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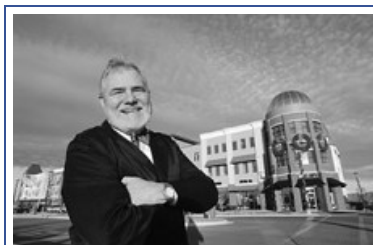
Saturday, December 05, 2009

## News & Features

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### A clash of dueling taverns leads to lawsuit

BY KENT DARR



A tavern owner at West Glen Town Center says that William Van Orsdel, show above during the 2007 holiday season, threatened to put him out of business during a dispute over the establishment's lease. Business Record file photo

West Glen Town Center management violated terms of a lease agreement and placed the first tavern to open in the upscale shopping, entertainment and residential district at a competitive disadvantage, according to a lawsuit filed in Polk County District Court.

Riley Drive Entertainment I Inc., owner of Tonic bar, which opened in 2005, filed the lawsuit, in which it accuses West Glen management and unnamed employees and service providers with "fraud" and "collusion" in driving up fees built into its lease that are associated with such things as snow removal, marketing, property taxes and general maintenance.

Tonic stopped paying a portion of those charges, called common area maintenance fees, in 2007 and 2008, believing that they had been inflated and in reaction to what Tonic owners say was West Glen's violation of a lease that granted them the sole right to operate a tavern at the development.

On Nov. 10, West Glen served the tavern with an order to essentially pay all of the fees within three days or move out of the development, according to the lawsuit, which was filed Nov. 13.

Scott Anderson, a lawyer in Kansas City, Mo., who is a partner in Riley Drive Entertainment, said the dispute dates to 2006, when he and partner Marc Mundt learned that West Glen had signed a lease to open what is now called Cabaret West Glen.

An attorney representing Anderson and Mundt sent a letter to Cabaret's owner in March 2006 saying, "We view the operation of a bar such as yours as a violation of the lease agreement between my client and West Glen Town Center LLC."

Anderson said the letter and others protesting the planned opening of a competitor prompted a telephone call to Anderson from William Van Orsdel. During what Anderson described as a "heated" exchange, Van Orsdel said, "at the end of the day, I don't care what our deal was, I will bury you,"

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according to Anderson.

Van Orsdel is part of a prominent group of Greater Des Moines developers and business people who teamed up to develop West Glen, at the time a chunk of ground on the west side of Interstate 35/80 and just north of the exclusive Glen Oaks community and country club.

Van Orsdel declined to respond.

"We'll let the process proceed," he said.

Anderson said that he and Mundt, who had been boyhood buddies in Ottumwa, decided to open Tonic after learning from a real estate broker that West Glen

had space available. They insisted on the exclusivity agreement, because at that time "there were a bunch of cornfields out there. There was a big concern on our part whether there would be sufficient business to support the bar."

The lawsuit cites language in an operating easement agreement with Target Corp., the anchor tenant at West Glen, and other property owners that limits the development to a sports bar and one other tavern.

The lease that Anderson and Mundt entered contains this language:

"Notwithstanding anything contained herein regarding exclusivity, landlord acknowledges that the operating and easement agreement affecting the property allows 4,073 square feet of floor area on the property to be used for the purposes of a bar or tavern, restaurant or other establishment (other than a sports bar) whose reasonable annual gross revenues for the sale of alcoholic beverages for on-premises consumption exceeds thirty percent ... of the gross revenues of such business. Landlord specifically reserves the right to allow other similar uses on the property."

The 10-year lease requires Tonic to pay common area maintenance fees of \$5.50 per square foot, with the fee adjusted on an annual basis.

Anderson said Tonic has continued to pay the base fee but in 2007 and 2008 refused to pay the adjustment, which he said ranged up to \$9 per square foot.

Attorney Brad Schroeder, who filed the lawsuit on behalf of Riley Drive Entertainment, said Tonic owners recently paid the outstanding charges in order to preserve their lease.

Schroeder also said that in assessing damages under the lawsuit, he will attempt to determine the profits earned by Cabaret and Blue Moon Dueling Piano Bar and Restaurant, which opened in 2008.

"Why shouldn't that be our guide? It's the key premise on which our guys entered into the deal," Schroeder said.

West Glen spokeswoman Jamie Buelt said, "These allegations are absolutely without merit and we will respond accordingly."

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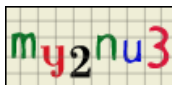
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