

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

LAMAR ADVERTISING OF
MICHIGAN, INC.,

Plaintiff,

v.

CITY OF DETROIT,

Defendant.

Case No.

Hon.

BODMAN LLP

By: James J. Walsh (P27454)
Rebecca D'Arcy O'Reilly (P70645)

201 South Division St.

Ann Arbor, MI 48104

(734) 761-3780

Attorneys for Plaintiff LAMAR
ADVERTISING OF MICHIGAN, INC.

COMPLAINT

Lamar Advertising of Michigan, Inc. ("Lamar"), through its attorneys Bodman LLP, files its Complaint and in support of same, states:

JURISDICTION AND VENUE

1. This Court has jurisdiction over this action under 28 U.S.C. § 1331 because plaintiff asserts claims arising under the United States Constitution and 42 U.S.C. § 1983.

2. This Court has jurisdiction over this action under 28 U.S.C. § 1343(a)(3)&(4) because plaintiff seeks to redress the deprivation, under color of state law, of rights secured by the United States Constitution.

3. This Court has supplemental jurisdiction over plaintiff's state law claims under 28 U.S.C. § 1367(a) because such claims are so related plaintiff's claims arising under the United States Constitution that they form part of the same case or controversy.

4. Venue is proper in this Court under 28 U.S.C. § 1391(b) because defendant resides in this judicial district.

PARTIES

5. Lamar is a Michigan corporation with its principal place of business in Wayne County, Michigan.

6. Lamar engages in the business of erecting and maintaining outdoor advertising displays, commonly known as billboards, on property it owns or leases for that purpose. Lamar uses its billboards for the display of noncommercial and truthful commercial messages. Lamar earns income by charging its advertisers for the display of their messages on its billboards.

7. Defendant City of Detroit is a city chartered under the laws of the State of

Michigan and is located in Wayne County.

COMMON ALLEGATIONS

8. Lamar erects and maintains billboards on property in the City of Detroit.
9. The City of Detroit, Buildings and Safety Engineering Department, imposes an annual “sign license fee” on each billboard that Lamar maintains in the City of Detroit.
10. The “sign license fees” charged by the City of Detroit far exceed any expense that the City reasonably incurs in rendering the services and regulation attendant to the license.
11. Effective August 1, 2004, the “sign license fees” charged by the City of Detroit more than doubled without any commensurate increase in the reasonable cost of enforcing its regulations with respect to signs. Indeed, it is questionable whether the City of Detroit incurs *any* costs in regulating Lamar’s billboards.
12. The Board of Rules sets license fees. The only explanation of the Board of Rules for the dramatic fee increase in 2004 is the following statement from the minutes of a meeting held on July 19, 2004:

“After discussion between D. Bitzarakis and S. Warriar, Warriar indicated that the largest fee increase was in signs. The costs had been low and now the increases would provide incentive to discourage so many signs being displayed.”

Minutes of the July 19, 2004 Board of Rules meeting, p. 3, attached as **Exhibit A**.
13. On the invoices sent to Lamar in January of 2005, the only explanation for the fee increase was a notation stating simply: “THERE WAS A SUBSTANTIAL FEE INCREASE EFFECTIVE AUGUST 1, 2004.” See **Exhibit B**, 2005 Invoice for Sign 32039.

14. On September 28, 2005, counsel for Lamar sent the City of Detroit Law Department a detailed letter explaining the illegality of the “sign license fees.” The City of Detroit did not respond to the letter and did not revise the fees.

15. The City of Detroit does not maintain any clear and certain procedure whereby Lamar could seek redress for illegally or improperly charged “sign license fees.” The City of Detroit had the opportunity to provide Lamar with such a procedure in response to Lamar’s September 28, 2005 letter and it did not.

16. In each of the years, 2005, 2006, 2007, 2008, and 2009, the City of Detroit has attempted to collect “sign license fees” from Lamar in excess of \$36,000. The current total for “sign license fees” and “service fees” sought by the City of Detroit is in excess of \$198,000. See **Exhibit C**, 2009 Invoice.

17. In 2003 and 2004, Lamar paid the “sign license fee,” although it was excessive. The cost, if any, incurred by the City of Detroit in enforcing its regulations with respect to signs during the years 2003 and 2004 was not in proportion to the amount of “sign license fees” charged by the Buildings and Safety Engineering Department. Lamar paid the “sign license fees” assessed by the City of Detroit in 2003 and 2004.

