

STATE OF MICHIGAN
COURT OF CLAIMS

SYLVAN INN B&B, LLC,
a Michigan limited liability company
and

Case Number: 17 - - MZ

Hon.

LAKESHORE INN, LLC,
a Michigan limited liability company,

Plaintiffs,

v

SLEEPING BEAR DUNES VISITORS BUREAU,
a Michigan nonprofit corporation,

and

STEVE ARWOOD,
in his official capacity as President of the Michigan Strategic Fund,

Defendants.

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VERIFIED COMPLAINT

There is no other pending or resolved civil action arising out of the same transaction or
occurrence as alleged in the complaint.

Now comes Plaintiffs, SYLVAN INN B&B, LLC and LAKESHORE INN, LLC, and for their Verified Complaint, state the following:

BACKGROUND

The Plaintiffs, SYLVAN INN B&B, LLC and LAKESHORE INN, LLC, rent rooms in Glen Arbor near Sleeping Bear Sand Dunes. The State of Michigan, pursuant to the Community Convention or Tourism Marketing Act, PA 395 of 1980, MCL 141.871 *et seq.*, has authorized the creation of certain regional entities to promote regional tourism and to fund themselves through the imposition of a room tax on rented rooms at facilities within the region. Defendant, SLEEPING BEAR DUNES VISITORS BUREAU, is such a taxing entity. Defendant STEVE ARWOOD is the president of the Michigan Strategic Fund and, under the Community Convention or Tourism Marketing Act, is the state official who approves actions taken under that Act. The purpose of this room tax is promote tourism by paid advertising and promotion. However, this paid advertising and promotion is a form of compelled speech. Our United States Supreme Court has held that a person cannot be compelled to pay for speech against his will, regardless of the message, except under certain circumstances which do not apply here. For this reason, the imposition of this room tax is unconstitutional as an imposition on free speech under the Michigan and United States Constitutions, and the Community Convention or Tourism Marketing Act is unconstitutional.

THE PARTIES, VENUE AND JURISDICTION

1. Plaintiff, SYLVAN INN B&B, LLC (“SYLVAN”), is a limited liability company organized under the laws of Michigan.
2. Plaintiff, LAKESHORE INN, LLC (“LAKESHORE”), is a limited liability company organized under the laws of Michigan.

3. Both SYLVAN and LAKESHORE are owned by GERSENSEN AD-VENTURES, LLC (“GERSENSEN”), a limited liability company organized under the laws of Michigan.
4. GERSENSEN has a registered office in Traverse City, Michigan.
5. The Defendant, SLEEPING BEAR DUNES VISITORS CENTER (“SBDVB”), is a Michigan nonprofit corporation, and is recognized as a tax exempt 501(c)(6) under the federal tax code.
6. SBDVB, upon information and belief, maintains an office and does business in Glen Arbor, Michigan.
7. Defendant, STEVE ARWOOD is an individual acting as president of the Michigan Strategic Fund.
8. The matter at issue here is the constitutionality of a statute authorizing an assessment and Plaintiffs seek a declaratory ruling and damages; therefore, under MCL 600.6419, this court has jurisdiction to hear and decide this dispute.
9. This matter includes a claim for relief under 42 USC 1983 of the federal code, which this state Court of Claims has jurisdiction over pursuant to the Supremacy Clause of Art VI of the United States Constitution. See *Felder v Casey*, 487 US 131, 108 SCt 2302 (1988)

COUNT 1 – MICHIGAN CONSTITUTIONAL FREE SPEECH VIOLATION

10. The Plaintiffs incorporate the preceding paragraphs as if restated fully herein.
11. Const 1963, Art I, § 5 guarantees “Every person may freely speak, write, express and publish his views on all subjects, being responsible for the abuse of such right; and no law shall be enacted to restrain or abridge the liberty of speech or of the press.”
12. Using the power of the government to compel speech is a violation of the liberty of speech.
13. The Defendant SBDVB monetarily assesses the Plaintiffs based on their room rentals.

14. The statutory basis of Defendant SBDVB's room rental assessment is found in the Community Convention or Tourism Marketing Act, Public Act 395 of 1980, MCL 141.871 *et seq.* (hereafter, the "Act").
15. Defendant SBDVB's assessments are used to fund speech that advertises tourism in the region.
16. Defendant SBDVB's assessments fund no other action other than speech promoting regional tourism.
17. Defendant SBDVB's tourism message is not effectively controlled by Michigan's government.
18. Defendant SBDVB's tourism message is developed by the Defendant SBDVB in the form of a marketing program.
19. Defendant SBDVB's tourism message is not created by the president of the Michigan Strategic Fund, Defendant STEVE ARWOOD.
20. Defendant SBDVB's tourism message is not created or developed by any State of Michigan government agency.
21. Upon information and belief, Defendant STEVE ARWOOD and his predecessors as presidents of the Michigan Strategic Fund have never disapproved a tourism marketing program created by Defendant SBDVB.
22. Upon information and belief, Defendant STEVE ARWOOD and his predecessors as presidents of the Michigan Strategic Fund have never altered a proposed tourism marketing program created by Defendant SBDVB.

