

STATE OF INDIANA)
)
COUNTY OF MARION)

IN THE MARION SUPERIOR COURT NO. 1
SS: CIVIL DIVISION, ROOM NO. 1
CAUSE NO. 49D01-0504-PL-014394

EAST CHICAGO SECOND CENTURY, INC.)
Plaintiff)
v.)
RIH ACQUISITIONS IN, LLC d/b/a RESORTS EAST CHICAGO,)
Defendant, and)
CITY OF EAST CHICAGO, INDIANA,)
Intervening Defendant.)

TWIN CITY EDUCATION FOUNDATION, INC. and EAST CHICAGO)
COMMUNITY DEVELOPMENT FOUNDATION, INC.,)
Intervening Plaintiffs)
v.)
RIH ACQUISITIONS IN, LLC d/b/a RESORTS EAST CHICAGO,)
Defendant, and)
CITY OF EAST CHICAGO, INDIANA,)
Intervening Defendant.)

RIH ACQUISITIONS IN, LLC d/b/a RESORTS EAST CHICAGO,)
Defendant/Third Party Plaintiff/Counterclaim Plaintiff)
v.)
CITY OF EAST CHICAGO, INDIANA,)
Intervening Defendant/Third Party Defendant, and)
TWIN CITY EDUCATION FOUNDATION, INC. and EAST CHICAGO)
COMMUNITY DEVELOPMENT FOUNDATION, INC.,)
Intervening Plaintiffs/Third Party Defendants, and)
EAST CHICAGO SECOND CENTURY, INC.)
Plaintiff/Counterclaim Defendant.)

CITY OF EAST CHICAGO, INDIANA,)
Intervening Defendant/Third Party Defendant/Third Party)
Plaintiff/Counterclaim Plaintiff/Crossclaim Plaintiff and)
INDIANA ATTORNEY GENERAL GREG ZOELLER)
Intervening Plaintiff.)

v.)
RIH ACQUISITIONS IN, LLC d/b/a RESORTS EAST CHICAGO,)
Defendant/Third Party Plaintiff/Counterclaim)
Plaintiff/Counterclaim Defendant, and)
EAST CHICAGO SECOND CENTURY, INC.)
Plaintiff/Counterclaim Defendant/Crossclaim Defendant, and)
TWIN CITY EDUCATION FOUNDATION, INC. and EAST CHICAGO)
COMMUNITY DEVELOPMENT FOUNDATION, INC.,)
Intervening Plaintiffs/Third Party Defendants/Crossclaim)
Defendants, and)
MICHAEL A. PANNOS,)
Third Party Defendant, and)
THOMAS S. CAPPAS,)
Third Party Defendant.)

GREG ZOELLER, Attorney General of Indiana,)
Intervening Defendant/Counterclaim Plaintiff/Crossclaim Plaintiff)
v.)
EAST CHICAGO SECOND CENTURY, INC.)
Plaintiff/Counterclaim Defendant/Crossclaim Defendant, and)
MICHAEL A. PANNOS,)
Third Party Defendant, and)
THOMAS S. CAPPAS,)
Third Party Defendant/Crossclaim Defendant.)

**OBJECTION TO AGREED STIPULATION OF DISMISSAL WITH PREJUDICE
AND MOTION TO VACATE ORDER OF DISMISSAL WITH PREJUDICE**

Comes now Intervening Party, Gregory F. Zoeller, Attorney General of Indiana, by Deputy Attorney General Michael Carter, and hereby files his Objection to Agreed Stipulation of Dismissal with prejudice and, Motion to Vacate Order of Dismissal with Prejudice, and would show the court as follows:

1. On April 6, 2010, East Chicago Second Century, Inc. (“Second Century”), Michael Pannos, Thomas Cappas, and the City of East Chicago filed with the Court a pleading entitled “Stipulation of Dismissal with Prejudice” (“Stipulation”).
2. On April 8, 2010, the Court issued an Order of Dismissal with Prejudice, in opposition to Indiana Trial Rule 41, which states:

Rule 41. Dismissal of actions

(A) Voluntary dismissal: Effect thereof.

(1) By plaintiff--By stipulation. Subject to contrary provisions of these rules or of any statute, an action may be dismissed by the plaintiff without order of court:

(b) by filing a stipulation of dismissal ***signed by all parties who have appeared in the action.***

(2) By order of court. Except as provided in subsection (1) of this subdivision of this rule, an action shall not be dismissed at the plaintiff's instance save upon order of the court and upon such terms and conditions as the court deems proper. If a counterclaim or cross-claim has been pleaded by a defendant prior to the service upon him of the plaintiff's motion to dismiss, the action shall not be dismissed

against the defendant's objection unless the counterclaim or cross-claim can remain pending for independent adjudication by the court. Unless otherwise specified in the order, a dismissal under this subsection is without prejudice.

