

STATE OF INDIANA)
) SS:
COUNTY OF MONROE)

IN THE MONROE CIRCUIT COURT

CAUSE NO. 53C03-0706-PL-01349

INDIAN CREEK TOWNSHIP
OF MONROE COUNTY, BY LINDA
HOLLINGSWORTH, TRUSTEE,
Plaintiff,

vs.

INDIAN CREEK FIRE FIGHTERS, INC.,
Defendant.

ANSWER

1. Admit.
2. Admit all parts.
3. Defendant agrees that the Executive of the Township has a duty to provide fire protection within its geographic territory, but points out that no Indiana statute, case, or rule excludes the provision of other fire protection.
4. Admit all parts.
5. Admit.
6. Admit all parts.
7. Admit.
 - 7.1. Deny. Indian Creek Firefighters, Inc. (“ICFF”) provided services without a contract from 1973 until 1987 (ICFF Exhibit A, attached hereto). Various contracts covered the periods from 1987 into 1993. From 1993-1996, then-Trustee DeKoker explicitly refused to contract with ICFF; she contracted instead with Van Buren Fire Department. However, ICFF continued to respond to calls during that period.

8. Deny. The Trustee's letter was dated February 9, but ICFF was not given it that day. The letter was sent by U.S. Mail, certified, with return receipt requested. The contract states in paragraph 13 (see Trustee's Exhibit 3) "this contract may be terminated by either party upon 90 days [sic] written notice **received** by the other party." (Emphasis added). The letter was actually mailed on February 10, 2007, and ICFF received the letter on February 12, 2007. (See Trustee's Exhibit 4). Thus, the Trustee gave slightly less than the full ninety (90) days' termination notice required by the contract.

8.1. Deny. At the January 20, 2007 ICFF Annual Meeting, the Trustee offered to consider making a loan for some repairs if ICFF provided an estimate (See ICFF Exhibit B1 and B2, ICFF Board minutes from January and February 2007). ICFF provided a worst-case scenario estimate on January 31, 2007, at the Township Board Meeting. (Trustee's Exhibit 5).

On the evening of January 31 and morning of February 1, two trucks were repaired by WSF Fleet at a cost of \$1181.61, paid for by ICFF (ICFF Exhibits B1-B3, attached hereto).

On February 3, the Trustee hired Chris Welch of Welch's Fire Equipment to assess the condition of the vehicles and the appropriateness of the ICFF estimate. In attendance at this inspection were Pat Munson (ICFF Board Member), then-Chief Doug Thompson, then-Assistant Chief Steven Hendrickson, and firefighter Shawn Harris, plus the Trustee, all of whom

were present throughout the two hour visit. At the conclusion of this full inspection, Welch explained in detail to the Trustee that 3 trucks were already repaired, and there were no significant problems with the others. (ICFF Exhibit C, attached hereto). Welch also prepared a written estimate that reiterated the conversation (ICFF Exhibit D, attached hereto).

The Trustee's letter of termination of contract (Trustee's Exhibit 4) states that "Of primary concern is the failure of the Corporation to maintain equipment. Despite over \$50,000 paid by the Township to the Corporation in 2006, 5 of the 6 emergency vehicles are either completely inoperable or seriously defective." By the time of the Welch inspection on February 3, the Trustee knew that ICFF's equipment was fully operational and her stated reason for termination—alleged failure to maintain equipment—was proven false.

8.1.1. Admit

8.1.1.1. Admit

8.1.2. Admit

8.1.3. Deny. ICFF maintained equipment in working order, as shown by the Welch inspection (See ICFF Exhibit D, attached hereto). ICFF owns five (5) vehicles, and as with any vehicle, there are times that repair and maintenance are needed.

8.2. Deny.

8.2.1. Deny. The Fire Chief of ICFF is elected by the volunteer firefighters, not appointed by the ICFF Board or, needless to say, appointed by the Trustee. In June of 2005, there was a dispute between the Assistant Chief and the Dispatcher. Mr. Jerry Hooten (then-Chief of the ICFF) asked the ICFF Board to write a reprimand against the Assistant Chief. The ICFF Board considered the charges and concluded they were baseless. They informed Mr. Hooten of their decision. There was no consideration or decision made about removing or not removing Mr. Hooten from his position—for the simple reason that the firefighters, not the Board, elect the Fire Chief.