COUNT I
42 USC § 1983 – VIOLATION OF FREE SPEECH UNDER THE FIRST AMENDMENT

18. Plaintiff restates paragraphs 1 through 17 and incorporates them by reference.

19. There is no reasonable relationship between the “sign license fee” and the reasonable cost in rendering the services and regulation attendant to the license.

20. Because the excessive “sign license fee” is not in proportion to any cost the City

of Detroit incurs in regulating billboards, this purported “fee” is in fact a tax.

20. The Board of Rules explicitly acknowledged when increasing the “sign license fee” in 2004 that the purpose of the increase was to discourage the erection and maintenance of signs in the City of Detroit.

21. The City of Detroit has imposed a tax on signs in the City of Detroit for the purpose of discouraging the erection and maintenance of signs and raising revenue from taxing signs.

22. The City of Detroit has thereby imposed a tax on billboard advertising in the City of Detroit for the explicit purpose of discouraging billboard advertising.

23. Communicating through the erection of signs is a form of speech protected under the First Amendment to the United States Constitution.

24. Billboard advertising is a form of speech protected under the First Amendment to the United States Constitution.

25. Under the First Amendment, any attempt by the City of Detroit to regulate or restrict Lamar’s billboards must directly advance substantial government interests and be narrowly tailored to reach no further than necessary to achieve those interests.

26. The City of Detroit has no legitimate interest in discouraging an entire form of speech.

27. Any interest the City of Detroit may have in collecting license fees is not served by the imposition of an excessive fee that bears no relationship to the reasonable cost in rendering the services and regulation attendant to the license.

28. The City of Detroit's imposition of excessive licensing fees on Lamar for maintaining billboards was an act that was taken under color of state law and that deprived Lamar of rights and privileges granted to it by the First Amendment of the United States Constitution.

29. The "sign license fee" imposed by the City of Detroit is unconstitutional on its face and unconstitutional as applied to plaintiff.

WHEREFORE, plaintiff requests judgment in its favor declaring that the "sign license fees" imposed by the City of Detroit are an unconstitutional tax designed to limit free speech protected by the First Amendment to the United States Constitution; enjoining the City of Detroit from assessing "sign license fees" on plaintiff; ordering the City of Detroit to reimburse plaintiff for the license fees paid to the City of Detroit by plaintiff in 2003 and 2004; awarding plaintiff attorney fees as provided under 42 U.S.C. § 1988; and awarding plaintiff all other relief provided by law.

COUNT II

42 U.S.C. § 1983 – VIOLATION OF DUE PROCESS UNDER THE FOURTEENTH AMENDMENT

30. Plaintiff restates paragraph 1 through 29 and incorporates them herein by reference.

31. Because the "sign license fee" is not proportionate to the reasonable cost of the services and regulation attendant to the fee, it is a tax.

32. The City of Detroit does not provide a clear and certain remedy for Lamar, as the taxpayer, to challenge the accuracy and legal validity of the assessment of "sign license fees."

33. The City of Detroit has no provision for the refund of illegally or improperly collected "sign license fees."

34. The failure of the City of Detroit to maintain constitutionally adequate process was made under color of state law and deprived Lamar of rights and privileges granted to it by the Fourteenth Amendment to the United States Constitution.

35. The refusal of the City of Detroit to provide Lamar with due process upon receiving the letter of Lamar's counsel dated September 28, 2005 was an action taken under color of state law that deprived Lamar of rights and privileges granted to it by the Fourteenth Amendment to the United States Constitution.

36. The failure of the City of Detroit to provide persons assessed with "sign license fees" with a clear and certain remedy to challenge the accuracy and legal validity of the assessment is unconstitutional on its face and as applied to Lamar.

37. The failure of the City of Detroit to respond to the letter of Lamar's counsel dated September 28, 2005 deprived Lamar of due process of law.

WHEREFORE, plaintiff requests judgment in its favor declaring that the City of Detroit's failure to maintain a clear and certain remedy for persons taxed with the "sign license fee" is a violation of the due process requirement of the Fourteenth Amendment to the United States Constitution; ordering the City of Detroit to reimburse plaintiff for illegally obtained taxes under the guise of "sign license fees" in the years 2003 and 2004; awarding plaintiff attorney fees as provided under 42 U.S.C. § 1988; and awarding plaintiff all other relief provided by law.

