

ID No: 50207

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT -- CHANCERY DIVISION

TERESA GRODSKY, TRUSTEE OF)
THE BETTY F. KEMNITZ TRUST,)
)
) Plaintiff,)
)

vs.)

PARK RIDGE RECREATION AND)
PARK DISTRICT; PARK RIDGE)
SENIOR SERVICES, INC.; and)
LISA MADIGAN, as ATTORNEY)
GENERAL OF THE STATE OF)
ILLINOIS,)
) Defendants.)
)

PARK RIDGE RECREATION AND)
PARK DISTRICT, an Illinois Municipal)
Corporation,)
) Cross-Plaintiff,)
)

vs.)

PARK RIDGE SENIOR SERVICES,)
INC., an Illinois Not-For-Profit)
Corporation,)
) Cross-Defendant.)
)

No: 12 CH 2032
Judge Flynn

COPY



**ANSWER OF PARK RIDGE RECREATION
AND PARK DISTRICT TO COMPLAINT FOR
DECLARATORY JUDGMENT AND INJUNCTIVE
RELIEF AND CROSS CLAIM FOR INJUNCTION**

NOW COMES the Defendant Park Ridge Recreation and Park District, an Illinois
Municipal Corporation ("the Park District"), by and through its attorneys, THOMAS G.

HOFFMAN LTD., P.C., and for its answer to the Complaint for declaratory Judgment and Injunctive Relief filed herein by Teresa Grodsky, Trustee of the Betty F. Kemnitz Trust (the Complaint), states as follows:

General Allegations

1. Plaintiff, TERESA GRODSKY, is the Trustee of the Betty F. Kemnitz Trust, as established by the Declaration of Trust dated April 26, 1996 with a First Amendment dated December 27, 2005 and a Second Amendment dated November 10, 2008.

ANSWER: The Park District admits the allegations of Paragraph 1 of the Complaint. Further answering Paragraph 1, the Park District admits that Grodsky was, in addition, at all relevant times, an employee of Park District (she terminated her employment in 2012); that, moreover, during a period of approximately 30 years, from the time it was created by the Park District, until January 1, 2012, Grodsky was the Supervisor of the Park Ridge Park District Senior Center or, more formally, the Senior Center Coordinator or, later, the Senior Center Manager.

2. True and correct copies of the Betty F. Kemnitz Declaration of Trust, the First Amendment thereto and the Second Amendment thereto are attached hereto and incorporated herein by reference as Exhibit "A."

ANSWER: The Park District admits the allegations of Paragraph 2 of the Complaint.

3. Defendant, PARK RIDGE RECREATION AND PARK DISTRICT, (hereinafter referred to herein as "Park District"), has its principal place of business in Park Ridge, Cook County, Illinois.

ANSWER: The Park District admits the allegations of Paragraph 3 of the Complaint.

4. Defendant, PARK RIDGE SENIOR SERVICES, INC. (hereinafter referred to herein as "Senior Services"), is a former Not-for-Profit corporation, with its principal place of business in Park Ridge, Cook County, Illinois.

ANSWER: The Park District admits the corporate existence of Senior Services. The Park District helped to create Senior Services at or around the time that the Park District created the Park Ridge Park District Senior Center. The Park District denies that Senior Services is a "former" corporation; as the Corporation File Detail Report obtained from the Illinois Secretary of State, attached hereto and marked as Exhibit Q, Senior Services is apparently in good corporate standing.

5. The Defendant, LISA MADIGAN, ILLINOIS ATTORNEY GENERAL, is named as a necessary party pursuant to the Illinois Charitable Trusts Act, 760 ILCS 55/1, et seq.

ANSWER: The Park District admits the allegations of Paragraph 5 of the Complaint.

6. The Circuit Court of Cook County, Illinois has jurisdiction and venue in this case because all of the defendants reside in Cook County, Illinois and the acts which are contested occurred in Cook County, Illinois.

ANSWER: The Park District admits the allegations of Paragraph 6 of the Complaint.

7. This is a declaratory judgment action pursuant to Section 2-701 of the Illinois Code of Civil Procedure, 735 ILCS 5/2-701 and an action for injunctive relief pursuant to 735 ILCS 5/11-102.

ANSWER: The Park District admits the allegations of Paragraph 7 of the Complaint.

