

STATE OF NORTH CAROLINA

IREDELL COUNTY

IN THE GENERAL COURT OF JUSTICE  
DISTRICT COURT DIVISION

FILE NO: 19 CVS 1222

2019 MAY -7 A 9:13

IREDELL CO., C.S.C.

BY M

THE CITY OF STATESVILLE, )  
NORTH CAROLINA, )  
A Municipal Corporation )  
Plaintiff, )

vs. )

COMPLAINT

HOLIDAY KAMPER CO. OF )  
COLUMBIA, LLC d/b/a GANDER RV )  
And CAMPING WORLD, And, REALTY )  
INCOME CORPORATION, )  
Defendants. )

NOW COMES the Plaintiff, by and through counsel, complaining of Defendant, and alleges and says as follows:

1. The Plaintiff, The City of Statesville, North Carolina (hereinafter "the City"), is a Municipal Corporation chartered under the laws of the State of North Carolina, and situated in Iredell County, North Carolina.
2. The Defendant Holiday Kamper Co. of Columbia, LLC (hereinafter "Holiday Kamper") is a Minnesota limited liability company with a principal place of business in Lincolnshire, Illinois.
3. Holiday Kamper operates a business, which does business today as Gander RV, located at 1220 Morland Drive in Statesville, North Carolina. Holiday Kamper has filed a D/B/A in the Iredell County Register of Deeds in Book 2598, and Page 1808 on January 22, 2019.
4. Holiday Kamper previously operated this same business, at the same address, as Camping World RV Sales. Holiday Kamper has filed a D/B/A in the Iredell County Register of Deeds in Book 1859, and Page 2145 on June 18, 2007. This D/B/A has never been terminated.
5. The land and all of its' improvements located at 1220 Morland Drive are owned by Realty Income Corporation. This is a foreign corporation out of Maryland, with a principal place of business in San Diego, California. The Deed for this property was recorded and described in the Iredell County Register of Deeds in Book 1560, Page 2326 on June 16, 2004.

6. This Court has jurisdiction over the parties and subject matter of this action pursuant to N.C.Gen.Stat. §§160A-175 and 1-75.4(6).
7. Iredell County, North Carolina is the proper venue because the violations that are the subject of this action for injunctive relief have occurred and are occurring in Iredell County, North Carolina.
8. The property described in paragraph five above is subject to the Code of the City of Statesville, including the Unified Development Code of the City of Statesville.
9. Section 6.07 of the Unified Development Code (hereinafter UDC §6.07) regulates signs, including flags which are flown on flag poles within the Statesville city limits. This provision of the Unified Development Code was unanimously amended on June 4, 2018 in Ordinance 20-18: "An Ordinance Amending the Unified Development Code, Article 6 Development Standards, Section 6.07 Sign Regulations, C. Definitions, I. Exempt Signs, 3. Flags", to state: "If located in the B-4 or B-5 District and on a property with 100 feet or more of road frontage of an Interstate Highway right-of-way, heights of flagpoles can be a maximum of 130 feet and the maximum size of the flag cannot exceed 25 feet by 40 feet and only one per site is permitted. Flagpole plans must have an engineer's seal for stress load and wind shear."
10. Camping World has 100 feet or more of road frontage on an Interstate Highway right-of-way in Statesville, North Carolina.
11. Prior to June 4, 2018, UDC §6.07 was more restrictive, and allowed for a maximum size of any governmental flag to not exceed 8 feet by 12 feet in size.
12. On or around September 4, 2018, Camping World informed the City in a meeting that it had erected an American flag that is approximately 40 feet by 80 feet in size at the address of 1220 Morland Drive in Statesville. The City informed Camping World orally at this meeting that this flag violated UDC § 6.07.
13. The oral warning issued on or around September 4, 2018, was reiterated again to Camping World representatives by email from Planning Director, David Currier on September 11, 2018.
14. To date, this flag and pole are still erected on the property and the violation of UDC §6.07 has not been corrected.
15. On June 29, 2015, and prior to the amendment of Section 6.07, Camping World filed a request for a variance with the City of Statesville Board of Adjustment (hereinafter "Board of Adjustment")..

