

**IN THE COURT OF COMMON PLEAS  
MAHONING COUNTY OHIO**

M.J. JOSEPH DEVELOPMENT CORP., 117 Langley Avenue Irvine, CA 92614	)	CASE NO.: _____
	)	
and	)	JUDGE: _____
	)	
JOSEPH MANUFACTURING COMPANY, INC., 117 Langley Avenue Irvine, CA 92614	)	
	)	<b>COMPLAINT FOR DECLARATORY JUDGMENT PURSUANT TO R.C. 2721.01, <i>et</i> <i>seq.</i></b>
Plaintiffs,	)	
	)	
v.	)	<b>INSTRUCTIONS FOR SERVICE</b>
	)	
THE CITY OF YOUNGSTOWN, OHIO, c/o Jeff Limbian, Law Director City Hall – 4 <sup>th</sup> Floor 26 South Phelps Street Youngstown, OH 44503	)	
	)	
Defendant.	)	
	)	

Now come the Plaintiffs, M.J. Joseph Development Corp. and Joseph Manufacturing Company, Inc., by and through undersigned counsel, and state as their Complaint against Defendant, the City of Youngstown, Ohio, the following:

**PARTIES & JURISDICTION**

1. Plaintiff, M.J. Joseph Development Corp. (hereinafter referred to as “Joseph Development”), is an Ohio corporation and, at all times relevant to this Complaint, was a party to contractual agreements for the development of land in Mahoning County, Ohio.
  
2. Plaintiff, Joseph Manufacturing Company, Inc. (hereinafter referred to as “Joseph Manufacturing”), is a foreign corporation registered to do business in the State of Ohio and, at all

times relevant to this Complaint, was a party to agreement involving an Urban Renewal Plan in Mahoning County, Ohio.

3. Defendant, the City of Youngstown, Ohio (hereinafter referred to as the “City”), is a municipal corporation in the State of Ohio and, at all times relevant to this Complaint, was a party to the aforementioned contractual agreements with the Plaintiffs.

4. This Court possesses jurisdiction over the subject matter of this dispute pursuant to R.C. 2305.01, *et seq.*

5. Venue is proper in this Court as all or part of the claim for relief arose in Mahoning County, Ohio.

### **FACTUAL ALLEGATIONS**

6. Plaintiff, Joseph Manufacturing, is a technology and manufacturing company that invents and produces products which are purchased by beverage companies for the bottling, distribution, and consumption of beverage products to businesses and consumers.

7. In 2015, Plaintiff, Joseph Manufacturing, became involved in discussions to expand its production and construct a new manufacturing plant on the East Side of Youngstown, Ohio.

8. Plaintiff, Joseph Manufacturing, was presented with an Urban Renewal Plan (the “Project”) involving approximately twenty-one (21) acres of land around Lane Avenue on the City’s East Side thereby providing for the clearance of significant slum and blight in the area.

9. The Project called for a significant expenditure of monies and resources, most of which was to be provided by Plaintiff, Joseph Development.

10. The area targeted for the Project fell within an Enterprise Zone previously designated by the Defendant City’s Council through Ordinance 94-306 and the Director of Development for the State of Ohio.

11. R.C. 5709.61(A) defines an Enterprise Zone as a location of high unemployment and decreasing population with the majority of residents earning less than eighty percent of the median income within the municipality according to section 119(b) of the “Housing and Community Development Act of 1974,” 88 Stat. 633, 42 U.S.C. 5318.
12. Plaintiff, Joseph Development, was formed in 2016 to handle the construction and development of the Project.
13. Thereafter, the Defendant City, by and through City Council, approved the Project with the goal of creating employment opportunities and improving the economic climate.
14. The Project required the Defendant City to commit approximately \$1,500,000.00 in Grant Funds derived from Youngstown’s water funds, wastewater funds, and environmental sanitation funds.
15. In addition to the above referenced Grant Funds, Plaintiff, Joseph Development, needed and acquired construction financing for the Project by and through Plaintiff, Joseph Manufacturing, its CEO, Mitchell J. Joseph, and its other corporate affiliates.
16. To date, Plaintiffs have borrowed in excess of \$4,000,000.00 for the Project.
17. In order to incentivize the Project, the Defendant City granted a seventy five percent tax exemption for real property improvement for the first ten (10) years in accordance with R.C. 5709.62(C)(1)(b).
18. Additionally, the Defendant City, by and through key employees, recommended third party engineers and contractors to Plaintiffs and represented that these professional companies were capable and competent to timely complete the Project to specification.
19. The original agreements, which set forth the reciprocal obligations of the Parties for the Project, were executed in October of 2016 and later amended in July of 2017.

