

GRANT F. LANGLEY
City Attorney

MIRIAM R. HORWITZ
ADAM B. STEPHENS
MARY L. SCHANNING
Deputy City Attorneys



Milwaukee City Hall Suite 800 • 200 East Wells Street • Milwaukee, Wisconsin 53202-3551
Telephone: 414.286.2601 • TDD: 414.286.2025 • Fax: 414.286.8550

Nuisance Abatement Litigation Summary

May 26, 2017

1. **City of Milwaukee v. Mohammad Choudry, et al.**

Court: Milwaukee County Circuit Court

Case No: 16-CV-8057

City Counsel: Kail Decker

Opposing Counsel: Frank Gimbel, Russell Karnes

Judge: William Sosnay

Issue(s): Since 2009, Mohammad Choudry has amassed a portfolio of neglected rental properties. He frequently failed to record sheriff's deeds, regularly did not pay real estate taxes, and hid behind LLCs that incurred significant forfeiture debt. His tenants lived in poor conditions, the city rarely collected debts upon him, and his cash-only business made it difficult to garnish to pay those debts.

Summary of Case: The City sued Mr. Choudry and several related LLCs under causes of action including: debt collection, public nuisance, racketeering, and fraudulent transfers. In addition, the City sought to pierce the corporate veil of the LLCs and hold Choudry personally liable.

Case Status: Temporary injunction granted and receivership ordered on Nov. 3, 2016. No scheduling order issued yet.

2. **City of Milwaukee v. ELRA 2121, LLC, et al.**

Court: Milwaukee County Circuit Court

Case No: 15-CV-3720

City Counsel: Kail Decker

Opposing Counsel: David Halbrooks

Judge: William Sosnay

Issue(s): Property at 2405 W. National Avenue was dilapidated and uninhabitable. The City served a raze order against the property and the owner did not comply.

Summary of Case: City sued the owner of 2405 W. National Avenue to force it to raze the building. The owner expressed an interest in fixing the property instead and

STUART S. MUKAMAL
JOHN J. HEINEN
SUSAN E. LAPPEN
JAN A. SMOKOWICZ
PATRICIA A. FRICKER
HEIDI WICK SPOERL
GREGG C. HAGOPIAN
ELLEN H. TANGEN
JAY A. UNORA
KATHRYN Z. BLOCK
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ALLISON N. FLANAGAN
LA KEISHA W. BUTLER
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HEATHER H. HOUGH
ANDREA J. FOWLER
PATRICK J. MCCLAIN
NAOMI E. GEHLING
CALVIN V. FERMIN
BENJAMIN J. ROOVERS
ELLENY B. CHRISTOPOULOS
RACHEL S. KENNEDY
TYRONE M. ST. JUNIOR
HANNAH R. JAHN
Assistant City Attorneys



posted \$20,000 as a bond to assure its completion. Through a stipulation with the City, the owner was provided with an opportunity to repair the building. Although the owner has repaired a portion of the building, it remains unfinished. A third-party project manager was overseeing the project until recently.

Case Status: City filed a motion for a finding of contempt and sanctions against the owner for failing to comply with the court's order. Based on the owner's complete ineptitude, the City will not be entering into any similar agreements with the owner in the future.

3. **City of Milwaukee v. M & R Properties Investment, LLC, et al.**

Court: Milwaukee County Circuit Court

Case No: 15-CV-7228

City Counsel: Kail Decker

Opposing Counsel: David Halbrooks

Judge: Rebecca Dallet

Issue(s): Property at 2710 W. Juneau Avenue was dilapidated and uninhabitable. The City served a raze order against the property and the owner did not comply.

Summary of Case: City sued the owner of 2710 W. Juneau Avenue to force it to raze the building. The owner stipulated to razing the building by a certain date. It failed to do so by that date. The city sought a finding of contempt and sanctions, but the judge refused to make such a finding despite the owner's failure to follow through. Just prior to another scheduled contempt hearing, the owner conveyed the property to a third party who was not financially capable of completing the project. The city filed a motion under Ch. 242 to declare the conveyance to be a fraudulent transfer and the owner agreed to void the conveyance, essentially admitting it was fraudulent. However, the City razed this building in March 2017 at its cost due to the extended period of time it would take to compel the owner.

Case Status: The case is now a collections action seeking reimbursement of approximately \$75,000 from the owner.

4. **City of Milwaukee v. Amjad Tufail et al.** (27th St. Tobacco)

Court: Milwaukee County Circuit Court

Case No: 15-CV-7550

City Counsel: Nicholas DeSiato

Opposing Counsel: David Halbrooks, Michael Maistelman

Judge: William Sonsay

Issue(s): The occupant of a small commercial building was selling drugs out of the building and disrupting the neighborhood.

