

IN THE CIRCUIT COURT OF THE TWELTH JUDICIAL CIRCUIT
WILL COUNTY, ILLINOIS, LAW DIVISION

FIRST COUNTRY HOMES, LLC, and)
STATE BANK OF COUNTRYSIDE,)
TRUSTEE OF TRUST NO. 03-2603,)
Plaintiffs,)

AQUA ILLINOIS, INC. and the VILLAGE OF)
MONEE)
Defendants.)

05 CH 664
CASE NO. _____
FILED
05 MAR 30 AM 10:01
CIRCUIT COURT
WILL COUNTY, ILLINOIS

COMPLAINT AT LAW

First Country Homes, LLC ("First Country Homes") and State Bank of
Countryside, Trustee of Trust Dated January 5, 2004, also known as Trust No. 03-2603,
by and through their attorneys, Gardiner Koch & Weisberg, complains of defendants as
follows:

THE PARTIES

1. First Country Homes ("First Country") is a real estate developer with its principal place of business located at 25640 Jasmine Lane, Monee, Illinois.
2. The State Bank of Countryside, is an Illinois state bank holding a trust property located in Mokena, Illinois under Trust Dated January 5, 2004, also known as Trust No. 03-2603 ("Trust 03-2603"). The beneficial interest owners of Trust 03-2603 are Mike Willis and Shamus Flanagan. The property held in Trust 03-2603 is being developed by Kirsea, LLC.
3. Upon information and belief, Aqua Illinois, Inc., formerly known as Consumers Illinois Water Company ("Aqua"), is an Illinois corporation with its principal place of business located in Kankakee, Illinois, doing business in Monee, Illinois.

Initial case management set for

7-18-05 at 8:30 am

- 4. The Village of Monee in an Illinois municipal corporation.

ALLEGATIONS COMMON TO ALL COUNTS

- 5. On October 16, 1986, Aqua and the Village of Monee entered into an agreement by which Aqua agreed to provide sewerage and wastewater treatment services to Monee (the "October 16 Agreement"). The October 16 Agreement is attached hereto as Exhibit A.
- 6. On November 16, 1994, the Village of Monee annexed approximately 151.3 acres of unincorporated property contiguous to the corporate boundaries of Monee. See Annexation Agreement dated 11/16/94, attached hereto as Exhibit B. The Annexation Agreement dated 11/16/94 provides:

SEWER AND WATER CAPACITY. Village warrants that as of the date of the execution of this Annexation Agreement there is adequate supply and pressure of potable water to serve the needs of the Subject Realty and that there exists adequate sewerage disposal and treatment capacity to service same.

Id.

- 7. On or about February 18, 2004, as part of an agreement entered into between the former owners, the Village of Monee, and Kirsea Builders, as developer, the Village of Monee annexed approximately 53.5 acres of unincorporated property contiguous to the corporate boundaries of Monee ("Trust 03-2603 Property"). See Annexation Agreement dated 2/18/04, attached hereto as Exhibit C.
- 8. On February 17, 2005, Kirsea Builders transferred its interest to the Trust 03-2603 Property to Trust 03-2603.
- 9. As owner and developer, Trust 03-2603 subsequently began the installation of infrastructure upon the lots located within the Trust 03-2603 Property.

10. The October 16 Agreement specifically provided for wastewater service and treatment to all wastewater collected by Monee in the collection system, and therefore the Trust 03-2603 Property.
11. After receipt of notice, Aqua received monies from Trust 03-2603 for the provision of sewage and wastewater services for the development of the Trust 03-2603 Property. In addition, Aqua signed the Illinois Environmental Protection Agency ("IEPA") permit so that Trust 03-2603 was authorized to obtain the necessary development permits.
12. To-date, Trust 03-2603 has incurred significant expense toward permitting, site improvements and construction.
13. On September 16, 2004 the Village of Monee approved and signed a plat of subdivision known as Phase 8 of Country Meadows subdivision, a portion of the property ("the First Country Property") owned by First Country pursuant to the annexation agreement dated 11/16/94, to First Country. The plat was recorded on 10/25/04, Document No. R 2004194559.
14. As owner and developer, First Country built homes on the First Country Property.
15. The October 16, 1986 Agreement specifically provided for wastewater service and treatment to all wastewater collected by Monee in the collection system, and therefore the First Country Property.
16. On August 28, 2003, the Village of Monee provided notice to Aqua it would not renew the October 16, 1986 Agreement when it was to expire three years hence, on October 16, 2006.

