

Return Date: No return date scheduled  
Hearing Date: No hearing scheduled  
Courtroom Number: No hearing scheduled  
Location: No hearing scheduled

FILED  
9/26/2019 6:16 PM  
DOROTHY BROWN  
CIRCUIT CLERK  
COOK COUNTY, IL  
2015ch13833

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

TUFF CAR COMPANY, INC., an Illinois corporation,  
  
Plaintiff/Counter-Defendant,  
  
v.  
  
TOWN OF CICERO, Illinois, an Illinois municipal corporation,  
  
Defendant/Counter/Cross Plaintiff,  
  
v.  
  
EUGENE F. POTEMPA, PATRICK POTEMPA, and TIMOTHY POTEMPA,  
  
Cross Defendants.

Case No. 2015 CH 13833

6738124

**TUFF CAR, INC., EUGENE POTEMPA, TIMOTHY POTEMPA and PATRICK POTEMPA’S RESPONSE TO TOWN OF CICERO’S MOTION TO DISMISS**

NOW COMES the Cross-Defendants, Eugene F. Potempa, Patrick Potempa and Timothy Potempa and the Counter-Defendant, Tuff Car, Inc., by and through their attorneys, Angelini & Ori, LLC, in Response to Town of Cicero’s Motion to Dismiss the Affirmative Defenses of the Counter-Defendant and Cross-Defendant, states as follows:

**INTRODUCTION**

1. The Cross-Defendants, Eugene F. Potempa, Patrick Potempa and Timothy Potempa and the Counter-Defendant, Tuff Car, Inc., assert three (3) traditional affirmative defenses of: (a) promissory estoppel, (b) equitable estoppel and (c) laches as a defense to the allegations that they breached both a lease agreement and a towing contract with the Town of Cicero. The affirmative defenses are stated in their popular posture, as defensive matters as opposed to independent causes of action.

2. Whether the affirmative defenses are stated with proper specificity is for the court's determination. The Cross-Defendants, Eugene F. Potempa, Patrick Potempa and Timothy Potempa and the Counter-Defendant, Tuff Car, Inc. assert that the conduct of Town of Cicero attorney, Michael DelGaldo, Esq., as an agent for the town itself, is the exact type of conduct that is defined by recognized applications of the three affirmative defenses.

3. The basic premise of the affirmative defenses is that Town of Cicero attorney, Michael DelGaldo, Esq., told the Cross-Defendants, Eugene F. Potempa, Patrick Potempa and Timothy Potempa and the Counter-Defendant, Tuff Car, Inc. that in consideration for these parties performing various political favors on behalf of the town, the Cross-Defendants/Counter-Defendant did not have to perform under the agreements as long as they performed political favors. And they did. And this is clearly evidenced by the simple fact that for years, the Town of Cicero never requested performance, ever, all to the eventual detriment of the Cross-Defendants/Counter-Defendant. Michael DelGaldo's basic lie was that there actually was no *quid pro quo*: there may have been a *quid* but there certainly wasn't a *pro quo*. To induce the Cross-Defendants/Counter-Defendant to continue to perform all of these political favors, DelGaldo lied. We know that he lied, because while the Cross-Defendants/Counter-Defendant were required to perform all of these political favors at the specific demand of the Town of Cicero, the Town of Cicero is now suing for the monies that induced the performance of those favors.