3. Dismissal was improper under section 41(A)(1) because the Stipulation in this case was not signed by all parties who have appeared in this action.
4. Dismissal was further improper 41(A)(2) because dismissal was not made pursuant to a Motion that would have allowed an opportunity for a timely objection to be filed.
5. Upon information and belief, the terms of the settlement that led to the Stipulation of Dismissal provided for the distribution of funds held in an escrow account the ownership of which was in question.
6. Upon information and belief, the settlement provides for a portion of the escrow funds to be paid to Second Century.
7. The Attorney General has intervened in this lawsuit in order to obtain an accounting of certain funds that are not completely accounted for.
8. The Attorney General has further sought to obtain the establishment of a constructive trust in order to ensure that such funds already paid to Second Century that are due the State of Indiana are protected during the accounting.
9. Because discovery has not been permitted to proceed, no accounting has been completed.
10. While the escrow funds may not currently be a part of the constructive trust, the whereabouts of almost the entirety of the money already paid to Second Century that would constitute the constructive trust are completely unknown. Furthermore, the escrow funds were held in escrow in the first place for the

same reasons the Attorney General has sought the constructive trust – namely the refusal of Second Century to account for the monies paid to it.

11. If, after a proper accounting, the funds constituting the constructive trust are found to be improperly missing, a major source of funds that would otherwise be available to re-fund the trust will no longer be protected.
12. The Attorney General therefore objects to the Stipulation because dismissal will allow the escrow funds to be distributed to Second Century, and such distribution would severely prejudice the claims that form the basis of his action.
13. The Attorney General further asks that the Court vacate its Order of Dismissal with Prejudice dated April 8, 2010 because dismissal could allow the escrow funds to be distributed to Second Century, and such distribution would severely prejudice the claims that form the basis of his action.

WHEREFORE, Intervening Party, Gregory F. Zoeller, Attorney General of Indiana, by Deputy Attorney General Michael L. Carter respectfully requests the Court vacate the April 8, 2010, Order of Dismissal with Prejudice, and all other appropriate relief.

Respectfully submitted,

GREGORY F. ZOELLER
Indiana Attorney General
Attorney No. 1958-98

By: 
Michael L. Carter
Deputy Attorney General
Attorney No. 4300-49

CERTIFICATE OF SERVICE

I hereby certify that on April 9, 2010, a copy of the foregoing document was duly served upon all counsel of record listed below by United States mail, first-class postage prepaid:

Peter J. Rusthoven
Deborah Pollack-Milgate
Paul L. Jefferson
Mark J. Crandley
BARNES & THORNBURG
11 S. Meridian Street
Indianapolis, IN 46204

J. Lee McNeely
Brady James Rife
McNEELY STEPHENSON
THOPY & HARROLD
2150 Intelliplex Drive, Ste. 100
Shelbyville, IN 46176

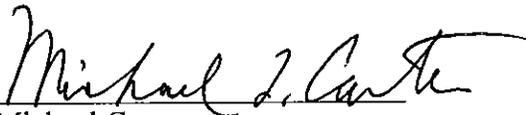
Norman T. Funk
Rori L. Goldman
HILL, FULWIDER, MCDOWELL,
FUNK & MATTHEWS
One Indiana Square, Ste. 2000
Indianapolis, IN 46204

James Knauer
William Bock
Steven E. Runyan
KROGER GARDIS & REGAS
111 Monument circle, Ste. 900
Indianapolis, IN 46204-5125

Karl L. Mulvaney
Duane R. Denton
BINGHAM McHALE LLP
2700 Market Tower
10 W. Market Street
Indianapolis, IN 46204

Bruce A. Kotzan
Attorney at Law
4111 N. Washington Blvd.
Indianapolis, IN 46205

Margaret L. Smith
FROST BROWN TODD, LLC
201 North Illinois Street, Suite 1900
P.O. Box 4
Indianapolis, IN 46244-0961


Michael Carter
Deputy Attorney General

Office of the Attorney General
Indiana Government Center South, Fifth Floor
302 West Washington Street
Indianapolis, IN 46204-2770
Telephone: (317) 232-6292
Fax: (317) 232-7979
e-mail: david.christoff@atg.in.gov

STATE OF INDIANA)
) SS: IN THE MARION SUPERIOR COURT NO. 1
) CIVIL DIVISION, ROOM NO. 1
COUNTY OF MARION) CAUSE NO. 49D01-0504-PL-014394

EAST CHICAGO SECOND CENTURY, INC.)
Plaintiff)
v.)
RIH ACQUISITIONS IN, LLC d/b/a RESORTS EAST CHICAGO,)
Defendant, and)
CITY OF EAST CHICAGO, INDIANA,)
Intervening Defendant.)