17. After receipt of notice, Aqua received monies from First Country for the provision of sewage and wastewater services for Phase 7 of development of the First Country Property. In addition, Aqua signed the IEPA permit so that First Country was authorized to obtain the necessary development permits.
18. To-date, First Country has incurred significant expense toward permitting, site improvements and construction.

First Country

19. The current phase of First Country's development is called Phase 8. It is part of the First Country Property. Phase 8 consists of 30 lots upon which homes will be built by First Country. First Country has executed 28 contracts for the sale of lots and construction of homes in Phase 8 of the First Country Property.
20. Construction of the homes in Phase 8 (the "Phase 8 Houses") shall be completed June, July and August depending upon the dates of the contracts. The homes will be sold at prices ranging from \$180,000 to \$260,000. If the Phase 8 Houses are not connected to the Village of Monee sewer and wastewater treatment system, First Country will breach all 28 of its contracts.
21. Phase 7 and 8 adjoin each other and the sewerage and wastewater flow through the same lines from Phase 8 to Phase 7 and then to the treatment facility. There is adequate capacity for the treatment facility to handle Phase 8's sewerage and wastewater.
22. Although Aqua signed the necessary IEPA permit application for Phase 7, it has failed and refused to sign such permit application for Phase 8.

23. In connection with Phase 8, First Country has provided all necessary engineering approvals for wastewater and sewage and has paid fees, including payment of some Two Thousand Dollars (\$2,000.00), plus others totaling One Hundred Sixty-Two Thousand Six Hundred Dollars (\$162,600.00), required by Aqua to the Village of Monee.
24. In connection with Phase 8, First Country paid checks to the IEPA to obtain the IEPA permits.
25. In addition to money paid for permitting, First Country has paid approximately Four Hundred Fifty-Six Thousand Six Hundred Seventy-Six Dollars (\$456,676.00) toward site improvements, including excavation, sewer and water improvements, as well as approximately Two Hundred Thirty-Four Thousand One Hundred and One Dollars (\$234,101.00) toward home construction. First Country anticipates expenditures of approximately Seventy One Thousand Eight Hundred Ninety Dollars (\$71,890.00) toward street and curb paving for Phase 8 of the First Country Property on or about April 1, 2005. Of the amounts previously spent, \$ 1,290,614.38 is attributable to Phase 8 of the First Country Property.
26. Despite demands by First Country of Aqua and the Village of Monee, neither party has caused sewage and wastewater treatment services to be provided to Phase 8 of the First Country Property.

Trust No. 03-2603

27. The Annexation Agreement dated February 18, 2004 provides:

SEWER AND WATER. Developer shall extend the existing Village sanitary Sewer and water lines from their current termini to the Subject Realty at Developer's expense as needed per phase of development.

28. Trust No. 03-2603 has subdivided its property into 136 lots. It has spent substantial sums installing infrastructure for the property, including piping for the wastewater and sewerage system, but has been ordered to halt construction by the Village of Monee and the IEPA.
29. Trust No. 03-2603's wastewater and sewerage piping connects into the piping coming from Phase 8 of First Country's development.
30. Trust No. 03-2603 has begun to premarket its lots to builders for sale this Spring. With 30 lots under contract and 15 pending the result of this suit.
31. Trust No. 03-2603 has submitted an application for permit to the IEPA for its property.
32. The permit submitted by Trust No. 03-2603 was signed by the Village of Monee and had met all engineering certification requirements.
33. In connection with permitting, Trust 03-2603 has provided all necessary engineering approvals for wastewater and sewage and has paid fees, totaling \$13,373.66 required by the Village of Monee.
34. Aqua has failed and refused to sign the IEPA permit.
35. In addition to money paid for permitting, First Country has paid approximately \$1,018,937.50 toward site improvements. Additionally, in order to facilitate the construction of the lots, Trust 03-2603 has taken out a loan in the amount of \$1,850,000.00 and has paid \$38,303.13 in interest (quarterly).

