

IN THE COURT OF COMMON PLEAS
ASHTABULA COUNTY, OHIO

| | | |
|----------------------------|---|--------------------------------|
| BOARD OF TRUMBULL TOWNSHIP |) | CASE NO.: 2008 CV 0925 |
| TRUSTEES, et al. |) | |
| |) | JUDGE RONALD W. VETTEL |
| Plaintiffs, |) | |
| vs. |) | |
| |) | SECOND AMENDED COMPLAINT |
| |) | OF PLAINTIFF BOARD OF TRUMBULL |
| LAWRENCE RICKARD, et al. |) | TOWNSHIP TRUSTEES AND NOMINAL |
| |) | PLAINTIFFS TRUMBULL TOWNSHIP |
| Defendants, |) | VOLUNTEER FIRE DEPT., INC. AND |
| |) | TRUMBULL TOWNSHIP FIRE & |
| and |) | RESCUE AUXILLARY, INC. |
| |) | |
| RICHARD CORDRAY ATTORNEY |) | |
| GENERAL OF OHIO |) | |
| |) | |
| Defendant-Cross-Claimant, |) | |
| vs. |) | |
| |) | |
| LAWRENCE RICKARD, et al. |) | |
| |) | |
| Cross-claim Defendants. |) | |

COPY

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FILED
 CAROL A. MEAD
 CLERK OF COURTS
 COMMON PLEAS COURT
 ASHTABULA CO. OH

PARTIES

1. Plaintiff Board of Trumbull Township Trustees (hereinafter "Township" or "Plaintiff") is a political subdivision of the State of Ohio currently composed of duly elected Township Trustees Willis Clay, John T. McMahan, III, and Ron M. Tamburrino.
2. Involuntary Plaintiff Trumbull Township Volunteer Fire Department, Inc. (hereinafter "TTVFD") is a nonprofit corporation having its principal place of business in Ashtabula County, Ohio, and organized and incorporated under the laws of the State of Ohio. TVFD is a charitable trust recognized under RC 109.23 and RC 1716.01 et seq. inuring to the exclusive benefit of Trumbull Township as stipulated by the parties to the settlement

Agreement (hereinafter “the Settlement Agreement”) entered into in the case Trumbull Township Volunteer Fire Dept., Inc. v. Bd. of Trumbull Township Trustees, Case No. 2006 CV 00487. The Judgment entry in the foregoing case and the Settlement Agreement (in pertinent part) are attached hereto as Ex. A incorporated by reference as if fully rewritten herein.

3. Involuntary Plaintiff Trumbull Township Fire and Rescue Auxiliary, Inc. is and was at all relevant times a nonprofit corporation having its principal place of business in Ashtabula County, Ohio, and organized and incorporated under the laws of the State of Ohio. Trumbull Township Fire and Rescue Auxiliary, Inc. is and was at all relevant times a charitable trust recognized under RC 109.23 and RC 1716.01 et seq. inuring to the exclusive benefit of Trumbull Township.
4. Defendant-Cross-Claimant Richard Cordray is the duly appointed acting Attorney General for the State of Ohio and is a necessary and indispensable party to this action in order to protect the public interest, pursuant to RC 109.25.
5. Defendant Lawrence Rickard is a natural person residing in Ashtabula County, Ohio who is an owner of or who owns and/or has an interest in one or more companies that own and/or operate the Great Lakes Medieval Faire. At all times relevant herein, The Great Lakes Medieval Faire (hereinafter “the Medieval Faire”), located at 3033 State Route 534, Rock Creek, Ohio, purported and still purports to operate pursuant to law as a temporary fair or festival.
6. Defendant Phoenix Productions, LLC is a limited liability company whose identity and whereabouts were previously unknown, which owns, has an interest in, and/or operates the Great Lakes Medieval Faire. At all times relevant herein, Phoenix Productions, LLC,

whose statutory agent is 2112 East Ohio Service Corp., 1717 East Ninth Street # 2112, Cleveland, Ohio 44114, purported and still purports to operate pursuant to law as a domestic limited liability company organized and established under the laws of the State of Ohio.

