

KLS

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August 20, 2014

Honorable Gerald P. Ptacek
Racine County Courthouse
730 Wisconsin Avenue
Racine, WI 53403

Re: Vincent Milewski, et al v. Town of Dover, et al
Case No.: 14-CV-1482
Our File No.: 231.229059

RECEIVED
8/21/14

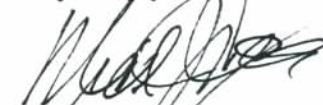
Dear Judge Ptacek:

I enclose with this letter the Answer and Affirmative Defenses on behalf of the defendants, Town of Dover and Board of Review for the Town of Dover in the above-referenced matter. I would appreciate it if your clerk would file this on our behalf and indicate the date of filing on the bottom of the photocopy of this letter and return it to me in the self-addressed stamped envelope provided.

By copy of this letter, we are providing a copy of the same to the other attorneys of record of whom we have notice.

Thank you for your courtesy and cooperation.

Very truly yours,



Michael J. Cieslewicz

MJC/jfk
Enclosures

cc: ~~Thomas C. Kamenick, Esq.~~ (with enclosure)

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Milwaukee • Green Bay

A Limited Liability Service Corporation

VINCENT MILEWSKI and
MORGANNE MACDONALD,

Plaintiffs,

Case No. 14-CV-1482

vs.

Case Code: 30701

TOWN OF DOVER,
BOARD OF REVIEW FOR THE TOWN OF DOVER and
GARDINER APPRAISAL SERVICE, LLC,

Defendants.

ANSWER AND AFFIRMATIVE DEFENSES

The defendants, Town of Dover and Board of Review for the Town of Dover, by their attorneys, Kasdorf, Lewis & Swietlik, S.C., answer and plead as follows:

1. Paragraph 1 of the Complaint contains a summary of the plaintiffs' action to which no response is required; however, to the extent that the Court requires a response, these defendants deny each and every allegation contained therein as they may in any way relate to the liability of these answering defendants.

2. Paragraph 2 of the Complaint contains a summary of the plaintiffs' action to which no response is required; however, to the extent that the Court requires a response, these defendants deny each and every allegation contained therein as they may in any way relate to the liability of these answering defendants. Further, these defendants affirmatively state that a municipal assessor's request to view the interior of a property for the purposes of a tax assessment is not unreasonable nor does it constitute an unreasonable search. As a further affirmative statement, section 70.32 of the Wisconsin Statutes provides that real estate is to be

assessed through “actual view” of the property and the Wisconsin Property Assessment Manual published by the Department of Revenue confirms that an “actual view” includes an interior viewing.

3. Paragraph 3 of the Complaint contains a summary of the plaintiffs’ action to which no response is required; however, to the extent that the Court requires a response, these defendants deny each and every allegation contained therein as they may in any way relate to the liability of these answering defendants. Further, these defendants affirmatively state that because the plaintiffs are alleging that certain state statutes are unconstitutional, the Attorney General was required to have been served with a copy of the proceeding and is entitled to be heard pursuant to section 806.04(11) of the Wisconsin Statutes.

PARTIES AND VENUE

- 4. Upon information and belief, admit.
- 5. Upon information and belief, admit.
- 6. Admit.
- 7. Admit.
- 8. Admit.
- 9. Upon information and belief, admit.
- 10. Admit.
- 11. Deny.
- 12. These defendants admit that venue is proper.

ASSESSMENT OF THE PROPERTY

- 13. Admit.
- 14. Admit.

15. Admit.

16. Lack information and knowledge sufficient to form a belief as to the allegations contained in paragraph 16 and, therefore, deny the same.

17. Lack information and knowledge sufficient to form a belief as to the allegations contained in paragraph 17 and, therefore, deny the same. Further, these defendants affirmatively state that substituting an “actual view” of the interior of a property for the mere questioning of an owner about the interior would be a permissible means of assessment under section 70.32 of the Wisconsin Statutes.