36. As a result of Aqua's actions, the IEPA has required the Village of Monee to shut down all work on the Trust No. 03-2603 Property.

Prior Annexations and IEPA Permits

37. Upon information and belief, on at least four separate occasions subsequent to October 16 Agreement, the Village of Monee annexed properties.
38. In connection with all annexations prior to the annexation of the First Country Property and the Trust 03-2603 Property, Aqua has previously installed or constructed the necessary facilities and improvements to service the annexed properties.
39. Upon information and belief, Aqua has refused to provide sewer and wastewater treatment services to Phase 8 of the First Country Property and the Trust No. 03-2603 Property because the Village of Monee has provided notice to Aqua that it will discontinue its contract with Aqua in the future.
40. To connect Phase 8 of the First Country Property and Trust No. 03-2603 Property to the existing sewer and wastewater treatment facility, Aqua must be a signatory to an application for a construction permit to the IEPA. (See correspondence dated February 23, 2005 to Kirsea LLC, attached hereto as Exhibit D) Aqua has refused to sign the application, which would be submitted to the IEPA by First Country and Trust No. 03-2603 and their engineers.
41. The IEPA has sent an order to Aqua which provides:
- [c]onversations resulted in a resolution into how future construction applications should be signed until the contract between Aqua Illinois and the Village of Monee expires. Aqua should include an asterisk next to each item that requires their signature with an explanation that Aqua only certifies transport and treatment capacity until October 16, 2006. If any intermediate sewers will

remain under the operation of Aqua after the October 2006 deadline, construction applications can be certified in the usual manor without the asterisk.

See EPA correspondence dated December 3, 2004, pertaining to signature on permit applications, attached hereto as Exhibit E.

- 42. Upon information and belief, additional developers, Monee Ventures, LLC (hereafter "Monee Ventures"), Commander Packing (hereafter "Commander") and Location Finders International, Inc. (hereafter "Location Finders") are developing property that was recently annexed to the Village of Monee.
- 43. Upon information and belief, Aqua has previously signed IEPA permits necessary for construction of infrastructure within the area annexed pursuant to the Annexation Agreement dated 11/16/94, but has since then refused to cooperate in further permitting for Monee Ventures', Commander's and Location Finders' property.
- 44. In recognition of its responsibilities under the Annexation Agreement dated 11/16/94, the Village of Monee has provided methods by which wastewater and sewerage from the Monee Ventures' property has been delivered to a specialized truck that disposes of the waste.

COUNT I - PRELIMINARY AND PERMANENT INJUNCTION

- 45. The October 16 Agreement between Aqua and the Village of Monee requires Aqua to provide sewage and wastewater treatment services to Phase 8 of the First Country Property and the Trust No. 03-2603 Property.
- 46. First Country and Trust No. 03-2603 are intended beneficiaries to the October 16 Agreement.

47. As a result of the actions of Aqua, First Country and Trust No. 03-2603 have been irreparably damaged because its unique real estate homes and the lots will have no sewage and wastewater treatment services.
48. The contracting parties with interest in lots being developed by First Country and Trust No. 03-2603 will be harmed if Aqua does not provide sewage and wastewater treatment services to their properties because they will be unable to utilize their real property for its intended purpose.
49. First Country and Trust No. 03-2603 have no adequate remedy at law to resolve this dispute.
50. First Country and Trust No. 03-2603 are likely to succeed on the merits of this case.
51. A weighing of the balance of harms as a result of the actions of Aqua favors First Country and Trust No. 03-2603.
52. If First Country is to build the homes under contract, construction must begin immediately.
53. If Trust No. 03-2603 is to sell lots for the Spring selling season, it must complete the infrastructure immediately.

WHEREFORE, First Country Homes, LLC and State Bank of Countryside,

Trustee of Trust Dated January 5, 2004, also known as Trust No. 03-2603, request this

Court:

- A. For the entry of a Preliminary and Permanent Injunction requiring that Aqua sign the applications for construction permit to the Illinois Environmental Protection Agency submitted to it by First Country Homes,

LLC and State Bank of Countryside, Trustee of Trust Dated January 5, 2004, also known as Trust No. 03-2603;

- B. For entry of an order declaring that Aqua must provide sewage and wastewater treatment services to the properties owned by Plaintiffs;
- C. For such attorneys' fees and costs as allowed by law; and
- D. For such other further relief as this Court deems fair and just.