20. The Defendant City, with the cooperation of the Mahoning County Land Bank, transferred title to parcels on the East Side of Youngstown, Ohio to Plaintiff, Joseph Development, for the commencement of construction.
21. The Parties executed an Amended and Restated Development Agreement on July 27, 2017. (A true and accurate copy of the “Development Agreement” is attached hereto as Exhibit “A”).
22. As part of and contemporaneously with the Development Agreement, Plaintiff entered into a Security Agreement with the Defendant City. (A true and accurate copy of the “Security Agreement is attached hereto as Exhibit “B”).
23. The Grant Funds identified in the Development Agreement became available upon the execution of the Security Agreement.
24. Pursuant to Section 2.2 of the Development Agreement, Grant Funds were provided through the City of Youngstown’s water funds, wastewater funds, and environmental sanitation funds, to be used at the sole discretion of Plaintiff, Joseph Development, upon presentation upon the receipt of paid contractor invoices.
25. The Development Agreement provides that Grant Funds are only payable for reimbursement purposes upon Plaintiff, Joseph Development, presenting proper documentation and invoices.
26. The Defendant City issued payment of Grant Funds to Plaintiff, Joseph Development, through the Development Agreement, upon presentation of invoices submitted to contract specification.
27. The Development Agreement only allows the Defendant City to reclaim payment of Grant Funds in the event the developer fails to comply “with all rules and regulations regarding the receipt of Grant Funds.”

28. The Defendant City has never claimed that any contractors, subcontractors, agents or service providers, engaged by Plaintiff, Joseph Development, acted improperly or outside the scope necessary for the for the reimbursement of Grant Funds on the Project.

29. The Parties memorialized additional understandings related to the Project through an Ohio Enterprise Zone Agreement pursuant to Ordinance No. 16-354 on December 21, 2017. (A true and accurate copy of the Enterprise Agreement is attached hereto as Exhibit “C”).

30. Since that time, the Project encountered construction delays for a myriad of reasons that are known to the Defendant City.

31. Through 2020 and into 2021, Plaintiff, Joseph Development, faced unforeseeable consequences as a result of the global restrictions and shutdowns from the COVID-19 pandemic.

32. Despite allegations made publicly by City of Youngstown officials, Plaintiff, Joseph Development has not abandoned the Project and plans to continue the development.

33. On or about March 26, 2021, the Defendant City sent Plaintiff, Joseph Development, a Notice of Default letter alleging noncompliance with contractual terms and provided a 60-day period to cure the default as provided by Section 6.2 of the Enterprise Agreement.

34. The March 26, 2021 letter contends that Plaintiff, Joseph Development, is in default for the following:

- (1) Developer has failed to complete the construction of the warehouse building and bottling facility by October 1, 2017 as required by Section 3.2 of the [Developer] Agreement;
- (2) Building No. 3 is required to be completed by the end of September 2017 in accordance with Section 3.8 [of the Developer Agreement]; and
- (3) Developer shall complete the warehouse building, bottling facility and plastics facility by October 1, 2017 as set fort in Section 4 of the [Developer] Agreement.

35. In the Notice of Default, the Defendant City alleges that “failure to cure these defaults could result in litigation and demand by the City for repayment of grant funds provided for this project.”

36. Plaintiff, Joseph Development, denies that its actions constitute default of the Agreements.

37. The Defendant City’s prior actions, through its elected and appointed government officials, demonstrate a clear and convincing intent to waive specific contractual provisions, including but not limited to, its remedies. *See Ludwig v. Lydick*, 7th Dist. Monroe No. 10 MO 9, 2011-Ohio-5164, ¶ 14 citing *Ashley v. Henahan*, 56 Ohio St. 559, 47 N.E. 573 (1897).