4. The fact pattern which supports the allegations under the three affirmative defenses is essentially the same:

a. That the Town of Cicero attorney, Michael DelGaldo, Esq., made an unambiguous promise to Tuff Car, Inc., that the company was not responsible for paying rents after a designated period of time and that Tuff Car, Inc. was also not responsible for paying the \$20.00 in tow fees, if Tuff Car, Inc. acted in a certain manner concerning the Town of Cicero, including but not limited to, participating in the election campaigns of the acting elected officials in the town and waiving certain tow fees for the voting public and friends of the mayor. (Affirmative Defenses, par. 2-3) (See attached as Exhibit "A")

b. That Tuff Car, Inc. relied upon that promise in not paying rents and tow fees for years. (Affirmative Defenses, par. 7)

c. That the conduct of Tuff Car, Inc. was expected and foreseeable by the Counter-Plaintiff, Town of Cicero, based upon the promises that were made by the Town of Cicero. That Tuff Car, Inc. relied upon the promise to their detriment. Unexpectedly and against the specific promise by Michael DelGaldo, Esq., the rents and tow fees are now being requested of the Counter-Defendants and Cross-Defendants, Eugene Potempa, Patrick Potempa, Timothy Potempa and Tuff Car, Inc., without basis. (Affirmative Defenses, par. 8)

d. That Tuff Car, Inc. relied upon the promise to their detriment. Unexpectedly and against the specific promise by Michael DelGaldo, Esq., the rents and tow fees are now being requested of the Counter-Defendants and Cross-Defendants, Eugene Potempa, Patrick Potempa, Timothy Potempa and Tuff Car, Inc., without basis. (Affirmative Defenses, par. 9)

e. That Tuff Car, Inc.'s conduct in not paying the rents and fees was expected and foreseeable by the Counter-Plaintiff, Town of Cicero, based upon the promises that were made by the Town of Cicero. (Affirmative Defenses, par. 8)

f. That Town of Cicero's attorney, Michael Delgaldo, Esq. misrepresented certain facts when he asserted that Tuff Car, Inc. would not have to pay rents or storage fees as long as they acted in a certain manner in relation to the Town of Cicero. (Affirmative Defenses, par. 20)

g. That when Town of Cicero's attorney, Michael Delgaldo, Esq. misrepresented certain facts to Tuff Car, Inc., he knew that those facts were false. (Affirmative Defenses, par. 21)

h. That Tuff Car, Inc. did not know that those facts were untrue when it acted upon same. (Affirmative Defenses, par. 22)

i. That Town of Cicero attorney, Michael DelGaldo, Esq reasonably expected Tuff Car, Inc. to rely upon the representations to their detriment. (Affirmative Defenses, par. 23)

j. Tuff Car, Inc. would be prejudiced by its reliance upon the representations if Michael DelGaldo, Esq. was permitted to deny the truth thereof. That Tuff Car, Inc. relied upon the promise to its detriment. Unexpectedly and against the specific promise by Michael DelGaldo, Esq., the rents and tow fees are now being requested of the Counter-Defendants and Cross-Defendants, Eugene Potempa, Patrick Potempa, Timothy Potempa and Tuff Car, Inc., without basis. (Affirmative Defenses, par. 24-25)

k. That the Town of Cicero had knowledge of the conduct of the Tuff Car, Inc. in not paying rents and tow fees for years. The Town of Cicero had the opportunity to assert a claim

and file an action in behalf of the Town of Cicero against Tuff Car, Inc. for those years. (“Laches”) (Affirmative Defenses, par. 42)

l. The Counter-Defendants and Cross-Defendants, Eugene Potempa, Patrick Potempa, Timothy Potempa and Tuff Car. Inc. had zero knowledge based upon the assertions that were made by attorney, Michael DelGaldo, Esq. that the Town of Cicero would for the first time assert its rights to collect rents and tow fees, and assert same for the first time in the instant action. (“Laches”) (Affirmative Defenses, par. 43)

m. That the Counter-Defendants and Cross-Defendants, Eugene Potempa, Patrick Potempa, Timothy Potempa and Tuff Car. Inc. would be injured if the Town of Cicero were to be allowed to institute an action for rents and tow fees at this time. (“Laches”) (Affirmative Defenses, par. 44)

