

# LEGAL DIVISION MONTHLY REPORT

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OCTOBER 2024



**VILLAGE OF SCHAUMBURG**

PROGRESS THROUGH THOUGHTFUL PLANNING

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## **NEW CASES**

### Hidden Pond Condo Association v. Village of Schaumburg: 24 CH 6102

Hidden Pond Condo Association has filed a one count complaint for declaratory judgment against the Village relating to the Village's garbage collection. Hidden Pond has alleged, and is seeking a judgment from the Court, that the Village lacks the authority to require Hidden Pond to pay for a second trash collection service. Hidden Pond claims the Village's garbage collection program violates the Illinois Tax Code. The Village will be filing a motion to dismiss the complaint in its entirety. Klein, Thorpe and Jenkins (hereinafter KTJ) is defending the Village in this matter.

## **CURRENT CASES**

### Youtem v. Village of Schaumburg, et al.: 2024 L 005894

This matter is a personal injury lawsuit against the Village and Fire Department employee, Jorge Mendoza. The Plaintiff, Yousif Youtem, alleges the Village and Mendoza are at-fault in a vehicle collision between the Plaintiff and Mendoza on February 10, 2024. The incident took place at the intersection of Frontage Road and Rodenburg Road while Mendoza was responding to a call and driving a Village ambulance. The initial case management took place on July 31, 2024. The Plaintiff's counsel was given leave to amend the Complaint to correct the form of the pleadings. In the initial Complaint, the ambulance was incorrectly identified as a firetruck. The Plaintiff's counsel filed the Amended Complaint on August 2, 2024 to correct that error. The Village's Answer to the First Amended Complaint was filed on August 9, 2024. At the July 31, 2024 initial case management, the judge entered a discovery schedule. The Village has issued its written discovery. Written discovery will be completed no later than January 3, 2025. Party depositions will be completed no later than March 4, 2025. Dispositive motions are due no later than June 5, 2025. KTJ is defending the Village and Mendoza in this matter.

### Parr v. Village of Schaumburg: 23 L 8837

This matter is a wrongful death claim filed against the Village and the Police Department, related to the death of an individual who was serving as a security guard at the Septemberfest event, when he was struck by a vehicle. Also named as a Defendant in the claim is James Tokarz, the third-party individual who was driving the vehicle that struck the individual. KTJ is only representing the Village in this matter, as Co-Defendant James Tokarz has separate counsel. On January 25, 2024, KTJ filed a motion to dismiss the Plaintiff's complaint with respect to the claims brought against the Village and the Schaumburg Police Department. These arguments and the civil case in general only pertain to the Plaintiff and the Village, as the individual Defendant, Mr. Tokarz, is facing criminal prosecution for the events giving rise to the claim and has received a stay from the court regarding his portion of the civil case until that prosecution resolves. On June 8, 2024, the court ruled on the Village's motion to dismiss the complaint. The court denied the motion related to Counts I-IV that allege negligence and willful and wanton conduct against the Village regarding wrongful death and survivor claims. The court granted the

Village's motion and dismissed with prejudice Counts V-VIII alleging negligence and willful and wanton conduct against the Schaumburg Police Department. The Village filed its answer and affirmative defenses on July 8, 2024. The Plaintiff and the Village currently are engaged in written discovery which is still in process. The Village will take the depositions of the plaintiff, Danielle Parr and Janet Parr, the wife of decedent, during the first week of November. Neither Danielle or Janet witnessed the accident, but both have information related to damages in the case.

#### James v. Village of Schaumburg: 23 L 7258

This matter is a personal injury claim filed against the Village for injuries sustained when the Plaintiff allegedly fell on a damaged portion of sidewalk near Town Square and Schaumburg Road on July 28, 2022. The alleged location where the Plaintiff fell initially appears to be under the control of the Town Square Owners Association, not the Village. Russell Hartigan is representing the Village in this matter. Investigation is underway. The court recently granted leave to the Plaintiff to add Town Square Owners Association, Inc. as a party Defendant to the matter. The Village will review whether to file a counterclaim against the Association when they become a party to the matter. Depositions of the parties will proceed once the new Defendant is added to the case.