7. Defendant John Doe is an individual whose identity and whereabouts are currently unknown who is an owner of and/or who owns and/or has an interest one or more companies that own and/or operate the Great Lakes Medieval Faire.
8. Defendant John Doe 2 is an individual whose identity and whereabouts are currently unknown who is an owner of and/or who owns and/or has an interest in one or more companies that own and/or operate the Great Lakes Medieval Faire.
9. Defendant ABC, Inc. is a corporation whose identity and whereabouts are currently unknown and which owns, has an interest in, and/or operates the Great Lakes Medieval Faire.
10. Defendant ABCD, Inc. is a corporation whose identity and whereabouts are currently unknown which owns, has an interest in, and/or operates the Great Lakes Medieval Faire.

FIRST CLAIM FOR RELIEF-ACCOUNTING

11. On or about 1994 or thereafter, but not later than December 16, 1997, TTVFD entered into a contract (hereinafter "The Contract") with Lawrence Rickard, and/or Bridget Rickard, and/or John Doe, John Doe 2, ABC, Inc., and/or ABCD, Inc. (hereinafter collectively designated as "the Defendants") to operate and manage the beer concession at the Great Lakes Medieval Faire.
12. Phoenix Productions, LLC was formed by or at the direction of Defendant Lawrence Rickard as a limited liability company on November 25, 2002, and on information or

belief Defendant Lawrence Rickard has transferred a legal or equitable interest in certain of his assets to Phoenix Productions, LLC. As such, any reference to the collective defendants with respect to events occurring on or after November 25, 2002 will include Phoenix Productions, LLC.

13. On or about July 26, 2002, Bridget Rickard assigned to Lawrence Rickard and he assumed all of her rights and obligations under The Contract pursuant to the final divorce decree entered in the Ashtabula County Court of Common Pleas, Case No. 2001 DR 00543.
14. At all times relevant herein, The Medieval Faire was open up to six weekends each year during the summer season beginning on or about the first Saturday of July.
15. Pursuant to The Contract, TTVFD was granted the exclusive right to procure permits to dispense beer, and to otherwise operate and manage the beer concession at the Medieval Faire.
16. The parties to The Contract agreed that, after deducting from the gross proceeds amounts for expenses, TTVFD had the exclusive right to all net proceeds from the operation and management of the beer concession.
17. As a charitable trust, TTVFD existed for the exclusive purpose of providing fire and emergency protection services to Trumbull Township.
18. On or about December 16, 1997, Defendants obtained administrative approval respecting a conditional use zoning permit to operate the Medieval Faire based in part on their representation, and facts and conclusions made by the Trumbull Township Board of Zoning Appeals, that the Medieval Faire would benefit Trumbull Township in part because The Contract afforded TTVFD an exclusive right and unique venue respecting the

solicitation and receipt of charitable donations to be used for fire and emergency protection for Trumbull Township.

19. Given that the administrative approval respecting the conditional use zoning permit was obtained by Defendants in part on the premise the beer concession and related charitable contributions would benefit exclusively Trumbull Township's fire protection services, the duration of The Contract, whose sole intent it was to provide financial support for fire and emergency protection to Trumbull Township, was to last as long as the conditional use permit was in effect.
20. The parties performed The Contract, but at some time during such performance the Defendants unilaterally and improperly demanded payment of unreasonable expenses and/or other unlawful payments to be deducted from the gross proceeds from the beer concession.
21. On or before July 4, 2003, the Defendants improperly and unilaterally refused to allow TTVFD to continue to operate and manage the beer concession at the Medieval Faire and receive the net proceeds therefrom.
22. On or after July 4, 2003, the Defendants directly or indirectly managed, operated, or otherwise controlled the beer concession and misdirected from TTVFD all gross profits and net profits derived therefrom.
23. Under the terms of The Contract, TTVFD had a right and continues to have a right to the net proceeds from the operation and management of the beer concession at the Medieval Faire and to any future net proceeds from the operation and management of that concession.

24. In addition, TTVFD had a right and continues to have a right to the amount of money unlawfully paid to Defendants and amounts that exceeded the amount of reasonable expenses related to the management and operation of the beer concession as required by RC 4303.20.
25. Under the Settlement Agreement set forth in Ex. A, TTVFD assigned its right to its claims against the Defendants, and, with regard to any recovery from such claims, fifty percent of the proceeds from such recovery shall go to the Township to use exclusively for fire protection for Trumbull Township and fifty percent of the proceeds shall go to TTVFD to donate to the Trumbull Township Fire and Rescue Auxiliary, Inc. to use exclusively for fire protection for the benefit of Trumbull Township.
26. Township has a right under The Contract to past and future net profits from the operation and management of the beer concession at the Medieval Faire and therefore has a need to know the exact amount of the gross proceeds derived therefrom by any person or entity, related reasonable expenses, the amount of expenses charged by Defendants to any such person or entity, amounts of all other payments made to Defendants by TTVFD and any other person or entity directly or indirectly related to such beer concession.
27. Township is entitled to an accounting from Defendants respecting the amounts referenced in the preceding paragraph for each year the beer concession was in operation at the Medieval Faire.