16. On August 4, 2015, and after the consideration of Camping World's request, the Board of Adjustment denied their request for a variance. The Board of Adjustment's Decision was never appealed.

17. On October 15, 2018, the City issued a Citation to Camping World for violation of UDC § 6.07. (Hereinafter "Citation Letter"). This Citation was signed by the Planning Director, David Currier. In relevant part, this Citation states:

A. That Camping World has violated the provisions of the UDC, which regulates the size of flags within the City limits;

B. That Camping World has been warned both orally and in writing of this violation;

C. That a failure to remove the flag would result in a \$50.00 per day fine until the violation is corrected beginning October 15, 2018;

D. That Camping World has a right to appeal this decision within 30 days from October 18, 2018; and

E. That the City is entitled to file a lawsuit for injunctive relief for this violation.

18. Section 1.09 of the City's Unified Development Code states that an aggrieved citizen may file an appeal from any staff determination, including, but not limited to action on a development application or interpretation of development regulations to the Board of Adjustment within thirty days from entry of a written order. Under this section, when you file a notice of this appeal, it stays any further action, such as the issuance of any fines assessed.

19. Section 1.07 of the City's Unified Development Code states that violation of the Code shall subject the offender to a fifty dollar (\$50.00) per day fine, to be recovered by the City in a civil action in the nature of the debt if the offender does not pay the penalty within a period of seventy-two (72) hours after he has been cited for violation of the ordinance. It also provides that citations must be in writing, signed by the appropriate department head, and shall be delivered or mailed to the offender at his place of business or at the place where the violation has occurred.

20. Section 1.07 of the City's Unified Development Code further authorizes the City to recover the civil penalty through any appropriate equitable or other legal remedy, including injunctions and orders of abatement and including an action to recover damages owing to the city by reason of expenses incurred by the city in abating, correcting, limiting and otherwise dealing with the harmful effects of the offending action.

21. Camping World, and thereafter Gander RV, never appealed the Planning Department's determination from the Citation issued by the City on October 15, 2018.

**FIRST CLAIM FOR RELIEF**

(Permanent Injunction and Abatement Order)

22. The allegations contained in Paragraphs 1-21 above are incorporated into this claim for relief as if fully set forth herein.

23. As of the filing of this Complaint, the Defendants have failed to correct the violations stated in the Citation Letter. Defendants remain in violation of the Ordinance.

24. The Defendants failure to correct the violations set forth in the Citation Letter constitutes continuing violations of UDC §6.07.

25. The City is entitled to permanent injunctive relief against Defendants to abate the violations set forth in this Complaint pursuant to N.C.Gen.Stat. §160A-175 so that failure to do so will be contempt of this Court..

26. The City is further entitled to recover the fine of \$50.00 per day beginning October 15, 2018 and going until a final judgment is entered herein, or the Defendants abate the nuisance, whichever occurs first.

WHEREFORE, the Plaintiff prays unto the Court:

1. That the Plaintiff have and recover of the Defendants civil penalties in the amount of \$50.00 per day per violation from October 15, 2018 until such time as the Defendant is within compliance with the Code of the City of Statesville;

2. That the Court issue a mandatory injunction and the Defendant be ordered to abate said nuisance violation and further ordered to remain in compliance with the Code of the City of Statesville upon the subject property herein such that the injunction shall be enforceable by and through the contempt powers of the Court;

3. That the Plaintiff have and recover of the Defendant all expenses incurred herein pursuant to UDC §1.7;

4. That the costs of this action be taxed against the Defendant; and

5. For such other and further relief as the Court may deem just and proper.

This is the 7<sup>th</sup> day of May, 2019.

WINTHROP & GAINES MESSICK, PLLC  
Attorneys for the Plaintiff

*Leah Gaines Messick*

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Leah Gaines Messick, Bar Number 45481

Jamie Gentry, Bar Number 38177

706 Hartness Road

Statesville, NC 28677

704.872.9544

[leah@winthrop-law.com](mailto:leah@winthrop-law.com)

[jamie@winthrop-law.com](mailto:jamie@winthrop-law.com)