18. Admit.

19. Admit only that the Town of Dover Town Board received the letter attached to the Complaint as Exhibit C.

20. Admit only that Gardiner Appraisal Service, LLC assessed plaintiffs’ property at \$307,100 and that the previous year’s assessment was \$277,761. Lack information and knowledge sufficient to form a belief as to the remaining allegations contained in paragraph 20 and, therefore, deny the same.

21. Lack information and knowledge sufficient to form a belief as to the allegations contained in paragraph 21 and, therefore, deny the same.

22. Deny.

23. Lack information and knowledge sufficient to form a belief as to the allegations contained in paragraph 23 and, therefore, deny the same.

24. Lack information and knowledge sufficient to form a belief as to the allegations contained in paragraph 24 and, therefore, deny the same.

25. Lack information and knowledge sufficient to form a belief as to the allegations contained in paragraph 25 and, therefore, deny the same.

DISPARATE ASSESSMENT OF SIMILARLY SITUATED PROPERTIES

26. Admit.

27. Lack information and knowledge sufficient to form a belief as to the allegations contained in paragraph 27 and, therefore, deny the same.

28. Lack information and knowledge sufficient to form a belief as to the allegations contained in paragraph 28 and, therefore, deny the same.

29. Lack information and knowledge sufficient to form a belief as to the allegations contained in paragraph 29 and, therefore, deny the same.

30. Lack information and knowledge sufficient to form a belief as to the allegations contained in paragraph 30 and, therefore, deny the same.

ATTEMPTED TAX CHALLENGE

31. Admit.

32. Admit only that on November 25, 2013, Vincent Milewski appeared at the BOR hearing. Further, these defendants affirmatively state that Mr. Milewski was not allowed to appear before the BOR because he had refused a reasonable request by certified mail from Gardiner to view the property pursuant to section 70.47(7)(aa) of the Wisconsin Statutes.

33. Admit.

34. Admit only that at the BOR hearing, Mr. Milewski argued that he was not barred from challenging the assessment of his property. Deny that any legal analysis or argument made by Mr. Milewski was correct.

35. Admit.

36. Admit.

37. Admit only that the plaintiffs served on the Town Clerk the Notice of Claim and Claim attached as Exhibit E to the Complaint.

38. Admit only that the Town of Dover did not deny or allow the Claim within 90 days after the Claim was filed. The remainder of the allegations in paragraph 38 of the Complaint contain conclusions of law to which no response is required; however, to the extent the Court requires a response, these defendants deny each and every allegation contained therein as they may in any way relate to the liability of these answering defendants.

**FIRST CLAIM – Declaratory Judgment
§ 70.47(7)(aa) Is Unconstitutional as Applied to the Plaintiffs**

39. Reallege and incorporate herein by reference all of the answers contained in paragraphs 1 through 38 above.

40. Paragraph 40 of the Complaint does not contain any factual allegations to which an answer is required.

41. Paragraph 41 of the Complaint does not contain any factual allegations to which an answer is required.

42. Paragraph 42 of the Complaint does not contain any factual allegations to which an answer is required.

43. Paragraph 43 of the Complaint does not contain any factual allegations to which an answer is required.

44. Paragraph 44 of the Complaint does not contain any factual allegations to which an answer is required. To the extent the Court requires a response, admit.

45. Paragraph 45 of the Complaint contains a conclusion of law to which no response is required; however, to the extent the Court requires a response, these defendants deny each and

every allegation contained therein as they may in any way relate to the liability of these answering defendants as applied to this case.

46. Paragraph 46 of the Complaint contains a conclusion of law to which no response is required; however, to the extent the Court requires a response, these defendants deny each and every allegation contained therein as they may in any way relate to the liability of these answering defendants as applied to this case.