**COUNT II – PRELIMINARY AND PERMANENT INJUNCTION
VILLAGE OF MONEE**

- 54. In the Annexation Agreement dated 11/16/94, relied upon when First Country purchased the property, the Village of Monee warranted that the First Country Property will be serviced for sewage and wastewater treatment. See Annexation Agreement dated 11/16/94, p. 7.
- 55. In the Annexation Agreement dated 11/16/94, relied upon when Trust No. 03-2603 purchased the property, and the Annexation Agreement dated 2/18/04, the Village of Monee warranted that the Trust No. 03-2603 Property will be serviced for sewage and wastewater treatment. See Id.
- 56. Despite demands by First Country and Trust No. 03-2603, the Village of Monee has failed and refused to provide sewage and wastewater treatment services to the Annexed Property.
- 57. As a result of the actions of the Village of Monee, First Country and Trust No. 03-2603 have been irreparably damaged because their unique real estate homes and lots will have no sewage and wastewater treatment.

WHEREFORE, First Country Homes, LLC and State Bank of Countryside, Trustee of Trust Dated January 5, 2004, also known as Trust No. 03-2603, request this Court:

- A. For the entry of a Preliminary and Permanent Injunction requiring that Village of Monee must sign the applications for construction permit to the Illinois Environmental Protection Agency submitted to it by First Country Homes, LLC and State Bank of Countryside, Trustee of Trust Dated January 5, 2004, also known as Trust No. 03-2603;
- B. For entry of an order declaring that the Village of Monee must provide sewage and water waste treatment services to the properties owned by Plaintiffs;
- C. For such attorneys' fees and costs as allowed by law; and
- D. For such other further relief as this Court deems fair and just.

**COUNT III – BREACH OF CONTRACT
FIRST COUNTRY HOMES, LLC v. VILLAGE OF MONEE**

- 58. In reliance upon the Annexation Agreement dated 11/16/94, First Country:
 - a. Purchased the First Country Property;
 - b. Contracted for general construction and home construction services on the First Country Property;
 - c. Paid the amount of One Hundred Sixty-Two Thousand Six Hundred Dollars (\$162,600.00) during development of the First Country Property pursuant to the Village of Monee's direction to make the payments in connection with the issuance of construction permits for homes constructed by First Country on the Annexed Property;

- d. Paid the amount of Four Hundred Fifty-Six Thousand Six Hundred Seventy-Six Dollars (\$456,676.00) toward site improvements, including excavation, sewer and water improvements;
 - e. Paid the amount of Two Hundred Thirty-Four Thousand One Hundred and One Dollars (\$234,101.00) toward home construction; and
 - f. Made payment in connection with IEPA permit applications.
59. First Country has demanded the Village of Monee provide it with sewage and wastewater services.
60. The Village of Monee has failed to provide First Country with sewer and wastewater treatment services for Phase 8 of the First Country Property.
61. Such failure to provide sewer and wastewater treatment services by the Village of Monee is a breach of the Annexation Agreement.
62. As a result of the breach of this contract, First Country is unable to complete its contract for the sale of lots and construction of homes on Phase 8 of the First Country property and therefore will lose sales in the amount of over \$6 million.

WHEREFORE, First Country Homes, LLC requests this Court to enter judgment against the Village of Monee as follows:

- A. Damages in an amount exceeding \$6 million;
- B. Such attorneys' fees and costs as allowed by law; and
- C. Such other further relief as this Court deems fair and just.

