

**IN THE CIRCUIT COURT OF COOK COUNTY
COUNTY DEPARTMENT, CHANCERY DIVISION**

Case No. 2023 CH 5147
(transferred to Law Division)

Hon. Thomas More Donnelly
Calendar W

CITY OF DES PLAINES, an Illinois municipal)
corporation,)

Intervenor Plaintiff.)

v.)

PRESTIGE FEED PRODUCTS, LLC, an Illinois)
limited liability company,)

Defendant.)

Intervenor Plaintiff, City of Des Plaines (“**City**”), by and through its attorneys, Elrod Friedman LLP, moves to strike certain paragraphs of Defendant Prestige Feed Products, LLC’s

(“*Prestige*”) Affirmative Defenses to the City’s Verified Complaint. In support, the City states as follows:

I. BACKGROUND

1. This matter, initially commenced by Prestige on May 25, 2023, relates to Prestige’s operations at its feed production factory (“*Facility*”) in Mount Prospect, Illinois.

2. Namely, the Village of Mount Prospect (“*Village*”) and the City each assert that Prestige’s operations, which persistently emit noxious odors, constitute an impermissible nuisance.

3. The Village filed a Counterclaim against Prestige, most recently the Third Amended Verified Counterclaim filed on July 19, 2024, alleging violations of various provisions of the Village Code and common law nuisance caused by the odor emitting from the Facility.

4. On August 19, 2024, the City filed its Petition to Intervene, which was granted on September 20, 2024.

5. The City filed its Verified Complaint in the instant action on September 24, 2024.

6. Prestige filed its Answers and Affirmative Defenses (“*Affirmative Defenses*”) to the City’s Verified Complaint on February 7, 2025.

7. Paragraphs 1, 2, 3, and 6 of Prestige’s Affirmative Defenses improperly incorporate numerous prior pleadings and allegations to which the City is unable to adequately respond.

II. PARAGRAPHS AT ISSUE

8. Paragraph 1 of the Affirmative Defenses states:

Prestige restates and incorporates herein all factual allegations set forth in the City’s Complaint. (*See* ILCS S. Ct. Rule 134; “If facts are adequately stated in one part of a pleading, or in any one pleadings, they need not be repeated elsewhere in the pleading, or in the pleadings, and may be incorporated by reference elsewhere or in other pleadings.”).

9. Paragraph 2 of the Affirmative Defenses states:

Prestige restates and incorporates herein all factual allegations set forth in Prestige's Verified Complaint For Injunction, For Declaratory Judgment, and For Damages filed in the instant case against the Village of Mount Prospect on May 25, 2023 ("Prestige's Complaint"). Prestige restates and incorporates herein all factual allegations set forth in the Affidavits of Joseph Pesoli, Ryan Hartley, and Riccardo A. DiMonte filed in the instant case on September 4, 2024.

10. Paragraph 3 of the Affirmative Defenses states:

Prestige restates and incorporates all factual allegations set forth in Prestige's Combined § 2-619.1 Motion to Dismiss the Verified Complaint of Intervenor City of Des Plaines filed on November 12, 2024 ("Prestige Motion").

11. Paragraph 6 of the Affirmative Defenses states:

The factual basis for the allegations are contained in the Prestige Complaint and the three Affidavits, and the Prestige Motion.

III. PARAGRAPHS 1, 2, 3, AND 6 OF THE AFFIRMATIVE DEFENSES SHOULD BE STRICKEN BECAUSE THEY IMPROPERLY INCORPORATE PRIOR PLEADINGS IN VIOLATION OF ILL. SUP. CT. R. 134 AND 735 ILCS 5/2-613(D).

12. Paragraphs 1, 2, 3, and 6 are improper under Illinois Supreme Court Rule 134,

which provides:

If facts are adequately stated in one part of a pleading, or in any one pleading, they need not be repeated elsewhere in the pleading, or in the pleadings, and may be incorporated by reference elsewhere or in other pleadings. Ill. Sup. Ct. R. 134

13. Paragraphs 1, 2, 3, and 6 are improper under Section 2-613(d) of the Illinois Code

of Civil Procedure, which provides:

The facts constituting any affirmative defense, such as payment, release, satisfaction, discharge, license, fraud, duress, estoppel, laches, statute of frauds, illegality, that the negligence of a complaining party contributed in whole or in part to the injury of which he complains, that an instrument or transaction is either void or voidable in point of law, or cannot be recovered upon by reason of any statute or by reason of nondelivery, want or failure of consideration in whole or in part, and any defense which by other affirmative matter seeks to avoid the legal effect of or defeat the cause of action set forth in the complaint, counterclaim, or third-party complaint, in

whole or in part, and any ground or defense, whether affirmative or not, which, *if not expressly stated in the pleading, would be likely to take the opposite party by surprise, must be plainly set forth in the answer or reply.* 735 ILCS 5/2-613 (emphasis added).

14. While Rule 134 allows for the incorporation of prior factual allegations, the facts establishing an affirmative defense “must be stated with the same degree of specificity that is required of a plaintiff stating a cause of action.” *International Insurance Co. v. Sargent & Lundy*, 242 Ill. App. 3d 614, 630 (1993).

15. Prestige’s incorporation of the entirety of the City’s Complaint, Prestige’s Complaint, the Affidavits of Joseph Pesoli, Ryan Hartley, and Riccardo A. DiMonte, and Prestige’s Combined § 2-619.1 Motion to Dismiss in the Affirmative Defenses contravenes the specificity requirement of Illinois Supreme Court Rule 134.

16. Further, Prestige’s incorporation of the above-mentioned pleadings has “taken the opposite party by surprise” pursuant to 735 ILCS 5/2-613(d), as the City cannot adequately respond to each and every allegation contained within several of the incorporated pleadings nor determine the specific allegations which Prestige relies on to support its Affirmative Defenses. To conform with Section 2-613(d), Prestige must expressly plead the specific allegations upon which it relies.

17. Therefore, the Court should strike Paragraphs 1, 2, 3, and 6 from the Affirmative Defenses.

WHEREFORE, the City respectfully requests that this Court strike Paragraphs 1, 2, 3, and 6 from the Affirmative Defenses, and for such other relief as may be deemed fair or just.

CITY OF DES PLAINES

By: /s/ Caitlyn R. Culbertson
One of its attorneys

Peter M. Friedman
Gregory T. Smith
Caitlyn R. Culbertson
Monica V. Pechous
Elrod Friedman LLP
325 N. LaSalle St., Suite 450
Chicago, Illinois 60654
(312) 528-5200
peter.friedman@elrodfriedman.com
gregory.smith@elrodfriedman.com
caitlyn.culbertson@elrodfriedman.com
monica.pechous@elrodfriedman.com
Firm No. 64467