IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
MUNICIPAL DEPARTMENT, FOURTH DISTRICT

THE VILLAGE OF RIVER FOREST, an Illinois municipal corporation,	)	
Plaintiff,	)	
v.	)	**Case No. 20244006290**
LAKE LATHROP PARTNERS, LLC, et al.	)	
Defendants.	)	

VILLAGE'S RESPONSE TO LAKE LATHROP PARTNERS, LLC'S AND ALPHA CONSTRUCTION'S 2-619.1 MOTION TO DISMISS

NOW COMES the Plaintiff, the Village of River Forest ("Village"), by and through its attorneys, Klein, Thorpe, & Jenkins, Ltd., and in response and opposition to Defendants LAKE LATHROP PARTNERS, LLC'S ("Lake Lathrop") and ALPHA CONSTRUCTION SERVICES, LLC'S[1] ("Alpha") motions to dismiss ("Motion") Plaintiff's Verified Complaint for Demolition, Injunctive, and Other Relief, states as follows:

ARGUMENT

I. There is No Affirmative Matter Under 2-619(a)(9) that Bars or Defeats the Village's Complaint.

Lake Lathrop asserts that there are two affirmative matters outside of the Village's Complaint that defeat its claims: (1) that there are two pending litigation matters regarding the Subject Property, and (2) a court-appointed receiver has been named to maintain the Subject Property. However, neither of these issues bar the Village's claims in this matter as outlined below and as such Lake Lathrop's Motion as asserted under 2-619 should be denied.

[1] On March 24, 2025, Alpha Construction Services, LLC filed a one-page motion adopting the arguments set forth in Lake Lathrop's Motion to Dismiss, so this response goes to the motion as asserted by both parties.

"A motion to dismiss, pursuant to 2-619 of the Code, admits the legal sufficiency of the plaintiffs' complaint, but asserts an affirmative defense or other matter that avoids or defeats the plaintiffs' claim." *Jackson v. Hehner*, 2021 IL App (1st) 192411, ¶ 25 (internal citation omitted). In ruling on a Section 2-619 motion to dismiss, a court must interpret the pleadings and supporting materials in the light most favorable to the non-moving party. *Van Meter v. Darien Park District*, 207 Ill. 2d 359, 367-68 (2003).

a. The Pending Litigation Referred to by Lake Lathrop Does Not Bar the Village's Claim.

Lake Lathrop asserts that two court actions regarding the Subject Property bar the Village's claim seeking demolition of the perpetually incomplete structures[2] on the vacant land at issue here. The first of which being Lake Lathrop's pending counterclaims in the foreclosure action before this Court, the second of which being Lake Lathrop's complaint against the Village seeking a writ of mandamus commanding the Village review a new building permit to complete the redevelopment of the Subject Property ("Mandamus Complaint"; Circuit Court of Cook County Case No. 2024CH06462). However, neither of these actions bar the Village's Complaint in the instant case.

Since Lake Lathrop filed its Motion in this matter, the Cook County Circuit Court entered an order granting the Village's motion to dismiss Lake Lathrop's Mandamus Complaint in its entirety with prejudice.[3] *See* Opinion and Order attached as **Exhibit B**. In dismissing Lake Lathrop's Mandamus Complaint seeking an order compelling the Village to review its application for a building permit to complete the redevelopment of the Subject Property, the court held that

[2] Photographs depicting the current state of the incomplete an exposed structures on the Subject Property taken on March 27, 2025, are attached hereto as **Exhibit A**.

[3] Lake Lathrop has since filed a motion seeking to file a later motion to reconsider which the Village has opposed and a motion to file a late notice of appeal on this order. Neither motion seeking authorization to file a late motion to reconsider or notice of appeal has been granted.

"Lake Lathrop has no further right to submit a building permit for the Project…". *Id.* at 5. The court also held that "Lake Lathrop no longer has a legal tangible interest in the [Redevelopment of the Subject Property]." *Id.* at 7.