Summary of Case: In September 2015, the CAO filed a drug house complaint against the property and business owners of the tobacco shop. By stipulation, the

business agreed to vacate the property and the parties are ordered to engage in good faith negotiations over the future use of the property.

Case Status: The NWSP has since bought the property and they are currently engaging in a Phase II. A status update with the court is scheduled for June 20, 2017.

5. **City of Milwaukee v. Asad Mustafa et al.** (Ashraf Foods)

Court: Milwaukee County Circuit Court

Case No: 16-CV-5931

City Counsel: Nicholas DeSiato

Opposing Counsel: Michael John Whitcomb

Judge: Clare L Fiorenza

Issue(s): An individual was selling food without a proper license as well as improperly labeled cigarettes to adults and minors.

Summary of Case: In September 2016, the CAO filed an injunctive action in circuit court for the convenience store to cease selling food without a food dealer's license (which was non-renewed in December 2015), single cigarettes and cigarettes to minors (which it had been cited for). After the non-renewal, both MPD and the Health Department twice found them selling food (for a total of four violations), resulting in citations and orders to suspend. Although the court ordered the injunction, a follow-up health department inspection revealed that the business was still selling food without a license. In November 2016, the circuit court found the business was in contempt of court and ordered a \$1,000 forfeiture to the City.

Case Status: Since the finding of contempt, the store has been in compliance.

6. **City of Milwaukee v. NTO LLC**

Court: Milwaukee County Circuit Court

Case No: 15-CV-5210

City Counsel: Nicholas DeSiato

Opposing Counsel: Joseph William Scherwenka

Judge: John DiMotto

Issue(s): A California-style hotel building at 2408 W. Kilbourn Avenue was a frequent location for prostitution, drug sales, and other public nuisance activity that disrupted the neighborhood.

Summary of Case: In August 2015, the CAO obtained a court order for a nuisance receivership for the 15-unit apartment. In May 2016, DNS ordered the property razed. In December 2016, the CAO obtained an order to compel the building owner to raze the building at its own cost. After NTO failed to timely raze the building, the CAO has filed a motion for contempt against NTO.

Case Status: The next hearing is on June 23, 2017 where the CAO intends to attempt to pierce the corporate veil and pursue personal liability against the LLC's members.

7. **City of Milwaukee v. Bonnita J Mennengna**

Court: Milwaukee County Circuit Court

Case No: 16-CV-2340

City Counsel: Nicholas DeSiato

Opposing Counsel: N/A

Judge: Dennis P Moroney

Issue(s): Building was being used as a temporary shelter for drug users.

Summary of Case: In March 2016, the CAO filed a drug house complaint. The absentee owner permitted the house to be used as a flop house, which generated considerable neighborhood unrest. As a result of the action, the owner sold the property to an unrelated third party buyer. Alderman Bohl and the CAO met with the prospective buyer and had no objection to his plan with the property. Therefore, the case was dismissed upon sale.

Case Status: No neighbor complaints under new ownership.

8. **City of Milwaukee v. J Jesus Gamez** (Palomas Place)

Court: Milwaukee County Circuit Court

Case No: 15-CV-10282

City Counsel: Nicholas DeSiato

Opposing Counsel: Roberto R Ledesma

Judge: Timothy G. Dugan

Issue(s): The owners and employees of a bar on the south side was dealing cocaine from within the business and behind the bar.

Summary of Case: In November 2015, the CAO filed both a license revocation and drug house complaint against the tavern as a result of an eight month investigation regarding the sale of cocaine. The Common Council revoked its tavern license and, in a court trial, the circuit court found the property to be a drug house.

Case Status: Case is currently on appeal with the court of appeals. The parties have briefed the issue and are awaiting the court's decision.

9. **City of Milwaukee v. Estate of Thelma Bush et al.**

Court: Milwaukee County Circuit Court

Case No: 15-CV-8702

City Counsel: Nicholas DeSiato

Opposing Counsel: Pro Se Defendants

Judge: Timothy Witkowiak

Issue(s): The owner of a house was allowing her adult children to operate the home as a distribution point for drugs.

Summary of Case: In October 2015, the CAO filed a drug house complaint against the property owner. The property had been used by the owner's children and grandchildren for active drug activity, resulting in multiple incidents of shots fired. In April 2016, the owner passed away leaving the children and grandchildren in full control of the property. In a June court trial, the court found the property to be a drug house and ordered it sold.

