IN THE CIRCUIT COURT OF THE COUNTY OF ST. LOUIS
STATE OF MISSOURI

STEPHANIE REYNOLDS, et al.	)	
	)	
Plaintiffs,	)	
	)	
and	)	
	)	Cause No. 06-CC-3802
JAMES ZHANG,	)	
	)	Division No. 13
Intervenor,	)	
	)	
v.	)	
	)	
CITY OF VALLEY PARK, MO, et al.	)	
	)	
Defendants.	)	

PLAINTIFFS' MEMORANDUM IN SUPPORT OF MOTION FOR CONTEMPT

Come now Plaintiffs, by and through their attorneys, and for their Memorandum in Support of the Motion for Contempt, state as follows:

INTRODUCTION AND FACTUAL SUMMARY

The pending Motion for Contempt arises out of lengthy litigation involving the efforts of the City of Valley Park to regulate "illegal aliens" in that St. Louis County municipality. This action started when Plaintiffs filed a complaint for declaratory and injunctive relief challenging a Valley Park ordinance attempting to regulate "illegal aliens" by penalizing landlords and businesses. The original complaint challenged Ordinance No. 1708, and the complaint was amended after the City enacted Ordinance No. 1715, which, like Ordinance No. 1708 imposed penalties on both landlords and businesses for conducting business with illegal aliens.

While this litigation was pending, the Board of Aldermen adopted, and the Mayor signed, Ordinance No. 1722 regulating employers. At the time Ordinance No. 1722 was passed it provided that it would not become effective unless and until any injunction entered in this case was dissolved.

On August 9, 2007, Valley Park adopted Ordinance No. 1736, which provides that Ordinance No. 1722 is effective immediately. (Plaintiffs believe the Valley Park Board of Aldermen has taken an additional vote to re-approve Ordinance No. 1736 due to questions raised about whether there was adequate notice given prior to the August 9 meeting.) Therefore, the current status is that Ordinance No. 1736 has fully implemented Ordinance No. 1722.

Valley Park's City Attorney testified during the hearing on March 1, 2007, in the underlying litigation before this Court, that the "substance" of Ordinance No. 1722 is "virtually identical" to the substance of Ordinance No. 1715. Transcript p. 48-49, March 1, 2007. Referring to Ordinances No. 1715 and No. 1722, another attorney representing the City admitted in argument that: "The employment provisions have not been changed in any of the statutes and I would not represent to the Court that there is a substantial change in the employment provisions." Transcript p. 12-14, March 1, 2007.

The Court entered its Findings of Fact, Conclusions of Law, Order and Judgment on March 12, 2007, declaring that both Ordinances No. 1708 and No. 1715 were void for violating Missouri law, and permanently enjoined Valley Park from enforcing either ordinance. The Court found that Ordinance No. 1722 is "'sufficiently similar' to the old ordinances in that [it is] directed at the same class of people and conduct and include some of the same penalties. Given that the substance of the new ordinances is the same, the Court concludes the challenged conduct will continue." Judgment, p. 5. The Court's ruling specifically found fault with the penalty

provisions of Ordinance No. 1715 which suspend the permit of a business to operate as a penalty for violating the ordinance. Ordinance No. 1722 has the same penalty provisions as the enjoined Ordinance No. 1715.

Valley Park has appealed the court's judgment on the merits, while Plaintiffs have appealed the court' ruling denying attorney fees. The appeal is still pending, and no briefs have yet been filed. Valley Park has not requested a stay of the injunction in this court or the Appellate Court.

ARGUMENT

A. This Court Has Jurisdiction to Hear the Motion for Contempt

Defendants appeal of the injunction enjoining enforcement of Ordinance No. 1722 is still pending. No date for argument has yet been set, and no briefs have yet been filed. However, this Court retains jurisdiction to enforce its order, despite the pending appeals. See In Re Marriage of Smith, 721 S.W.2d 782, 784 (Mo. App. S.D. 1986); Roberts v. Flowers, 996 S.W.2d 130, 134 (Mo. App. S.D. 1999.) An injunction is not suspended pending an appeal, State ex rel South Missouri Pine Lumber Co. v. Dearing, 180 Mo. 53, 79 S.W. 454, 459 (Mo. 1904), and a court can hold a party in contempt for violating an injunction while an appeal is pending. State ex rel. Gray v. Hennings, 185 S.W. 1153 (St. Louis Court App. 1916).