**COUNT IV - BREACH OF CONTRACT
FIRST BANK OF COUNTRYSIDE, TRUSTEE OF TRUST DATED JANUARY 2,
2004, ALSO KNOWN AS TRUST NO. 03-2603 - VILLAGE OF MONEE**

63. In reliance upon the Annexation Agreement dated 11/16/94 and the Annexation Agreement dated 2/18/04, Trust No. 03-2603:
- a. Purchased an interest in the Trust No. 03-2603 Property;
 - b. Contracted for general construction and home construction services on the Trust No. 03-2603 Property;
 - c. Paid the amount of \$13,373.66 during development of the Trust No. 03-2603 Property pursuant to the Village of Monee's direction to make the payments in connection with the issuance of construction permits for homes constructed by Trust No. 03-2603 on the Trust No. 03-2603 Property;
 - d. Paid interest on a loan of \$850,000 in the amount of \$28,303.13 on a quarterly basis, and will be forced to do so until this matter is resolved.
 - e. Incurred costs in the amount of \$1,018,937.57 toward site improvement.
 - f. Made payment in connection with IEPA permit applications.
64. Trust No. 03-2603 has demanded the Village of Monee provide it with sewage and wastewater services.
65. The Village of Monee has failed to provide Trust No. 03-2603 with sewer and wastewater treatment services.
66. Such failure to provide sewer and wastewater treatment services by the Village of Monee is a breach of the Annexation Agreement dated 11/16/94 and the Annexation Agreement dated 2/18/04.

67. As a result of the breach of the Annexation Agreement dated 11/16/94 and the Annexation Agreement dated 2/18/04, Trust No. 03-2603 is unable to complete its contract for the sale of lots on the Trust No. 03-2603 Property and therefore will lose sales in the amount of over \$6 million.

WHEREFORE, State Bank of Countryside, LLC, Trustee of Trust Dated January 5, 2004, also known as Trust No. 03-2603, requests this Court to enter judgment against the Village of Monee as follows:

- A. Damages in an amount exceeding \$6 million;
- B. Such attorneys' fees and costs as allowed by law; and
- C. Such other further relief as this Court deems fair and just.

**COUNT V - BREACH OF CONTRACT
FIRST COUNTRY HOMES, LLC v. AQUA**

- 68. At the time of purchasing the property comprising Phase 8 of its development, First Country relied upon the October 16 Agreement.
- 69. First Country is an intended third party beneficiary of the October 16 Agreement.
- 70. In reliance upon the October 16 Agreement, First Country:
 - a. Purchased the First Country Property;
 - b. Contracted for general construction and home construction services on the First Country Property;
 - c. Paid the amount of One Hundred Sixty-Two Thousand Six Hundred Dollars (\$162,600.00) during development of the First Country Property pursuant to the Village of Monee's direction to make the payments in connection with the issuance of construction permits for homes constructed by First Country on the Annexed Property;

- d. Paid the amount of Four Hundred Fifty-Six Thousand Six Hundred Seventy-Six Dollars (\$456,676.00) toward site improvements, including excavation, sewer and wastewater improvements;
- g. Paid the amount of Two Hundred Thirty-Four Thousand One Hundred and One (\$234,101.00) toward home construction; and
- f. Made payment in connection with IEPA permit applications.

WHEREFORE, First Country Homes, LLC requests this Court to enter judgment against Aqua as follows:

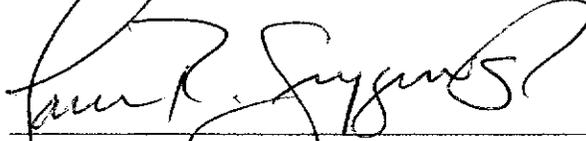
- A. Damages in an amount exceeding \$6 million;
- B. Such attorneys' fees and costs as allowed by law; and
- C. Such other further relief as this Court deems fair and just.

**COUNT VI - BREACH OF CONTRACT
FIRST BANK OF COUNTRYSIDE, TRUSTEE OF TRUST DATED JANUARY 2,
2004, ALSO KNOWN AS TRUST NO. 03-2603 v. AQUA**

- 71. At the time of purchasing the Trust No. 03-2603 Property, Trust No. 03-2603 was aware of the October 16 Agreement.
- 72. Trust No. 03-2603 is an intended third party beneficiary of the October 16 Agreement.
- 73. In reliance upon the October 16 Agreement, Trust No. 03-2603:
 - a. Purchased an interest in the Trust No. 03-2603 Property;
 - b. Contracted for general construction and home construction services on the Annexed Property; and
 - c. Paid the amount of \$13,373.66 during development of the Trust No. 03-2603 Property pursuant to the Village of Monee's direction to make the

VERIFICATION

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.



Lawrence R. Gryczewski
Village Attorney
Village of Monee