8. This action arises out of a bequest to Park Ridge Senior Center by Betty F. Kernnitz in a Declaration of Trust, Second Amendment dated November 10, 2008 (hereinafter referred to

as the "Kemnitz Trust"), in which Betty F. Kemnitz bequeathed sixty percent (60%) of the proceeds from the sale of the property at 8053 N. Prospect Avenue, Niles, Illinois and the remaining principal and any accrued and undistributed income of the Trust to the Park Ridge Senior Center to be used by that organization in such manner and for such purposes as its Board of Directors or Trustees determines.

ANSWER: The Park District makes no answer to the allegations of Paragraph 8 of the Complaint for the reason that the relevant trust documents speak for themselves, that these documents are attached to the Complaint, and that the appropriate construction of these documents is a legal question to be determined by the court in this action.

9. There is no such legal entity as the "Park Ridge Senior Center."

ANSWER: The Park District admits that there is no corporation or limited liability company with this name.

10. There is a building called the Senior Center in Park Ridge, Illinois where senior residents can meet and participate in various clubs and activities.

ANSWER: The Park District admits that it operates a building at 100 S. Western in Park Ridge which is called the Senior Center; that it has operated the Senior Center at this location for roughly 30 years; that Grodsky worked at this location for roughly 30 years, planning and implementing the programs put on by the Park District for senior citizens, and supervising other Park District employees who assisted her in the performance of these duties; that Betty Kemnitz was a regular participant in various programs and activities operated at and from the Senior Center during her lifetime; and that Betty Kemnitz was, during her lifetime, one of the 800 to 1,000 senior citizens who avail themselves of the services of or programs at the Senior Center at any given time. Further answering Paragraph 10, by way of illustrating what the Senior Center

at any given time. Further answering Paragraph 10, by way of illustrating what the Senior Center is, attached hereto as Exhibit R are the relevant pages of the Winter 2012 Park Ridge Park District catalog.

11. The Senior Center in Park Ridge, Illinois is maintained by the Park District.

ANSWER: The Park District admits the allegations of Paragraph 11 of the Complaint.

12. Senior Services does the fundraising and receives donations for the Senior Center.

ANSWER: The Park District admits that, in the past, Senior Services has done fundraising and coordinated donations to help defray the costs incurred by the Park District in the operation of the Senior Center. However, the Park District has long provided substantial funding for the Park District programs and activities offered at and from the Park District's Senior Center facility and it has become obliged, over the years, to contribute more and more to the point where, at present, notwithstanding the occasional bequest, such as the one at issue in this case, the Park District is practically the sole funding source for the Senior Center.

13. Betty F. Kemnitz passed away prior to November 11, 2009.

ANSWER: On information and belief, the Park District admits the allegations of Paragraph 13 of the Complaint.

14. After Ms. Kemnitz' death, the Trustee, the Plaintiff, began to distribute funds bequeathed to the "Park Ridge Senior Center" in the Kemnitz Trust to Senior Services.

ANSWER: The Park District admits the allegations of Paragraph 14 of the Complaint.

15. Recently, a falling out between the Park District and Senior Services has occurred.

ANSWER: The Park District admits the allegations of Paragraph 15 of the Complaint.

16. As a result, the Park District has recently contested the Plaintiff's distribution of funds pursuant to the Kemnitz Trust for the Senior Center in Park Ridge, Illinois to Senior Services.

ANSWER: The Park District has historically allowed Senior Services to receipt for and administer bequests to the Senior Center as a conduit for the return of such bequest funds to the Park District. Contrary to its past practices, however, and contrary to the purposes for which it was founded, Senior Services has failed and refused to turn over to the Park District those funds that it received from the Kemnitz Trust. The Park District therefore admits that it has 'contested' the distribution of funds to Senior Services because, contrary to Betty Kemnitz' obvious intent, the Park Ridge Park District Senior Center, and the 800 to 1,000 senior citizens who utilize and benefit from the programs and activities provided at and from the Senior Center, have not received the funds that Betty Kemnitz intended that they receive.

17. There are additional funds to be distributed to the Park Ridge Senior Center pursuant to the Kemnitz Trust.

ANSWER: The Park District admits the allegations of Paragraph 17 of the Plaintiff's Complaint and further admits that it has demanded, and Plaintiff Grodsky has so far refused, to turn over these funds to the Park District.

18. Due to the language of the Kemnitz Trust, it is unclear as to whether the funds should be distributed to the Park District or Senior Services.

ANSWER: The Park District denies each and every allegation of the Plaintiff's Complaint.