### **LACHES**

5. The Cross-Defendants, Eugene F. Potempa, Patrick Potempa and Timothy Potempa and the Counter-Defendant, Tuff Car, Inc. assert that the Town of Cicero unreasonably delayed bringing a claim for unpaid rents and tow fees, to their detriment. *Laches* is an equitable doctrine that precludes the assertion of a claim by a party whose unreasonable delay in raising that claim has misled or prejudiced the opposing party. *Ulm v. Memorial Medical Center*, 2012 IL App (4th) 110421, ¶ 52. The doctrine is based on the principle that courts are reluctant to come to the aid of a party who has knowingly withheld assertion of a right when, in the exercise of due diligence, the party should have asserted that right earlier. *Nancy’s Home of the Stuffed Pizza, Inc. v. Cirrincione*, 144 Ill. App. 3d 934, 940 (1986). In the instant action, there is no question, that the Town of Cicero, in withholding the assertion of their rights was “knowing”, because at least according to the well pleaded facts, the withholding of rights served the purpose of securing political favors for many years.

6. Whether the defense of laches is available is to be determined based on the facts and circumstances of each case. *Admiral Builders Corp. v. Robert Hall Village*, 101 Ill. App. 3d 132, 139 (1981).

7. Whether a party is guilty of *laches* to a degree that would bar suit is a matter within the trial court's discretion. *City of Rockford v. Suski*, 307 Ill. App. 3d 233, 244 (1999).

8. A party is guilty of *laches*, which will defeat whatever claim that party might have, when he or she remains passive while another party "incurs risk, enters into obligations, or makes expenditures for improvements or taxes." *Pyle v. Ferrell*, 12 Ill. 2d 547, 555 (1969), See *County of DuPage v. K-Five Construction Corp.*, 267 Ill. App. 3d 266, 275-76 (1994). Again, in the instant action, the Cross-Defendants/Counter-Defendants went broke waiving tow fees for political favors at the direct demand of the Town of Cicero. For years, the town literally waived collecting rents from Tuff Car to secure those political favors for the Town of Cicero. The town never asserted their rights to collect rents from Tuff Car, and it was not due to recklessness or negligence. It served the town's purpose.

#### **EQUITABLE ESTOPPEL**

9. Under equitable estoppel, where a person, by his or her statements or conduct, leads a party to do something that said party would not have done but for such statements or conduct, that person will not be allowed to deny his or her words or actions to the detriment of the other party. *Geddes v. Mill Creek Country Club, Inc.* 196 Ill. 2d 302, 313 (2001). To establish equitable estoppel, a party must demonstrate the following elements: (1) the other party misrepresented or concealed material facts; (2) the other party knew at the time he or she made those representations that they were untrue; (3) the party claiming estoppel did not know the representations were untrue when they were made and when they were acted on; (4) the other party intended or reasonably expected that the party claiming estoppel would act upon the representations; (5) the party claiming estoppel relied on those representations in good faith to his or her detriment; (6) the party claiming

estoppel would be prejudiced by his or her reliance if the other party were permitted to deny the truth thereof. *Id.* at 313-14.

10. In the case at bar, Tuff Car and the Potempas alleged that in basic terms, Town of Cicero attorney, Michael DelGaldo, Esq., lied to them. He told them that they would never have to pay rents if they granted the Town of Cicero certain political favors. Of course, we know this now to be a lie, because the Town of Cicero is now suing Tuff Car and the Potempas, contrary to that promise. The affirmative matters set forth that the Cross/Counter-Defendants relied upon that promise in good faith to their detriment and that DelGaldo knew that Tuff Car and the Potempas would rely upon those promises. A proper defense of equitable estoppel was stated in the Affirmative Defense.

