

IN THE COURT OF COMMON PLEAS
OF LUCAS COUNTY, OHIO

CITY OF MAUMEE,)	
)	Case No. CI-2019-03255
Plaintiff,)	
)	Judge Goulding
vs.)	
)	
COUNTY OF LUCAS, et al.,)	Fritz Byers (0002337)
)	414 N. Erie St., 2 nd Floor
Defendants.)	Toledo, Ohio 43604
)	Phone: 419-241-8013
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)	E-mail: fritz@fritzbyers.com
)	
)	Counsel for Defendant
)	

ANSWER and COUNTERCLAIM OF DEFENDANT
BOARD OF LUCAS COUNTY COMMISSIONERS

For the Answer to the Complaint, defendants Lucas County and Board of Lucas
County Commissioners:

1. Admit the allegations of paragraph 1.
2. Deny that the “County” was connected to the City of Maumee’s sanitary and storm-water sewer system, state that Ohio Revised Code Section 2744.01(F) speaks for itself, deny that Lucas County is a *sui juris* entity that can be sued, and otherwise deny the allegations of paragraph 2.

3. Admit that the City of Maumee appears to believe it has the power to require and mandate persons and entities to pay sums unilaterally determined by the City without regard to the accuracy or reasonableness of the calculations, measurements, and computations of such sums, and deny the remaining allegations of paragraph 3.
4. Deny the allegations of paragraph 4.
5. Deny the allegations of paragraph 5.
6. State they are without sufficient information to form a belief as to the truth of the allegations of paragraph 6, and so deny those allegations.
7. Admit the City of Maumee presented bills purporting to reflect amounts the defendants owed, admits that the City demanded payment of these bills, state that at the time the City of Maumee presented those bills the City knew they were factually erroneous yet persisted in demanding payment, state further that the City of Maumee declined to provide defendants with information supporting the demands, and deny the remaining allegations of paragraph 7.
8. Admit that the City of Maumee has provided defendants with bills and notices purporting to set forth demands for payment, state that the City of Maumee has refused to provide information supporting the demands for payments despite knowing that the demands are factually unsupported, and deny the remaining allegations of paragraph 8.

FIRST CLAIM

9. Answer the incorporated allegations of paragraph 9 as those allegations are separately answered.
10. Deny the allegations of paragraph 10.
11. Deny the allegations of paragraph 11.
12. Deny the allegations of paragraph 12.

SECOND CLAIM

13. Answer the incorporated allegations of paragraph 13 as those allegations are separately answered.
14. State that the City of Maumee's codified ordinances speak for themselves and deny the remaining allegations of paragraph 14.
15. Deny the allegations of paragraph 15.
16. Deny the allegations of paragraph 16.

AFFIRMATIVE DEFENSES

First Affirmative Defense

The Complaint fails to state a claim upon which relief can be granted.

Second Affirmative Defense

Lucas County is not a *sui juris* entity that can be sued.

Third Affirmative Defense

The actions of the City of Maumee on which the Complaint is predicated were *ultra vires*.

Fourth Affirmative Defense

The actions of the City of Maumee on which the Complaint is predicated are void as against public policy.

Fifth Affirmative Defense

As an agency of the State of Ohio, the defendant Board of Lucas County Commissioners is immune from suit and from liability.

Sixth Affirmative Defense

The defendant Board of Lucas County Commissioners is immune from liability because any relevant conduct of the defendant Board or of its employees was not undertaken negligently and was required or authorized by law or was necessary or essential to the exercise of powers of the defendant Board or its employees.

Seventh Affirmative Defense

The defendant Board of Lucas County Commissioners is immune from liability because any relevant conduct of the defendant Board or of its employees was within the discretion of the employee with respect to policy-making, planning, or enforcement powers by virtue of the duties and responsibilities of the office or position of the employee.

Eighth Affirmative Defense

The defendant Board of Lucas County Commissioners is immune from liability because any relevant conduct of the defendant Board or of its employees resulted from the exercise of judgment or discretion in determining whether to acquire, or how to use, equipment, supplies, materials, personnel, facilities, and other resources.

Ninth Affirmative Defense

Any loss or damage incurred by the City of Maumee was the direct and proximate result of the City of Maumee's own conduct, including the City of Maumee's failure to take reasonable steps to mitigate the loss or damage.

Having fully answered the Complaint, defendants Lucas County and Board of Lucas County Commissioners demand that the Court enter judgment in their favor, that plaintiff takes nothing, that defendants be awarded the costs and expenses, including reasonable attorney fees, incurred in defending this action, and that the Court grant defendants such additional relief as is necessary and proper.

