

“... *individuals* are not permitted to bring declaratory judgment actions seeking to determine boundaries or to oust a municipal or other public corporation from disputed territory” City of Lake Saint Louis, supra at 759.

The Missouri Supreme Court goes on to entitle an entire section of the opinion in City of Lake Saint Louis, supra, as:

“*An Individual May Not File for Declaratory Relief to Resolve a Boundary Dispute*” City of Lake Saint Louis, supra at 760

Under that heading the Missouri Supreme Court clearly states:

“Individuals sometimes have sought to bypass the prohibition on an individual bringing a quo warranto action by seeking the same relief in a suit for an injunction or for declaratory judgment. *Spiking Sch. Dist. No. 71, DeKalb Cnty. v. Purported 'Enlarged Sch. Dist. R-II, DeKalb Cnty., Mo.'*, 362 Mo. 848, 245 S.W.2d 13, 15 (1952) In approving dismissal of their petition, this Court stated that ‘a declaratory judgment action is not available to the individual plaintiffs For these reasons, ‘[t]he law is settled that when a public body has, under color of authority, assumed to exercise the powers of a public corporation of a kind recognized by law, so as to become at le[a]st a de facto corporation, the validity of its organization can be challenged only by direct proceedings in quo warranto by the state through its officers designated in [section] 531.010, and cannot be challenged by individuals.’ *State ex rel. Junior Coll. Dist. of Sedalia v. Barker*, 418 S.W.2d 62, 65 (Mo. banc 1967). As a matter of public policy, suits by individuals are not permitted due to ‘the importance of stability and certainty in such matters, and the serious consequences which might follow if the existence of a public corporation could be called in question by persons who do not have an interest in the matter separate and distinct from that of the State itself.’ *Id.* at 65-66 (internal citations and quotations omitted). ‘[C]orporate franchises are grants of sovereignty only, and, if the state acquiesces in their usurpation, individuals will not be heard to complain.’ *Id.* (internal citations and quotations omitted).” City of Lake Saint Louis, supra at 760-761

2. In this case the appropriate action is a quo warranto action that would seek to oust a defendant from the annexed area and not an action filed by individual plaintiffs.

WHEREFORE, the defendant requests that plaintiffs’ suit be dismissed and for such other and further relief as the court deems just under the circumstances.

MOTION FOR COSTS AND ATTORNEY FEES

Comes now defendant, City of Jackson, Missouri, by and through its attorney, Thomas A. Ludwig of Ludwig & Boner, L.C., of Jackson, Missouri, and moves the court to award costs and attorney fees herein for the reasons that:

1. The law has been absolutely clear for decades that individuals may not sue a city to oust that city from its boundaries or to declare the city's right to those boundaries (see Motion to Dismiss).

2. The Missouri Supreme Court en banc reiterated this longstanding and well known rule of law just 393 days before plaintiffs filed the suit herein (suit filed November 23, 2011, after the October 26, 2010, decision of the Missouri Supreme Court). City of Lake Saint Louis v. City of O'Fallon, 324 S.W.3d 756 (Mo. en banc 2010).

3. The suit was filed to vex and harass the defendant, was done without basis in the law, and was, therefore, frivolous

4. The defendant should be awarded all costs and attorney fees for the defense of this suit.

WHEREFORE, the defendant prays this court for the award of all costs and attorney fees of the defense of this action.

ANSWER

COUNT I

PETITION FOR DECLARATORY JUDGMENT

Comes now defendant, City of Jackson, Missouri, by and through its attorney, Thomas A. Ludwig of Ludwig & Boner, L.C., of Jackson, Missouri, and states that the suit filed herein is filed in violation of the long established law that individual defendants cannot bring an action for

declaratory judgment or injunction to oust a city from its boundaries and, therefore, this court lacks jurisdiction to hear this matter, but without waiving the fact that this court lacks jurisdiction and in the event that a court of competent jurisdiction determines that this court may hear this case, then for its Answer to plaintiffs' Count I – Petition for Declaratory Judgment states to the court as follows:

1. The defendant has no official legal knowledge of the allegations in Paragraphs 1, 2, 3, 4, 5, 6, and 7 of plaintiffs' Count I and, therefore, demands strict proof thereof and denies said allegations.

2. The defendant denies the allegations of Paragraph 8 of plaintiffs' Count I and states that the defendant is a fourth class city operating under the statutes of the State of Missouri.

3. The defendant specifically denies the allegations of Paragraphs 9, 10, and 11 of plaintiffs' Count I except to state that at the request of Mark Shelton, District Engineer for the Missouri Highways and Transportation Commission, the defendant did adopt Ordinance No. 09-15 on March 16, 2009.

4. The defendant states that Paragraphs 12 and 13 of plaintiffs' Count I are legal conclusions drawn from the Missouri statutes and that the Missouri statutes will speak for themselves and, therefore, the defendant denies the allegations of Paragraphs 12 and 13 of plaintiffs' Count I.

5. The defendant denies the allegations of Paragraphs 14, 15, 16, 17, 18, 19, 20, and 21 of plaintiffs' Count I except as admitted elsewhere herein.

6. The defendant specifically states that "The term 'contiguous and compact' does not prohibit voluntary annexations pursuant to this section merely because such voluntary

annexation would create an island of unincorporated area within the city, town or village, so long as the owners of the unincorporated island were also given the opportunity to voluntarily annex into the city, town or village.” Section 71.012.1, RSMo (2006).

7. The defendant states affirmatively that the plaintiffs do not have standing to pursue this action for the reason that this is an action which seeks to oust the defendant from the annexed area and that action can only be done by a quo warranto petition filed by an appropriate party.

8. The claim of plaintiffs is barred by the doctrine of laches or, in the alternative, by the statute of limitations.

9. Section 71.012, RSMo, is unconstitutional in that said statute treats municipalities in Perry County and Randolph County differently than municipalities in Cape Girardeau County without a justifiable and valid purpose.

WHEREFORE, the defendant prays the court to dismiss plaintiffs’ Count I – Petition for Declaratory Judgment and for such other and further relief as the court deems just under the circumstances.

COUNT II

PERMANENT INJUNCTION

Comes now defendant, City of Jackson, Missouri, by and through its attorney, Thomas A. Ludwig of Ludwig & Boner, L.C., of Jackson, Missouri, and states that the suit filed herein is filed in violation of the long established law that individual defendants cannot bring an action for declaratory judgment or injunction to oust a city from its boundaries and, therefore, this court lacks jurisdiction to hear this matter, but without waiving the fact that this court lacks jurisdiction and in the event that a court of competent jurisdiction determines that this court may hear this

case, then for its Answer to plaintiffs' Count II – Permanent Injunction states to the court as follows:

1. The defendant realleges each and every affirmance, denial, and affirmative defense set forth in its Answer to plaintiffs' Count I – Petition for Declaratory Judgment.
2. The defendant denies each and every allegation of Paragraphs 2, 3, 4, 5, and 6 of plaintiffs' Count II.

WHEREFORE, the defendant prays the court to dismiss plaintiffs' Count II – Permanent Injunction and for such other and further relief as the court deems just under the circumstances.

LUDWIG & BONER, L.C.

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ATTORNEYS FOR DEFENDANT

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing instrument was served upon the attorneys of record for all parties to the above cause by enclosing the same in envelopes addressed to such attorneys at their business addresses disclosed by the pleadings of record herein and by hand delivering said envelopes this 6th day of January, 2012.

LUDWIG & BONER, L.C.

By: 