#### **PROMISSORY ESTOPPEL**

11. Of the three (3) affirmative defenses, the strongest stated defense that fits the above fact pattern is most likely stated in “promissory estoppel.” With respect to promissory estoppel, four elements have to be met: (1) an unambiguous promise must be made to the plaintiff; (2) the plaintiff relied on the promise; (3) the Plaintiff’s reliance was foreseeable by the defendants; and (4) the Plaintiff actually relied on the promise to its detriment. *Quake Construction, Inc. v. American Airlines, Inc.*, 141 Ill. 2d 281 (1990); *Newton Tractor Sales, Inc. v. Kubota Tractor Corp.*, 233 Ill. 2d 46, 51 (2009). Whether detrimental reliance occurred is determined by the specific facts of each case. *DiLorenzo v. Valve & Primer Corp.*, 347 Ill. App. 3d 194, 202 (2004). Primarily, as in the case at bar, “promissory estoppel” is more prevalently accepted as a defense as opposed to a stated cause of action.

12. Again, Michael DelGaldo, Esq., made a promise when he lied to Tuff Car and the Potempas, telling them that they would never have to pay rents if they granted the Town of Cicero certain political favors. Of course, we know this now to be a lie, because the Town of Cicero is

now suing Tuff Car and the Potempas, contrary to that promise. We know that the Cross/Counter-Defendants relied upon that promise in good faith to their detriment because we know from all of the previously submitted pleadings in this case that Tuff Car had to accept all of the waivers as political favor in order to keep the contract. DelGaldo knew that Tuff Car and the Potempas would rely upon those promises. A proper defense of promissory estoppel was stated in the Affirmative Defense.

WHEREFORE, the Cross-Defendants, Eugene F. Potempa, Patrick Potempa and Timothy Potempa and the Counter-Defendant, Tuff Car, Inc., respectfully request that this Court deny Defendant/Counter/Cross-Plaintiff, Town of Cicero's Motion to Strike Counter-Defendants' Affirmative Defenses in its entirety and for any other relief this Court deems just and proper.

Respectfully Submitted,

By: Donald J. Angelini, Jr.  
One of Defendants' Attorneys

Donald J. Angelini, Jr.  
Angelini Ori + Abate Law (Firm No. 59586)  
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# EXHIBIT A



Return Date: No return date scheduled  
Hearing Date: No hearing scheduled  
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FILED  
7/1/2019 1:51 PM  
DOROTHY BROWN  
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**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, CHANCERY DIVISION**

TUFF CAR COMPANY, INC., an Illinois corporation,  
  
Plaintiff/Counter-Defendant,  
  
v.  
  
TOWN OF CICERO, Illinois, an Illinois municipal corporation,  
  
Defendant/Counter/Cross Plaintiff,  
  
v.  
EUGENE F. POTEMPA, PATRICK POTEMPA, and TIMOTHY POTEMPA,  
  
Cross Defendants.

Case No. 2015CH13833

5609078

**CROSS DEFENDANTS’ and COUNTER-DEFENDANT’S AFFIRMATIVE DEFENSES**

NOW COMES the Cross Defendants, EUGENE F. POTEMPA, PATRICK POTEMPA, and TIMOTHY POTEMPA, and the Counter-Defendant, Tuff Car, by and through their attorneys, Angelini Ori + Abate Law, in submitting their Affirmative Defenses, states as follows:

**AFFIRMATIVE DEFENSE I  
(Promissory Estoppel)**

1. The Town of Cicero asserts in its Second Amended Complaint at Law that the Counter-Defendants and Cross-Defendants, Eugene Potempa, Patrick Potempa, Timothy Potempa and Tuff Car, Inc., as tenants, owe the Town of Cicero, unpaid rents from a tow lot, from September 2009 until the time period when the Town of Cicero took possession of the subject lot.
2. Further, the Town of Cicero alleges that pursuant to a “towing agreement” the Counter-Defendants and Cross-Defendants, Eugene Potempa, Patrick Potempa, Timothy Potempa and Tuff Car, Inc. were also required to pay the Town of Cicero \$20.00 per car as a fee for each

FILED DATE 7/1/2019 6:56 PM 2015ch13833

car that Tuff Car towed, which was subsequently redeemed by the owner in return for Tuff Car's release of the vehicle that had been towed.

