

IN THE COURT OF COMMON PLEAS OF LUCAS COUNTY, OHIO

CITY OF TOLEDO
One Government Center, Suite 2200
Toledo, Ohio 43604,

Plaintiff,

v.

BLOCK COMMUNICATIONS, INC.
d/b/a Buckeye Broadband and
Buckeye CableSystem
c/o Statutory Agent: Jodi L. Miehls
405 Madison Avenue, Suite 2100
Toledo, Ohio 43604

Defendant.

) Case No. _____

)

) Judge _____

)

) **CITY OF TOLEDO'S COMPLAINT FOR**
) **DECLARATORY JUDGMENT AND OTHER**
) **RELIEF AND JURY DEMAND**

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) Dale R. Emch, Director of Law (0080004)
) Jeffrey B. Charles, Chief of Litigation (0064514)
) John T. Madigan (0023614)
) City of Toledo, Department of Law
) One Government Center, Suite 2250
) Toledo, Ohio 43604-2293
) Telephone: (419) 245-1020
) Fax: (419) 245-1090

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) Counsel for Plaintiff City of Toledo

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Now comes Plaintiff City of Toledo ("City") and for its complaint against Block Communications, Inc., d/b/a Buckeye Broadband and Buckeye CableSystem ("Buckeye"), hereby states as follows:

Background and Parties

1. This case is brought pursuant to Ohio Revised Code Chapter 2721, Toledo Municipal Code Sections 945.10 and 945.21 and Ohio Revised Code 4939.08.

2. The City is a municipal corporation organized and operating pursuant to its Charter, the Ohio Constitution and the laws of Ohio.

3. The City was selected as the site of the Solheim Cup, an internationally recognized LPGA event set to commence in Toledo on September 4, 2021. This tournament is expected to generate many events and related public visitation in and around the downtown area of the City.

4. Partly in preparation for this event, the City embarked on a wide-variety of public improvement projects under the authority of City Ordinance 180-20 and referred to as the Summit Street Roadway Improvements Project, some of which were located on and around Summit Street in Toledo, Lucas County, Ohio. These improvements included but were not limited to streetscape, public art, infrastructure, waterline elements, and substructure of the street.

5. In order to timely complete the project, the City asked Buckeye, along with the other utilities, to relocate and change the position of certain of their facilities located within the City's right of way so the project could move forward as well as support economic development in the downtown area. Except for Buckeye, all other utility companies had relocated their facilities by the spring of 2020.

6. Though asked to relocate its facilities in order for the above described projects to be completed in a timely fashion, Buckeye did not do so.

7. Buckeye also asserted a legal claim that it was not required to bear the cost of relocation of its facilities and lines pursuant to Toledo Municipal Code section 945.10 (b)(4). Buckeye claimed the project was being undertaken for non-transportation aesthetic purposes citing to a provision of the Toledo Municipal Code at 945.10 (b)(4) which states that the owner of facilities such as Buckeye need not bear the cost of relocation or change of its facilities within the

City right of way if such action is being undertaken for “***a non-transportation related aesthetic improvement.” Buckeye also cited Ohio law for its position.

8. No agreement having been reached with the City, and with time running out to timely complete the project, ultimately, Buckeye said it would pursue legal action against the City to avoid paying its relocation costs.

9. The City, not wishing to jeopardize the completion of such an important project, or risk the project not being completed by the 2021 Solheim Cup, elected in good faith based upon the language of Toledo Municipal Code 945.10(b)(4), Ohio Law, and City Ordinance 180-20, to bear the Buckeye relocation costs at that time. The City paid its general contractor to accomplish the movement of Buckeye’s facilities which consisted of fiber-optic lines.

10. After the movement of the Buckeye facilities, certain City officials subsequently questioned the City having incurred the related costs.

11. The relocation costs incurred by the City on behalf of Buckeye are \$972,474.60. The City retains the right to recover these funds pursuant to Toledo Municipal Code 945.21 which states that “the permit builder shall not be relieved of its obligations to comply with any of the provisions of this change *** by reason of the City’s failure to enforce prompt compliance.”

12. The City, per Toledo Municipal Code section 945.10(a) and related subsections , Ohio Revised Code 4939.08, and Ohio law, now has the right to seek from Buckeye the money it paid to relocate Buckeye Facilities in the amount of \$972,474.60 as no agreement has been reached between the parties.

COUNT I

(Declaratory Judgment)

13. The Plaintiff restates the allegations contained above and incorporates them herein as if fully rewritten.

14. As there is a justiciable issue now existing between Buckeye and the City as to the proper application of the above described code sections and related law, a declaration is needed by this Court to resolve this issue and determine responsibility, rights and duties for the costs associated with the relocation and change of any of Buckeye's facilities as these terms are described at the Toledo Municipal Code at 945.10 and all related subparts.

COUNT II

(Unjust Enrichment)

15. The Plaintiff restates the allegations contained above and incorporates them herein as if fully rewritten.

16. As a result of the City being forced to pay for Buckeye facility relocations and change, Buckeye unjustly benefitted from the City's payments.

17. Buckeye is therefore obligated to reimburse the City for monies expended on Buckeye's behalf and for Buckeye's benefit.

WHEREFORE, Plaintiff City of Toledo prays for an Order of the Court as follows:

1. A declaration that Buckeye is responsible for the full cost of relocating its facilities located within the City right of way at or near Summit St.

2. That Final Judgment be rendered by this Court Ordering Buckeye to reimburse the City in the amount of \$972,474.60 for the costs to relocate and change facilities that Buckeye should have paid in the first instance.
3. Such other relief that this Court deems just, equitable, or otherwise, including attorney fees and costs.

Respectfully submitted,

DALE R. EMCH, DIRECTOR OF LAW:

By: /s/ Jeffrey B. Charles
Jeffrey B. Charles, Chief of Litigation
Counsel for Defendants

JURY DEMAND

Plaintiff, City of Toledo, hereby demands a trial by jury on all issues triable by a jury in the above captioned matter.

Respectfully submitted,

DALE R. EMCH, DIRECTOR OF LAW:

By: /s/ Jeffrey B. Charles
Jeffrey B. Charles, Chief of Litigation
Counsel for Defendants