

IN THE IOWA DISTRICT COURT FOR CERRO GORDO COUNTY

<p>G8 DEVELOPMENT, INC.,</p> <p>Plaintiff,</p> <p>v.</p> <p>CITY OF MASON CITY, IOWA AND MASON CITY CHAMBER OF COMMERCE,</p> <p>Defendants</p>	<p>CASE NO: CVCV070631</p> <p><b>APPEARANCE, ANSWER TO PETITION AT LAW, AFFIRMATIVE DEFENSES, AND JURY DEMAND</b></p>
--	--

**COMES NOW** Seth R. Delutri of Bradshaw, Fowler, Proctor & Fairgrave, P.C. and hereby enters his Appearance on behalf of the Defendant, Mason City Chamber of Commerce, and hereby submits its Answer, Affirmative Defenses, and Jury Demand, and in support thereof, states as follows:

**THE PARTIES, JURISDICTION AND VENUE**

1. The Plaintiff in this matter is G8 Development, Inc. (hereinafter "G8").

**ANSWER:** Paragraph 1 is admitted.

2. G8 is in the business of real estate development and is a California corporation licensed to do business in the State of Iowa, with a principal business addressed as 4538 Cass Street, San Diego, California 92109.

**ANSWER:** Paragraph 2 is denied for lack of knowledge, information or belief.

3. Upon information and belief, the City of Mason City, Iowa (hereinafter the "City") is a municipal corporation organized under the provisions of the Constitution and the laws of the State of Iowa and is vested with the power to enter into contracts and carry out its obligations thereunder.

**ANSWER:** Paragraph 3 is denied for lack of knowledge, information or belief.

4. Upon information and belief, the official actions taken by the City, including entering into contracts, is subject to ratification and approval by a legally constituted City Council.

**ANSWER:** Paragraph 4 is denied for lack of knowledge, information or belief.

5. Upon information and belief, the Mason City Chamber of Commerce Foundation (hereinafter “the Chamber”) is an Iowa Nonprofit Corporation existing and established under Iowa Code Chapter 504, with a principal place of business located in Mason City, Cerro Gordo County, Iowa.

**ANSWER:** Paragraph 5 is admitted to the extent that the Mason City Chamber of Commerce (“Chamber”) has a principal place of business in Mason City, Cerro Gordo County, Iowa. Paragraph 5 is otherwise denied.

6. The actions and conduct giving rise to these causes of action took place in Mason City, Cerro Gordo County, Iowa and venue is, therefore, proper herein.

**ANSWER:** Paragraph 6 is denied for lack of knowledge, information or belief.

7. The damages alleged herein exceed the jurisdictional minimum for an amount in controversy in this District Court.

**ANSWER:** Paragraph 7 is denied for lack of knowledge, information or belief.

**FACTUAL ALLEGATIONS COMMON TO ALL COUNTS**

8. G8 and the City have been in continual negotiations for contracting to build a hotel since 2013.

**ANSWER:** Paragraph 8 is admitted to the extent the Chamber is generally aware of the fact that G8 and the City engaged in negotiations related to the building of a hotel. Paragraph 8 is otherwise denied for lack of knowledge, information or belief.

9. The City submitted grant applications to the State of Iowa for funding assistance grants in the calendar year 2014.

**ANSWER:** Paragraph 9 is denied for lack of knowledge, information or belief.

10. The State of Iowa turned down the City's 2014 grant application.

**ANSWER:** Paragraph 10 is denied for lack of knowledge, information or belief.

11. The 2014 failure to obtain grant funding from the State of Iowa slowed the negotiations between the City and G8.

**ANSWER:** Paragraph 11 is denied for lack of knowledge, information or belief.

12. Again, in 2015, the City submitted grant applications to the State of Iowa for funding assistance.

**ANSWER:** Paragraph 12 is denied for lack of knowledge, information or belief.

13. The State of Iowa granted the City's 2015 grant application, and agreed to offer grants in the range of \$7,000,000 to assist with urban renewal within the City.

