

STATE OF INDIANA)
)
COUNTY OF MONROE)

IN THE MONROE CIRCUIT COURT

Cause No.: 53C0 60706 PL 01349

INDIAN CREEK TOWNSHIP)
OF MONROE COUNTY, BY LINDA)
HOLLINGSWORTH, TRUSTEE,)
Plaintiff,)
vs.)
INDIAN CREEK FIRE FIGHTERS, INC.,)
Defendant.)

SHERIFF PLEASE SERVE

**COMPLAINT FOR EVICTION, FOR DAMAGES FOR BREACH OF CONTRACT,
AND FOR SPECIFIC PERFORMANCE**

Plaintiff Indian Creek Township of Monroe County, by its Trustee, Linda Hollingsworth, in person, and by counsel, Guy R. Loftman, states its Complaint for Eviction, for Damages for Breach of Contract, and for Specific Performance as follows:

A. EVICTION

1. Indian Creek Township of Monroe County (Township) is a political subdivision of the State of Indiana.
2. Linda Hollingsworth (Hollingsworth) is the duly elected Indian Creek Township Trustee.
 - 2.1. Hollingsworth was the successor to the former Trustee, her husband, Sam Hollingsworth, who died on April 16, 2005, while serving as Trustee.
 - 2.2. Hollingsworth initially became Trustee when she was administered the oath of office on May 9, 2005.

- 2.3. Hollingsworth was then elected in her own right in the November, 2006 General Election in Monroe County.
3. Pursuant to IC 36-6-4-3(11), the Executive of the Township has the duty to provide fire protection within its geographic territory.
4. Township owns real estate located at 8019 S. Rockport Road, Bloomington, Indiana, more particularly describe in Plaintiff's Exhibit 1, the deed thereto.
 - 4.1. Township's real estate consists of approximately 5 acres, more or less.
 - 4.2. The Monroe County Community School Corporation (MCCSC) conveyed that real estate to Township by deed dated January 13, 1986.
5. A fire station is located on a portion of that real estate.
6. The real estate on which the fire station is located is subject to a lease to Lessee Defendant Indian Creek Fire Fighters, Inc. (Corporation), a copy of which is attached hereto as Plaintiff's Exhibit 2 (the Lease).
 - 6.1. That lease covers approximately one acre of the approximately five acres owned by Township.
 - 6.2. That lease was originally made by the Monroe County Community School Corporation (MCCSC) on October 16, 1973.
 - 6.3. Township is Successor Lessor to MCCSC.
 - 6.4. The portion of the real estate not subject to the lease is developed as a park, with picnic tables, playground, a basketball court, a baseball diamond, and a mowed field.
7. Township entered into a Contract for Fire Protection with Corporation on March 16, 2006. (Exhibit 3, the Contract.)

- 7.1. The Contract was one of a series of contracts, oral and written, formal and informal, that go back to the construction of the fire station shortly after the lease was signed in 1973.
8. On February 9, 2007, Corporation was given a letter from Trustee Hollingsworth with which was enclosed Township's Termination of Lease and Contract for Fire Protection, to be effective on May 10, 2007. (Exhibit 4.)
 - 8.1. The primary reason for Township's cancellation of that contract was the request of Corporation for at least \$10,100 in emergency equipment repairs presented by Corporation's Vice-President, Pat Munson, at the January 31, 2007 Township Board meeting. (Exhibit 5.)
 - 8.1.1. Township had provided Corporation \$55,500.00 during 2006. (Exhibit 6.)
 - 8.1.1.1. A portion of those funds was paid pursuant to the Contract (Exhibit 3) and part pursuant to an automatic extension of the prior contract between the parties, dated January 15, 2005. (Exhibit 7.)
 - 8.1.2. Maintenance of Corporation's emergency equipment was a primary responsibility under the Contract, as set forth in its Section 1.a. (Exhibit 3.)
 - 8.1.3. Corporation's failure to maintain its emergency equipment constituted inadequate performance by Corporation, and was unacceptable to Township.
 - 8.2. Numerous other conflicts between the parties had arisen during the preceding years, which caused the Trustee to conclude that Corporation would not cooperate

in implementing an effective program of public safety in cooperation with Township.

