

Legal battles escalate over Freedom Hill

Hillside claims spat with county scared away Palace County argues it has been shortchanged on revenues

By Chad Selweski Macomb Daily Staff Writer

It's the kind of legal dispute only a divorce lawyer could love. Or, at least, tolerate. The legal bickering between attorneys for Macomb County and Hillside Productions, the company that runs the concert amphitheater at Freedom Hill County Park, has reached monumental proportions.

In the 15 months since Hillside filed a lawsuit against the county and Macomb responded with a countersuit, the two sides have piled up tens of thousands pages of documents that attempt to make their case.

Their sniping has tested federal Judge Robert Cleland's patience as competing motions — some nearly 200 pages in length — have flooded into the court.

To the casual observer, it seems inconceivable that a battle over revenues at a relatively small concert venue could be amplified to this extent. But this is Freedom Hill, Macomb County's epicenter of noisy political fights for more than six years.

At issue in the newest round of court tussles is a \$250 million lawsuit filed against the county in April 2006, claiming that money disputes with Macomb had sabotaged a pending agreement to have Palace Sports and Entertainment take over operations of the Sterling Heights venue.

The county's countersuit filed a month later claims that Hillside has shorted Macomb County on revenues for parking, catering services, advertising and ticket sales. Those moneysharing contractual obligations are included in a lease agreement between Hillside and Macomb County.

A Hillside victory in court would bring the fledgling company a multimillion-dollar payoff. At the same time, a Macomb defeat could cost county taxpayers millions of dollars annually for more than a decade.

Amid all the petulant pretrial maneuvering, the county and Hillside have each declared small victories along the way.

Hillside points to a supposedly "devastating" deposition taken last month of Alan Ostfield, chief operating officer for The Palace. Ostfield testified that the pending deal for his entertainment conglomerate to buy a 90 percent interest in the Freedom Hill concert theater from Hillside came to a "screaming halt" when the county Parks and Recreation Commission challenged the amount of parking revenues shared with Macomb.

That deal would have involved a \$9 million sale of assets and untold millions of dollars in ticket revenues for years to come.

In turn, county officials point to a decision by Judge Cleland last month that allowed Macomb to pursue new avenues in its claim that Hillside has systematically hidden revenues.

The county focuses on another deposition, by Hillside sales representative Tom Bommarito, that might have long-standing implications. Court transcripts indicate that Hillside gains up to \$1.6 million a year in advertising revenues for banners and signs within the amphitheater. Yet, the gains from advertising outside the concert theater, which must be shared 50-50 with the county, are no more than \$40,000 a year.

Hillside spokesman Hank Riberas said the county is trying to "spin" the story to suggest that hundreds of thousands of dollars are unaccounted for. The only money earned

outside the theater is money from sponsors who post advertising at 15 sites on the park grounds.

Figures submitted to county auditors annually justify all the money earned by the theater — and the county's share, he said.

"What the county is trying to do is smear by implication. They're planting in the minds of the media that there's something sinister going on," Riberas said.

County officials will not comment on the record about the ongoing legal dispute.

But in court proceedings, finger pointing has been standard fare in this legal melodrama. Trial is just months away, in October, yet a flustered Judge Cleland recently postponed the July 1 deadline for the "discovery" process, which allows each side to attain depositions and documents. With several "emergency" motions pending from each side, the judge was forced to push the discovery period into August.

Some highlights of the legal wrangling, according to court records, are these:

Both sides have asked the judge to impose sanctions — essentially reimbursement of legal fees — on the other because of claims that the opposition is being uncooperative.

Hillside said it has submitted 20,000 pages of documents to the county while Macomb County attorneys claim that 7,000 of those were irrelevant material from Hillside's previous court fight with the city of Sterling Heights. That legal battle resulted in a \$31 million settlement in favor of the concert promoters. In the meantime, the county's legal team claims that Hillside still has not come clean.

One recent Hillside motion was 194 pages and a second was 132 pages. One of those motions offered a detailed chronology to claim that the private attorney handling the case for the county, Tom Esordi, was dodging the phone calls of Hillside attorney Cindy Victor.

Hillside complained that the county has supplied its team with just a few days notice — as little as 24 hours in some instances — of a pending deposition. As a result, depositions have been postponed several times. Meanwhile, two key players in the dispute from Hillside, co-owners Joe Vicari and Gary Roncelli, have yet to be deposed as the trial nears.

Twice while depositions were being taken the proceedings were halted by disputes that resulted in a phone call by the competing attorneys to the judge to mediate the situation.

When a top county auditor, Robert Grzanka, appeared for his deposition in April, Hillside attorneys came armed with 100 exhibits — mostly memos and financial documents — to bolster their questioning.

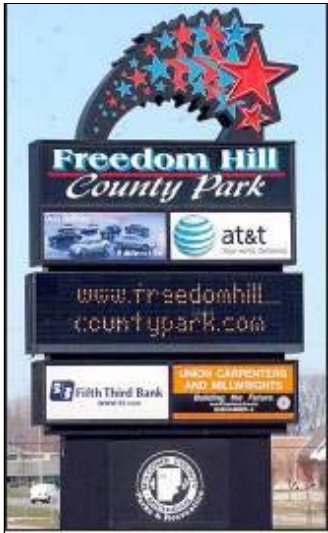
Hillside scored an opening victory in March when Cleland ruled the Parks and Recreation Commission was off base in its assertion a year earlier that the county was shortchanged on parking revenues. The judge's decision said the only "reasonable interpretation" of the lease contract is that Hillside gets three-fourths of parking funds from all events at the Sterling Heights park.

In contrast, the judge decided last month that the county's 1 percent share of revenues from ticket sales includes the lawn area of the amphitheater, which seats nearly 3,000 people. Hillside had argued that the lawn contains no actual seats, so the county's revenue share did not apply to those ticket sales.

Attorneys on both sides are assuming the trial will go forward in October. But, at this rate, the blizzard of paperwork could be enough to create a second hill at the county park.

Hillside's Riberas talks of setbacks and casualties as if the battle of Freedom Hill is being waged by America's generals, not a team of attorneys trying to outmatch the wits of the other side.

"Some battles are won, some battles are lost," he said. "In the end, I think we'll prevail."



Concertgoers enjoy a show at the Freedom Hill amphitheater in this file photo. A judge decided last month that the county's 1 percent share of revenues from ticket sales includes the lawn area of the amphitheater, which seats nearly 3,000 people. Hillside had argued that the lawn contains no actual seats, so the county's revenue share did not apply to those ticket sales.