

212/11-2765.A  
STATE OF ILLINOIS )  
                                  )  
COUNTY OF COOK )

#27915

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

VILLAGE OF NILES, )  
                                  )  
                          Plaintiff, )  
                                  )  
                          vs. )              No. \_\_\_\_\_  
                                  )  
VILLAGE OF GLENVIEW, )  
                                  )  
                          Defendant. )

**PLAINTIFF VILLAGE OF NILES' MOTION  
FOR PRELIMINARY INJUNCTION**

NOW COMES the Plaintiff, VILLAGE OF NILES, by and through its attorneys, JUDGE, JAMES & KUJAWA, LLC, and, pursuant to § § 11-101 and 11-102 of the Code of Civil Procedure (735 ILCS 5/11-101 & 102), presents to this Court its Motion for Preliminary Injunction in the cause herein. In support of its Motion for Preliminary Injunction, the Plaintiff Village of Niles states as follows:

1. That the Plaintiff, Village of Niles, has filed the “Village of Niles’ Verified Complaint for Specific Performance and Mandatory Injunction to Pay Unpaid Invoices” against the Defendant, Village of Glenview, in the cause herein. (A copy of Plaintiff “Village of Niles’ Verified Complaint for Specific Performance and Mandatory Injunction to Pay Unpaid Invoices” is attached hereto and marked as Plaintiff Niles Exhibit A.)

2. That the Plaintiff Village of Niles’ Verified Complaint for Specific Performance sues the Defendant Village of Glenview, owner of the North Maine Utility (“NMU”), for breach of a 30-year “Water Supply Agreement” of 1990, which expires in

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2020 and which requires the Plaintiff Village of Niles to purchase Lake Michigan water from the City of Chicago, to construct some \$3,400,000 worth of facilities to transport water to the Defendant Village of Glenview, and sell and provide to the Defendant Village of Glenview for the North Maine Utility's (NMU) 44,000 customers the water for which the Defendant Village of Glenview is to pay for monthly by the 22<sup>nd</sup> of each month.

3. That, in 1997, the Defendant Village of Glenview took an assignment of the "1990 Water Supply Agreement" from the previous owner and continued to honor the "1990 Water Supply Agreement" for 14 years, until April of 2011, when it refused to pay its April billing invoice of \$338,198.50 and its May billing invoice of \$359,860.00, claiming, for the first time in 14 years, that the Plaintiff Village of Niles was overcharging it for water and that it would no longer pay for its monthly water bills until it sends an "audit team" into the Village of Niles to conduct an audit of the Village of Niles' records back to 1997.

4. That the Plaintiff Village of Niles invested \$3,400,000 in facilities to transport Lake Michigan water it purchases from the City of Chicago to the Defendant Village of Glenview for NMU's 44,000 residents, and when the Defendant Village of Glenview refused to pay its April bill and its May bill, it cost the Plaintiff Village of Niles approximately \$1 million loss of revenue which it needs to furnish services to its own residents for their "health, safety and welfare" (approximately \$150,000 each month for Chicago water and approximately \$350,000 each month for furnishing water to the Defendant Village of Glenview which has not been paid for).

5. That because the Plaintiff Village of Niles does not have the financial wherewithal to afford to lose \$1 million every two months, or \$6 million every year, and provide the necessary governmental services it needs to provide for its own residents and

with 9 years still to run on the 30-year “1990 Water Supply Agreement,” the Plaintiff Village of Niles filed its Verified Complaint for Specific Performance of the 30-Year Contract and Mandatory Injunction to Pay Unpaid Invoices, seeking enforcement of the “1990 Water Supply Agreement” and the payment of unpaid invoices.

6. That the purpose of a preliminary injunction is to prevent a threatened wrong or a continuing injury pending a full hearing on the merits and the Court has broad discretion to grant a preliminary injunction if the petitioner makes a *prima facie* showing of the following five elements necessary for a preliminary injunction to issue:

- (a) plaintiff petitioner has a clearly ascertainable right that needs protection;
- (b) plaintiff petitioner will suffer or is suffering irreparable harm, warranting a preliminary injunction;
- (c) plaintiff petitioner has no adequate remedy at law and any remedy at law will not fully protect petitioner;
- (d) plaintiff petitioner shows a likelihood of success on the merits — it need not prove its case, but merely that it has a fairly good chance of winning; and
- (e) the benefits of the preliminary injunction for the plaintiff petitioner outweigh any possible detriment to the defendant.