47. Paragraph 47 of the Complaint contains a conclusion of law to which no response is required; however, to the extent the Court requires a response, these defendants deny each and every allegation contained therein as they may in any way relate to the liability of these answering defendants.

48. Paragraph 48 of the Complaint contains a conclusion of law to which no response is required; however, to the extent the Court requires a response, these defendants deny each and every allegation contained therein as they may in any way relate to the liability of these answering defendants.

49. Paragraph 49 of the Complaint contains a conclusion of law to which no response is required; however, to the extent the Court requires a response, these defendants deny each and every allegation contained therein as they may in any way relate to the liability of these answering defendants.

50. Paragraph 50 of the Complaint contains a conclusion of law to which no response is required; however, to the extent the Court requires a response, these defendants deny each and every allegation contained therein as they may in any way relate to the liability of these answering defendants.

51. Paragraph 51 of the Complaint contains a conclusion of law to which no response is required; however, to the extent the Court requires a response, these defendants deny each and every allegation contained therein as they may in any way relate to the liability of these answering defendants.

SECOND CLAIM – Against All Defendants
42 U.S.C. § 1983 Claim for Deprivation of Constitutional Rights

52. Reallege and incorporate herein by reference all of the answers contained in paragraphs 1 through 51 above.

53. Paragraph 53 of the Complaint does not contain any factual allegations to which an answer is required.

54. Paragraph 54 of the Complaint contains a conclusion of law to which no response is required; however, to the extent the Court requires a response, these defendants deny each and every allegation contained therein as they may in any way relate to the liability of these answering defendants.

55. Paragraph 55 of the Complaint contains a conclusion of law to which no response is required; however, to the extent the Court requires a response, these defendants deny each and every allegation contained therein as they may in any way relate to the liability of these answering defendants.

56. Paragraph 56 of the Complaint contains a conclusion of law to which no response is required; however, to the extent the Court requires a response, these defendants deny each and every allegation contained therein as they may in any way relate to the liability of these answering defendants.

57. Admit.

58. Deny that plaintiffs refused an unreasonable request to view their property's interior. The remaining allegations of paragraph 58 of the Complaint contain conclusions of law to which no response is required; however, to the extent the Court requires a response, these defendants deny each and every allegation contained therein as they may in any way relate to the liability of these answering defendants.

59. Paragraph 59 of the Complaint contains a conclusion of law to which no response is required; however, to the extent the Court requires a response, these defendants deny each and every allegation contained therein as they may in any way relate to the liability of these answering defendants.

60. Admit only that the Town has a policy of requiring assessors to view the interiors of the properties they assess and affirmatively state that section 70.32 of the Wisconsin Statutes provides that real estate is to be assessed through "actual view" of the property and the Wisconsin Property Assessment Manual published by the Department of Revenue confirms that an "actual view" includes an interior viewing. The remaining allegations contained in paragraph 60 of the Complaint contain conclusions of law to which no response is required; however, to the extent the Court requires a response, these defendants deny each and every allegation contained therein as they may in any way relate to the liability of these answering defendants.

61. Paragraph 61 of the Complaint contains a conclusion of law to which no response is required; however, to the extent the Court requires a response, these defendants deny each and every allegation contained therein as they may in any way relate to the liability of these answering defendants.

62. Paragraph 62 of the Complaint contains a conclusion of law to which no response is required; however, to the extent the Court requires a response, these defendants deny each and

every allegation contained therein as they may in any way relate to the liability of these answering defendants.

**THIRD CLAIM – Declaratory Judgment
Violation of Uniformity Clause, Wis. Const. Article VIII § 1**

63. Reallege and incorporate herein by reference all of the answers contained in paragraphs 1 through 62 above.

64. Paragraph 64 of the Complaint does not contain any factual allegations to which an answer is required.

65. Paragraph 65 of the Complaint does not contain any factual allegations to which an answer is required. To the extent the Court requires a response, lack information and knowledge sufficient to form a belief as to the truth of any allegations that may be contained therein.