Supreme Court Rule 92.03 allows for a court to suspend or modify an injunction pending an appeal, but here Valley Park has not requested such a suspension or modification, either from this Court or the Appellate Court. The injunction remains in effect and this Court has the ability to enforce it through contempt proceedings.

The Court can proceed to hear the contempt motion without the need for an order or rule

to show cause. Plaintiffs have provided Valley Park with the time and place of the hearing, the essential facts constituting the contempt charge, and a description of the charge as contempt, which is all that is required to proceed to a hearing. Happy v. Happy, 941 S.W.2d 539, 543 (Mo. App. W.D. 1997) "Although a show cause order is an appropriate method of putting the contemnor on notice of contempt, it is not mandatory." 941 S.W.2d at 543. The Court can proceed with a hearing on the merits of the contempt motion without a show cause order.

B. Municipalities Can Be Held In Contempt

This Court has the authority to hold Valley Park in contempt for the City's adoption, through its Board of Aldermen and Mayor, of Ordinance No. 1722 as made effective by Ordinance No. 1736. Courts have authority to hold cities in contempt for their actions. Spallone v. United States, 493 U.S. 265, 276 (1990). In Spallone, the Supreme Court held that the city council members in Yonkers, New York, could not be held personally in contempt for failing to adopt an ordinance carrying out the city's obligations in a consent judgment absent extraordinary circumstances, but made clear the City itself could be held in contempt. See also Shakman v. Democratic Organization of Cook County, 533 F.2d 344, 353 (7th Cir. 1976). More specifically, a court can hold a city in contempt for passage of an ordinance that violates an earlier court order. See State ex rel. Adkins et al v. Sobb et al., 528 N.E.2d 1247 (OH 1988).

A city might avoid contempt for adoption of an ordinance in the face of an earlier court order if the new ordinance is "sufficiently different" from the previous ordinance. Ginsberg v. Kentucky Utilities Co., 83 S.W.2d 497 (KY 1935). Here, however, Defendants have admitted the exact opposite: Ordinance No. 1715 and Ordinance No. 1722 are actually substantially similar. Transcript, p. 12-14, 48-49.

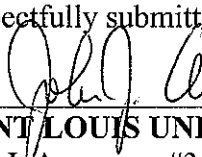
C. The Two Ordinances in Question Are not Different in Any Material Matter

The City should be held in contempt for adopting an ordinance which bears no material difference from the ordinance struck down by the court. Just as *res judicata* applies to bar a new action against an ordinance that is no different "in any presently material respect" than one struck down earlier, JBK Inc. V. City of Kansas City, Mo., 641 F. Supp. 893, 899 (W.D. Mo. 1986), a City should not be allowed to enact the same defective ordinance by changing its number and adding a few superfluous sections. Here, in ruling that the merits of Ordinance No. 1715 were not moot even in the face of adoption of Ordinance No.1722, the Court found that the ordinances were "sufficiently similar." This Court's ruling is supported by the Supreme Court's decision in Northeastern Florida Chapter of the Associated General Contractors of America v. City of Jacksonville, Florida, 508 U.S. 656, 124 L.Ed.2d 586 (1993.) In Northeastern Florida, the Court held that a new ordinance replacing an old ordinance according preferential treatment to minority contractors "may have disadvantaged them to a lesser degree than the old one, but insofar as it accords preferential treatment for black- and female owned contracts – and in particular, insofar as its Sheltered Market Plan' is a 'set aside' by another name – it disadvantages them in the same fundamental way." 508 U.S. 656, 662, 124 L.Ed.2d 586, 595. Likewise here, while Ordinance Nos. 1722 and 1736 may contain some cosmetic additions not found in Ordinance No. 1715, it disadvantages employers in the "same fundamental way," by taking their business licenses as punishment, which is the exact basis upon which this Court voided Ordinance No. 1715.

CONCLUSION

For the foregoing reasons, Plaintiffs pray for an Order holding Defendant in contempt for its willful passage of Ordinances Number 1722 and 1736, and imposing a penalty of $100 per day until such time as these ordinances are repealed or are otherwise no longer in effect.

Respectfully submitted,



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CERTIFICATE OF SERVICE

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