#### Zahareas v. Raoul, et al.: 23-CV-3423

The Plaintiff alleges that he and another driver were involved in a road rage incident. Two days after the incident, the other driver showed up to the Plaintiff's home and began to threaten the Plaintiff and the Plaintiff's family. While arguing in front of the Plaintiff's home, the Plaintiff pulled out a gun on the public sidewalk and pointed it at the other driver. The Plaintiff alleged pulling a gun out because the other driver indicated that he would hurt the Plaintiff and the Plaintiff's family. The other driver stated he was leaving to get his gun and would be back, before driving away. The Plaintiff, the other driver, and a concerned neighbor all called the police. The police arrived, and after a lengthy investigation lead by a team of officers, both the Plaintiff and the other driver were arrested. The Plaintiff was arrested for aggravated assault, and the other driver was arrested for disorderly conduct. Officer Centeno was the technical arresting officer, and he filed both reports, as well as sent a clear and present danger form to the Illinois State Police relative to the Plaintiff's actions pursuant to Schaumburg policy. The charges against both individuals were simultaneously dropped after both agreed in court not to pursue them against each other. The clear and present danger form was denied by the Illinois State Police after the incident, but for unknown reasons, more than 14 months later and without Schaumburg's involvement, the Illinois State Police acted on the clear and present danger form and canceled the Plaintiff's FOID card. The Plaintiff then sued Officer Centeno, as well as the Illinois Attorney General, Illinois State Police, and Illinois State Police Firearm Safety Counsel alleging that the "clear and present danger" statute is unconstitutional pursuant to federal law and that the statute is unconstitutional under state law. The Plaintiff also alleges that Officer Centeno authored a false report with the intent to harm the Plaintiff and that he falsely arrested the Plaintiff. The claims against Officer Centeno are for false arrest and malicious abuse of process. KTJ is representing the Village in this matter. Since this litigation has been pending, the Illinois State Police

have reviewed the Plaintiff's appeal of their revocation and have reissued his FOID card. As a result, the State Defendants have filed a second motion to dismiss the Plaintiff's complaint as to the State Defendants arguing that the claims against them are moot given the reissuance of his FOID card. The Village filed its own motion to dismiss and a response to the State's second motion to dismiss, opposing it on the basis that the State Defendants are necessary parties under FRCP 19 regarding damages claimed against Officer Centeno. A hearing was held on July 17, 2024 for oral argument on the pending motions, at which time the Plaintiff referenced the body camera videos of the incident and indicated they established that there was no probable cause for arrest. The Village argued that this was not the case and that the videos are irrelevant at the motion to dismiss stage, which is limited to only the Plaintiff's pleadings (said pleadings did not include the body camera videos). The judge decided she wants to see the videos before ruling on the Motion to Dismiss. As such, the court entered an order instructing KTJ to produce the unredacted body camera videos after a protective order is entered and staying all other discovery. On August 16, 2024, per the court's order KTJ filed an amended motion to dismiss with body camera footage attached. The Plaintiff was required to file a response on October 2, 2024. KTJ filed a reply by October 18, 2024, and hearing for oral argument on the motion will occur on November 4, 2024. The court also denied the State Defendants' second motion to dismiss on September 20, 2024.

