

refusal has caused and continues to cause the City damages and has interfered with the City's attempts to secure a new baseball team to occupy the baseball stadium. As a result, the City requests that the Court (1) enter a Declaratory Judgment finding that the Lease expired on September 30, 2024, and (2) order Defendants to immediately peaceably and quietly quit and surrender to the City the baseball stadium.

FACTUAL ALLEGATIONS

A. The Parties.

1. The City is a municipal corporation organized under the laws of the State of Indiana.

2. MKE Baseball, LLC is a Wisconsin limited liability company with its principal office at 4600 Loomis Road, Suite 310, Milwaukee, Wisconsin 53220.

3. Kokomo Baseball, LLC is an Indiana limited liability company with its principal office at 319 S. Union Street, Kokomo, Indiana 46901.

4 This Court has jurisdiction over this dispute.

5. Preferred venue lies in Howard County, Indiana, under Indiana Trial Rule 75(A)(5).

B. The City Leases a Baseball Stadium to MKE Baseball.

6. On July 11, 2014, the City entered into the Lease with MKE Baseball for the use of the baseball stadium located at 319-321 S. Union Street, Kokomo, Indiana (the "Premises"). Baseball Stadium Use Agreement, attached as Exhibit A.¹ The lease is governed by Indiana law. *Id.* at § 33(A).

7. On November 1, 2014, MKE Baseball assigned its interests in the Lease to Kokomo Baseball.

¹ The City has also attached the addenda to the Lease as part of Exhibit A, but they are not relevant to the issues before the Court.

8. The Lease had an initial five-year term from October 1, 2014 through September 30, 2019. Ex. A at § 2(A).

9. The Lease further provided that MKE had the right to renew the Lease for two additional five-year terms. *Id.*

10. Additionally, the Lease provide that MKE Baseball “shall exercise its right of renewal by **written notice** to the City, delivered no later than 90 days prior to the conclusion of the ten current Term.” Ex. A at § 2(C) (emphasis added).

11. On June 26, 2019, Kokomo Baseball provided written notice to the City that it was renewing the Lease for an additional five-year term, from October 1, 2019 to September 30, 2024. Letter from Kokomo Baseball to the City, attached as Ex. B.

C. The Lease Expired September 30, 2024, and Defendants Refuse to Surrender the Premises.

12. To renew the Lease beyond September 30, 2024, Kokomo Baseball was required to provide the City with written notice on or before July 2, 2024. It failed to do so.

13. Given Kokomo Baseball’s failure to renew the Lease beyond September 30, 2024, the City has expended significant time, effort, and resources in an effort to secure a new user of the Premises.

14. On September 17, 2024, the City served formal notice on Kokomo Baseball to vacate and surrender the Premises not later than September 30, 2024. City Letter to Kokomo Baseball, attached as Exhibit C.

15. The City reminded Kokomo Baseball that pursuant to Section 22 of the Lease, it was required to peaceably and quietly quit and surrender the Premises to the City in good order and condition with normal wear and tear. *Id.*; Ex. A at § 22.

16. On September 20, 2024, Kokomo Baseball responded that it provided oral notice

that it was renewing the Lease during a meeting with the City in May 2024. Despite the unambiguous terms of the Lease and the fact that it had previously served written notice that it intended to renew the lease in 2019, Kokomo Baseball claimed that it did not understand that the City requested or required written notice. Kokomo Baseball Letter to City, attached as Exhibit D.

17. On September 25, 2024, the City rejected Kokomo Baseball's untimely, non-compliant attempt to renew the Lease and once again reiterated its demand that Kokomo Baseball vacate and surrender the Premises. City Letter to Kokomo Baseball, attached as Exhibit E.

18. On September 26, 2024, Kokomo Baseball demanded arbitration pursuant to Section 33 of the Lease. Kokomo Baseball Letter to City, attached as Exhibit F; Ex. A at § 33.

19. On October 19, the City agreed with Kokomo Baseball to use Michael Bishop as the arbitrator for the dispute.

20. The City has reached out to Kokomo Baseball multiple times inquiring about when it intended to file for arbitration with the American Arbitration Association, as dictated by the Lease. Ex. A at § 33(B).

20. To date, although it demanded arbitration on September 26, 2024, Kokomo Baseball has not filed a claim in arbitration. As a result, it has waived any requirement that this matter be arbitrated.

21. Kokomo Baseball has continued to refuse to peaceably and quietly quit and surrender the Premises to the City.

22. Kokomo Baseball's failure to comply with its Lease obligations to surrender the Premises threatens the City's efforts to engage another team to occupy the Premises for the upcoming baseball season.

23. Kokomo Baseball's refusal to surrender the Premises has caused significant

monetary harm to the City.

COUNT I – DECLARATORY JUDGMENT

24. The City restates the allegations contained in paragraphs 1-23.

25. In light of Kokomo Baseball’s actions, a dispute over whether the Lease has expired has arisen between the City and Kokomo Baseball.

26. The City requests that the Court enter a declaratory judgment, pursuant to Ind. Trial Rule 57 and Ind. Code § 34-14-1 *et seq.*, that the Lease expired September 30, 2024, and that Kokomo Baseball is required to immediately peaceably and quietly surrender the Premises to the City.

27. In light of the time-sensitive nature of the dispute and the need for an expedited resolution to avoid harm to the City, pursuant to Ind. Trial Rule 57 the City requests that the Court order an expedited hearing on the City’s Complaint and order that Defendants provide an expedited response to the Complaint.

28. The City further requests that the Court advance this case on its calendar as quickly as possible so that the City may continue its efforts to secure a new baseball team.

29. Kokomo Baseball’s actions are in direct violation of the express and unambiguous terms of the Lease, and are therefore without merit, unreasonable, and groundless. Accordingly, the City requests that the Court award it its attorney’s fees and costs pursuant to Ind. Code § 34-52-1-1.

WHEREFORE, the City respectfully requests that the Court enter judgment in its favor and against Defendants, and award the City declaratory relief, its costs and attorney’s fees, and all other appropriate legal and equitable relief.

COUNT II – SPECIFIC PERFORMANCE

30. The City restates the allegations contained in paragraphs 1-29.

31. By refusing to peaceably and quietly surrender the Premises, Kokomo Baseball has breached the Lease.

32. Kokomo Baseball’s breach of the Lease has injured the City.

33. As a result, the Court should award the City specific performance of Kokomo Baseball’s obligation to peaceably and quietly surrender the Premises. The Court should order Kokomo Baseball to immediately peaceably and quietly surrender the Premises to the City.

34. The Court should award the City any and all damages incurred as a result of Kokomo Baseball’s acts and omissions in violation of the Lease.

WHEREFORE, the City respectfully requests that the Court enter judgment in its favor, order Defendants to immediately peaceably and quietly surrender the Premises to the City, and award the City its damages, costs, attorney’s fees, and all other appropriate legal and equitable relief.

Respectfully submitted,

/s/ Blake J. Burgan

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CERTIFICATE OF SERVICE

I hereby certify that on October 31st 2024, the foregoing was filed electronically with the Indiana E-Filing System (IEFS). I further certify that a copy of the foregoing has been served via process server on the following:

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