23. The president of the Michigan Strategic Fund's statutory duty, in regards to the tourism marketing message, is confined to approval or disapproval of Defendant SBDVB's marketing plan. See MCL 141.873a.
24. The president of the Michigan Strategic Fund does not participate in any meetings held by the Defendant SBDVB.
25. Upon information and belief, the largest expenditures by Defendant SBDVB, funded by assessments, is its webpage and other publications.
26. Defendant SBDVB's webpage and other publications do not state that its message is that of the State of Michigan.
27. Defendant SBDVB's webpage and other publications do not state that its message is that of the Michigan Strategic Fund.
28. Defendant SBDVB's webpage and other publications prominently feature Plaintiffs and other room renters.
29. Defendant SBDVB's webpage and other publications appear to the reasonable viewer to be the speech and message of Plaintiffs and other room renters in the district.
30. The State of Michigan does not appoint any of Defendant SBDVB's principals or officers.
31. The Michigan Strategic Fund does not appoint any of Defendant SBDVB's principals or officers.
32. The rights to free speech under the Michigan and federal constitutions are coterminous. See, e.g., *Up & Out of Poverty Now Coalition v Michigan*, 210 Mich App 162, 168 (1995). Thus, federal authority construing the First Amendment may be used in construing Michigan's constitutional free speech rights. See *id.* at 168–169.

33. Our United States Supreme Court has ruled that compelled marketing like that conducted by the Defendant SBDVB violates the First Amendment. See *USDA v United Foods*, 121 SCt 2334 (2001).

34. A statute that violates the liberty of speech protected by Const 1963, Art I, § 5 is invalid.

COUNT 2 – U.S. CONSTITUTIONAL FIRST AMENDMENT VIOLATION

35. Plaintiffs hereby incorporate the preceding paragraphs as though fully restated herein.

36. The First Amendment to the U.S. Constitution states: “Congress shall make no law ... abridging the freedom of speech.”

37. For all of the reasons given in Count 1, the Defendant SBDVB’s assessments levied against Plaintiffs violate Plaintiffs’ freedom of speech under the United States Constitution by compelling Plaintiffs to fund speech they chooses not to engage in.

38. Michigan’s courts can hear and adjudicate claims based on USCA Const Amend 1. See, for example, *Mich State AFL–CIO v MERC*, 453 Mich 362 (1996).

39. 42 USC 1983 provides injured parties with jurisdiction to challenge the denial of their constitutional rights by a public official acting under the color of law.

40. As described above, conduct by Defendants deprived Plaintiffs of their constitutional rights under the First Amendment to the United States Constitution.

41. Defendants’ said deprivation of Plaintiffs’ rights occurred under color of state law.

42. Defendant STEVE ARWOOD in his official capacity is a “person” for the purposes of 42 USC 1983. See, *Smith v DPH*, 428 Mich 540 (1987).

43. Plaintiffs who prevail in cases brought under 42 USC 1983 may be awarded reasonable attorney’s fees under 42 USC 1988(b).

RELIEF REQUESTED

Plaintiffs request that this court declare that the room-rental assessment found in the Community Convention or Tourism Marketing Act, PA 395 of 1980, MCL 141.871 *et seq.* violates the free speech rights of the Plaintiffs where it performs no other function than to compel Plaintiffs to fund speech they do not want to fund; and for nominal damages. Plaintiffs request a declaration that no past-due amounts are owed to Defendant SBDVB as the room assessment is and was unconstitutional. In addition, Plaintiffs request any other relief, including but not limited to reasonable attorney’s fees and court costs under 42 USC 1988(b) or any other applicable law, in law or equity, this court finds to be appropriate as justice requires.

I declare that the statements above are true to the best of my information, knowledge, and belief.

Dated: _____

David Gersenson, Member
Gersenson Ad-Ventures, LLC

Subscribed and sworn to by _____ before me on the _____ day of February 2017.

Signature _____

Printed name _____

Notary public, State of Michigan, County of _____

My commission expires _____

Acting in the County of _____