At the July 21, 2007 (not July 31) ICFF Board meeting, the Trustee made agitated and incomprehensible statements to the ICFF Board. ICFF Vice-President, Pat Munson asked her to clarify, and she very emotionally stated “We are going to lose Jerry” (Mr. Hooten). The Trustee was informed at that time that this was a personnel issue, not to be discussed in an open board meeting. On Saturday, July 23, then-ICFF President Himes prepared a document (Trustee’s Exhibit 8) which was intended to allow ICFF Board meetings to be conducted in an orderly fashion and to keep personnel issues private. This document demonstrates a great deal of thought with regard to fairness, order, and openness

to the ICFE's contractual partner, the Township, as well as to the ICFE's volunteers and staff.

8.2.1.1. Admit.

8.2.1.2. Admit.

8.2.1.3. Deny. The Trustee regularly attended ICFE Board meetings and was aware of the agenda, which was always emailed to her prior to the meeting, as well the previous month's minutes. The Guidelines were an attempt by the ICFE Board to encourage not only the trustee but also others to conduct themselves appropriately in a meeting and to ensure privacy of personnel matters. This document was delivered on August 18, not July 23, at the next regular ICFE Board meeting (See ICFE Exhibit E, p. 2, attached hereto) and was read aloud to meeting attendees. The ICFE Board welcomed Trustee participation and asked that it be done in a respectful, orderly manner. Again, while the Trustee was encouraged to provide input, the firefighters, per ICFE bylaws (Trustee's Exhibit 19, see p. 4, section 2d), elect their own chief. Neither the Trustee nor the ICFE Board chooses a chief.

8.2.2. Deny. Trustee referred to an “undated letter handed to Trustee on November 16, 2006,” (Trustee’s Exhibit 9) and quoted it selectively in her Complaint. However, that letter is actually an e-mail that ICFE then-President Himes sent to the Trustee on October 17, 2005—more than a year earlier. (ICFE Exhibit F). It was sent in reply to Trustee’s concerns about Mr. Hooten resigning and the Trustee wanting to keep it quiet. (ICFE Exhibit G) Trustee’s Exhibit 9 appears to have had the e-mailed header removed, which has the effect of concealing both its true date and its context.

8.2.2.1. Deny. Personnel issues are internal ICFE issues, dealt with according to ICFE Bylaws and Indiana law. Of the contracts between the Trustee and ICFE, all of which have been drafted by the Trustee, none have included provisions for the Trustee’s involvement in internal ICFE personnel issues.

8.2.2.2. Deny. The Trustee has no role in ICFE personnel matters that could justify any level of concern. Further, even if she did, there was no justification present. Mr. Hooten’s chosen Assistant Chief was appointed immediately as Chief when Mr. Hooten quit without notice, and that man served for over one year, resigning because of a personal crisis,

unrelated to the fire department. A new chief was elected by the firefighters but resigned after five months because the Trustee cancelled the ICFF contract.

8.3. Deny.

8.3.1. October 24, 2005 Fire: Deny. The alarm was sent at 9:44 pm.

Both ICFF and Van Buren were en route at 9:46 pm. Van Buren did arrive first at 9:52 pm as they were considerably closer to that location and had a manned station at that hour of the night. ICFF responded with eight (8) firefighters (including 2 EMTs), Pumper 103 and Tanker 104. The Van Buren log does not show Indian Creek there, but the ICFF log and the official log from Central Dispatch gives the accurate information. (ICFF Exhibit H).

8.3.1.1. Admit. Van Buren Fire Department and ICFF EMT arrived at the same time. They were the first *Department* to arrive, but our EMT arrived at the same time.

8.3.1.2. Deny. Per a conversation with then-Chief Donald Sterling on July 1, 2007, he located and rescued the injured person and did all the basic life support. (ICFF Exhibit S). The Chief responded directly to the scene and arrived in his personal vehicle at the

same time Van Buren arrived (ICFF records indicate the time ICFF trucks arrived).