8.2.1. In late June or early July of 2005 Hollingsworth was informed that long time Corporation Fire Chief Jerry Hooten was going to be removed from that position. When Hollingsworth tried to gain information and express her reservations concerning this termination at Corporation's July 31, 2005 Board of Director's Meeting, she was given "Guidelines for Board of Director's Meetings" from then Corporation President Beverly Himes dated July 23, 2005 which were intended to obstruct Hollingsworth's effective participation in Corporation Board of Directors meetings.

(Exhibit 8.)

8.2.1.1. One guideline states:

The Board members and I will tolerate no surprises with impromptu items presented in a disrespectful manner. If this occurs, the meeting will be immediately adjourned!

8.2.1.2. Another states:

If we have internal problems, we are quite capable of resolving them without outside meddling.

8.2.1.3. The guidelines set forth manifest routine efforts to discourage Hollingsworth's effective participation in addressing problems arising between Corporation and Township, such as who would be the Fire Chief.

8.2.2. On November 4, 2006, Hollingsworth was advised by Corporation Board President Beverly Himes and others that serious personnel problems were present, in that Chief Donnie Sterling, Assistant Chief Steven Hendrickson

and First Responder Shawn Harris had stopped coming to fires, had stopped showing up at meetings and were not responding to phone calls. When Hollingsworth tried to follow up on her concerns she was told in an undated letter handed to her on November 16, 2006 by Corporation Board President Himes that “There won’t be any need for considering changes,” and “After all, this is an internal fire department matter”. (Exhibit 9.)

8.2.2.1. This attitude that the Trustee had no business tracking serious personnel concerns demonstrated an unreasonable hostility to the need of the Trustee to be engaged in how Corporation performed, especially when it had become clear that serious personnel problems had arisen.

8.2.2.2. Township’s concerns are further justified by the fact that Corporation has had three fire chiefs in the year and a half since long time chief Jerry Hooten was replaced.

8.3. Serious issues had arisen during Hollingsworth’s service as Trustee concerning Corporation’s performance of its fire fighting duties.

8.3.1. On October 24, 2005, Van Buren Township Fire Department responded to an incident at 7620 S. Burch Rd. in Indian Creek Township as an automatic aid run concerning a fire in a large show horse barn with an upstairs apartment. (Exhibit 10.)

8.3.1.1. Van Buren Township Fire Department was the first department to arrive.

8.3.1.2. Van Buren Township Fire Department located and rescued an injured person trapped on a second floor balcony.

8.3.1.3. Van Buren Township Fire Department extinguished the fire, provided salvage and overhaul and provided basic life support.

8.3.2. On November 19, 2005, Van Buren Township Fire Department responded to an incident at 8000 S. Rockport Road, Bloomington, Indiana, in Indian Creek Township as an automatic aid run concerning fire in a residence.

(Exhibit 11.)

8.3.2.1. Van Buren Township Fire Department was the first department to arrive, even though this location was across the street from the Indian Creek Fire Station, which is located at 8019 S.

Rockport Road.

8.3.2.2. Van Buren Township Fire Department extinguished the fire.

8.3.3. On April 24, 2006, Van Buren Township Fire Department responded to an incident at 7861 S. Harmony Road, Bloomington, Indiana, in Indian Creek Township as an automatic aid run concerning a mobile home fire.

(Exhibit 12.)

8.3.3.1. Corporation's equipment and staff were the first to arrive at the scene.

8.3.3.2. When Van Buren Township Fire Department arrived, Corporation's staff could not get Corporation's equipment to operate.

8.3.3.3. Corporation's staff then relied on Van Buren Township Fire Department's equipment to be able to fight the fire.

8.3.3.4. Van Buren Township Fire Department assumed command of the incident.

8.3.4. On October 12, 2006, Van Buren Township Fire Department responded to an incident at 6530 W. Duvall Road, Bloomington, Indiana, in Indian Creek Township as an automatic aid run concerning a flue fire in a residence originally built around 1840 as a log cabin, in a remote location. (Exhibit 13.)