This leaves only the pending foreclosure action before this Court on which Lake Lathrop's argument can rest. First, Lake Lathrop has cited zero case law to support its bald contention that the existence of the foreclosure action and appointment of a receiver to maintain the property bars the Village's claim seeking demolition of the incomplete and unsafe structures on the subject Property. Second, Lake Lathrop's argument has no merit. Neither the existence of the pending foreclosure action nor the appointment of the receiver changes or negates the underlying conditions on the Subject Property which necessitates the Village's actions in filing the present suit. Lake Lathrop claims that the Village's Complaint must be dismissed because allowing the Complaint to advance "would avoid any legal effect arising from the conclusion of the active lawsuits related to the Property." *Motion* at 10. However, the only thing that would be frustrated by the Court granting the Village the relief it is seeking under the Complaint would be Lake Lathrop's desire to complete the redevelopment of the Subject Property and construction of the incomplete structures thereon. But, as the Circuit Court of Cook County has ruled, "Lake Lathrop no longer has a legal tangible interest in the Project." *Ex. A* at 7. Even if Lake Lathrop prevailed on its counterclaims in the foreclosure action, it would not be able to complete the redevelopment of the Subject Property. Due to Lake Lathrop's own repeated neglect of its obligations under the Redevelopment Agreement as outlined in the Village's Complaint, Lake Lathrop no longer has an interest in the redevelopment of the Subject Property nor the right to complete the redevelopment of the Subject Property no matter what result comes from the foreclosure action. Therefore, the pending foreclosure action in no way bars the Village's demolition action, and Lake Lathrop's motion should be denied in that regard.

b. Appointment of a Receiver to "Maintain the Status Quo" Does Not Bar the Village's Complaint Against Lake Lathrop.

Lake Lathrop claims that because of the pending foreclosure action against it in which a receiver was appointed to maintain the Subject Property, the Village is wrong in seeking relief against Lake Lathrop. *Motion* at 9. However, such an argument is entirely frivolous and without support in the law. In asserting this argument, Lake Lathrop, to use its own language, "improperly at best and disingenuously at worst" (*Id*.), entirely ignores the plain language of 65 ILCS 5/11-31-1 pursuant to which the Village seeks relief under its count for demolition or repair, which authorizes the Village to apply to the Court "for an order requiring the ***owner or owners of record*** to demolish, repair, or enclose the building…". 65 ILCS 5/11-31-1(a) (emphasis added). As Lake Lathrop makes plain and clear, "there is no dispute that Lake Lathrop remains the sole, legal title owner of the Property…". *Motion* at 9. This indeed is the sole basis on which the receiver's motion to sell the property was summarily denied. While Lake Lathrop is correct that the court-appointed receiver has possession and control over the Subject Property to maintain the status quo under the Court's supervision, Lake Lathrop remains the owner of record and as such it is the proper party against whom the Village must seek relief under 65 ILCS 5/11-31-1.

Additionally, Lake Lathrop has provided no case law indicating that the appointment of a receiver to maintain the Subject Property prohibits a court from issuing an order for the demolition of incomplete and unsafe structures thereon. As Lake Lathrop admits in its Motion, the Court appointed a receiver to "maintain the status quo" of the Subject Property. *Motion*, at 4. It is not the role of the receiver to take proactive action to demolish structures on the property it is overseeing without order from the Court. Further, looking to Section 15-1704 of the Illinois Mortgage Foreclosure Act (735 § 5/15-1704; "Receivers") cited by Lake Lathrop, there is nothing prohibiting the receiver from complying with a court order requiring it to allow the owner of the

property or the Village to access the Subject Property to demolish such incomplete and unsafe structures should the Court find in the Village's favor and order such relief. Accordingly, there is no basis for Lake Lathrop's argument that the appointment of a receiver to maintain the Subject Property in any ways bars the Village's demolition Complaint in this matter, and its motion should also be denied in that regard.

For the foregoing reasons, Lake Lathrop's and Alpha's motions to dismiss as asserted under Section 2-619 should be denied in their entirety as they have failed to identify any affirmative matters that defeat the Village's claim.

II. The Village has Sufficiently Pled Its Claims for Demolition, Injunctive Relief, and Fines.

The Landing claims that the Village has not sufficiently alleged facts regarding the dangerous nature of the incomplete structures which remain on the Subject Property, but the Village has sufficiently done so. A Section 2-615 motion to dismiss attacks the legal sufficiency of a complaint but admits "as true all well-pleaded facts in the complaint and all reasonable inferences that can be drawn therefrom." *Bryson v. News Am. Publs*., 174 Ill. 2d 77, 86 (1996). The question presented by a Section 2-615 motion to dismiss for failure to state a claim is whether sufficient facts are contained in the pleadings which, if established, could entitle the plaintiff to relief. *Id*. "A section 2–615 motion attacks only defects apparent on the face of the complaint." *Barber-Colman Co. v. A & K Midwest Insulation Co*., 236 Ill. App. 3d 1065, 1068 (5th Dist. 1992). In making this determination courts must interpret the allegations of the complaint in the light most favorable to the plaintiff. *Bryson*, 174 Ill. 2d at 86. A cause of action should not be dismissed under Section 2-615 unless no set of facts can be proved under the pleadings which will entitle the plaintiff to recover. *Id*. at 87. Here, the Village has alleged sufficient facts which, if proven, would entitle the Village to relief under all counts and as a result Lake Lathrop's and Alpha's motions to dismiss under Section 2-615 should be denied as to all counts.