**ANSWER:** Paragraph 13 is admitted to the extent that the Chamber was generally aware that certain grant money was awarded related to this project. Paragraph 13 is otherwise denied for lack of knowledge, information or belief.

14. On or about January 20, 2016, G8 and the City entered into a written "Purchase, Sale and Development Agreement" (hereinafter "Development Contract"). A true and complete copy of the Development Contract is attached hereto as Exhibit A.

**ANSWER:** Paragraph 14 is admitted to the extent the Chamber was generally aware that G8 and the City entered into a contract. Paragraph 14 is otherwise denied for lack of knowledge, information or belief.

15. Approval of the City's entry into the Development Contract with G8 was ratified by the City Council of Mason City in February of 2016.

**ANSWER:** Paragraph 15 is denied for lack of knowledge, information or belief.

16. Prior to the execution of the Development Contract, the City had undertaken efforts for urban renewal within the City in an area dubbed the "Mason City Downtown Reinvestment Urban Renewal Area" (referred to in the Development Contract and hereinafter as "Urban Renewal Area").

**ANSWER:** Paragraph 16 is denied for lack of knowledge, information or belief.

17. Pursuant to the Development Contract, the City identified its ownership rights in certain real property located within the Urban Renewal Area (hereinafter referred to as the "Development Property").

**ANSWER:** Paragraph 17 is denied for lack of knowledge, information or belief.

18. Pursuant to the Development Contract, the City identified its willingness to transfer ownership of the Development Property to G8, within timeframes and under terms as established in the Development Contract, in exchange for G8's agreement to make certain improvements to the Development Property.

**ANSWER:** Paragraph 18 is denied for lack of knowledge, information or belief.

19. As a result of these transfer clauses contained in the Development Contract, G8 had an expectancy interest in the future based in the Development Contract.

**ANSWER:** Paragraph 19 is denied for lack of knowledge, information or belief.

20. In reliance on the Development Contract, G8 expended nearly \$600,000.00 in reliance costs in connection with its performance of the Development Contract.

**ANSWER:** Paragraph 20 is denied for lack of knowledge, information or belief.

21. The Development Contract inured to the benefit of the City as a means of economic development and cured blight within the Urban Renewal Area.

**ANSWER:** Paragraph 21 is denied for lack of knowledge, information or belief.

22. The Development Contract referred to the anticipated improvements as “Minimum Improvements” and contemplated the construction of a business class hotel and what was referred to as a “Parking Facility.”

**ANSWER:** Paragraph 22 is denied for lack of knowledge, information or belief.

23. At all times pertinent hereto, G8 held exclusive contractual franchise rights to build a Marriott franchise hotel in Mason City in connection with the Development Contract.

**ANSWER:** Paragraph 23 is denied for lack of knowledge, information or belief.

**COUNT I – BREACH OF CONTRACT AGAINST CITY**

The Defendant, Mason City Chamber of Commerce, provides no Answer to Count I (“Breach of Contract Against City”) as stated in Paragraphs 24-31 of Plaintiff’s Petition because the same are not directed against this Defendant. To the extent an Answer is required, Paragraphs 24-31 of Plaintiff’s Petition are denied.

**COUNT II - QUANTUM MERUIT - IMPLIED IN FACT CONTRACT AGAINST CITY**

The Defendant, Mason City Chamber of Commerce, provides no Answer to Count II (“Quantum Meruit – Implied in Fact Contract Against City”) as stated in Paragraphs 32-37 of Plaintiff’s Petition because the same are not directed against this Defendant. To the extent an Answer is required, Paragraphs 32-37 of Plaintiff’s Petition are denied.

**COUNT III - INTENTIONAL INTERFERENCE WITH  
CONTRACT AGAINST CHAMBER**

38. The stated mission of the Chamber is, in part, to “work for the success of its members.”

**ANSWER:** Paragraph 38 is admitted.

39. G8, at all times pertinent herein, was a member of the Chamber.

**ANSWER:** Paragraph 39 is admitted.

40. An individual named Robin Anderson is the current Director of the Chamber and held that same position at all times material hereto.

