

State of Indiana)
)
County of Lake)

In The Lake Superior Court
Sitting at East Chicago, Indiana

Rodney and Zena Logal,)
Husband and Wife,)
Plaintiffs,)

Cause No. 45 D02-0911-PL-00172

-vs-

The Town of Schererville, et al.,)
Defendants.)

Plaintiffs' First Amended Complaint

Comes now the plaintiffs, *pro se*, pursuant to Article 1, Sections 1, 9, 12, 20, 23, and 24 of the Indiana Constitution as well as Title 42 U.S.C. §1983, and for their causes of action against the defendants, say as follows:

1. Said plaintiffs are husband and wife, residing for more than ten (10) years in the Town of Schererville, Indiana;
2. Fee simple title to the property commonly known as 7624 Rohrman Road in Schererville, Indiana (which property has a Crown Point mailing address) is vested in plaintiff Rodney A. Logal;
3. Plaintiff Zena Logal enjoys an equitable interest in said property as the wife and dependent of plaintiff Rodney A. Logal;
4. Sometime during the week of October 26, 2009, plaintiffs received an "Official Code Violation Warning" from the Town of Schererville, Indiana, a copy of which is attached hereto and incorporated herein as Plaintiffs' Exhibit 3;
5. Said warning references Schererville Town Ordinance number 1046 and relates it to the following details:

Garage must be demolished. (*sic*). Zoning ordinance does not allow a secondary structure to be permitted without a primary structure.

6. In response, plaintiffs secured a copy of the cited ordinance, attempting to discern their corresponding obligation(s);
7. A copy of said ordinance is available at the office of the Schererville Town Clerk, separately bound as a document of more than 120 pages;

8. As far as the plaintiffs can determine after careful review, said ordinance does not explicitly or implicitly require the demolition of a sound, secure, and remote “secondary structure” upon the demolition of its adjacent primary structure as is the case at 7624 Rohrman Road in Schererville, Indiana;
9. If the structure at issue does not conform in some way with said Ordinance No. 1046, it is “a lawful non-conforming building, structure or use, and may be continued”. *See, Title XIX, Section 1 – Ordinance No. 1046 for the Town of Schererville, Lake County, Indiana*;
10. Neither plaintiff is required to appeal or otherwise challenge said “Official Code Violation Warning” pursuant to zoning regulations and / or any other administrative provision(s) as the underlying ordinance is “charged to be void on its face” to the extent it purports to “require the demolition of a sound, secure, and remote ‘secondary structure’ upon the demolition of its adjacent primary structure” *See, Bowen v. Sonnenburg, Ind. App., 411 N.E.2d 390 at 403 (1980); Wright v. Georgia, 373 U.S. 284 at 292 (1963) (“a generally worded statute which is construed to punish conduct which cannot constitutionally be punished is unconstitutionally vague to the extent that it fails to give adequate warning of the boundary between the constitutionally permissible and the constitutionally impermissible applications of the statute”); and Bouie v. City of Columbia, 378 U.S. 347 at 352 (1964) (“There can be no doubt that a deprivation of the right of fair warning can result not only from vague statutory language, but also from an unforeseeable and retroactive judicial expansion of narrow and precise language.”)*;
11. Moreover, the plaintiffs contend this case was precipitated by deliberate misconduct undertaken for the sole purpose of annoying and harassing them in contravention of their constitutional rights, *i.e.*, matters beyond the expertise and redressability of any town board;
12. Said October 2009 warning marks the second occasion in less than six (6) months on which defendant and Schererville Code Enforcement Officer Juanita Peters issued an “Official Code Violation Warning” to plaintiff Rodney A. Logal regarding his referenced Rohrman Road property;
13. On May 15, 2009, defendant Peters issued her first in a series of relevant warnings, citing Schererville Town Ordinance Number 1347 and the following details:

You have created a very dangerous situation with this house demolition. Building code requires that a temporary 6’ cyclone fence be erected until demolition has been completed.
14. A copy of said “Official Code Violation Warning” is attached hereto and incorporated herein as Plaintiffs’ Exhibit 5;
15. In addition to disputing her foregoing conclusion that plaintiff Rodney A. Logal “created a very dangerous condition . . .,” the plaintiffs noted in the hand delivered letter attached hereto and incorporated herein as Plaintiffs’ Exhibit 6, that “ordinance 1347 does not set forth the fence requirements (defendant Peters) reference(s) in support of (her indicated) warning”;

16. The plaintiffs have accordingly faced and continue contending with the prospect of substantial fines based on constructions of Schererville Town ordinances by defendant Peters that cannot be corroborated by a careful review of cited provisions;
17. The defendants' referenced conduct is an unconstitutional abuse of process transgressing the plaintiffs' "right to be let alone" and free of arbitrary, capricious, government action. *See, Spiegel v. M Rabinovitz*, 121 F. 3d 251(7th Cir. 1997); *Olmstead v. U.S.*, 277 U.S. 438 at Justice Brandeis dissent, 478-479 (1928) (*majority opinion overruled*); and *Poe v. Ullman*, 367 U.S. 497 at Justice Harlan dissent, 543 (1961). (*majority opinion overruled*);
18. Exhaustion of town judicial and / or administrative remedies is not a prerequisite to the present litigation under the Indiana State Constitution and Title 42 U.S.C. §1983. *See, Ellis v. Dyson*, 421 U.S. 426 at 432 (1975);
19. Neither plaintiff is or was obliged to remain between the proverbial Scylla and Charybdis of risking substantial penalties and fines so their present claims could be addressed in Schererville Town Court. *See, Dada v. Mukasey*, 128 S. Ct. 2307 (2008);
20. All acts of omission and commission of which the plaintiffs are aware and on which they premise this lawsuit transpired pursuant to the prevailing practices, policies, and / or operating procedures of defendant Town of Schererville, Indiana;
21. Alternatively defendant Peters so acted alone or in concert, under color of law, and outside her duties as an employee and agent of said town. In either instance the Court may "give a remedy to parties deprived of constitutional rights, privileges and immunities". *See, Monroe v. Pape*, 365 U.S. 167 at 172 (1983);
22. As a direct and proximate result of all acts of omission and commission on which this lawsuit is based, the plaintiffs have suffered and continue to suffer violation of their state and federal constitutional rights; have been and continue to be unduly inconvenienced, forced to incur the cost of this action, and subjected to corresponding distress;
23. The defendants concede that the ordinances at issue are "unclear." *See, Logal et. al. v. Town of Schererville*, et. al, formerly Cause No. 2:10 CV 11 PPS before the U.S. District Court for the N. Dist. of Indiana at Hammond – Order of January 28, 2010 by the Honorable Judge Philip P. Simon, p 3;

Wherefore the plaintiffs and each of them pray for (I). judgment against the defendants and each of them, declaring and proclaiming that (1). to the extent Schererville Town Ordinance 1046 purports to require the "Compliance" defendant Peters expected by December 1, 2009 as evidenced by Plaintiffs' Exhibit 3, it is unconstitutionally void for vagueness; and (2). to the extent enforcement of Schererville Town ordinances amount to an unconstitutional abuse of process as to the plaintiffs or either of them, they are experiencing a violation of privacy and denial of due process as well as the equal protection of law as contemplated by the Indiana State

Constitution as well as the First and Fifth Amendments to the U.S. Constitution made applicable to the several states by the 14th Amendment to said constitution; (II). a permanent injunction against said violation(s) of rights; (VII). for the costs of this action, including but not limited to reasonable attorney fees if any; and for any and all other relief, just and proper upon the premises.

Jury Demand

The plaintiffs and each of them demand trial by jury.

Respectfully Submitted,

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(p) [REDACTED]
(f) [REDACTED]
(e) [REDACTED]@ [REDACTED]

Zena D. Crenshaw-Logal, Plaintiff *Pro Se*
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