#### Birair v. Village of Schaumburg: 23 L 63040

The Village was served with this lawsuit on April 24, 2023. The Complaint alleges on April 15, 2022, the property at 109 Cedar Court was flooded with raw sewage due to the Village's failure to properly maintain the sewer system. According to Village records, this was a blockage on the service line to the home and not on a Village's main. The resident retained a contractor that could not clear the blockage in the service line, and Engineering and Public Works assisted by using Village equipment to restore service. KTJ is representing the Village in this matter. KTJ filed an appearance on May 30, 2023, and filed an Answer and Affirmative Defenses on June 27, 2023. The case was up for initial case management on July 17, 2023, at which a written discovery schedule was entered requiring both parties to propound written discovery requests by August 14, 2023, and to answer written discovery by September 11, 2023. On September 13, 2023, the parties were given an additional 30 days to complete written discovery. The Village answered written discovery on October 24, 2023, and KTJ received responses from the Plaintiff in early November. Discovery has been ongoing, along with settlement discussions. The Plaintiff provided an initial demand of \$20,000. The documentation received from the Village as well as reports from Engineering and Public Works indicate that the sewage backup was in the service line, not the sewer main line, and was caused by the dumping of grease and a washcloth down the drain. KTJ subpoenaed the private plumbers used by the Plaintiff regarding the backup, whose reports indicated that the blockage was in the main sewer line. KTJ is working to schedule the depositions of the Plaintiffs and the plumbers. The matter appeared in court on July 10, 2024, and the Plaintiff did not appear, so the matter was continued for discovery. KTJ has not received cooperation from the Plaintiff and discovery has stalled. On September 6, 2024, the Plaintiff's counsel indicated that they have not been able to get in contact with their clients for months. The

Plaintiff's counsel was given 21 days to file a motion to withdraw, which will be considered by the court on October 2, 2024. The Plaintiff's will then be given 21 days to obtain a new attorney. If they do not, the case will be dismissed for want of prosecution. On October 30, 2024, Plaintiffs failed to appear or obtain counsel, and the court granted the Village's motion to dismiss for want to prosecution. The matter is now closed.

Sheikh v. Village of Schaumburg, et al., 23 CV 3315

Zafar Sheikh, as manager of the property, was found liable at the August 3, 2022 administrative adjudication hearing for several property maintenance violations on this matter. He filed a complaint for administrative review which the Village answered on October 21, 2022. This matter was scheduled for an initial hearing on the administrative review complaint on January 31, 2023. On January 31, 2023, the matter appeared for a status on the administrative review complaint. The owner appeared and requested time to amend his complaint, to add various counts related to the Village's alleged interference with his business operations, retaliation against him and discrimination. Mr. Sheikh eventually voluntarily dismissed his complaint and refiled a complaint in federal court. The Village moved to dismiss this complaint. On September 24, 2024, the court issued its ruling granting the Village's motion to dismiss in part and denying it in part. The court dismissed counts 2-7 of the complaint and dismissed all individual defendants. The only remaining count was Mr. Sheikh's equal protection claim against the Village, the only remaining Defendant. At the same time, Mr. Sheikh completed all necessary conditions for issuance of a permit for Unit 981 aside from payment of the outstanding \$3,800.00 in adjudication fines. The parties reached an agreement with Mr. Shiekh for the Village to dismiss/waive the outstanding adjudication fines in exchange for him dismissing the remaining portions of his lawsuit. On September 26, 2024, Mr. Sheikh executed a settlement agreement and stipulation to dismiss, dismissing his remaining claims and waiving all claims relating to the lawsuit. The court dismissed the remaining equal protection count pursuant to the settlement agreement on October 7, 2024 and the matter is now closed.

Motorola Solutions, Inc. v. Village of Schaumburg: 22 CH 12135

Motorola has filed a lawsuit against the Village relating to the RDA that provides for reimbursement of certain eligible expenses out of the North Schaumburg Tax Incremental Financing (TIF) District. Similar to the Zurich matter, this case involves the calculation of the Employment Standard as it relates to the Village's Reimbursement of Redevelopment Project Costs. KTJ is representing the Village in this matter. The Village filed its response to the Complaint and Affirmative Defenses on February 14, 2023. On March 7, 2023, Motorola filed a motion to dismiss the Village's Affirmative Defenses. The Village filed its response to Motorola's motion on April 19, 2023, and Motorola's reply was due by May 5, 2023. On June 5, 2023, the court entered an order dismissing the Village's affirmative defenses. The parties proceeded with cross-summary judgment motions, which were filed on August 25, 2023, and responses were filed on September 29, 2023. The court issued a ruling on October 20, 2023 denying the parties' motions for summary judgment. KTJ appeared for a status hearing on October 31, 2023 and agreed to proceed with written discovery before settling this matter for trial. The parties exchanged written