The Village has alleged that since June/July 2023, there have been partially completed concrete structures on the Subject Property, including an unfinished elevated concrete platform, partially completed concrete elevator shafts, and a partially competed concrete wall as depicted in Exhibit B to the Complaint. *Compl*. at ¶ 22. The Village has alleged that the Subject Property currently remains in the same condition as depicted in Exhibit B of the Complaint. *Id*. Looking to Exhibit B of the Complaint, it is clearly visible that there are two partially complete concrete elevator structures, an incomplete concrete wall, and the elevated concrete platform which along with the fence along the back of the structure creates a covered and partially enclosed area without doors, windows, or other devices for preventing access. *Id*. at Ex. B. From this Exhibit is also readily apparent that the partially complete and unsupported concrete wall on the right-side of the property in the photo is merely feet, if that, away from the neighboring building which is clearly occupied and also only inches away from the sidewalk. *Id*. We also see in the photograph attached to the Complaint as Exhibit A that the concrete structural poles on which the concrete platform is perched backs up to the edge of the property line, neighboring a parking lot where citizens park their vehicles merely feet, if that, away from where the incomplete concrete platform is. *Id*. at Ex. A. We also see in Exhibit A that that the structural poles on which the concrete platform now rests backs up to a residential backyard with kids toys. *Id*. The Village also alleged that the incomplete and vacant condition of the structures on the Subject Property are unlikely to ever be completed. *Id*. at Count I, ¶ 6. The Village further alleged that it is the perpetually incomplete nature of the concrete structures which render the structures unsafe. *Id*. at Count I, ¶¶ 9, 13-15. These factual allegations, which are deemed true in considering Defendants' motions to dismiss under Section 2-615, are sufficient at this stage to support the Village's allegations that the structures on the Subject Property constitute a dangerous building subject to demolition and injunctive relief under

65 ILCS 5/11-31-1 and 65 ILCS 5/11-31-2, and as such the Complaint is sufficient under 735 ILCS 5/2-615 and Lake Lathrop's and Alpha's motions should be denied.

As stated in the Complaint, under Section 4-10-1 of the Village of River Forest Municipal Code ("Village Code"), the term "dangerous building" includes: (1) "Any building, shed, fence, or other man-made structure which is dangerous to the public health because of its construction or condition, or which may… cause injury to the health of the occupants of it or neighboring structures", and (2) "Any building, shed, fence, or other man-made structure which, by reason of faulty construction, age, lack of proper repair or any other cause, is liable to cause injury or damage by collapsing or by a collapse or fall of any part of such structure". *Village of River Forest Municipal Code, § 4-10-1*. As identified in Exhibit C of the Complaint, the 15-Day Notice to Demolish or Repair and accompanying Notice of Violations, the structures on the Subject Property constitute dangerous buildings because they are liable to collapse or fall due to their age, lack of proper repair, and perpetual incompleteness. *Compl*. at Ex. C, Violations, A.

The facts alleged in the Complaint and identified above are sufficient to establish for purposes of this motion to dismiss that the structures on the Subject Property are dangerous buildings subject to demolition or repair under 65 ILCS 5/11-31-1 or injunctive relief under 65 ILCS 5/11-31-2. The facts alleged in the Complaint establish that the Subject Property has had the incomplete concrete wall, elevator shafts, and elevated concrete platform on it since June/July 2023. The photographs attached to the Complaint as Exhibits A and B clearly show that concrete wall is standing alone, is incomplete, and is unsupported by adjoining walls or supporting beams, that the elevator shafts are incomplete, and that the concrete platform is elevated and only supported by scattered support beams. Further, upon information and belief, as the wall and elevator shafts are both incomplete and uncovered they are and have been subject to weather conditions such as snow, rain, and ice which they are not meant to retain. The incomplete and unsupported condition of these structures

is sufficient to support an inference that they are liable to collapse and therefore dangerous structures. Additionally, Exhibits A and B establish that the incomplete and unsupported concrete wall is merely feet, if that, from the neighboring structure to the right of the Subject Property in Exhibit B which is clearly occupied and inches from the sidewalk, and that the incomplete concrete platform is merely inches or feet from the neighboring parking lot and residential backyard at the bottom of Exhibit A. These facts contained in the Complaint, taken to be true at this point, are sufficient to establish that the incomplete structures – and primarily the incomplete and unsupported wall and elevated concrete platform – are liable to cause damage or injury to the neighboring buildings and properties and their occupants or members of the public walking on the sidewalk. Therefore, the Village has sufficiently alleged its claim that the incomplete structures on the Subject Property constitute dangerous buildings and subject to demolition or repair under 65 ILCS 5/11-31-1 or injunctive relief under 65 ILCS 5/11-31-2. As a result, Lake Lathrop's motion under 2-615 should be denied as to Counts 1 and 2. Alternatively, even if the Court finds that the Village has not sufficiently pled its claims under Counts 1 and 2, any such defects are easily curable and the proper remedy at this point is to allow the Village an opportunity to amend its complaint, which has not been amended thus far.

