

RECEIVED
CLERK'S OFFICE

DEC 02 2010

STATE OF ILLINOIS
Pollution Control Board

ORIGINAL

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

ROLF SCHILLING, PAM SCHILLING and)
SUZZANE VENTURRA,)

Complainants,)

vs.)

PCB. No. 10-100

GARY D. HILL, VILLA LAND TRUST,)
an Illinois Land Trust, and PRAIRIE)
LIVING WEST, LLC)

Respondents.)

MOTION FOR LEAVE TO FILE THIRD-PARTY COUNTERCLAIM

NOW COMES the Defendants, GARY D. HILL, VILLA LAND TRUST, an Illinois Land Trust, and PRAIRIE LIVING WEST, LLC , by and through their attorneys, Winters, Brewster, Crosby and Schafer LLC, and moves the Board for leave to file a third-party counterclaim, and in support thereof, hereby states as follows:

1. Defendants seek leave to file a third-party counterclaim. Defendants attach hereto the proposed Counterclaim for Indemnity as "Exhibit A".
2. Plaintiff will not be prejudiced by the granting of this Motion.

WINTERS, BREWSTER, CROSBY and SCHAFER LLC

BY: _____

Molly Wilson Dearing
Attorneys for Respondents
ARDC No. 6294101

WINTERS, BREWSTER, CROSBY and SCHAFER LLC
Attorneys at Law
111 West Main, P.O. Box 700
Marion, IL 62959
Phone: (618)997-5611
Fax: (618)997-6522

CERTIFICATE OF MAILING

ORIGINAL

The undersigned certifies that a copy of the above and foregoing instrument was mailed by depositing the same in a U.S. Post Office Box in the City of Marion, Illinois, postage fully prepaid and addressed to:

**RECEIVED
CLERK'S OFFICE**

DEC 02 2010

**STATE OF ILLINOIS
Pollution Control Board**

Sorling, Northrup, Hanna, Cullen,
& Cochran, Ltd.
Stephen F. Hedinger and Brian D.
Jones, Of Counsel
Suite 800 Illinois Building
P O Box 5131
Springfield, IL 62705

Carol Webb
Hearing Officer
Illinois Pollution Control Board
1021 North Grand Avenue East
P.O. Box 19274
Springfield, IL 62794-9274

Dated this 30th day of November, 2010.



WINTERS, BREWSTER, CROSBY and SCHAFER LLC
Attorneys at Law
111 West Main, P.O. Box 700
Marion, IL 62959
Phone: (618) 997-5611
Fax: (618) 997-6522

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

ROLF SCHILLING, PAM SCHILLING and)
SUZZANE VENTURRA,)

Complainants,)

vs.)

PCB. No. 10-100

GARY D. HILL, VILLA LAND TRUST,)
an Illinois Land Trust, and PRAIRIE)
LIVING WEST, LLC)

Respondents.)

RECEIVED
CLERK'S OFFICE
DEC 02 2010
STATE OF ILLINOIS
Pollution Control Board

ORIGINAL

ORDER GRANTING DEFENDANTS'
MOTION FOR LEAVE TO FILE THIRD PARTY COUNTERCLAIM

THIS CAUSE coming before the Board on Defendants' Motion for Leave to File Counterclaim, the Board being fully advised in the premises and having reviewed the pleadings, FINDS that Defendants' Motion should be, and is hereby, GRANTED. Dated this _____ day of _____, 2010.

ENTER:

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

ROLF SCHILLING, PAM SCHILLING and)
SUZZANE VENTURRA,)

Complainants,)

vs.)

GARY D. HILL, VILLA LAND TRUST,)
an Illinois Land Trust, and PRAIRIE)
LIVING WEST, LLC)

Respondents/Counter-Complainants,)

vs.)

HORVE CONTRACTORS, INC.)

Counter-Respondents.)

PCB. No. 10-100

**RECEIVED
CLERK'S OFFICE**

DEC 02 2010

**STATE OF ILLINOIS
Pollution Control Board**

ORIGINAL

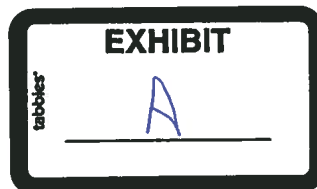
COUNTERCLAIM FOR INDEMNITY

NOW COMES the Defendants, GARY D. HILL, VILLA LAND TRUST, an Illinois Land Trust, and PRAIRIE LIVING WEST, LLC , by and through their attorneys, Winters, Brewster, Crosby and Schafer LLC, and for their Crossclaim for Indemnity against HORVE CONTRACTORS, INC., states as follows:

1. At all relevant times, there existed Document A201 - 2007, Article 3, Section 3.18 between Gary D. Hill, Villa Land Trust, Prairie Living West, LLC, and Horve Contractors, Inc. in this case.

2. A true and accurate copy of Document A201 - 2007 is attached hereto as Exhibit "A".

3. The relevant language of Document A201 - 2007, Article 3, Section 3.18 indicates as follows:



To the fullest extent permitted by law the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorney's fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18.

4. In this case, a claim was made against Gary D. Hill, Villa Land Trust, and Prairie Living West, LLC. arising out of or resulting from performance of the work and alleged negligent acts or omissions of Horve Contractors, Inc.

WHEREFORE, Defendants/Counter-Plaintiffs, GARY D. HILL, VILLA LAND TRUST, an Illinois Land Trust, and PRAIRIE LIVING WEST, LLC, pray for judgment against Counter-Defendants, HORVE CONTRACTORS, INC, in an amount equal to any judgment entered in favor of Plaintiff and for its costs and attorneys fees in this case.

WINTERS, BREWSTER, CROSBY and SCHAFER LLC

BY: _____
Molly Wilson Dearing
Attorneys for Respondents
ARDC No. 6294101

WINTERS, BREWSTER, CROSBY and SCHAFER LLC
Attorneys at Law
111 West Main, P.O. Box 700
Marion, IL 62959
Phone: (618)997-5611
Fax: (618)997-6522

WINTERS, BREWSTER, CROSBY AND SCHAFFER LLP

ATTORNEYS AT LAW
111 West Main, P.O. Box 700
MARION, IL 62959

ORIGINAL

JOHN S. BREWSTER
THOMAS F. CROSBY
PAUL J. SCHAFFER

CHARLES D. WINTERS (1917-1992)

TELEPHONE: (618) 997-5611

FAX: (618) 997-6522

LINDA J. BRAME*
MOLLY R. DEARING
JONATHAN R. CANTRELL

* Also licensed in Missouri

November 30, 2010

E-MAIL: winlaw@winterslaw.com

RECEIVED
CLERK'S OFFICE

DEC 02 2010

STATE OF ILLINOIS
Pollution Control Board

Mr. John T. Therriault
Assistant Clerk of the Board
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph, Suite 11-500
Chicago, IL 60601

RE: Rolf Schilling, Pam Schilling and Suzanne Venture vs Gary D. Hill, Villa Land Trust, an Illinois Land Trust, and Prairie Living West, LLC
IPCB. No. 2010-100
WBCS File No.: 10-185 JSB

Dear Mr. Therriault:

Please find enclosed find original and nine (9) copies of the following documents to be filed in the above-referenced matter:

Motion For Leave To File Third-Party Counterclaim

Please return file-stamped copies of same to my office in the enclosed self-addressed, stamped envelope. Thank you for your cooperation and should you have any questions, please do not hesitate to contact me.

Very truly yours,


Molly Wilson Dearing
For the Firm

MRD:kw

Enc.

cc: Ms. Carol Webb
Mr. Stephen Hedinger