SECOND CLAIM FOR RELIEF-BREACH OF CONTRACT

28. Township realleges and incorporates by reference as if fully rewritten herein, the allegations set forth in paragraphs 1 through 27.

29. On information and belief, The Contract was in writing. Because Township is unable to locate the original of The Contract or copies thereof, it could not be attached to this Amended Complaint.
30. In the alternative, The Contract was oral, but evidenced by the performance of the parties.
31. On or about July 4, 2003, the Defendants breached and continue to breach The Contract by refusing to allow TTVFD to operate and manage the beer concession at the Medieval Faire and to receive the net proceeds from that concession.
32. As a proximate result of the foregoing breach of contract, Township has sustained lost past financial loss and will sustain future financial loss.
33. Township is entitled to specific performance of The Contract.

THIRD CLAIM FOR RELIEF—PROMISSORY ESTOPPEL

34. Township realleges and incorporates by reference as if fully rewritten herein, the allegations set forth in paragraphs 1 through 33.
35. On or about 1994 or thereafter, but not later than December 16, 1997, Defendants promised TTVFD that it could exclusively manage and operate the beer concession at the Medieval Faire, and that it would be entitled to receive in exchange therefore the net proceeds therefrom.
36. TTVFD reasonably expected to reap a large financial benefit from operating and managing the beer concession and receiving the net proceeds therefrom.
37. In reliance on the foregoing promise, TTVFD made substantial and costly improvements to its property and to Defendants' property and purchased expensive equipment that it would not have done had it not been for Defendants' promise.

38. As a proximate result of TTVFD's reliance on the foregoing promise of Defendants, TTVFD sustained a detriment by incurring a large financial loss in expending large sums of money in the improvement to its and Defendants' property and purchasing expensive fire equipment as well as by incurring debt in financing the purchase of expensive fire equipment.

39. As a proximate result of Defendants' failure to honor the foregoing promise to TTVFD, Township has sustained substantial past financial losses and will sustain substantial future losses.

FOURTH CLAIM FOR RELIEF - DECLARATORY JUDGMENT

40. Township realleges and incorporates by reference as if fully rewritten herein, the allegations set forth in paragraphs 1 through 39.

41. The Contract is enforceable and binding upon the Defendants.

42. Defendants improperly charged TTVFD unreasonable expenses and otherwise collected from TTVFD unlawful amounts respecting the management and operation of the beer concession for their own personal profit and gain, in violation of RC 4303.20.

43. The Contract and the Settlement Agreement give Township the right to receive payment from Defendants in the amount of fifty percent of the net proceeds from the Medieval Faire beer concession (less the amount of net proceeds previously received by TTVFD, plus amounts paid to Defendants in excess of reasonable expenses, and plus amounts respecting otherwise unlawful payments to Defendants) and TTVFD the right to receive fifty percent of the net proceeds from the Medieval Faire beer concession (less the amount of net proceeds previously received by TTVFD, plus amounts paid to Defendants in excess of reasonable expenses, and plus amounts respecting otherwise unlawful payments

to Defendants) (to be donated to the Trumbull Township Fire and Rescue Auxiliary, Inc.) and the Trumbull Township Fire and Rescue Auxiliary the exclusive right to operate and manage the beer concession as long as there is a beer concession at the Medieval Faire.

44. Township requests that this Honorable Court issue an order declaring that The Contract is enforceable and that under such Contract and the Settlement Agreement, Defendants are required to pay to Township fifty percent of the net proceeds from the Medieval Faire beer concession (less any net proceeds previously received by TTVFD, plus amounts paid to Defendants in excess of reasonable expenses, and plus amounts respecting otherwise unlawful payments to Defendants) and TTVFD fifty percent of the net proceeds from the Medieval Faire beer concession (less any net proceeds previously received by TTVFD, plus amounts paid to Defendants in excess of reasonable expenses, and plus amounts respecting otherwise unlawful payments to Defendants) (to be donated to the Trumbull Township Fire and Rescue Auxiliary, Inc.) and that Defendants are required to allow the Trumbull Township Fire and Rescue Auxiliary to operate and manage the beer concession as long as there is a beer concession at the Medieval Faire.