8.3.4.1. Van Buren Township Fire Department was the first department to arrive, established command, extinguished the fire, and provided salvage and overhaul.

8.3.5. On October 13, 2006, Van Buren Township Fire Department responded to a rekindling of the fire extinguished the day before at 6530 W. Duvall Road, Bloomington, Indiana, in Indian Creek Township as an automatic aid run. (Exhibit 14.)

8.3.5.1. Van Buren Township Fire Department was the first department to arrive, extinguished the fire, and provided salvage and overhaul.

8.4. It should also be noted that Township and Corporation have a long unsuccessful history with respect to their relationship, leading to litigation in the 1990's under the following cause numbers:

53C01 9306 CP 00687

53C03 9505 CP 00507

53C03 9505 CP 00519
53C01 9509 SC 02630 (transferred to 53C02 9510 CP 01355)
53C02 9510 CP 01355
53C03 9602 CP 00209

9. Because Corporation would no longer have a contract with Township as of May 10, 2007, Corporation would no longer provide fire fighting services to Township's building and property at Kirksville, Indiana, or to Township in general as of that date.
 - 9.1. When Corporation ceased providing fire fighting services to Township there was a failure of consideration for the Lease.
 - 9.1.1. Provision of fire fighting services was the actual and substantial consideration of the lease.
 - 9.1.2. Township acknowledges that the yearly \$1.00 rent payment called for in the Lease was token, and that Corporation's routine failure to pay such is without legal consequence.
 - 9.2. Township terminated the Lease effective as of the date of termination of Corporation's Contract for Fire Protection because Corporation would no longer be providing Township with fire protection.
 - 9.3. The fire station is needed by Township in order to provide fire fighting services.
 - 9.3.1. Township intends to provide such services through a fire department directly operated by Township, rather than through a contract with an independent provider.
 - 9.3.2. That arrangement will prevent the conflicts which have characterized the history of the parties.
10. Township's termination of the Contract did not constitute impermissible prevention of Corporation's performance.

10.1. Township has full authority to determine the manner in which it will provide fire protection, and Corporation has no authority to control that determination.

10.1.1. Township's determination that it would provide fire protection through a means other than Corporation cannot have been wrongful to Corporation, so long as the termination of the Contract was lawful.

10.1.2. Township's termination of the contract was within its discretion, and was lawfully carried out.

10.1.3. The Lease cannot be allowed to constrain Township's discretion in how to provide fire protection.

10.1.4. Corporation's interest in the lease is subject to Township's discretion as to whether it will or will not contract with corporation to provide fire fighting services.

10.1.5. Corporation's duty remains the same as it was when MCCSC was its landlord: Enter into a fire protection contract with Township or face eviction.

10.2. Corporation's acknowledgement in Exhibit 5 that it had not maintained fire fighting equipment as required by the Contract constituted justification for Township's termination of the Contract and the Lease.

10.3. Prior to termination, Township proposed a Supplement to Contract which would have allowed Corporation to continue to provide services, which Corporation rejected. (Exhibits 15 and 16.)

10.4. Subsequent to termination Township made another proposal to allow Corporation to continue to provide fire fighting services, which was not accepted. (Exhibit 17.)

10.5. Corporation made a proposal for a contract on April 15, 2007 (Exhibit 18) which was unacceptable to Township for numerous reasons which were well within Township's legitimate discretion.

10.5.1. For instance, Section 1.2 of Corporation's proposed contract provided for payment from Township to Corporation if the fire station was used as an emergency shelter, whereas these services are appropriately covered under the general contract payments. Payment per emergency event has never been the practice of the parties.

10.5.2. For another instance, Section 6.1 of Corporation's proposed contract required Township to pay for any audit of Corporation, whereas Article VI of Corporation's own bylaws required Corporation to be audited. (Exhibit 19.) Corporation thereby attempted to shift the cost for one of the responsibilities Corporation had voluntarily undertaken from Corporation to Township.