discovery responses on January 9, 2024. KTJ was working with Motorola's counsel to reach an agreement on the scope of the parties' document productions, which were exchanged upon the entry of a confidentiality order. An agreement was reached upon search parameters for the electronically stored information and KTJ reviewed the results. KTJ appeared in court on March 11, 2024, and the judge continued the case to May 20, 2024 for status on the progress of the parties' document productions. Motorola provided its initial document production on April 11, 2024. KTJ produced the Village's documents on April 18, 2024. Motorola also served a Rule 206(a)(1) notice to depose a Village representative on topics related to its document destruction/retention policies. KTJ provided objections to nearly all the proposed topics and is still working with Motorola's counsel to determine if a compromise can be reached. At the last status hearing, the following discovery schedule was entered: fact discovery closes November 1, 2024; opinions and reports of any affirmative experts are due by November 15, 2024; opinions and reports of any responding experts are due by December 13, 2024; and any rebuttal opinions are due by January 10, 2025. A status hearing is set for February 18, 2025.

#### Zurich American Insurance Company v. Village of Schaumburg: 22 CH 1256

The Village received a lawsuit on March 4, 2022, relating to the RDA between the Village and Zurich for Zurich's headquarters in the North Schaumburg TIF District and the calculation of the Employment Standard as it relates to the Village's Reimbursement of Redevelopment Project Costs. KTJ is representing the Village in this matter. After significant motion practice related to the Village's Affirmative Defenses, the matter was able to proceed to summary judgment. The parties filed cross-summary judgment motions, which were denied. The parties then proceeded to written discovery. The parties agreed to engage ADR Systems for private mediation, which was conducted by Judge Casciato (ret.) on September 24, 2024. The parties reached a tentative settlement at the mediation. The next status before Judge Cohen is set for January 14, 2025 for status on the settlement agreement and possible dismissal.

#### ADS v. Village of Schaumburg: 17 CV2153 (Lawsuit over Village Fire Alarm Ordinance)

The case involves the Village of Schaumburg's ordinance requiring all commercial fire alarms to connect to Northwest Central Dispatch. KTJ is representing the Village in this matter. The Village succeeded in denying the Plaintiff's request for a preliminary injunction. The case has been on hold due to a similar case in another court. Judge Durkin ruled in favor of other units of government. Judge Pallmeyer has ruled to dismiss the matter. The Plaintiff filed a notice of appeal, and the case was docketed with the Seventh Circuit. The Plaintiff filed an opening brief on January 11, 2019, and the Village filed its response brief on February 28, 2019. Reply briefs were filed on March 22, 2019, and the Seventh Circuit heard oral argument on April 8, 2019. The Seventh Circuit issued its opinion affirming the dismissal of all claims against the Village, except for the Commerce Clause Claim. Although the court noted that the Plaintiff has not demonstrated any likelihood of success on that claim, it found that the complaint itself contains sufficient facts to overcome a motion to dismiss. That claim will return to the District Court, where the Village will continue to aggressively defend itself through discovery and move for summary judgment. The Plaintiff filed an Amended Complaint, and the Village filed a

motion to dismiss the Amended Complaint. Discovery is now complete. The parties filed motions for summary judgment on August 1, 2022. On August 14, 2024, the court granted the Village's motion and denied the Plaintiff's motion. The court found that the ordinance had no substantial impairment on existing contracts; therefore, did not run afoul of the Contracts Clause and further ruled that the state law claims of tortious interference also failed as a matter of law. Plaintiffs filed a motion to reconsider the ruling on summary judgment, which was recently denied. Plaintiffs have not yet filed a notice of appeal to the Seventh Circuit, but the time to appeal has not yet run.



# PROSECUTION DATA