8.3.1.3. Deny. ICFF with mutual aid from Van Buren, Perr-Clear Creek, Eastern (Greene County), Ellettsville, and Central (Greene County) fire departments extinguished the fire and provided salvage and overhaul. ICFF Chief Sterling carried his medical bag in his truck, and he located the person and administered medical relief. After ICFF's firefighters and trucks arrived (with the Chief's gear) and the patient was being taken care of by BHAS, the Chief donned his gear, fought the fire and extinguished the fire along with all the other departments. All departments did salvage and overhaul. Chief Sterling went back the next day to do further investigation.

8.3.2. November 19, 2005 Fire. Deny. Van Buren has a standing mutual aid agreement to respond to all structure fires throughout Indian Creek Township (as opposed to the one-mile radius response for other fires, a standing agreement made between the former trustees of both Van Buren and Indian Creek Townships). Central Dispatch records indicate that ICFF and Van Buren both arrived at 4:30 am. ICFF logs indicate ICFF was in command of the scene. This is

prima facie evidence that ICFE was there first. (In incident command, the first to arrive is in charge of the scene.) As is the norm with mutual aid, both departments extinguished the fire. (See ICFE Exhibit I).

8.3.2.1. Deny (see above). ICFE was in command of the scene.

8.3.2.2. Deny. ICFE with mutual aid from Van Buren Fire Department extinguished the fire.

8.3.3. April 24, 2006 Fire. Deny. According to Van Buren logs, they were never in command of the incident (see Trustee Exhibit 12, page 2, Ed Terrell's comments that they "were released by Indian Creek Fire Chief without incident" – the incident command performs release. This is in direct conflict with their check box on page 1 which shows incident command in Section F). Other portions of this particular allegation refer to a malfunctioning piece of equipment; the reason to have mutual aid is in case of equipment malfunction on scene or necessary personnel assistance. (ICFE Exhibits J1 and J2).

8.3.3.1. Admit.

8.3.3.2. Admit.

8.3.3.3. Admit.

8.3.3.4. Deny.

8.3.4. October 12, 2006 Fire. Deny. Under a public records act request, Township Board member Cheryl Munson received from Van Buren Fire Chief Tim Deckard a list of runs that Van Buren made with ICFE, which list includes the October 12 fire. (ICFE Exhibits K1-K4). Van Buren said ICFE provided only two firefighters; however, ICFE logs show that ICFE provided five firefighters. According to ICFE logs, the ICFE tanker became stuck in the long poorly-maintained driveway, but after freeing the tanker, the ICFE crew delivered its load of water, plus 3 more loads later. (Trustee's Exhibit 13, on p. 2, notes the driveway was "NOT easily assessable [sic] by fire engine."). ICFE logs notes that ICFE trucks were released by Van Buren, one truck at 9:10 p.m. and the other truck at 10:06 p.m.

8.3.5. October 13, 2006 Fire. Deny. According to Central Dispatch records and its director, ICFE was never dispatched to this fire. Upon questioning by ICFE, the director of Central Dispatch noted that there was a glitch in the system. (ICFE Exhibits L1 and L2).

8.4. Deny. On the contrary, except for a period of mostly nuisance lawsuits filed by supporters of the former trustee DeKoker in the era 1992-1996, the Trustee and ICFE have enjoyed a long and fruitful partnership. Further, ICFE fails to understand how litigation in the early- to mid- 1990s would void a lease in 2007.

9. Deny. ICFF is providing fire protection to its leased building and grounds, and is also providing fire protection to much of the township through subscriber agreements.

9.1. Deny. The lease for the building does not require that ICFF provide fire fighting services to the Township as consideration for the lease.

9.1.1. Deny. Consideration for the lease is variously stated in different parts of the lease as follows:

9.1.1.1. “Lessor is willing to allocate the site to Lessee, both for One Dollar (\$1.00) a year, and protection for its building and property at Kirksville, Indiana. This enables the Lessor to discharge its responsibilities for better fire protection for its buildings and property.”

9.1.1.2. “The consideration for this lease shall be the payment of the aforesaid annual rental of One Dollar (\$1.00) per year, together with protection for its building and property at Kirksville, Indiana, the fencing of the property in a manner mutually acceptable to the parties and the Lessor’s successors and assigns, and the re-location of a baseball back stop for the Lessor’s school located adjacent to the leased premises and the Lessee’s utilization of said land solely as a fire station.”