For the same reasons outlined above, the Village has sufficiently alleged a claim for fines against Lake Lathrop for ordinance violations on the Subject Property under Count 3. As outlined above, the Village has alleged sufficient facts to support its claims that the incomplete structures on the Subject Property constitute dangerous structures under Section 4-10-1 of the Village Code. As set forth in the Complaint, under Section 4-10-2 of the Village Code, dangerous structures under Section 4-10-1 constitute nuisances and it is a violation of the Village Code for the owner or person in custody of such a dangerous structure to permit the structure to remain in the dangerous condition. Accordingly, the factual allegations outlined above which sufficiently

establish the Village's allegations that the structures on the Subject Property are dangerous structures are sufficient at this point to plead a claim for code violations against Lake Lathrop as the owner of the Subject Property, defeating Lake Lathrop's motion under 2-615 claiming insufficiency of allegations on their face as to Count 3.

To the extent that Lake Lathrop is arguing that the appointment of a receiver to maintain the property absolves them of the responsibility for violations relating to the incomplete and dangerous structures that they caused to be constructed and which have been allowed to remain on the Subject Property which they own, this is an affirmative matter outside of the allegations set forth in the Complaint which is not a valid basis to dismiss a claim under Section 2-615. As is clearly delineated in Lake Lathrop's Motion (and Alpha's by adoption), Lake Lathrop's motion to dismiss under Section 2-619 for an affirmative matter outside of the allegations set forth in the complaint is limited to Counts 1 and 2. Lake Lathrop's motion to dismiss as to Count 3 is only under Section 2-615, which is only based on the sufficiency of the complaint on its face. *Barber-Colman Co.*, 236 Ill. App. 3d at 1068. Here, the Village has sufficiently alleged facts establishing that Lake Lathrop is the owner of the Subject Property and that it has allowed dangerous structures to continue to exist on the Subject Property. This is sufficient to state a claim against Lake Lathrop for violation of the Village's nuisance ordinance under Section 4-10-1 and 4-10-2 of the Village Code on its face, and as such Lake Lathrop's motion as to Count 3 under Section 2-615 should be denied.

Even considering the merits of this argument, Lake Lathrop's argument fails. Even though there is a receiver that has been appointed to maintain the Subject Property, Lake Lathrop is the owner of the Subject Property and is the one who caused the dangerous structures to be built, and is the one whose own actions caused the structures not to be completed within the times allowed under the Redevelopment Agreement. The receiver simply received the Subject Property in that

condition and is not responsible for creating the dangerous structures. As the receiver has not been authorized by the Court to demolish the structures, it could not do so. Ultimately, Lake Lathrop, as the owner of the Subject Property and the entity that caused the dangerous structures to exist in the incomplete and dangerous condition, is responsible for any code violations on the Subject Property; the appointment of the receiver does not absolve it from its duty as owner in that regard and it does not defeat the Village's claim against lake Lathrop for code violations under Count III.

CONCLUSION

WHEREFORE, Plaintiff, VILLAGE OF RIVER FOREST, respectfully requests that this Honorable Court deny Defendants Lake Lathrop Partners, LLC's and Alpha Construction Services, LLC's motions to dismiss, and for any other relief this Court deems just and appropriate.

Respectfully submitted,

VILLAGE OF RIVER FOREST

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EXHIBIT A

PHOTOGRAPHS


SPEED LIMIT
30
END SCHOOL ZONE


YORK

EXHIBIT B

OPINION AND ORDER

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

Lake Lathrop Partners, LLC, Plaintiff, v. The Village of River Forest, a Municipal corporation, Defendant.	Case No. 2024 CH 06462 Calendar 2

OPINION AND ORDER

JOEL CHUPACK, Circuit Judge

THIS MATTER comes before the Court on the Village of River Forest's (the "Village") Combined Motion to Dismiss (the "Motion") the Verified Complaint for the Issuance of a Writ of Mandamus, Declaratory and Other Relief (the "Complaint") filed by Lake Lathrop Partners, LLC ("Lake Lathrop") pursuant to Section 2-619.1 of the Illinois Code of Civil Procedure (the "Code"). 735 ILCS 5/2-619.1. The Court having reviewed and duly considered the briefs now issues its opinion and order.

