Lyday to the Wesley Township Board she would file a lawsuit against the Township seeking more than \$100,000 worth of damages due to the Township's alleged failure to respond to FOIA requests that she had sent to the Township.
- 25. Mr. McCubbin did not vote for Ms. Lyday, and she was not appointed to the Board. On April 6, 2020, Ms. Brzana filed the Amended Complaint alleging that the Township failed to respond to thirty-five FOIA requests that she had submitted, making good on her threat.

26. This conduct constituted the crimes of threatening a public official (720 ILCS 5/12-9) and intimidation (720 ILCS 5/12-6).

27. Section 12-9 of the Criminal Code states, in relevant part:

“A person commits threatening a public official or human service provider when:

(1) that person knowingly delivers or conveys, directly or indirectly, to a public official or human service provider by any means a communication:

(ii) containing a threat that would place the public official or human service provider or a member of his or her immediate family in reasonable apprehension that damage will occur to property in the custody, care, or control of the public official.” 720 ILCS 5/12-9.

28. Ms. Brzana made a threat to Mr. McCubbin, a public official, that she would seize property in his custody, care, and control, funds held by Wesley Township, if he did not vote in the way she wanted. This violated Section 12-9 of the Criminal Code.

29. Ms. Brzana also committed the crime of intimidation. Section 12-6 of the Criminal Code states in relevant part:

“A person commits intimidation when, with intent to cause another to perform or to omit the performance of any act, he or she communicates to another, directly or indirectly by any means, a threat to perform without lawful authority any of the following acts:

(3) Commit a felony or Class A misdemeanor.” 720 ILCS 5/12-6.

30. Ms. Brzana threatened to commit a felony, threatening a public official, if Mr. McCubbin did not perform the act she desired. This is a violation of Section 12-6 of the Criminal Code.

31. Ms. Brzana’s conduct was extreme and outrageous. She committed at least two criminal acts. Any reasonable person would know that her conduct was unethical and wrong. Her conduct was beyond all possible bounds of decency.

32. Ms. Brzana actually intended to inflict severe emotional distress upon Mr. McCubbin or should have known that her conduct would do so. She extorted Mr. McCubbin, placing him in the

awful position of having to either vote for Ms. Brzana's preferred candidate for trustee and against the candidate he wanted, or to subject the Township to a lawsuit imposing potentially enormous and crippling liability.

33. Ms. Brzana's conduct caused Mr. McCubbin severe emotional distress. It caused him significant anxiety and fear.

WHEREFORE, as to Plaintiff/Counter-Defendant Cynthia Brzana, Counter-Plaintiff Leonard McCubbin respectfully requests that this Court:

- A. Award him such damages as may be proven at trial, but, in any event, an amount greater than \$50,000;
- B. Award him punitive damages in an amount sufficient to punish Ms. Brzana for her willful, wanton, and malicious conduct;
- C. Award him his costs incurred this matter; and
- D. Award him such other and further relief as this Court deems just and proper.

Jury Demand

34. Wesley Township and Wesley Township Road District demand a trial by jury pursuant to 735 ILCS § 5/2-1105.

Respectfully submitted,



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Wesley Township Road District

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