3. The Counter-Defendants and Cross-Defendants, Eugene Potempa, Patrick Potempa, Timothy Potempa are only being sued as the *alter egos* of the defendant, Tuff Car, Inc.
4. The Counter-Defendants and Cross-Defendants, Eugene Potempa, Patrick Potempa, Timothy Potempa deny that they are the *alter egos* of the defendant, Tuff Car, Inc.
5. If the Affirmative Defense of Promissory Estoppel is successful in barring the claim of the Town of Cicero against Tuff Car, Inc., then as a matter of law, that affirmative defense will be successful as and for the Counter-Defendants and Cross-Defendants, Eugene Potempa, Patrick Potempa, Timothy Potempa as they are only being sued as the *alter egos* of Tuff Car, Inc.
6. That the Town of Cicero attorney, Michael DelGaldo, Esq., made an unambiguous promise to Tuff Car, Inc., that the company was not responsible for paying rents after a designated period of time and that Tuff Car, Inc. was also not responsible for paying the \$20.00 in tow fees, if Tuff Car, Inc. acted in a certain manner concerning the Town of Cicero, including but not limited to, participating in the election campaigns of the acting elected officials in the town and waiving certain tow fees for the voting public and friends of the mayor.
7. That Tuff Car, Inc. relied upon that promise in not paying rents and tow fees for years.
8. That the conduct of Tuff Car, Inc. was expected and foreseeable by the Counter-Plaintiff, Town of Cicero, based upon the promises that were made by the Town of Cicero.
9. That Tuff Car, Inc. relied upon the promise to their detriment. Unexpectedly and against the specific promise by Michael DelGaldo, Esq., the rents and tow fees are now being requested of the Counter-Defendants and Cross-Defendants, Eugene Potempa, Patrick Potempa, Timothy Potempa and Tuff Car, Inc., without basis.

WHEREFORE, Counter-Defendants and Cross-Defendants, Eugene Potempa, Patrick Potempa, Timothy Potempa and Tuff Car, Inc. pray this court to affirmatively deny the Counter-Plaintiff, Town of Cicero, any of the relief requested, whatsoever.

**AFFIRMATIVE DEFENSE 2**  
**(Equitable Estoppel)**

10. The Town of Cicero asserts in its Second Amended Complaint at Law that the Counter-Defendants and Cross-Defendants, Eugene Potempa, Patrick Potempa, Timothy Potempa and Tuff Car, Inc., as tenants, owe the Town of Cicero, unpaid rents from a tow lot, from September 2009 until the time period when the Town of Cicero took possession of the subject lot.
11. Further, the Town of Cicero alleges that pursuant to a “towing agreement” the Counter-Defendants and Cross-Defendants, Eugene Potempa, Patrick Potempa, Timothy Potempa and Tuff Car, Inc. were also required to pay the Town of Cicero \$20.00 per car as a fee for each car that Tuff Car towed, which was subsequently redeemed by the owner in return for Tuff Car’s release of the vehicle that had been towed.
12. The Counter-Defendants and Cross-Defendants, Eugene Potempa, Patrick Potempa, Timothy Potempa are only being sued as the *alter egos* of the defendant, Tuff Car, Inc.
13. The Counter-Defendants and Cross-Defendants, Eugene Potempa, Patrick Potempa, Timothy Potempa deny that they are the *alter egos* of the defendant, Tuff Car, Inc.
14. If the Affirmative Defense of Equitable Estoppel is successful in barring the claim of the Town of Cicero against Tuff Car, Inc., then as a matter of law, that affirmative defense will be successful as and for the Counter-Defendants and Cross-Defendants, Eugene Potempa, Patrick Potempa, Timothy Potempa as they are only being sued as the *alter egos* of Tuff Car, Inc.
15. That the Town of Cicero’s attorney, Michael DelGaldo, Esq., made an unambiguous promise to Tuff Car, Inc., that the company was not responsible for paying rents after a designated

period of time and that Tuff Car, Inc. was also not responsible for paying the \$20.00 in tow fees, if Tuff Car, Inc. acted in a certain manner concerning the Town of Cicero, including but not limited to, participating in the election campaigns of the acting elected officials in the town and waiving certain tow fees for the voting public and friends of the mayor.