FIFTH CLAIM FOR RELIEF -UNJUST ENRICHMENT

45. Township realleges and incorporates by reference as if fully rewritten herein, the allegations set forth in paragraphs 1 through 44.
46. Between 1994 and 2002 TTVFD expended funds in the approximate amount of \$25,000.00 and provided labor valued in excess of \$10,000.00 to build permanent structures and otherwise improve real property at the Great Lakes Medieval Faire on property owned by Defendant Lawrence Rickard.

47. Defendants continued and still continue to make use of the foregoing improvements for their own pecuniary gain since July 4, 2003, while precluding TTVFD from managing and operating the beer concession at the Medieval Faire.
48. Defendants are unjustly enriched by their continued use of the foregoing improvements by profits derived directly or indirectly therefrom.
49. As a proximate result of the foregoing unjust enrichment of Defendants, Township has sustained a loss in excess of \$35,000.00.

PRAYER FOR RELIEF

WHEREFORE, Township respectfully requests this Honorable Court to grant judgment on all of its claims, and specifically requests the following:

a) For the period January 1, 1994 to the present, that Defendants provide an accounting respecting the exact amount of the gross proceeds derived from the operation and management of the beer concession at the Medieval Faire, related reasonable expenses, the amount of expenses charged by Defendants to any such person or entity, amounts of all other payments made to Defendants by TTVFD and any other person or entity directly or indirectly related to such beer concession.

b) A declaratory judgment declaring the following:

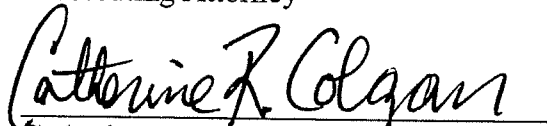
The Contract is enforceable and that under such Contract and the Settlement Agreement Defendants are required to pay to Township fifty percent of the net proceeds from the Medieval Faire beer concession (less any net proceeds previously received by TTVFD, plus amounts paid to Defendants in excess of reasonable expenses, and plus amounts respecting otherwise unlawful payments to Defendants) and TTVFD fifty percent of the net proceeds from the Medieval Faire beer concession (less any net proceeds

previously received by TTVFD, plus amounts paid to Defendants in excess of reasonable expenses, and plus amounts respecting otherwise unlawful payments to Defendants) (to be donated to the Trumbull Township Fire and Rescue Auxiliary, Inc.) and that Defendants are required to allow the Trumbull Township Fire and Rescue Auxiliary, Inc. to operate and manage the beer concession as long as there is a beer concession at the Medieval Faire;

- c) an award of damages to Township in excess of twenty-five thousand (\$25,000) sufficient to redress the harm it has sustained in amounts to be determined at trial;
- d) specific performance of The Contract;
- e) an award of attorneys' fees and the costs and expenses of this action;
- f) pre-judgment and post-judgment interest; and
- g) such other and further relief as may be found appropriate and as the Court may deem just or equitable.

Respectfully submitted,

Thomas L. Sartini, Esq. (0001937)
Prosecuting Attorney



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Trumbull Township Trustees,

Trumbull Township Volunteer Fire

Department, Inc., and

Plaintiff Trumbull Township Fire and Rescue

Auxiliary, Inc.

JURY DEMAND

Plaintiff hereby demands a trial by jury in the maximum number of jurors permitted by law.

Sandra J. Rosenthal by CRC

Sandra J. Rosenthal, Esq. (0040215)

Attorney for Plaintiffs Board of

Trumbull Township Trustees,

Trumbull Township Volunteer Fire

Department, Inc., and

Plaintiff Trumbull Township Fire and Rescue

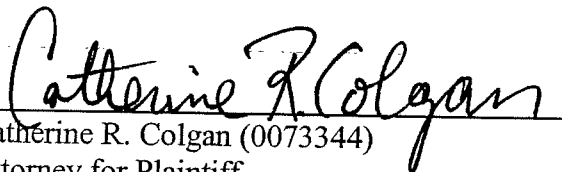
Auxiliary, Inc.

CERTIFICATE OF SERVICE

A copy of the foregoing Second Amended Complaint was sent by ordinary United States mail to the following this 1st day of July, 2009.

Dale H. Markowitz, Esq.
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