I.

The well-pled facts in a complaint are taken as true for the purpose of ruling on a motion to dismiss. Around 2010, the Village planned to redevelop property located at 7601-7613 Lake Street and 7617-7621 Lake Street in River Forest, Illinois (the "Property"). The redevelopment project comprised a mixed-use development containing residential units and commercial retail space (the "Project"). The Village committed an estimated $1.9 million to the Project.

On March 23, 2016, Lake Lathrop was nominated as the project developer. The parties entered into an initial redevelopment agreement, which was amended multiple times to extend certain deadlines and allow Lake Lathrop to acquire title to the Property.

On March 11, 2019, the parties entered into a Second Amended and Restated Redevelopment Agreement (the "Second Amended RDA"). The Second Amended RDA set forth numerous obligations and deadlines to be satisfied by Lake Lathrop for the Project. Pertinent to this litigation is Section 7 of the Second Amended RDA

entitled, "PERFORMANCE, DEFAULT, TERMINATION, AND OTHER CONDITIONS."

Section 7.06(A)(1), entitled "Termination Upon an Event of Default" states, in relevant part, as follows: "If this Agreement is terminated pursuant to a specific reference to this Section 7.06(A)(1), (i) [Lake Lathrop] shall convey any Parcel acquired by [Lake Lathrop] to the Village within fifteen (15) business days of a written demand from the Village. . . ."[1]

Also relevant is Section 7.06(E), entitled "Consent to Use of Committed Funds and Additional Village Funding." Section 7.06(E) provides that:

> If this Agreement is terminated for any reason, [Lake Lathrop] shall have no further interest in the Project, the Committed Funds or the Additional Village Funding, and [Lake Lathrop] shall execute such documents, and provide such information, within the time required by the Village, and as directed by the Village, to allow the [Lake Lathrop]'s rights and obligations under this Agreement, in the Project, to the Committed Funds, and to the Additional Village Funding, to either be assigned to a new developer chosen by the Village, or distributed in some other manner by the Village, as determined by the Village in the Village's sole discretion.

On October 14, 2019, the parties entered into the First Amendment to the Second Amended RDA (the "First Amendment"), which extended permit deadlines for the Project. On October 28, 2019, the parties entered into the Second Amendment to Second Amended RDA (the "Second Amendment"), which amended provisions for Lake Lathrop to obtain necessary financing for the Project.

On October 25, 2021, the parties entered into the Third Amendment to the Second Amended RDA (the "Third Amendment"). The Third Amendment reflected that Lake Lathrop completed substantial progress toward the project, and the parties agreed to extend certain deadlines for Lake Lathrop to commence construction. Additionally, the parties amended Sections 7.06(A)(1) and (A)(2) to remove the Village's right to demand that Lake Lathrop reconvey the Property back to the Village in the event of a default.

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[1] Section 7.06(A)(2) similarly states: "If this Agreement is terminated as a result of the existence of any Event of Default by [Lake Lathrop], which Event of Default does not have a specific reference to another remedy in this Agreement, or pursuant to a specific reference to this Section 7.06(A)(2), (i) [Lake Lathrop] shall convey any Parcel acquired by Developer to the Village within fifteen (15) business days of a written demand from the Village. . . ."

In February 2022, Lake Lathrop closed on a construction loan to finance the completion of the Project and obtained a building permit with an eighteen (18) month timeline to complete the Project. The mortgagee subsequently filed a breach of the note and foreclosure action against Lake Lathrop, which was consolidated in the Cook County Circuit Court Law Division. *Beverly Bank & Trust Co. v. Lake Lathrop Partners, LLC, et al.*, No. 2023L004422.

On August 28, 2023, the parties entered into the Fourth Amendment to the Second Amended RDA (the "Fourth Amendment"). The parties agreed the existing building permit would be extended to August 30, 2024, if conditions were met by September 15, 2023, but Plaintiff failed to meet those conditions.

The Village informed Lake Lathrop on September 15, 2023, that the prior building permit expired and would not be extended due to Lake Lathrop's failure to meet the deadlines outlined in the Fourth Amendment. The Village's President notified its residents through a November 10, 2023 newsletter that the "Village will not issue another building permit" to Lake Lathrop for the Project.

On May 22, 2024, Lake Lathrop submitted a new application for a building construction permit (the "Permit Application"). The Village responded in a letter dated May 24, 2024, stating that the Permit Application would not be considered because of the termination of the Second Amended RDA.[2] Lake Lathrop requested the Village to substantiate its position in denying the Permit Application. The Village responded on June 21, 2024, and relied on Section 7.06(E) of the Second Amended RDA in terminating the agreement.