COUNT III

DECLARATORY JUDGMENT

38. Plaintiff restates paragraph 1 through 37 and incorporates them herein by reference.

39. The “sign license fees” assessed by the City of Detroit are a tax.

40. The “sign license fees” assessed by the City of Detroit are designed to discourage the erection and maintenance of signs and billboard advertising and to raise revenue.

41. The City of Detroit does not provide a clear and certain remedy for a person assessed with “sign license fees” to challenge the accuracy and legal validity of the assessment.

42. The City of Detroit did not respond to the letter of Lamar’s counsel on behalf of Lamar dated September 28, 2005.

WHEREFORE, plaintiff requests judgment in its favor declaring (1) that the “sign license fee” is an unconstitutional tax on speech protected by the First Amendment of the United States Constitution, (2) that the “sign license fee” is a tax under Michigan law in violation of the Michigan Constitution, (3) that the failure of the City of Detroit to provide a clear and certain remedy for a person assessed with “sign license fees” to challenge the accuracy and legal validity of the assessment violates the Fourteenth Amendment to the United States Constitution, and (4) The failure of the City of Detroit to respond to the letter of undersigned counsel on behalf of plaintiff dated September 28, 2005 deprived plaintiff of due process of law guaranteed by the Fourteenth Amendment to the United States Constitution; and awarding plaintiff all other relief provided by law.

COUNT IV

VIOLATION OF THE MICHIGAN CONSTITUTION, ARTICLE 9, SECTION 31

43. Plaintiff restates paragraphs 1 through 42 and incorporates them herein by reference.

44. The “sign license fee” is excessive and disproportionate to any reasonable costs that the City of Detroit incurs in rendering the services and regulation attendant to the license.

45. The Board of Rules explicitly stated that the increase in the amount of the “sign license fee” was designed to discourage signs, not to pay for any reasonable costs incurred in rendering the services and regulation attendant to the license.

46. The purposes of the “sign license fee” are to discourage the erection and maintenance of signs and to raise revenue.

47. The “sign license fee” is, thus, a tax.

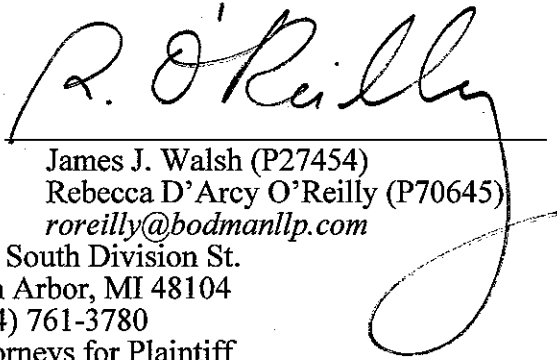
48. The City of Detroit is prohibited from levying such a tax under Article 9, Section 31 of the Michigan Constitution.

WHEREFORE, plaintiff requests judgment in its favor declaring invalid the City of Detroit’s schedule of “sign license fees”; enjoining the City of Detroit from assessing Lamar for the illegal “sign license fees”; ordering the City of Detroit to reimburse plaintiff for illegal “sign license fees” paid by Lamar for the years 2003 and 2004; awarding plaintiff its attorney fees and costs under M.C.L.A. Mich. Const. Art. 9, § 32; and awarding plaintiff all other relief provided by law.

Respectfully submitted,

BODMAN LLP

By:



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May 14, 2009

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CERTIFICATE OF SERVICE

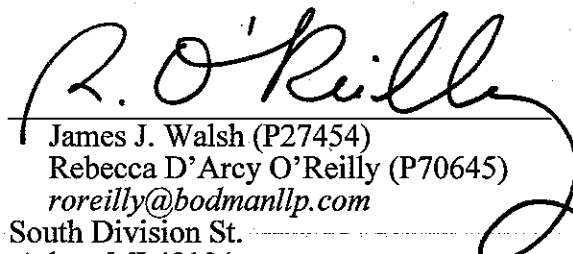
I, Rebecca O'Reilly, certify that on May 14, 2009, I served a copy of the Complaint and Certificate of Service upon the following:

City of Detroit — Law Department
1650 First National Building
660 Woodward Avenue, Suite 1650
Detroit, Michigan 48226

Respectfully submitted,

BODMAN LLP

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