38. At the time of the filing of this Action, the Defendant City, by way of public statement, and through its March 26, 2021 Notice of Default letter, alleges that it is entitled to monetary damages.

39. The Defendant City’s alleged right to monetary damages is neither provided for in the written documents nor supported by law.

40. In the event that the Defendant City can prove a breach or default by Plaintiffs, the City is limited to the equitable remedies contained in the written agreements of the Parties.

**PLAINTIFFS’ CAUSE OF ACTION**  
**(Request for Declaratory Judgment)**

41. Plaintiffs restate and reallege each and every allegation contained above as if expressly rewritten herein.

42. The Development Agreement provides the following pertinent provisions which define the roles and obligations of the respective Parties:

- (a) Section 2.2 – At the sole discretion of Developer, and to the extent permitted by law, Grant funds shall be paid to Developer upon receipt of paid contractor invoices submitted in AIA or EJCDC format by Developer to City. Within ten (10) days of receipt of the appropriate documentation needed by the City, the City shall reimburse Developer for approved

expenses set forth above. These Grant Funds shall be available after the Security Agreement set forth in Section 3.8 is in place and shall remain available throughout the completion of the Developer's Project. Developer shall comply with all rules and regulations regarding the receipt of Grant Funds provided herein. Failure to comply with the rules and regulations of any Grant Funds received may require Developer to reimburse or refund Grant Funds to City. City shall monitor compliance with the terms of this Agreement for three (3) years or until completion of the Project, whichever is later.

(b) Section 3.1 – If Developer fails to implement the Development's Proposal, then the City shall have the option to acquire the Developer's Property for the same consideration paid by Developer to acquire those properties from the previous owners. The City Option hereunder shall terminate and be extinguished upon the Developer's completion of the foundation and framing of the Warehouse and the Developer's completion of the foundation and framing of the Bottling Facility for use in Developer's business. In no event shall completion of those building be later than October 1, 2017.

(c) Section 3.2 – If Developer fails to implement the Developer's Proposal, then the properties acquired by Developer from the Land Bank shall be transferred to the City for the same consideration paid by Developer to acquire the Land Bank Property. The City's right to reacquire the Land Bank Property set forth above shall terminate and be extinguished upon the Developer's completion of the foundation and framing of the Warehouse and the Developer's completion of the foundation and framing of the Bottling Facility for use in Developer's business. In no event shall completion of those building be later than October 1, 2017.

43. Plaintiff, Joseph Development, followed all appropriate guidelines for the payment of Grant Funds pursuant to the Development Agreement.

44. The Defendant City has no contractual right to a claim for reimbursement of Grant Funds.

45. The Defendant City has no contractual right to reacquire property previously conveyed due to Plaintiff, Joseph Development's performance on the Project as set forth in the Development Agreement.

46. The Enterprise Agreement provides the following pertinent provisions which define the roles and obligations of the respective Parties:

- (1) Paragraph 10 – Except as provided in paragraph 16 herein, if Company materially fails to fulfill its obligations under this Agreement, other than with respect to the number of employee positions estimated to be created or retained under this Agreement, or if the City determines that the certification as to delinquent taxes required by this Agreement is fraudulent, the City may terminate or modify the exemptions from taxation granted under this Agreement, and may require the repayment of the amount of taxes that would have been payable had the property not been exempted from taxation.
- (2) Paragraph 16 – In any three-year period during which this Agreement is in effect, and with the exceptions of years one through three of this Agreement, if the actual number of employee positions created or retained by Company is not equal to or greater than Seventy-five percent of the number of employee positions estimated to be created or retained under this Agreement during that three year period, Company shall repay, on a pro-rata basis equal to the amount of the employment deficiency, the amount of taxes on property that would have been payable had the property not been exempted from taxation under this Agreement during that Three-year period. In addition, the City may terminate or modify the exemptions from taxation granted under this Agreement.