9.1.2. Admit. This was adjudicated in 53C01-9306-CP-00687 (ICFF Exhibit M).

9.2. Deny. The Township cannot terminate a lease unless the lease is broken. There is no language in the lease that would automatically terminate the lease if the Trustee chooses to no longer contract with ICFF.

9.3. Deny. The Trustee is free to set up a fire station of her choosing on any land she can lease or buy elsewhere in the Township.

9.3.1. Admit. This is the Trustee's stated intent.

9.3.2. Deny. This is a prediction without basis in fact.

10. Deny. ICFF is performing under the lease by utilizing the land solely as a fire station and providing fire protection to the building and grounds. There is no failure of performance.

10.1. Admit: Just because ICFF and an overwhelming majority of the township residents would prefer that the Trustee contract with ICFF (as she stated she would when running for office), ICFF has no control over whether the Trustee contracts with ICFF.

10.1.1. Deny. Actually, the contract termination gave only 87 days' notice, rather than the 90 required by the contract.

10.1.2. Deny. See above.

10.1.3. Deny. The Trustee's decision not to continue contracting with ICFF does not excuse her from any other legally-binding contracts or leases she happens to find inconvenient.

10.1.4. Deny. The Trustee is in error that ICFF must have a current contract with the Trustee for the lease to be valid. The lease contains no language subjecting ICFF's interest to the Trustee's discretion. The lease requires that ICFF operate a fire station and they are doing so.

10.1.5. Deny. The first parties to that lease were the Monroe County Community School Corporation (MCCSC) and ICFF. There is nothing in the lease with MCCSC that pertains to contracting with the Township. Additionally, when ICFF was incorporated March 5, 1973, there was no contract, either written or oral, between ICFF and the Township. The first contract between ICFF and Township was in the autumn of 1987. During the period of March 31, 1993 until sometime after January 1, 1996, there was no contract between the parties. Judge Hoff's ruling specifically notes that the contract ceased in March 1993 (See ICFF Exhibit M). During this entire time, ICFF occupied the land as per the lease and operated a fire station.

10.2. Deny. By the time Trustee notified ICFF of termination of lease, Trustee was aware that there were no significant problems with the equipment. On February 3, 2007, six days before she drafted the termination letter of February 9, she hired Chris Welch to examine the equipment. He told her orally on February 3 (and subsequently put in writing) that although there

were minor repairs needed on two trucks, ALL were fully operational.
(See ICFF Exhibits C and D).

- 10.3. Deny. The ICFF Board did reject the Trustee's proposed supplement, but it would not have allowed ICFF to continue to provide services. The proposed Supplement to Contract contained a false statement that ICFF had provided inadequate service and it implied the fire chief was not capable. It also allowed for a thirty (30) day termination of the contract AND the lease. The ICFF Board interpreted the Supplement as a tool to quickly and legally take the volunteer department away from the community.
- 10.4. Deny. The Trustee offered a second Supplement on April 2, 2007. However, it still contained the thirty (30) day contract and lease termination language, which remained unacceptable to ICFF. ICFF was free to reject a contract it believed to be one-sided and unfair. During these negotiations, ICFF's attorney and Trustee's attorney exchanged documents addressing all of Trustee's stated concerns and Trustee's attorney wrote a letter saying they found all the documentation we provided by ICFF to be acceptable. (ICFF Exhibit N). However, the Trustee decided to terminate the contract anyway.
- 10.5. Deny. The ICFF proposed contract used much of the language from the previous contract, one that had been drafted by the Trustee and used for years. The changes made were twofold; one, to clarify language, and two, to offer a clause constraining BOTH parties from speaking "out of school"

about the other in an attempt to stop some of the rumor-mongering and increase direct communication.

10.5.1. Deny. It is well within ICFF's rights to ask for payment for community use.

10.5.2. Deny. The board has its annual audit through a CPA and files taxes every year with this audit. The Trustee knows this; the payment to the CPA is listed in her single page that she uses as her Exhibit 22 (see no. 2670). Additionally the Trustee is provided with spreadsheets annually by the ICFF Treasurer, who is always happy to answer any questions. Budget items are noted by the Treasurer and are in the ICFF Board meeting minutes each month. This section was added to assist the Trustee in getting a broader audit if she so chose. Audits are expensive and ICFF operates on a tight budget. There is no cost shifting; the Trustee could have taken ICFF's annual CPA report and spreadsheets, as always. If the Trustee wanted more, then she could have paid for that service. ICFF is qualified for a waiver of the audit required by I.C. 5-11-1-9. (ICFF Exhibit O).