COUNTERCLAIM

For its Counterclaim against plaintiff City of Maumee, the Board of Lucas County Commissioners alleges:

BACKGROUND

17. The Board of Lucas County Commissioners brings this counterclaim on its own and on behalf of the residents and taxpayers of Lucas County, and all those adversely affected by the intentional unlawful acts and omissions committed, and willfully covered up, lied about, hidden from view, and misrepresented, over decades by the City of Maumee and its officials, employees, and agents.
18. In particular, this counterclaim seeks remedy and redress for the City of Maumee's unlawful intentional dumping, over decades, of hundreds of millions of gallons of untreated sewage into the Maumee River in violation of state and federal statutory and common law.

19. This illegal conduct was exacerbated by the City of Maumee's willful public lying to state and federal authorities, to its own residents and taxpayers, and to the broader public, about the nature, scope, and duration of the City's unlawful conduct.
20. The City's primary response to this long-standing pattern of unlawful behavior has been a public-relations campaign to understate the nature and extent of the problem and to deflect blame.
21. The factually unfounded and legally flawed claims set forth in the City of Maumee's Complaint in this civil-action are the culmination of a campaign, lasting more than a year, undertaken by senior officials of the City of Maumee to divert attention to and blame for the City's unlawful and unconscionable actions.
22. In particular, although the Complaint alleges that the Board of Lucas County Commissioners' putative discharges have been occurring for "more than ten years," the City of Maumee first mentioned this supposed conduct to representatives of the Board of Lucas County Commissioners after the Board announced formation of its Commission on Maumee River discharges, a body charged with determining the nature and extent of the City of Maumee's unpermitted and undisclosed discharges into the Maumee River and to make recommendations about remedial measures that might help prevent such occurrences.
23. Since that time, while representatives of the City of Maumee have stonewalled that Commission, invoking the Fifth Amendment right against self-incrimination, the City of Maumee has focused its energies on its unfounded allegations about discharges from the Lucas County Recreation Center and Fairgrounds, contending that these

- discharges caused the sewer-system overload that in turn led the City of Maumee to dump hundreds of millions of gallons of untreated sewage into the Maumee River.
24. Despite this transparent ploy, the Board of Lucas County Commissioners has consistently tried to work in good faith and candor with the City of Maumee to determine the nature, extent, and cause of excess run-off from the Lucas County Recreation Center and Fairgrounds, to identify appropriate engineering solutions for any such problems, and to properly allocate the costs of those solutions.
 25. The City of Maumee's putative factual support for its demands that the Board of Lucas County Commissioners pay arbitrary amounts to the city of Maumee is flawed in its conception and in the underlying processes for data collection.
 26. Through the Lucas County Sanitary Engineer, the Board attempted repeatedly to point out these flaws and offered to provide competent professional assistance in collecting and analyzing accurate data.
 27. In response, the City of Maumee ceased all communications and filed this ill-conceived civil action, and then undertook the predictable public-relations offensive.
 28. These actions by the City of Maumee poorly serve the City and the community.

FACTS

29. Plaintiff Board of Lucas County Commissioners is a body politic that under Ohio Revised Code Section 305.12 can sue in its own name.
30. Defendant City of Maumee is an Ohio Municipal Corporation.

31. At all times relevant to this Counterclaim, the City of Maumee owns and operates a municipal sewer system, consisting in part of stormwater collection sewers and pipes and sanitary sewers and pipes.
32. In 1985, the City of Maumee, in concert with the Ohio Environmental Protection Agency, agreed to a remediation plan to address the City's discharge of excess pollutants and sanitation runoff into the Maumee River.
33. Under that plan, the City agreed to implement a series of projects that would result in the City's unitary sewer system becoming a separate sewer system, which would separate the City's sanitary-sewage flows from its storm-water flows.
34. The Clean Water Act, 33 U.S.C. §1251, et seq., prohibits overflows from a separately sewer collection system. Acting under the Clean Water Act, the United States Environmental Protection Agency has ruled that sanitary-sewage overflows of raw or diluted sewage poses a risk to public health and the environment.
35. In accordance with federal law and policy, the Ohio Revised Code prohibits the discharge of sanitary-sewage overflows into State waters, except in accordance with a valid, unexpired permit.
36. Despite the City's binding commitments under the 1985 remediation plan, and the City of Maumee's actual knowledge of applicable state and federal laws and regulations, for an undisclosed period of time beginning more than twenty years ago and perhaps going back to 1985, the City has continuously unlawfully discharged sanitary-sewage overflows into the Maumee River. These discharges appear to have

violated the Ohio Revised Code, in addition to other applicable laws and regulations.