**ANSWER:** Paragraph 40 is denied. Mrs. Anderson is the President and CEO of the Chamber.

41. Anderson and the Chamber were aware that G8 and the City had a valid contract in the form of the aforementioned Development Contract.

**ANSWER:** Paragraph 41 is admitted to the extent the Chamber was generally aware of a contract between G8 and the City regarding a hotel project. Paragraph 41 is otherwise denied.

42. Upon information and belief, the Chamber intentionally and improperly interfered with the Development Contract by, among other things, Robin Anderson, in her capacity as Director of the Chamber, having “secret” meetings with certain members of the City Council and encouraging them to terminate the G8 Development Contract in favor of another proposal being offered by an entity known as Gatehouse Capital.

**ANSWER:** Paragraph 42 is denied. For further answer, the Chamber affirmatively states the City properly terminated the Contract because of the Plaintiff’s failure to perform as required therein.

43. The interference caused the City to terminate the Development Contract and affected G8's ability to perform and complete its obligations under the contract.

**ANSWER:** Paragraph 43 is denied.

44. As a result of this intentional interference by the Chamber, G8 was damaged as its Development Contract was wrongly terminated and it suffered reliance damages and loss of expectancy interests.

**ANSWER:** Paragraph 44 is denied.

WHEREFORE, Defendant, Mason City Chamber of Commerce, requests that the Plaintiff's Petition be dismissed at Plaintiff's cost and for such additional relief as the Court deems appropriate under the circumstance.

**AFFIRMATIVE DEFENSES**

1. Defendant City of Mason City properly terminated the Contract because Plaintiff materially breached the Contract by not performing as required and/or because it failed to act in good faith in its performance of the Contract.
2. Plaintiff has failed to state a claim upon which relief can be granted.
3. Plaintiff's claims and/or damages are barred by the doctrines of estoppel, waiver, acquiescence, accord and satisfaction, and/or ratification.
4. Plaintiff's claims are barred by the doctrine of unclean hands.
5. Plaintiff has failed to mitigate its damages, if any.
6. Defendant reserves the right to assert any additional affirmative defenses as may be available based on further investigation and discovery and to amend its Answer to assert any such defenses.

WHEREFORE, the Defendant, Mason City Chamber of Commerce, requests that the Plaintiff's Petition be dismissed at Plaintiff's cost and for such additional relief as the Court deems appropriate under the circumstance.

**JURY DEMAND**

**COMES NOW** the Defendant, Mason City Chamber of Commerce, and hereby demands a trial by jury of all of the issues in this case.

BRADSHAW, FOWLER, PROCTOR & FAIRGRAVE, P.C.

By: Seth R. Delutri  
Seth R. Delutri AT0010220  
801 Grand Avenue, Suite 3700  
Des Moines, IA 50309-8004  
Phone: (515) 246-5885  
Fax: (515) 246-5808  
E-Mail: [delutri.seth@bradshawlaw.com](mailto:delutri.seth@bradshawlaw.com)

ATTORNEYS FOR DEFENDANT MASON CITY CHAMBER OF COMMERCE

Original filed.

Copy to:

Stephen E. Doohen  
Whitfield & Eddy, P.L.C.  
699 Walnut Street, Suite 2000  
Des Moines, IA 50309

Randall E. Nielsen  
Pappajohn, Shriver, Eide & Nielsen, P.C.  
103 East State Street, Suite 800  
P.O. Box 1588  
Mason City, IA 50401

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing instrument was served upon one of the attorneys of record for all parties to the above-entitled cause by serving the same on such attorney at his/her respective address/fax number as disclosed by the pleadings of record herein, on the

31<sup>ST</sup> day of AUGUST, 2017 by:  
 U.S. Mail  Fax  
 Hand Delivered  UPS  
 Federal Express  Other EDMS

Seth R. Delutri