10.5.3. Deny. The Trustee's proposed Supplement (Trustee's Exhibit 15, item 9) demands a one-hour response to any contract. This is unreasonable and sometimes impossible. The ICFF contract offered to the Trustee (Trustee's Exhibit 18, p. 5) establishes a fair

process based upon contract issues and not rumors and protects both parties from “he said/she said” events.

- 10.6. Deny. ICFF agrees their proposed contract included such a provision, but disagrees it was egregious. In fact, ICFF regarded it as necessary. The Trustee had made a practice of making generalized allegations about ICFF to residents of Indian Creek Township with no opportunity for ICFF to respond to those allegations. (ICFF Exhibit P).
- 10.7. Deny. This provision would have prohibited no such thing. It is impossible for a contract to supersede state law. Further, Counsel for ICFF clarified that provision for Counsel for the Trustee in subsequent communication. Finally, any reasonable reading of this provision would not be construed to constrain the Trustee from discussing anything with the duly elected Township Board.
- 10.8. Deny. The contract proposed by ICFF was substantively similar to previous contracts between the parties and was but one of the three proposals exchanged by the parties (the other two being the Supplements proposed by the Trustee).
 - 10.8.1. Deny. ICFF fails to see how a dispute between the Trustee and a member of HER township board has any bearing upon termination of the lease, termination of the contract, or upon negotiations with ICFF.
- 10.9. Deny. In fact, before the termination of the contract that the Trustee was fully aware that the trucks were repaired and were in operating order. See

Paragraph 8.1, ICFE Exhibits C, D, E). ICFE had never sought funds for repairs from the Township—the Trustee had offered a loan (ICFE Exhibit C). In response to that offer, ICFE investigated and found that the estimate was overstated. The Trustee was fully aware of the investigation—in fact, she was present at the time (ICFE Exhibit E).

10.10. Deny. In fact, public records of the Trustee indicate that she was discussing termination language with her attorney as early as January 2, 2007 (ICFE Exhibit Q). Trustee was not negotiating with ICFE—she had already made the decision to terminate the contract by January 2, but didn't so inform ICFE until February. Further, ICFE has not failed to provide fire protection to the building or property it lies on. There is no failure of performance by ICFE.

11. Deny. ICFE provides fire protection to the Township by protecting the building and the property it occupies. Further, ICFE provides protection to township residents who have signed subscription agreements—over 200 (as of July 2, 2007) out of an estimated 625 Indian Creek households.

11.1. Deny. ICFE provides round-the-clock service as volunteers, as always, as before.

11.2. Deny. ICFE continues to operate on subscriptions, fundraising, donations, and grants.

11.2.1. Deny. In fact, in 2006, the Trustee paid ICFE \$24,000 for payroll but ICFE actually spent \$27,800, the difference of which ICFE absorbed. The Trustee paid ICFE \$31,500 for operating expenses,

and ICFF actually spent much more. ICFF did have greater than usual expenses last year (remodeling so Township could use fire station for handicapped-accessible voting; put in a new furnace; paid preliminary generator hook-up fees because the Trustee wanted the ICFF building to be an emergency shelter). ICFF raises additional funds quite successfully through grant-writing and various fund-raisers. In past years when ICFF operated without a contract with the Township, ICFF was able to raise its entire operating budget with zero contribution from the Township.

11.2.2. Admit.

11.2.3. Deny. ICFF does not require \$48,320.00 for the remainder of 2007 to fulfill the requirements of the lease.

11.3. Deny. ICFF operates a fire station and fire protection is available for any resident of the Township who wishes to subscribe.

11.3.1. Admit.

11.3.2. Deny. All fire department provide protection only when and if personnel and equipment are available.

11.3.3. Deny. The public and the Township can subscribe or contract.

11.3.4. Admit.

11.4. Admit. This constitutes ICFF's acknowledgment that Trustee cancelled the contract, ordered Central Dispatch not to tone, and caused ICFF to have to work much harder to protect the public safety. ICFF uses its radio

at all times and is available to respond to any subscriber (or household) in Indian Creek Township.