(*Scheffel & Co., P.C. v. Fessler*, 356 Ill.App.3d 308, 313, 821 N.E.2d 1, 5 (5<sup>th</sup> Dist. 2005)).

7. That to state a cause of action for specific performance, the plaintiff must allege and prove three elements, as follows:

- (a) the existence of a valid, binding and enforceable contract which is clear, definite and unequivocal;
- (b) compliance by the plaintiff with the contract terms or proof the plaintiff is ready, willing and able to perform the contract; and
- (c) the failure or refusal of the defendant to perform its part of the

contract.

(*Hoxha v. LaSalle National Bank*, 365 Ill.App.3d 80, 847 N.E.2d 725 (1<sup>st</sup> Dist. 2006) (For the court to grant specific performance of a contract, the contract must be clear, definite and specific); and *McCormick Road Associates, L.P. II v. Taub*, 276 Ill.App.3d 780, 659 N.E.2d 52 (1<sup>st</sup> Dist. 1995) (For specific performance of a contract to be granted, the terms of the contract must be clear and precise with no indefinite or unclear provisions)).

8. That specific performance of a contract will be granted even where there is a remedy at law for damages, but the remedy at law for damages is not adequate because the resulting damages are uncertain and difficult to ascertain — such as in this case where:

- (a) the Village of Niles has contracted with the City of Chicago for water for the Village of Glenview and what happens to that contract is uncertain;
- (b) the Village of Niles has spent approximately \$3,400,000 in facilities construction to transport water to the Village of Glenview for 30 years and how it can recoup that money and what happens to those facilities is uncertain;
- (c) what effect the Village of Glenview's failure to honor its contractual commitment will have on projects and programs undertaken by the Village of Niles in anticipation of the performance of the 30-year "1990 Water Supply Agreement" by the Village of Glenview is unclear and uncertain.

(*John O. Schofield, Inc. v. Nikkel*, 314 Ill.App.3d 771, 785, 731 N.E.2d 915, 927 (5<sup>th</sup> Dist. 2000) (Where legal remedy of damages for breach of contract is uncertain or difficult to ascertain or project, specific performance is warranted)).

9. That the Plaintiff Village of Niles' Verified Complaint for Specific Performance of 30-Year Contract and Mandatory Injunction to Pay Unpaid Invoices consists of two counts, as follows:

- (a) Count I — Specific Performance — Mandatory Injunction to Pay Unpaid Invoices; and
- (b) Count II — Breach of Contract — Damages to Conclusion of Contract in 2020.

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10. The Plaintiff Village of Niles' Verified Complaint for Specific Performance and Mandatory Injunction to Pay Unpaid Invoices clearly meets the 5-pronged test for the issuance of a mandatory preliminary injunction, as shown by the following:

**Clear & Specific Contract Rights**

- (a) The "1990 Water Supply Agreement" of which the Defendant Village of Glenview took an assignment is a clear, specific and unequivocal contract in which the Village of Niles' rights are indisputable;

**Irreparable Harm: \$3,400,000 In Facilities**

- (b) The Village of Niles will clearly suffer irreparable harm if the Village of Glenview does not honor the "1990 Water Supply Agreement," suffering loss of \$1 million every two months (\$6 million per year), loss of its \$3,400,000 worth of facilities, and loss of programs and projects undertaken relying upon the performance of the "1990 Water Supply Agreement" for 9 more years, until 2020.

**No Adequate Remedy At Law**

- (c) The Village of Niles has no adequate remedy at law because the "1990 Water Supply Agreement" was a "requirements contract," causing the Village of Niles to perform by:
  - (1) contracting with the City of Chicago to buy water for the Village of Glenview;
  - (2) constructing, paying for and owning and operating approximately \$3,400,000 worth of facilities to transport water to the Village of Glenview and provide the personnel, facilities, procedures and processes to operate those facilities.