16. That Tuff Car, Inc. relied upon that promise in not paying rents and tow fees for years.
17. That the conduct of Tuff Car, Inc. was expected and foreseeable by the Counter-Plaintiff, Town of Cicero, based upon the promises that were made by the Town of Cicero.
18. That Tuff Car, Inc. relied upon the promise to their detriment. Unexpectedly and against the specific promise by Michael DelGaldo, Esq., the rents and tow fees are now being requested of the Counter-Defendants and Cross-Defendants, Eugene Potempa, Patrick Potempa, Timothy Potempa and Tuff Car, Inc., without basis.
19. That Tuff Car, Inc.'s conduct in not paying the rents and fess was expected and foreseeable by the Counter-Plaintiff, Town of Cicero, based upon the promises that were made by the Town of Cicero.
20. That Town of Cicero's attorney, Michael Delgaldo, Esq. misrepresented certain facts when he asserted that Tuff Car, Inc. would not have to pay rents or storage fees as long as they acted in a certain manner in relation to the Town of Cicero.
21. That when Town of Cicero's attorney, Michael Delgaldo, Esq. misrepresented certain facts to Tuff Car, Inc., he knew that those facts were false.
22. That Tuff Car, Inc. did not know that those facts were untrue when it acted upon same.
23. That Town of Cicero attorney, Michael DelGaldo, Esq reasonably expected Tuff Car, Inc. to rely upon the representations to their detriment.

24. Tuff Car, Inc. would be prejudiced by its reliance upon the representations if Michael DelGaldo, Esq. was permitted to deny the truth thereof.

25. That Tuff Car, Inc. relied upon the promise to its detriment. Unexpectedly and against the specific promise by Michael DelGaldo, Esq., the rents and tow fees are now being requested of the Counter-Defendants and Cross-Defendants, Eugene Potempa, Patrick Potempa, Timothy Potempa and Tuff Car, Inc., without basis.

WHEREFORE, Counter-Defendants and Cross-Defendants, Eugene Potempa, Patrick Potempa, Timothy Potempa and Tuff Car, Inc. pray this court to affirmatively deny the Counter-Plaintiff, Town of Cicero, any of the relief requested, whatsoever.

**AFFIRMATIVE DEFENSE 3**  
**(Laches)**

26. The Town of Cicero asserts in its Second Amended Complaint at Law that the Counter-Defendants and Cross-Defendants, Eugene Potempa, Patrick Potempa, Timothy Potempa and Tuff Car, Inc., as tenants, owe the Town of Cicero, unpaid rents from a tow lot, from September 2009 until the time period when the Town of Cicero took possession of the subject lot.

27. Further, the Town of Cicero alleges that pursuant to a “towing agreement” the Counter-Defendants and Cross-Defendants, Eugene Potempa, Patrick Potempa, Timothy Potempa and Tuff Car, Inc. were also required to pay the Town of Cicero \$20.00 per car as a fee for each car that Tuff Car towed, which was subsequently redeemed by the owner in return for Tuff Car’s release of the vehicle that had been towed.

28. The Counter-Defendants and Cross-Defendants, Eugene Potempa, Patrick Potempa, Timothy Potempa are only being sued as the *alter egos* of the defendant, Tuff Car, Inc.