11.4.1. Deny. ICFF can provide primary services to those in the Township. The Trustee has ordered Central Dispatch not to send ICFF tones. ICFF is now forced to listen to all of Van Buren's tones and identify those calls that are for subscribers.

12. Admit. ICFF met with the City of Bloomington Attorney and the Monroe County Attorney as well as the director of Central Dispatch and the head of its board in an effort to continue direct dispatch of ICFF to its subscribers.

12.1. Deny: The fact that Central Dispatch ceased dispatching ICFF does not preclude ICFF from responding to any fire at its subscribers in the Township, or as mutual assistance to surrounding townships. .

12.2. Deny. ICFF provides fire protection through direct calls from subscribers.

13. Admit. ICFF is working with the FCC to determine appropriate ownership and lease rights of the call signs.

13.1. Deny. ICFF has up-to-date equipment that is the same as that used by all fire departments in the recently implemented 800 MHz system.

14. Admit. There is no basis to surrender the premises as the ICFF is not in violation of the lease.

14.1. Admit. Only 87 days had elapsed on May 10.

15. Deny. The Trustee is free to build another fire station elsewhere in Indian Creek.

15.1. ICFF has no personal knowledge of the Trustee's preparations.

15.2. ICFF has no personal knowledge of the Trustee's equipment.

15.3. ICFF has no personal knowledge of the Trustee's preparations.

15.4. Deny. ICFF is not obligated to voluntarily surrender property it occupies according to lease terms just because the Trustee has chosen to end the contract.

15.4.1. Deny. ICFF is operating a fire station from a good location.

However, it is not the only location available to the Trustee.

15.4.2. Admit.

15.4.3. Admit.

15.4.4. Deny. ICFF has a lease until 2013 as long as it utilized the land solely as a fire station, which it is doing. Township property "at Kirksville" referred to in the lease is just that, not all of Indian Creek Township. Lessor's building referred to in the original 1973 lease (with MCCSC) is the old Kirksville School, which was demolished many years ago. The property (other than real) that the Township presently owns at Kirksville consists of the metal playground equipment, a small metal picnic shelter, a limestone bench, four (4) picnic tables, and three (3) trash barrels in the park adjacent to the fire station building.

16. Deny. ICFF is operating in good faith in occupying land according to a valid lease. The Trustee cancelled the contract and chose to contract with another fire department. It is not up to ICFF what contracts the Trustee chooses to enter into. Interestingly, the Trustee is quoted in the Bloomington Herald-Times (February 15, 2007) as saying that "to buy fire protection from somewhere else won't

cost our taxpayers a dime more.” (ICFF EXHIBIT R, attached hereto). Yet her own lawsuit states that, not only is it more expensive to contract with Van Buren Township, but also that the Trustee is endangering public safety by NOT contracting with the centrally located fire department.

16.1. ICFF has no personal knowledge of the Trustee’s other contracts.

16.2. Deny. After the Trustee factors in the attorney fees, the copying fees, and all the other fees incurred to try to throw a legitimate and equipped community firefighting group out of its fire station, the costs will be much greater. The purchase of firefighting equipment will be enormous; a new fire truck costs about \$190,000. It would be literally impossible to provide service for less than ICFF has provided.

17. Deny.

18. No allegations made.

19. Deny. The contract says “submit to,” not “will get an annual audit.” In fact, when ICFF offered in its proposed contract revision to do an annual full audit if the Trustee would pay for it, that provision in the contract was used as a reason for cancellation. The Trustee did not request an audit prior to May 9, 2007.

20. Deny.

WHEREFORE, Defendant ICFF by counsel, request that Plaintiff take nothing by way of her Complaint, that judgment be awarded in favor of Defendant, and that the Court grant all other just and proper relief.

Respectfully Submitted,

Kara Reagan, Attorney for ICFE

CERTIFICATE OF SERVICE

I certify a copy of the foregoing mailed this ___ day of _____, 20___, to all parties and/or attorneys of record, U.S. Mail, first class postage prepaid, as shown below:

Mr. Guy Loftman
532 North Walnut Street, Suite A
Bloomington, IN 47404

Kara Reagan
Attorney Number: #25754-53