The Complaint consists of three counts. Count I seeks a writ of mandamus compelling the Village to immediately examine Lake Lathrop's Permit Application. Count II seeks a declaration that Lake Lathrop has the right, as the legal title owner of the Property, to submit its Permit Application and the Village must consider the Permit Application pursuant to the Village's Municipal Code. Count III is for tortious interference with a prospective business expectancy and economic advantage.

II.

The Motion is a combined motion to dismiss brought under Section 2-619.1 of the Illinois Code of Civil Procedure (the "Code"). Section 2-619.1 of the Code allows the defendant to combine a Section 2-615 motion to dismiss with a Section 2-619 motion to dismiss. *Walworth Investments-LG, LLC v. Mu Sigma, Inc.*, 2022 IL 127177, ¶ 39.

[2] The Village's response letter dated May 24, 2024, references a "Notice of Events of Default" sent on September 15, 2023 to Lake Lathrop, in which the Village revoked the previously issued permit and issued a stop work order.

Section 2-615

Section 2-615 of the Illinois Code of Civil Procedure permits a court to strike a pleading if it is substantially insufficient in law or otherwise defective. *Guinn v. Hoskins Chevrolet, et al.*, 361 Ill. App. 3d 575, 585 (1st Dist. 2005). A motion to dismiss under Section 2-615 admits all well pleaded facts and all reasonable inferences from those facts. *Calloway v. Kinkelaar,* 168 Ill. 2d 312, 325-26 (1995).

A court, in reviewing the legal sufficiency of a complaint, must assume the truth of all facts properly pled and must ignore conclusions of law that are unsupported by allegations of specific facts upon which conclusions rest. *Mlade v. Finley*, 112 Ill. App. 3d 914, 918 (1st Dist. 1983). If, after disregarding any legal and factual conclusions, the complaint does not allege sufficient facts to state a cause of action, the motion to dismiss should be granted. *Carter v. New Trier East High School,* 272 Ill. App. 3d 551, 555 (1st Dist. 1995).

Count I: Writ of Mandamus

The Village argues Lake Lathrop does not have a clear affirmative right to relief under the Second Amended RDA and that the Director of Public Works does not have a duty to act in reviewing the Permit Application. The Village argues Plaintiff has no further right to submit a building permit for the Project because it failed to meet the deadlines in the Second Amended RDA, resulting in the termination of the agreement.

Lake Lathrop counters that the Second Amended RDA, which the Village terminated, relates solely to the prior permit application that expired, and nothing in the Second Amended RDA prevents Lake Lathrop from submitting a new permit application under the Village's Municipal Code. The Village's Municipal Code provides:

> *The director of public works shall examine applications for permits, within a reasonable time after filing.* If, after examination and after written approval, the director of public works finds no objections to the same and it appears that the proposed work will be in compliance with the laws and ordinances applicable thereto and the proposed construction or work will be safe, he shall approve such application, obtain the approval of the fire chief and village administrator, and issue a permit for the proposed work as soon as practicable; provided, that the bonding and insurance requirements of section 3-3-3 of this code have been satisfied. If his examination reveals otherwise, he shall reject such application, note his findings in a written report to be attached to the application and deliver a copy to the applicant.

Title IV, Chapter 4, Section 2-2, Village Code of River Forest, Illinois (emphasis added).

"Mandamus is an extraordinary remedy to direct a public official or body to perform a ministerial duty that does not involve the exercise of judgment or discretion." *Read v. Sheahan*, 359 Ill. App. 3d 89, 97 (1st Dist. 2005). A petitioner for a writ of mandamus must demonstrate (1) a clear right to the requested relief, (2) the respondent's clear duty to act, and (3) the respondent's clear authority to comply with the terms of the writ. *Id.* at 98.

The parties voluntarily entered into the initial redevelopment agreement and subsequently executed several amendments setting forth rights and obligations regarding the redevelopment of the Property. As part of the RDA, the parties agreed to specific deadlines in applying for permit applications. Due to Lake Lathrop's failure to meet certain deadlines in the Fourth Amendment, the Village notified Lake Lathrop of their default on September 15, 2023, revoked the previous permit application, and issued a stop work order. As a result of the termination of the Second Amended RDA, the Village found Lake Lathrop no longer had the right to continue with the Project. The Village eventually invoked Section 7.06(E) in its June 21, 2024 response, which states: "[i]f the [Redevelopment] Agreement is terminated for any reason, Developer *shall have no further interest in the Project.*"