66. Deny.

67. Deny.

68. Deny.

69. Deny.

70. Deny that that substituting an “actual view” of the interior of a property for the mere questioning of an owner about the interior would be a permissible means of assessment under section 70.32 of the Wisconsin Statutes. The remaining allegations in paragraph 70 of the Complaint contain a conclusions of law to which no response is required; however, to the extent the Court requires a response, these defendants deny each and every allegation contained therein as they may in any way relate to the liability of these answering defendants.

FOURTH CLAIM – Against Defendant Town of Dover
§ 74.37(3)(d) Action for an Excessive Assessment

71. Reallege and incorporate herein by reference all of the answers contained in paragraphs 1 through 70 above.

72. Paragraph 72 of the Complaint does not contain any factual allegations to which an answer is required.

73. Deny.

74. Lack information and knowledge sufficient to form a belief as to the allegations contained in paragraph 74 and, therefore, deny the same.

75. Lack information and knowledge sufficient to form a belief as to the allegations contained in paragraph 75 and, therefore, deny the same.

76. Lack information and knowledge sufficient to form a belief as to the allegations contained in paragraph 78 and, therefore, deny the same.

77. Lack information and knowledge sufficient to form a belief as to the allegations contained in paragraph 77 and, therefore, deny the same.

78. Lack information and knowledge sufficient to form a belief as to the allegations contained in paragraph 78 and, therefore, deny the same.

79. Admit.

80. Deny.

81. Deny.

FIFTH CLAIM – Against Defendant Gardiner Appraisal Service, LLC
§ 70.501 Action for Fraudulent Valuations by Assessor

82. Reallege and incorporate herein by reference all of the answers contained in paragraphs 1 through 81 above.

83. Paragraph 83 of the Complaint does not contain any factual allegations to which an answer is required.

84. Paragraph 84 of the Complaint does not contain any factual allegations to which an answer is required.

85. Deny.

86. Paragraph 86 of the Complaint contains a conclusion of law to which no response is required; however, to the extent the Court requires a response, these defendants deny each and every allegation contained therein as they may in any way relate to the liability of these answering defendants.

AFFIRMATIVE DEFENSES

1. The Court lacks subject matter jurisdiction to decide the issues in this case pursuant to Wis. Stat. § 806.04(11) and *O'Connell v. Blasius*, 82 Wis. 2d 728, 264 N.W.2d 561 (1978) because the action challenges the constitutionality of several state statutes and the Attorney General has not been served with a copy of the proceeding.

2. The plaintiffs have failed to state a claim upon which relief can be granted against these answering defendants.

3. The damages sustained by the plaintiffs, if any, were caused in whole or in part by their own acts or omissions.

4. Plaintiffs have failed to exhaust administrative remedies and have failed to comply with conditions precedent in order to bring and maintain this action.

5. The plaintiffs fail to allege a custom or policy of the Town of Dover or the Board of Review for the Town of Dover with a purpose of denying the constitutional rights of these plaintiffs.

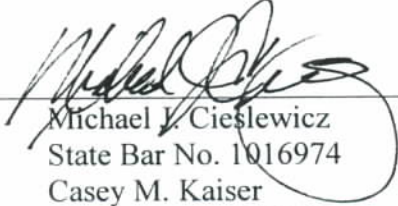
6. These defendants acted in good faith at all times.

WHEREFORE, the defendants, Town of Dover and Board of Review for the Town of Dover, demand judgment dismissing the plaintiffs' Complaint on its merits and with prejudice and awarding to the defendants their costs and disbursements in defense of the Complaint, together with any other relief that the Court deems just and equitable.

Dated at Milwaukee, Wisconsin, this 20th day of August, 2014.

KASDORF, LEWIS & SWIETLIK, S.C.
Attorneys for Defendants, Town of Dover and
Board of Review for the Town of Dover

By: _____


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