That the Village of Niles budgeted its financial resources and projects and programs based upon the "30-Year Water Supply Agreement" and the consequences on these matters is uncertain and difficult to ascertain.

**Likelihood Of Success-Performance**

- (d) The Village of Niles is performing under the "1990 Water Supply Agreement," furnishing water to the Village of Glenview and being "out of pocket" approximately \$1 million for the last two months, and the terms of the "1990 Water Supply Agreement" are clear, specific

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and unequivocal and the Village of Glenview's failure to pay for the water it has received is a unilateral breach of the contract based upon speculation that the Village of Niles was overcharging for the water — despite the fact that Village of Glenview paid for the water for 14 years without objection — offering no facts for its claim and offering not even “one scintilla” of evidence.

That it is clear that the Village of Niles has shown a likelihood of prevailing on the merits because it has a fairly good chance of winning on the merits.

### **Balance Of Equities For Niles**

- (e) It is clear that the benefits of a preliminary injunction for the Village of Niles, who is losing \$1 million every two months, which money is rightly for the benefit of the “health, welfare and safety” of the citizens of the Village of Niles, far, far outweighs any possible detriment to the Village of Glenview, who signed onto the “1990 Water Supply Agreement” and who says it has the money to pay the Village of Niles, but is holding onto the money, having put it in an escrow account.

The Defendant Village of Glenview, owner of NMU, which is losing money and running in the red, cannot just unilaterally, arbitrarily, without conscience or consideration of a fellow local governmental body, sister Village, break the “1990 Water Supply Agreement” now, 9 years before it terminates in 2020, because it can buy water cheaper from the Village of Wilmette which gets water directly from Lake Michigan rather than buying water from the Village of Niles, which must first buy Lake Michigan water from the City of Chicago before it can sell it to the Village of Glenview under the “1990 Water Supply Agreement.”

(*Gold v. Ziff Communications Co.*, 196 Ill.App.3d 425, 553 N.E.2d 404 (1<sup>st</sup> Dist. 1989) (A preliminary injunction may be granted when it is difficult to quantify the damages caused by loss of future revenues and breach of contract could cause the company to go out of business — court must “balance the equities”); and *Giannini v. First National Bank of Des Plaines*, 136 Ill.App.3d 971, 483 N.E.2d 924 (1<sup>st</sup> Dist. 1985) (In “balancing the equities,” there is no hardship imposed on compelling a party to a contract to do what it contracted to do when it believed the contract was to its advantage and the fact contract agreement resulted in unanticipated expense does not justify refusal and failure to perform — 136 Ill.App.3d at 982-83, 483 N.E.2d at 934)).

It is clear that the Defendant Village of Glenview has asserted no reasonable, factual basis to claim it will not pay its “total water bill” because it is being overcharged and the “balance of equities” mandate that injunctive relief be granted and that the Village of Glenview be required to pay all unpaid water bill invoices.

WHEREFORE, the Plaintiff, VILLAGE OF NILES, respectfully moves this Court, pursuant to § § 11-101 and 11-102 of the Code of Civil Procedure (735 ILCS 5/11-101 & 102), to enter a mandatory preliminary injunction against the Defendant VILLAGE OF GLENVIEW, owner of NMU, ordering as follows:

- (1) Defendant Village of Glenview to pay Plaintiff Village of Niles all unpaid water bill invoices;
- (2) Defendant Village of Glenview continue to pay Plaintiff Village of Niles the monthly water bill invoices until such a time as the Defendant Village of Glenview can state a cause of action for breach of contract and the Court can hold a hearing, take evidence, and determine the Defendant Village of Glenview’s claim on the merits.

Respectfully Submitted,

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JUDGE, JAMES & KUJAWA, LLC  
JAY S. JUDGE  
One of the Attorneys for Plaintiff  
VILLAGE OF NILES

**Exhibit Attached:**

**Plaintiff Niles Exhibit A** — Plaintiff Village of Niles’ Verified Complaint for Specific Performance of 30-Year Contract and Mandatory Injunction to Pay Unpaid Invoices and Exhibits No. 1 through No. 6.

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