Count I

DECLARATORY JUDGMENT

1. - 18. Plaintiff repeats and realleges Paragraphs 1-18 of the General Allegations as and for the Paragraphs 1-18 of this Count I as if they were fully set forth herein.

ANSWER: The Park District repeats and realleges its Answers to Paragraphs 1 through 18 of the General Allegations as and for its Answers to Paragraphs 1 through 18 of Count I of the Complaint.

19. Section 2-701 (a) of the Illinois Code of Civil Procedure, 735 ILCS 5/2-701, authorizes the Court to make declaratory judgments, as follows:

The court may, in cases of actual controversy, make binding declarations of rights, having the force of final judgments, whether or not consequential relief is or could be claimed, including the determination, at the instance of anyone interested in the controversy, of the construction... of any.... contract or other written instrument, and a declaration of the rights of the parties interested. 735 ILCS 5/2-701 (a).

ANSWER: The Park District admits the existence and applicability of §2-701 of the Code of Civil Procedure in this case.

20. As set forth above, there exists an actual controversy between the parties as to whether the funds bequeathed in the Kemnitz Trust to the "Park Ridge Senior Center" should be distributed to the Park District or to Senior Services.

ANSWER: The Park District admits that Senior Services has failed and refused to turn over the funds bequeathed in the Kemnitz Trust to the Park District, for the continuing operation of the Park Ridge Park District Senior Center that Betty Kemnitz enjoyed during her lifetime.

21. Pursuant to Section 2-701 of the Illinois Code of Civil Procedure, 735 ILCS 5/2-701, the Plaintiff asks this Court to examine the Kemnitz Trust and declare whether the funds left by Betty F. Kemnitz to the "Park Ridge Senior Center" should be distributed to the Park District or to Senior Services.

ANSWER: The Park District respectfully submits that the proper construction of the trust documents requires that the funds left by Betty F. Kemnitz be distributed to the Park Ridge Park District Senior Center.

WHEREFORE, the Defendant Park Ridge Recreation and Park District respectfully prays for a declaration that it, as the operator of the Park Ridge Park District Senior Center, be declared to be the proper beneficiary of the Betty F. Kemnitz Trust.

Count II

INJUNCTIVE RELIEF

1. - 18. Plaintiff repeats and realleges Paragraphs 1-18 of the General Allegations as and for the Paragraphs 1-18 of this Count II as if they were fully set forth herein.

ANSWER: The Park District repeats and realleges its Answers to Paragraphs 1 through 18 of the General Allegations as and for its Answers to Paragraphs 1 through 18 of Count II of the Complaint.

19. The Plaintiff has already distributed certain funds to Senior Services for the Park Ridge Senior Center pursuant to the Kemnitz Trust.

ANSWER: The Park District admits the allegations of Paragraph 19 of Count II of the Complaint.

20. Due to the recent challenge raised by the Park District, the Plaintiff is seeking for the Court to enjoin Senior Services from using these funds until the Court resolves this matter by issuing a declaratory judgment.

ANSWER: The Park District joins in this request.

WHEREFORE, the Defendant Park Ridge Recreation and Park District respectfully prays for that Park Ridge Senior Services, Inc. be enjoined from using any of the funds it has wrongfully retained from the Betty F. Kemnitz Trust.

CROSS-CLAIM

As and for its Cross-Claim against Defendant and Cross-Defendant Park Ridge Senior Services, Inc., an Illinois Not-For-Profit Corporation (Senior Services), Defendant and Cross-Plaintiff Park Ridge Recreation and Park District, an Illinois Municipal Corporation (Park District), states as follows:

1. Plaintiff, Teresa Grodsky, is the Trustee of the Betty F. Kemnitz Trust, as established by the Declaration of Trust dated April 26, 1996 with a First Amendment dated December 27, 2005 and a Second Amendment dated November 10, 2008.

2. True and correct copies of the Betty F. Kemnitz Declaration of Trust, the First Amendment thereto and the Second Amendment thereto are attached to Grodsky's Complaint as as Exhibit "A." There documents are likewise incorporated herein by reference as if fully set forth below.

3. At all relevant times, Grodsky was an employee of Park District (she terminated her employment in 2012).

4. During a period of approximately 30 years, from the time it was created by the Park District, until January 1, 2012, Grodsky was the Supervisor of the Park Ridge Park District Senior Center or, more formally, the Senior Center Coordinator or, later, the Senior Center Manager.