37. On information and belief, these unlawful discharges of sewage into the Maumee River continue to this day.
38. The City of Maumee, through its officials, employees, and agents knowingly filed false reports with governmental authorities intended to deceive regulators and the public about the City's intentional unlawful actions.

CAUSES OF ACTION

First Cause of Action - Public Nuisance

39. Counterclaim plaintiff realleges the allegations of paragraphs 17 through 38.
40. The City of Maumee's actions and omissions were intentional.
41. The City of Maumee's actions and omissions were unlawful.
42. The City of Maumee's acts and omissions unreasonably interfered with a right common to the general public.
43. As a direct result of the City of Maumee's actions, the Board of Lucas County Commissioners, in addition to the residents and taxpayers of Lucas County, have been injured.

Second Cause of Action - Trespass

44. Counterclaim plaintiff realleges the allegations of paragraphs 17 through 38.
45. The actions and omissions of the City of Maumee were intentional.
46. The actions and omissions of the City of Maumee were unauthorized and unlawful.

47. The actions and omissions of the City of Maumee caused the physical invasion of riparian lands downstream of the City of Maumee by toxic substances, adversely affecting the nature and character of the land and causing substantial actual damage to the land.
48. As a direct result of the City of Maumee's actions, the Board of Lucas County Commissioners, in addition to the residents and taxpayers of Lucas County, have been injured.

Third Cause of Action - Unlawful Taking

49. Counterclaim plaintiff realleges the allegations of paragraphs 17 through 38.
50. The actions and omissions of the City of Maumee were intentional.
51. The actions and omissions of the City of Maumee caused and constituted a direct physical encroachment on the downstream riparian lands and a direct physical interference with the use and enjoyment of the land, without any compensation therefor.
52. The actions and omissions of the City of Maumee caused and constituted an unlawful taking of private property without just compensation in the violation of the Constitution and laws of the State of Ohio.
53. As a direct result of the City of Maumee's actions, the Board of Lucas County Commissioners, in addition to the residents and taxpayers of Lucas County, have been injured and are entitled to compensation.

Fourth Cause of Action - Strict Liability

54. Counterclaim plaintiff realleges the allegations of paragraphs 17 through 38.

55. The actions and omissions of the City of Maumee were intentional and were undertaken under the direction or control of the City of Maumee.
56. The actions and omissions of the City of Maumee were undertaken unlawfully and without just cause or excuse, and a necessary consequence of those acts and omissions was the interference in the rights of the the Board of Lucas County Commissioners and of the residents and taxpayers of Lucas County.
57. As a direct result of the City of Maumee's actions and omissions, the Board of Lucas County Commissioners, in addition to the residents and taxpayers of Lucas County, have been injured, and the injuries were a necessary consequence of the actions or omissions or were incident to the activities themselves or the manner in which they were conducted.
58. The actions and omissions of the City of Maumee were in violation of specific legal requirement established for the protection of others.
59. The actions and omissions of the City of Maumee necessarily entailed the keeping upon the lands of the City of Maumee noxious, dangerous, and hazardous materials, the escape of which would be a foreseeable source of harm to others, and the City of Maumee failed to confine the said materials, causing damage.
60. As a direct result of the City of Maumee's actions, the Board of Lucas County Commissioners, in addition to the residents and taxpayers of Lucas County, have been injured and are entitled to compensation.

Fifth Cause of Action - Negligence

61. Counterclaim plaintiff realleges the allegations of paragraphs 17 through 38.

62. The City of Maumee owed to the Board of Lucas County Commissioners and to the residents and taxpayers of the Lucas County a duty to exercise reasonable and ordinary care in their conduct of the activities described above.
63. The actions and omissions of the City of Maumee departed from and were in breach of the City of Maumee's duty of reasonable and ordinary care.
64. The City of Maumee's departures from and breaches of the City of Maumee's duty of reasonable and ordinary care were the direct and proximate cause of substantial injuries to the Board of Lucas County Commissioners and to the persons and properties of the residents and taxpayers of Lucas County.
65. As a direct result of the City of Maumee's actions, the Board of Lucas County Commissioners, in addition to the residents and taxpayers of Lucas County, have been injured and are entitled to compensation.

_____ /s/ Fritz Byers _____

Counsel for Defendants-Counterclaim Plaintiffs

CERTIFICATE OF SERVICE

This will certify that a true and correct copy of the foregoing Answer and Counterclaim will be served on counsel of record through the court's electronic filing system, and has also been sent by email to Alan Lehenbauer, counsel for plaintiff, at alehenbauer@maumee.org.

_____ /s/ Fritz Byers _____