47. Pursuant to Civ.R. 57 and R.C. 2721.01, *et seq.*, Plaintiffs are entitled to a judicial declaration that:

- I. The Defendant City does not possess a right to recover Grant Funds for the alleged default of the Development Agreement and/or Enterprise Agreement pursuant to the plain and unambiguous language of the contracts;
- II. The Defendant City's has no right to title and possession of Plaintiff, Joseph Development's property;
- III. In the event it is determined that Defendant City's possesses a claim to title and possession of Plaintiff, Joseph Development's property, said claim is subject to and



limited by any lien from a bank or lender providing construction financing to the Project;

IV. Plaintiff, Joseph Manufacturing, its CEO, Mitchell J. Joseph, and its other corporate affiliates, are lenders with valid liens on the Project for providing construction financing to Plaintiff, Joseph Development, pursuant to Section 6.2 of the Development Agreement;

V. The Defendant City's right to recover title and possession of the property involved in the Project is limited by the construction financing liens possessed by Plaintiff, Joseph Manufacturing, its CEO, Mitchell J. Joseph, and its other corporate affiliates.

VI. The Defendant City does not possess a contractual right pursuant to the Enterprise Agreement for monetary damages;

VII. The Defendant City's remedies for any alleged default of the Development and Enterprise Agreements are not reasonably certain, speculative, and prohibited by the plain language of the contractual provisions; and

VIII. The Defendant City's remedies, if any, stemming from an alleged breach of the Development and Enterprise Agreements, exist solely in equity based upon the plain and unambiguous language of the contractual provisions.

48. Pursuant to Civ.R. 57 and R.C. 2721.01, *et seq.*, Plaintiffs are entitled to declaratory judgment from this Court that Defendant, City of Youngstown, Ohio, is bound by the specific contractual provisions discussed above, and that Plaintiffs are entitled to judgment, along with attorney's fees and costs of this Action for Declaratory Judgment.

**WHEREFORE**, Plaintiffs, M.J. Joseph Development Corp. and Joseph Manufacturing Company, Inc., demand judgment against Defendant, the City of Youngstown, Ohio, as follows:

- A. A declaration that the Defendant City does not possess a right to recover Grant Funds for the alleged default of the Development Agreement and/or Enterprise Agreement pursuant to the plain and unambiguous language of the contracts;
- B. A declaration that the Defendant City's has no right to title and possession of Plaintiff, Joseph Development's property;
- C. A declaration that any claim by Defendant City to title and possession of Plaintiff, Joseph Development's property, is subject to and limited by any lien from a bank or lender providing construction financing to the Project;
- D. A declaration that the Defendant City's right to recover title and possession of the property involved in the Project is limited by the construction financing liens possessed by Plaintiff, Joseph Manufacturing, its CEO, Mitchell J. Joseph, and its other corporate affiliates;
- E. A declaration that the Defendant City does not possess a contractual right pursuant to the Enterprise Agreement for monetary damages;
- F. A declaration that the Defendant City's remedies for any alleged default of the Development and Enterprise Agreements are not reasonably certain, speculative, and prohibited by the plain language of the contractual provisions;
- G. A declaration that the Defendant City's claimed monetary damages stemming from Plaintiffs' alleged breach of the Development and Enterprise Agreements are not reasonably certain, speculative and prohibited by the plain language of the contractual provisions contained herein;

- H. A declaration that the Defendant City's remedies, if any, stemming from an alleged breach of the Development and Enterprise Agreements, exist solely in equity based upon the plain and unambiguous language of the contractual provisions;
- I. Awarding costs incurred herein;
- J. Awarding attorney's fees incurred herein; and
- K. Any other relief the Court deems equitable and just.

Respectfully submitted,  
**BETRAS, KOPP & HARSHMAN, LLC**

*/s/ Brian P. Kopp*

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*Joseph Manufacturing Company, Inc.*

**INSTRUCTIONS FOR SERVICE**

Please serve a copy of the foregoing Complaint, along with Summons, upon the Defendants at the addresses noted in the caption, by certified mail, return receipt requested, and make return according to law, all pursuant to Civ.R. 4.1.

*/s/ Brian P. Kopp*  
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