TWIN CITY EDUCATION FOUNDATION, INC. and EAST CHICAGO)
COMMUNITY DEVELOPMENT FOUNDATION, INC.,)
Intervening Plaintiffs)
v.)
RIH ACQUISITIONS IN, LLC d/b/a RESORTS EAST CHICAGO,)
Defendant, and)
CITY OF EAST CHICAGO, INDIANA,)
Intervening Defendant.)

RIH ACQUISITIONS IN, LLC d/b/a RESORTS EAST CHICAGO,)
Defendant/Third Party Plaintiff/Counterclaim Plaintiff)
v.)
CITY OF EAST CHICAGO, INDIANA,)
Intervening Defendant/Third Party Defendant, and)
TWIN CITY EDUCATION FOUNDATION, INC. and EAST CHICAGO)
COMMUNITY DEVELOPMENT FOUNDATION, INC.,)
Intervening Plaintiffs/Third Party Defendants, and)
EAST CHICAGO SECOND CENTURY, INC.)
Plaintiff/Counterclaim Defendant.)

CITY OF EAST CHICAGO, INDIANA,)
Intervening Defendant/Third Party Defendant/Third Party)
Plaintiff/Counterclaim Plaintiff/Crossclaim Plaintiff and)
INDIANA ATTORNEY GENERAL GREG ZOELLER)
Intervening Plaintiff.)

v.)
RIH ACQUISITIONS IN, LLC d/b/a RESORTS EAST CHICAGO,)
Defendant/Third Party Plaintiff/Counterclaim)
Plaintiff/Counterclaim Defendant, and)
EAST CHICAGO SECOND CENTURY, INC.)
Plaintiff/Counterclaim Defendant/Crossclaim Defendant, and)
TWIN CITY EDUCATION FOUNDATION, INC. and EAST CHICAGO)
COMMUNITY DEVELOPMENT FOUNDATION, INC.,)
Intervening Plaintiffs/Third Party Defendants/Crossclaim)
Defendants, and)
MICHAEL A. PANNOS,)
Third Party Defendant, and)
THOMAS S. CAPPAS,)
Third Party Defendant.)

GREG ZOELLER, Attorney General of Indiana,)
 Intervening Defendant/Counterclaim Plaintiff/Crossclaim Plaintiff)
 v.)
 EAST CHICAGO SECOND CENTURY, INC.)
 Plaintiff/Counterclaim Defendant/Crossclaim Defendant, and)
 MICHAEL A. PANNOS,)
 Third Party Defendant, and)
 THOMAS S. CAPPAS,)
 Third Party Defendant/Crossclaim Defendant.)

ORDER VACATING APRIL 8, 2010
ORDER OF DISMISSAL WITH PREJUDICE

Intervening Party, Gregory F. Zoeller, Attorney General of Indiana, by Deputy Attorney General, Michael L. Carter, having filed his Objection to Agreed Stipulation of Dismissal with prejudice and, Motion to Vacate Order of Dismissal with Prejudice, and the Court, being duly advised in the premises, does now find that said Motion should be GRANTED.

IT IS THEREFORE ORDERED, ADJUDGED and DECREED that the Order of Dismissal with prejudice dated April 8, 2010, is hereby vacated.

SO ORDERED.

 Date

 Judge, Marion County Superior Court, No. 1

Distribution next page:

COPIES TO:

Peter J. Rusthoven
Deborah Pollack-Milgate
Paul L. Jefferson
Mark J. Crandley
BARNES & THORNBURG
11 S. Meridian Street
Indianapolis, IN 46204

Norman T. Funk
Rori L. Goldman
HILL, FULWIDER, MCDOWELL,
FUNK & MATTHEWS
One Indiana Square, Ste. 2000
Indianapolis, IN 46204

Karl L. Mulvaney
Duane R. Denton
BINGHAM McHALE LLP
2700 Market Tower
10 W. Market Street
Indianapolis, IN 46204

Michael L. Carter
David S. Christoff
Office of the Attorney General
302 W. Washington Street, 5th Floor
Indianapolis, IN 46204

J. Lee McNeely
Brady James Rife
McNEELY STEPHENSON
THOPY & HARROLD
2150 Intelliplex Drive, Ste. 100
Shelbyville, IN 46176

James Knauer
William Bock
Steven E. Runyan
KROGER GARDIS & REGAS
111 Monument circle, Ste. 900
Indianapolis, IN 46204-5125

Bruce A. Kotzan
Attorney at Law
4111 N. Washington Blvd.
Indianapolis, IN 46205

Margaret L. Smith
FROST BROWN TODD, LLC
201 North Illinois Street, Suite 1900
P.O. Box 4
Indianapolis, IN 46244-0961