10.5.3. Yet another instance is set forth in Article 7 of Corporation's proposed contract, establishing an elaborate conflict resolution procedure requiring weeks of notice, response and resolution time that could prevent Township from promptly and effectively addressing Corporation's future performance issues.

10.6. One particularly egregious provision of Corporation's proposal, identified as 7.6 stated:

If written notice of any alleged breach is not provided to the other party as mandated by this Article [7], any allegations of breach made as statements to the press, as statements to the public at any Township meeting, or as statements orally or in writing to any resident or group of residents of Indian

Creek Township shall be considered a violation of this contract and the party making the statement shall be liable for liquidated damages of \$500 per occurrence.

10.7. That provision would prohibit the Township Trustee and Board from discussing possible performance problems in accordance with their duties to oversee proper expenditure and application of public funds and would charge Township for carrying out such duties.

10.8. Given the starting point of Corporation's proposed contract, its receipt less than a month before the contract termination date and the history of the parties, it was clear that no negotiation would be successful.

10.8.1. This conclusion was particularly justified in light of the repeated public and private insults made by Corporation's advocates, such as that made in a February 9, 2007 email to Trustee Hollingsworth from Township Board Member Cheryl Ann Munson, the wife of then Corporation Vice President Pat Munson, which concluded:

Hey Madame Trustee: Put on Your Big Girl Panties and Deal – say what you mean, and act business like. (Exhibit 20.)

10.9. Shortly after Township's termination of the Contract and the Lease, Corporation stated that it had satisfactorily repaired most of the defective equipment with its own funds, or determined that the repairs were unnecessary, demonstrating Corporation's bad faith in seeking additional funds from Township for such repairs, which funds were not really needed. (Exhibit 21.)

10.10. In light of the substantial difficulties encountered by Township during the course of the Contract and preceding contracts in obtaining performance and cooperation from Corporation, Township's termination of the Contract and the Lease were

made in good faith, and did not constitute acts of contractual sabotage or acts in bad faith that led to Corporation's failure to provide fire protection to Township.

11. Corporation does not provide fire fighting services to Township.
 - 11.1. Corporation does not provide fire fighting services on a 24 hour per day, 7 days a week basis, as it did through a combination of paid and volunteer services under the Contract.
 - 11.2. Corporation has no adequate financial resources from which to pay the substantial costs of building and equipment operation and maintenance.
 - 11.2.1. Corporation's 2006 operating budget was \$65,800.00. (Exhibit 22.)
 - 11.2.2. Township's total payment to Corporation in 2007 was \$17,480.00.
(Exhibit 23.)
 - 11.2.3. Corporation has no credible funding mechanism to raise the \$48,320.00 needed to reach the level of its 2006 budget to operate a fire department and the Fire Station in 2007 without a contract with Township.
 - 11.3. Corporation is now acting as a private fire protection service on the basis of contracts with private parties.
 - 11.3.1. A copy of Corporation's subscription contract is attached. (Exhibit 24.)
 - 11.3.2. That subscription contract acknowledges that Corporation will only provide its subscribers services "... when personnel and equipment are available, ..." thus establishing that Corporation does not provide general coverage even to its subscribers.
 - 11.3.3. That subscription agreement states that Corporation is currently "... organized and equipped to provide firefighting services for its subscribers,

...” thereby establishing that Corporation is no longer organized for public benefit, but is now acting for the private benefit of its subscribers.

11.3.4. Township has not entered into a subscription for services with Corporation.

11.4. Corporation, through its web site, advises the general public and its subscribers to first call 911 in case of an emergency, and then to call Corporation, if a subscriber. (Exhibit 25.)

11.4.1. This constitutes Corporation’s acknowledgement that it cannot provide primary emergency services to Township or those in it, since 911 calls are not dispatched through Corporation.

12. Following termination of the contract, at Township’s request, Monroe County Central Emergency Dispatch ceased dispatching Corporation on emergency calls. (Exhibit 26.)

