

SCOTT

IN THE CIRCUIT COURT OF BENTON COUNTY, ARKANSAS
CIVIL DIVISION

CITY OF SILOAM SPRINGS, ARKANSAS

VS.

CASE NO. CV 12 - 1896-4

U.S.A. METAL RECYCLING, LLC

FILED
2012 OCT 2 PM 2 36
BRENDEN DESHIELD
CLERK AND RECORD
BENTON COUNTY, ARK.
PLAINTIFF
DEFENDANT

COMPLAINT FOR INJUNCTIVE RELIEF

Comes Now the City of Siloam Springs, Arkansas, Plaintiff herein, and files this, its First Original Complaint for Injunctive Relief. In support thereof, Plaintiff would state and allege as follows:

JURISDICTION AND VENUE

1. Defendant is an Arkansas Limited Liability Company with a principal place of business located within Benton County, Arkansas.
2. The operation and activity the City seeks to enjoin with this suit is occurring within Siloam Springs, Benton County, Arkansas.
3. The acts and omissions complained of herein occurred within Benton County, Arkansas.
4. Venue and Jurisdiction are proper with this Court.

FACTS

5. Plaintiff is a City of the first class located within Benton County, Arkansas.
6. For several years, Defendant has operated a metal recycling facility within the city limits of Siloam Springs, Arkansas.
7. While Defendant is required to obtain and maintain a business license for its

operation, Defendant has operated during the last few years without an appropriate business license.

8. During this time, Defendant has operated within an area of Siloam Springs which is not zoned appropriately for Defendant's business.
9. Defendant has been notified of the above mentioned violations numerous times.
10. Defendant has been issued citations for violation of the Siloam Springs City Code numerous times.
11. In April of 2012, after being cited numerous times Defendant announced to the City that it would voluntarily cease operations at its current location and requested, in exchange, that the City cease issuing citations until Defendant was able to relocate its operation to a location which complies with applicable regulations.
12. On June 18th, 2012, the City's Community Development Director granted the Defendant a reasonable reprieve and an extension of time to relocate. In a letter, the city notified the Defendant that its operation must cease on or before October 6th, 2012. The June 18th letter requires that Defendant make any request for an extension in writing at least seven days prior to the stated deadline. Further, the letter requires that any such request must state any remaining steps necessary to complete the relocation and provide a timetable for carrying out the move. A true and correct copy of the City's June 18th, 2012 letter is attached hereto as Exhibit "A".
13. On June 20th, 2012, Defendant's agent and Director signed an acknowledgement that he had received and understood the City's June 18th, 2012 notice. Within the

acknowledgement, the Defendant clearly indicated and admitted that Defendant was operating in violation of City Code and without a business license. Within the acknowledgement, Defendant further agreed to vacate its location no later than the close of business on October 6th, 2012. A true and correct copy of Defendant's signed acknowledgement is attached hereto as Exhibit "B".

14. On September 25th, Defendant requested an extension of time to continue its unlawful operation, but failed to supply any of the information required of such a request. Specifically, Defendant did not establish that it was making good faith and reasonable effort to relocate and did not provide the steps and timetable necessary for completing the move. A true and correct copy of Defendant's letter is attached hereto as Exhibit "C".
15. On October 3rd, as the City was not persuaded of Defendant's reasonable of good faith efforts to relocate, the City denied Defendant's Request for Extension. A true and correct copy of the City's denial is attached hereto as Exhibit "D".
16. On October 3rd, 2012, Defendant again requested an extension of time to continue its unlawful operation. While the October 3rd request indicated that Defendant has "an deal in principle to purchase a piece of property," the Defendant's offer had not been accepted and Defendant therefore did not yet even have a contract. Further, the October 3rd request was untimely presented as all such requests were to be submitted to the City at least seven days prior to October 6th.
17. As a result of Defendant's continued unlawful operation and violation of written contract, Defendant has not granted any extensions.

18. Defendant has violated the agreement to cease its operations because it has continued its operations beyond October 6, 2012. Defendant continues to operate its metal recycling facility. The continued operation is in violation of City Code, is in an area not zoned for Defendant's operation, and is still being conducted without a business license.
19. Defendant's continued unlawful operation is generally causing a nuisance and Defendant's residential neighbors are suffering Defendant's unsightly, noisy, dusty and dirty conduct.

**COUNT I: REQUEST FOR TEMPORARY
AND PERMANENT INJUNCTIVE RELIEF**

20. The facts and allegations contained within paragraphs 1-19 above are hereby fully incorporated herein as if restated and alleged here verbatim.
21. As Defendant has continued to operate illegally and to the detriment of the health, safety and welfare of the citizens of the City and its residential neighbors specifically to ignore the City's demands that Defendant cease its unlawful operation the City comes to this Court seeking an immediate temporary restraining order, and a permanent injunction ordering Defendant to immediately cease its operation.
22. As Defendant has acknowledged and admitted the unlawful nature of its operation within Exhibit "B", Plaintiff is entitled to injunctive relief.
23. In the absence of injunctive relief, the City and its inhabitants will suffer irreparable harm in the form of the above-described continued nuisances.

COUNT II: SPECIFIC PERFORMANCE

24. The facts and allegations contained within paragraphs 1-23 above are hereby fully incorporated herein as if restated and alleged here verbatim.
25. On or about June 20th, 2012, the parties entered into a valid and binding contract.
26. More specifically, Plaintiff would state that Defendant offered to voluntarily cease operation in its current location on or before October 6th, 2012 if Plaintiff, in consideration of said promise, would agree to dismiss or suspend certain citations issued to the Defendant and refrain from issuing additional citations until after October 6th, 2012. The city accepted these terms by email dated June 15th, 2012.
27. The City has fully performed its obligations pursuant to this Agreement.
28. Defendant has breached this agreement by failing to cease operations on or before October 6th, 2012 and by continuing operations thereafter.
29. Monetary damages are inadequate and will not address the damage the City and its citizens continue to suffer.
30. Plaintiff is entitled to specific performance of the parties' agreement.

ATTORNEYS' FEES

31. The facts and allegations contained within paragraphs 1-30 above are hereby fully incorporated herein as if restated and alleged here verbatim.
32. That this case is based upon the Defendants' breach of a valid contract, entered into between Plaintiffs and Defendants on June 20th, 2012.
33. That Plaintiff should recover its attorneys' fees pursuant to Ark. Code Ann. Sec. 16-22-308.

PRAYER

WHEREFORE, Plaintiff respectfully prays that Defendant be cited to appear, and that this Court enter an Order immediately restraining and enjoining the Defendant's unlawful operation in its current location in Siloam Springs, Arkansas. Plaintiffs further pray for an Order directing that the City may discontinue electric service to the Defendant's facility in order to enforce the Court's restraining order of injunction.

Plaintiff further prays that it receives all costs of court, a reasonable attorneys' fee, and any further relief to which it may show itself justly entitled.

Respectfully submitted,

The City of Siloam Springs, Arkansas,

By: _____

J. Greg Brown

ABA No.: 2004036

Thomas N. Kieklak

ABA No.: 92262

HARRINGTON, MILLER, KIEKLAK, EICHMANN
& BROWN, P.A.

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STATE OF ARKANSAS)
) ss
COUNTY OF Benton)

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SUBSCRIBED and SWORN to before me this 2 day of October, 2012.

Connie Mae New
Notary Public

My commission expires: 09-26-22