What follows from this termination is that Lake Lathrop has no further right to submit a building permit for the Project, nor does the Director of Public Works have a duty to review a new building permit due to the termination of the Second Amended RDA. Lake Lathrop's contention that nothing in the Second Amended RDA prevents it from submitting a new permit application for the Village's consideration is of no consequence. Lake Lathrop's right to develop the Property was subject to the terms and conditions of the Second Amended RDA, including the deadlines in it. The Second Amended RDA was terminated due to Lake Lathop's failure to meet those deadlines. Lake Lathrop is asking the Court to pretend that the Second Amended RDA did not fix the parties' rights and the deadlines did not matter. The Court will not do so. The Village provided the funds for Lake Lathrop to acquire title to the Property subject to the terms, provisions and conditions of the Second Amended RDA. It would be inequitable to allow Lake Lathrop to benefit from its failure to meet the deadlines and pretend that that failure has no consequences. The Court cannot put blinders on and look at the municipal ordinance in a vacuum. Lake Lathrop has failed to meet its burden that it has a clear right to the requested relief or that the Village had a clear duty to act.

Lake Lathrop's argument that Sections 7.06(A)(1) and (A)(2) are inconsistent with Section 7.06(E) is unpersuasive. Whether Lake Lathrop defaulted under Sections 7.06(A)(1) or (A)(2) is not before the Court as Lake Lathrop has not alleged

the Village invoked Sections 7.06(A)(1) and (A)(2). The Village does not dispute that Lake Lathrop is the title owner of the Property.

More importantly, Sections 7.06(A)(1) and (A)(2) state what remedy the Village cannot compel Lake Lathrop to do in the event of a default, which is to demand or compel Lake Lathrop to reconvey the Property to the Village. However, Section 7.06(E) states what the Village can do if the Second Amended RDA is terminated for any reason. Upon termination under Section 7.06(E), the Village may direct Lake Lathrop's rights and obligations under the Second RDA to either be assigned to a new developer chosen by the Village, or distributed in some other manner by the Village, as determined by the Village in the Village's sole discretion. The Court finds no inconsistency in these provisions.

In entering the initial redevelopment agreement and subsequent amendments, Lake Lathrop signed away its legal rights to the Project in the event the agreement was terminated for any reason. *Gaylor v. Village of Ringwood*, 363 Ill. App. 3d 543, 549 (2d Dist. 2006) ("It is fundamentally accepted that parties may contract away rights, even of constitutional dimension, as well as statutory rights."). In short, Lake Lathrop has failed to satisfy the first two elements needed for a writ of mandamus. The Court further finds that repleading cannot cure the deficiency as there are no set of facts Lake Lathrop can allege to overcome that deficiency.

Section 2-619

A motion to dismiss based on section 2-619 admits the legal sufficiency of the complaint and presumes a valid cause of action exists but raises defects, defenses, or other affirmative matters which appear on the face of the complaint or are established by external submissions which negate the plaintiff's cause of action. *Covinsky v. Hannah Marine Corp.*, 388 Ill. App. 3d 478, 489 (1st Dist. 2009). The purpose of a motion to dismiss under 2-619 is to dispose of issues of law and easily proved issues of fact at the outset of a case. *Corluka v. BridgFord Foods of Illinois Inc.*, 284 Ill. App. 3d 190, 192 (1st Dist. 1996). In ruling on a section 2-619 motion to dismiss, a court must interpret the pleadings and supporting materials in the light most favorable to the nonmoving party. *Van Meter v. Darien Park District*, 207 Ill. 2d 359, 367-68 (2003).

Count II: Declaratory Judgment

Count II seeks a declaration that (1) Lake Lathrop has the right as legal title owner of the Property to submit a new permit application to the Village without first obtaining approval of the Village's Board of Trustees and without first entering into a new redevelopment agreement, and (2) the Village must consider a new permit application pursuant to the Village's Municipal Code.

The essential elements of a declaratory judgment action are: (1) a plaintiff with a legal tangible interest; (2) a defendant having an opposing interest; and (3) an actual controversy between the parties concerning such interests. *Beahringer v. Page*, 204 Ill. 2d 363, 372 (2003). The Village asserts the rights and obligations set forth in the Second Amended RDA establish as an affirmative matter that Lake Lathrop does not have a right to submit a new permit application for the Project.

For the same reasons that Lake Lathrop cannot plead a prima facie cause of action for a writ of mandamus, it cannot establish the first element of a declaratory judgment action. Lake Lathop no longer has a legal tangible interest in the Project. It only has title to the Property because the Village paid $1,900,000 to allow them to have title to the Property subject to the terms of the redevelopment agreement.