Case Status: The property remains closed until the release of mortgage can be resolved.

10. **City of Milwaukee v. Kenneth D. Churchill, III**

Court: Milwaukee County Circuit Court

Case No. 17-CV-1135

City Counsel: Heather Hecimovich Hough

Opposing Counsel: Terry Teper, Bryan Ward

Judge: Rebecca Dallet

Issue(s): Since 2011, Churchill's 12 City property holdings have received 11 drug house designations and Churchill has failed to abate the drug, nuisance and prostitution activity at his property holdings. In addition, Churchill has numerous outstanding code violations that have not been corrected and have been open since 2015. The City also alleges that Mr. Churchill has direct involvement with the drug activity occurring at his rental properties.

Summary of Case: The City sued Churchill under Wis. Stat. § 823.02, alleging that Churchill's mismanagement of his properties constitutes a public nuisance; under Wis. Stat. § 823.09 alleging that the properties are Bawdy House nuisance, § 823.113 alleging that the properties are a drug house nuisance, and also that the properties are a nuisance per se due to the number of outstanding code violations and municipal citations attached to the properties.

Case Status: Temporary injunction granted and receivership ordered on March 22, 2017 (order filed April 3, 2017). Scheduling order issued, trial set for January 28, 2018.

11. City of Milwaukee: Notice of Intent to File Application for Appointment of a Receiver

Court: None, published only (March 30, 2017)

Case No.: N/A

City Counsel: Heather Hecimovich Hough

Opposing Counsel: Victor M. Arellano

Judge: N/A

Issue(s): Since 2011, DNS has issued at least 138 orders identifying at least 854 code violations at Miguel Saldivar's property holdings. To date, 44 orders to correct 458 code violations remain unabated.

Summary of Case: The City published the Notice of Intent to File Application for Receivership on March 30, 2017, with the intent of filing a nuisance action for receivership in circuit court after the expiration of 60 days (as required by statute).

Case Status: Saldivar through counsel and the City entered into an abatement agreement on May 23, 2017 whereby Saldivar will be provided additional time before the filing of the action if he addresses all code violations in accordance with the entered agreement.

12. ORP Real Estate Holdings LLC v. City of Milwaukee

Court: Milwaukee County Circuit Court (and Eastern District of Wisconsin)

Case No. 15-CV-10358 (16-CV-00278 Federal)

City Counsel: Heather Hecimovich Hough and Patrick Leigl (for civil case); Heather Hecimovich Hough and Jan Smokowicz (for federal case)

Opposing Counsel: Mark Peterson and Rock Pledl, Nathan Eckley, David Halbrooks

Judge: Clare Fiorenza (J P Stadtmueller for Federal Case)

Issues(s): Temporary and permanent injunction against raze order issued for 2801 W. Wisconsin Avenue for the purposes of providing a residential care center for male juveniles with disabilities. ORP initiated a suit in circuit court contesting the raze; and also in federal court for federal fair housing and disabilities claims.

Summary of Case: Upon stipulation in circuit court, ORP agreed to stipulate to dismissal without prejudice of the federal court case.

Stipulation in circuit court stays the raze until a decision on special use is made at BOZA. Matter to be heard at BOZA on June 1; next status conference scheduled for July 2017.

13. **City of Milwaukee Municipal Court v. Will J. Sherard**

Court: Milwaukee County Circuit Court

Case No: 16-CV-6628

City Counsel: Patrick Leigl

Opposing Counsel: Robert Meyeroff

Judge: Glenn Yamahiro

Issue(s): Did the municipal court abuse its discretion when it ordered Will Sherard to pay his municipal forfeitures in full?

Summary of Case: Judge Yamahiro denied Sherard's motion to set aside the municipal order and upheld the order to pay the forfeitures within 60 days. He subsequently denied the motion to stay the order pending the appeal.

Case Status: Will Sherard paid \$39,728 to his attorney's trust account on May 23, 2017. The circuit court order has been appealed to the court of appeals.

14. **City of Milwaukee v. Badface Development LLC et al.**

Court: Milwaukee County Circuit Court

Case No: 14-CV-009074

City Counsel: Jay Unora

Opposing Counsel: Robert Nailen

Judge: Rebecca Dallet

Issue(s): 823 Public nuisance action started as a dangerous excavation which was replaced by an unfinished building (building code non-compliant.)

Summary of Case: After many weeks of slow progress, the court appointed a receiver on February 15, 2017 charged with completing the construction project to the point of rough-in-inspection.

Case Status: With the appointment of the receiver we have seen a marked increase in both quantity and quality of work. Next court date is July 14, 2017.