29. The Counter-Defendants and Cross-Defendants, Eugene Potempa, Patrick Potempa, Timothy Potempa deny that they are the *alter egos* of the defendant, Tuff Car, Inc.
30. If the Affirmative Defense of Laches is successful in barring the claim of the Town of Cicero against Tuff Car, Inc., then as a matter of law, that affirmative defense will be successful as and for the Counter-Defendants and Cross-Defendants, Eugene Potempa, Patrick Potempa, Timothy Potempa as they are only being sued as the *alter egos* of Tuff Car, Inc.
31. That the Town of Cicero attorney, Michael DelGaldo, Esq., made an unambiguous promise to Tuff Car, Inc., that the company was not responsible for paying rents after a designated period of time and that Tuff Car, Inc. was also not responsible for paying the \$20.00 in tow fees, if Tuff Car, Inc. acted in a certain manner concerning the Town of Cicero, including but not limited to participating in the election campaigns of the acting elected officials in the town and waiving certain tow fees for the voting public and friends of the mayor.
32. That Tuff Car, Inc. relied upon that promise in not paying rents and tow fees for years.
33. That the conduct of Tuff Car, Inc. was expected and foreseeable by the Counter-Plaintiff, Town of Cicero, based upon the promises that were made by the Town of Cicero.
34. That Tuff Car, Inc. relied upon the promise to their detriment. Unexpectedly and against the specific promise by Michael DelGaldo, Esq., the rents and tow fees are now being requested of the Counter-Defendants and Cross-Defendants, Eugene Potempa, Patrick Potempa, Timothy Potempa and Tuff Car, Inc., without basis.
35. That Tuff Car, Inc.'s conduct in not paying the rents and fess was expected and foreseeable by the Counter-Plaintiff, Town of Cicero, based upon the promises that were made by the Town of Cicero.

36. That Town of Cicero's attorney, Michael Delgaldo, Esq. misrepresented certain facts when he asserted that Tuff Car, Inc. would not have to pay rents or storage fees as long as they acted in a certain manner in relation to the Town of Cicero.
37. That when Town of Cicero's attorney, Michael Delgaldo, Esq. misrepresented certain facts to Tuff Car, Inc., he knew that those facts were false.
38. The Tuff Car, Inc. did not know that those facts were untrue when it acted upon same.
39. That Town of Cicero attorney, Michael DelGaldo, Esq. reasonably expected Tuff Car, Inc. to rely upon the representations to their detriment.
40. Tuff Car. Inc. would be prejudiced by its reliance upon the representations if Michael DelGaldo, Esq. was permitted to deny the truth thereof.
41. That Tuff Car, Inc. relied upon the promise to its detriment. Unexpectedly and against the specific promise by Michael DelGaldo, Esq., the rents and tow fees are now being requested of the Counter-Defendants and Cross-Defendants, Eugene Potempa, Patrick Potempa, Timothy Potempa and Tuff Car. Inc., without basis.
42. That the Town of Cicero had knowledge of the conduct of the Tuff Car, Inc. in not paying rents and tow fees for years. The Town of Cicero had the opportunity to assert a claim and file an action in behalf of the Town of Cicero against Tuff Car, Inc. for those years.
43. The Counter-Defendants and Cross-Defendants, Eugene Potempa, Patrick Potempa, Timothy Potempa and Tuff Car. Inc. had zero knowledge based upon the assertions that were made by attorney, Michael DelGaldo, Esq. that the Town of Cicero would for the first time assert its rights to collect rents and tow fees, and assert same for the first time in the instant action.

44. That the Counter-Defendants and Cross-Defendants, Eugene Potempa, Patrick Potempa, Timothy Potempa and Tuff Car. Inc. would be injured if the Town of Cicero were to be allowed to institute an action for rents and tow fees at this time.

WHEREFORE, Counter-Defendants and Cross-Defendants, Eugene Potempa, Patrick Potempa, Timothy Potempa and Tuff Car. Inc. pray this court to affirmatively deny the Counter-Plaintiff, Town of Cicero, any of the relief requested, whatsoever.

Respectfully Submitted,

By: Donald J. Angelini, Jr.  
One of Defendants' Attorneys

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