Lake Lathrop never explains the equity in allowing it to submit a building permit for the Property that it did not pay for and untethered by the terms and conditions of the Second Amended RDA when it failed to meet the deadlines in the Second Amended RDA. As explained above, the Second Amended RDA sets forth the rights of the parties, which includes Lake Lathrop's further involvement in the Project pursuant to termination under Section 7.06(E). Accordingly, the Village does not have to accept a new permit application, notwithstanding that Lake Lathrop is the legal title owner of the Property. The Court finds the Village's Motion well founded, and Count II for declaratory judgment is dismissed.

Count III: Tortious Interference with Prospective Economic Advantage

The Village asserts Count III fails as a matter of law under the Illinois Local Governmental and Governmental Employees Tort Immunity Act (the "Tort Immunity Act"). 745 ILCS 10/2, *et seq*. The Village argues that it exercised discretion in determining whether to consider Lake Lathrop's Permit Application, which affords the Village immunity from Lake Lathrop's tort claim.

Lake Lathrop counters that the Village's obligations to accept and consider the Permit Application in good faith are ministerial, not discretionary. Thus, the Motion regarding Count III should be denied.

"To state a cause of action for intentional interference with prospective economic advantage, a plaintiff must allege (1) a reasonable expectancy of entering into a valid business relationship, (2) the defendant's knowledge of the expectancy, (3) an intentional and unjustified interference by the defendant that induced or caused a breach or termination of the expectancy, and (4) damage to the plaintiff resulting from the defendant's interference." *Voyles v. Sandia Mortg. Corp.*, 196 Ill. 2d 288, 300-301 (2001).

Section 2-201 of the Tort Immunity Act provides:

> Except as otherwise provided by Statute, a public employee serving in a position involving the determination of policy or the exercise of discretion is not liable for an injury resulting from his act or omission in determining policy when acting in the exercise of such discretion even though abused.

745 ILCS 10/2-201.

"[A] municipality's performance of discretionary duties is immune from tort liability, but its performance of ministerial duties is not." *Vill. Of Itasca v. Vill. Of Lisle*, 352 Ill. App. 3d 847, 859 (2d Dist. 2004). "[D]iscretionary acts are those which are unique to a particular public office, while ministerial acts are those which a person performs on a given state of facts in a prescribed manner, in obedience to the mandate of legal authority, and without reference to the official's discretion as to the propriety of the act." *Snyder v. Curran Township*, 167 Ill. 2d 466, 476 (1995). "When determining whether immunity attaches under Section 2-201, courts look at the conduct itself rather than the intent behind it. *Strauss v. City of Chi.*, 2022 IL 127149, ¶ 59.

Immunity will attach under Section 2-201 when two requirements are met: (1) a defendant must prove that the employee held either a position involving the determination of policy or the exercise of discretion, and (2) the act or omission giving rise to the injury must result from both a determination of policy and an exercise of discretion. *See id.* at ¶ 60.

"Policy determinations are 'those that require the governmental entity or employee to balance competing interests and to make a judgment call as to what solutions will best serve each of those interests.'" *Id.* at ¶ 61. "Discretionary decisions are 'unique to a particular public office' and 'involve the exercise of personal deliberation and judgment in deciding whether to perform a particular act, or how and in what manner that act should be performed.'" *Id.*

The Village has met its burden under the first requirement in proving that the Village's President held a position involving the determination of policy or exercise of discretion. Lake Lathrop does not argue otherwise.

Regarding the second requirement, the Court finds that the Village President's public statements were a "result from both a determination of policy and an exercise of discretion." *Strauss*, 2022 IL 127149, ¶ 60. First, the Village President's statements that the Project was "dead" was a "policy determination." In making the statements, the Village President balanced the interests of Lake

Lathrop's involvement in the Project and the termination of the Second Amended RDA. Based on Lake Lathrop's failure to meet certain deadlines, the Village President made a judgment call that it would not proceed with Lake Lathrop as the Project developer.

Second, the Village President's public statements were discretionary acts. While there is "no precise formula for classifying an act as either discretionary or ministerial," the President's public statements were guided by its interpretation that the Village terminated the Second Amended RDA. *Kevin's Towing, Inc. v. Thomas*, 351 Ill. App. 3d 540, 547 (2d Dist. 2004). The Village President's decision was based on the unique situation that involved announcing that the Village would no longer issue a building permit to Lake Lathrop because of the prior termination.

Since the Village's President is not liable for injuries resulting from her conduct due to discretionary immunity attached under Section 2-201, the Village is similarly not liable. *See Strauss*, 2022 IL 127149, ¶ 76 (citing 745 ILCS 10/2-109).

IT IS HEREBY ORDERED THAT:

1. The Village of River Forest's Motion is GRANTED;

2. All counts of the Complaint are dismissed with prejudice; and

3. This matter is disposed.

Judge Joel Chupack

ENTERED: FEB 14 2025

Circuit Court - 2227

Judge Joel Chupack