12.1. Township had contracted with Van Buren Township to provide fire protection services to the geographic territory of Indian Creek Township, so it was necessary to have Van Buren Township dispatched to emergencies in Indian Creek Township. (Exhibit 27.)

12.2. The fact that Monroe County Central Emergency Dispatch ceased dispatching Corporation on emergency call further establishes that Corporation does not provide fire protection for Township or its citizens.

13. At Township’s request, Corporation is no longer authorized to use FCC Call Sign WQDS629 and FCC Call Sign WPEA880, which are emergency communication frequencies. (Exhibit 28.)

- 13.1. This further establishes that Corporation does not have the modern equipment available to provide fire protection for Township or its citizens.
14. Corporation has refused to deliver the fire station premises to Township.
 - 14.1. Trustee Hollingsworth and Indian Creek Township Board President Mike Lucas requested delivery of the fire station on May 10, 2006, and were refused by Corporation's apparent agent at the fire station, Beverly Himes, Corporation's secretary and former president.
15. Township needs the fire station in order to effectively operate an Indian Creek Township fire department serving all those in Indian Creek Township.
 - 15.1. Township has organized and is prepared to put in place immediately a fire department under the direct control of the Township Trustee and Board.
 - 15.2. That department has equipment that can be promptly made available to it.
 - 15.3. That department cannot operate without a fire station.
 - 15.4. Corporation is jeopardizing public safety by refusing to deliver the fire station to Township.
 - 15.4.1. The fire station is the most centrally located and best equipped facility in Indian Creek Township available to serve as a fire station.
 - 15.4.2. The fire station was built for the purpose of providing fire protection to the general public of Indian Creek Township.
 - 15.4.3. Corporation has no right to be a party to a contract with Township to provide emergency services.

15.4.4. Corporation has no right to occupy the fire station if does not provide fire protection to Township property and to all those in the Township in need of such services.

16. Because Corporation is withholding the fire station from Township, Township has been forced to incur expenses for fire protection substantially in excess of the expenses that would be incurred if the fire station was available to Township for its intended purpose as a facility to protect the general public.

16.1. Township has entered into short term contracts with Van Buren Township to provide emergency services to Indian Creek Township. (Exhibits 27 and 29.)

16.2. Township can provide services through its own department at a lower cost to Township than was paid for Corporation's services, and at lower cost than is now paid to Van Buren Township.

WHEREFORE, Township prays this court to evict Corporation from the fire station and all other real estate located at 8019 S. Rockport Road, Bloomington, Indiana.

B. DAMAGES FOR BREACH OF CONTRACT

17. Corporation was paid for emergency equipment maintenance services pursuant to the contract which were not provided during periods when the contract was in effect.

18. WHEREFORE, Township prays this court to award it appropriate damages for Corporation's breach of contract.

C. SPECIFIC PERFORMANCE

- 19. Pursuant to Paragraph 6 of the Contract, Corporation was to submit to an audit.
- 20. In breach of that provision, Corporation failed to submit to an audit.

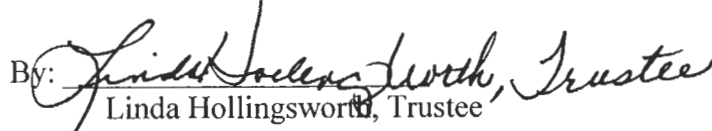
WHEREFORE, Township prays this court to order specific performance of the audit provision of the Contract.

VERIFICATION

Linda Hollingsworth, Trustee of Indian Creek Township, affirms, under the penalties for perjury, that the foregoing representations numbered one (1) through twenty (20) are true.

Respectfully submitted,

Indian Creek Township

By:  Linda Hollingsworth, Trustee


Guy R. Loftman,
Attorney for Indian Creek Township

Prepared for Indian Creek Township
of Monroe County by:
Guy R. Loftman
Attorney at Law
Atty # 8877-53
532 N. Walnut Street, Suite A
Bloomington, Indiana 47404-3804
(812) 339-4899