5. Senior Services was organized for the purpose of raising funds for the Park District to defray the costs of the operation of the Park Ridge Park District Senior Center. Senior Services sought and obtained §501(c)(3) status from the Internal Revenue Service to allow it to fulfill this organizational purpose.

6. In the past, Senior Services has done fundraising and coordinated donations to help defray the costs incurred by the Park District in the operation of the Senior Center. However, the amounts raised by Senior Services has declined over time and the Park District has become obliged, over the years, to contribute more and more to the point where, at present, notwithstanding the occasional bequest, such as the one at issue in this case, the Park District is practically the sole funding source for the Senior Center.

7. The Park District has historically allowed Senior Services to receipt for and administer bequests to the Senior Center as a conduit for the return of such bequest funds to the Park District. In all past instances, until the bequest of funds by the Betty F. Kemnitz Trust, Senior Services has always promptly turned over any and all such funds to the Park District.

8. Over its roughly three decades of operation, the Senior Center has provided services, clubs, activities and programs for roughly 800 to 1,000 senior citizens at any one time.

9. A current listing of services, clubs, programs and activities offered by the Senior Center is attached hereto as Exhibit R.

10. While the services, clubs, programs and activities offered by the Senior Center has varied from time to time in the course of the past 30 years, the services, clubs, programs and activities recited in Exhibit R are generally consistent with, and reflective of, the services, clubs, programs and activities offered by the Senior Center at any given time.

11. During her lifetime, Betty F. Kemnitz, was an active participant in the services, clubs, activities and programs offered by the Senior Center. Her bequest to the Park Ridge Senior Center was consistent with, and understandable in light of, her long use and enjoyment of the services, clubs, programs and activities provided by the Senior Center during its lifetime.

12. Contrary to its past practices, however, and contrary to the purposes for which it was founded, Senior Services has failed and refused to turn over to the Park District those funds that it received from the Kemnitz Trust.

13. Plaintiff Grodsky has filed a Complaint in this court asking this court to construe the Kemnitz Trust and to declare whether the Park District or Senior Services is the proper recipient of the funds that Betty F. Kemnitz intended for the Park Ridge Senior Center.

14. The Park District has answered Grodsky's Complaint by asking this court to construe the trust documents in its favor.

15. In addition to, but consistent with the construction that the Park District believes appropriate in this case, the Park District asks this court to find and declare that Senior Services has an obligation to turn over all funds previously paid to it by Grodsky from the Kemnitz Trust bequest and for such other and further relief consistent with that declaration, including an accounting for, and turnover of, those funds to the Park District.

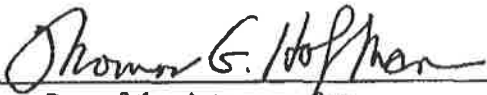
16. An actual controversy exists in this case that this court can adjudicate pursuant to §2-701 of the Illinois Code of Civil Procedure.

WHEREFORE, Defendant and Cross-Plaintiff Park Ridge Recreation and Park District respectfully prays as follows:

- A. For a declaration that the Park Ridge Park District Senior Center is entitled to the funds bequeathed by the Betty F. Kemnitz Trust to the Park Ridge Senior Center;
- B. For a declaration that Park Ridge Senior Services, Inc. is required to turn over to the Park District those funds in its possession that it has received from the Betty F. Kemnitz Trust and for an accounting or any other relief that may be necessary or appropriate in order to implement this declaration; and
- C. For such other or further relief as this court considers necessary in the circumstances.

In addition, the Park Ridge Park Recreation and Park District respectfully prays that it be permitted to recoup its costs incurred in the prosecution of this Cross-Claim.

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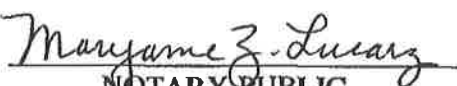

One of the Attorneys for
PARK RIDGE RECREATION AND
PARK DISTRICT

VERIFICATION

GAYLE MOUNTCASTLE, being duly sworn on oath, deposes and says that she is the Executive Director of the Park Ridge Recreation and Park District; that, as such, she has knowledge of the facts set forth in this Answer and Cross-Claim; that the facts set forth in this Answer and Cross-Claim are true and correct except where stated as on information and belief, and, as to those allegations, she verily believes these to be true.

SUBSCRIBED AND SWORN TO
before me this 29 day
of March, 2012.


GAYLE MOUNTCASTLE


NOTARY PUBLIC

