

NOTICE OF CLAIM

CITY OF MILWAUKEE

01 MAY -3 AM 10: 28

RONALD D. LEONHARDT
CITY CLERK

To: City Clerk
Attn: Claims
200 East Wells Street
Milwaukee, Wisconsin 53202-3567

On February 27, 2001, the Redevelopment Authority of the City of Milwaukee ("RACM") wrongfully attempted to terminate the tenancy at 633-41 North 4th Street. No relocation benefits were offered to tenant. On April 6, 2001, RACM commenced an eviction action related to such property. Attached hereto is an Answer, Affirmative Defenses and Counterclaim to such eviction complaint. The Counterclaim details the claims in an amount not less than One Million Dollars (\$1,000,000.00) or, in the alternative, relocation benefits as specified therein.

This claim for relocation benefits has previously been made to RACM and has been denied. Attached are letters dated February 28, 2001 from the undersigned and March 1, 2001 from RACM.

Dated this 3rd day of May, 2001.



Thomas A. Merkle, Attorney for Claimant
Gerald Robison and Central Parking, Inc.

P. O. Address:

Suite 1400
111 East Wisconsin Avenue
Milwaukee, Wisconsin 53202-4870

(414) 276-5000

CITY OF MILWAUKEE
RECEIVED
01 MAY -3 PM 4: 16
OFFICE OF
CITY ATTORNEY

REDEVELOPMENT AUTHORITY
OF THE CITY OF MILWAUKEE,

Plaintiff,

Case No. 01-SC-010403

vs.

GERALD ROBINSON (sic) d/b/a
CENTRAL PARKING,

Defendant.

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ANSWER, AFFIRMATIVE DEFENSES AND COUNTERCLAIM

NOW COMES the Defendant, Gerald Robison, by his attorneys, O'Neil, Cannon & Hollman, S.C., and for an Answer to Plaintiff's Complaint admits, denies and alleges as follows:

1. Admits the allegations of Paragraph 1 and alleges that the Redevelopment Authority of the City of Milwaukee ("RACM") as a public body corporate has a public trust and an obligation at all times to act fairly and equitably.
2. Denies the allegations of Paragraph 2 of Plaintiff's Complaint.
3. Admits.
4. Admits but alleges that the Occupancy Agreement was and is only one document of many that establishes and defines the relationship between the parties.
5. Admits that a notice purporting to terminate the Occupancy Agreement was given but alleges that such notice was improper and ineffective.

6. Denies the allegations of Paragraph 6 of the Complaint and alleges that RACM, among other failures, has failed to provide relocation benefits to the tenant as agreed and as required by state statute and federal law.

7. Denies the allegations of Paragraph 7 of Plaintiff's Complaint.

8. Realleges and incorporates by reference all of the admissions, denials and allegations set forth in Paragraph 1 through 7.

9. Denies information sufficient to form a belief as to the truth of the allegations in Paragraph 9 and, therefore, denies same and puts Plaintiff to its proof thereon. Defendant notes, however, that the Milwaukee City Center Lease is dated March 30, 2001, well after RACM had been made aware of the tenant's challenge to termination of occupancy and demand for relocation benefits.

10. Admits that the lease contains the referenced terms, among others.

11. Denies the allegations contained in Paragraph 11. Alleges that if the whole lot is worth \$14,400 in monthly rent, then the half of the lot closest to and most convenient and useful to the Hilton Milwaukee City Center is worth more than half (as opposed to 7% of half). Alleges that the "new rental agreement" is indicative of RACM's bad faith and possible conspiracy and fraudulent effort to unduly pressure and damage the Defendant.

12. Denies the allegations of Paragraph 12 and alleges that Defendant offered to rent the Subject Property and the property to its west for \$14,400 per month prior to RACM entering into the Milwaukee City Center Lease.

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AFFIRMATIVE DEFENSES

As and for its Affirmative Defenses, Defendant alleges and states:

- 13. Plaintiff's Complaint fails to state a cause of action upon which relief may be granted.
- 14. Plaintiff's Complaint fails to name necessary and/or indispensable party(ies).
- 15. Plaintiff is estopped from making its claims and claiming damages.
- 16. Plaintiff's claims are barred by the doctrine of Laches.

COUNTERCLAIM

As and for his Counterclaim, Defendant alleges and states:

- 17. Realleges and incorporates by reference all of the admissions, denials and allegations of Paragraphs 1 through 15 above.
- 18. In September of 1981 the Department of City Development drafted a Redevelopment Plan for the North 5th Street - West Wisconsin Avenue Urban Renewal Project in Tax Incremental District Number Four, City of Milwaukee in Downtown Milwaukee (the "Plan"). The Plan received all necessary approvals and was recorded with the County of Milwaukee Register of Deeds office on December 1, 1981.
- 19. As part of the Plan, and as required by Wisconsin and Federal statutes and law, a Relocation Plan ("Relocation Plan") was prepared to compensate persons being displaced in the area encompassed by the Plan.

20. Gerald Robison owned and operated a parking lot business in the area encompassed by the Plan.

21. Pursuant to the Relocation Plan, RACM began negotiations with the various persons being displaced under the Plan. RACM paid relocation benefits to such various owners and tenants.

22. Gerald Robison was one of the displaced persons with whom RACM negotiated relative to relocation benefits to which he was entitled. RACM delivered pamphlets and other written materials with respect to the process and Robison's rights to receive relocation benefits.

23. An appraisal was performed as to the personal property on his parking lot. RACM and Gerald Robison entered into a Bill of Sale with respect to such personal property.

24. RACM and Gerald Robison also entered into negotiations with respect to his tenancy and his right to receive a substantially comparable tenancy as well as rental assistance in the event the new tenancy was more expensive than the old tenancy. At the time of the taking of such property by RACM, Robison had a seven year lease with the owner of the real estate.

25. In order to clear title to the real estate being acquired, RACM requested that Robison execute a Quit Claim Deed to RACM. At such time RACM represented and warranted to Robison that he was entitled to relocation benefits and that he would not be displaced from the Subject Property until RACM actually redeveloped same. RACM further indicated to Robison that his relocation benefits would be deferred until such time that he actually had to move due to redevelopment and that in the meantime Robison could continue to occupy the Subject Property. Robison cooperated with RACM and in specific reliance upon the aforesaid representations and warranties executed such Quit Claim Deed. The Quit Claim Deed specifically reserved his rights

to relocate benefits. Robison's right to continued occupancy of the Subject Property was then memorialized in a Continued Occupancy Agreement attached hereto as Exhibit A and incorporated herein by reference. The Continued Occupancy Agreement necessarily had a short termination notice so that RACM had maximum flexibility to redevelop the Subject Property and surrounding properties. Both RACM and Robison understood and agreed that Robison's relocation benefits in exchange for his Quit Claim Deed would come to fruition when and if he was required to move to accommodate redevelopment. Robison was informed by a representative of RACM that he would receive his relocation benefits when ultimately required to move. This is consistent with the Wisconsin statutes and the relocation pamphlets. In fact, the pamphlet states: "The acquiring authority may not require the persons who occupied the premises on the date title vested in the acquiring authority to vacate until a comparable replacement property is made available." (Emphasis added) This is based upon § 32.05(8)(c), Wis. Stats.

26. In 1986 a new Occupancy Agreement was executed between RACM and Robison which again specifically confirmed Robison's rights to relocation benefits.

27. Over the intervening years RACM has been unsuccessful in obtaining any redevelopment of the Subject Property.

28. RACM has not and is not now redeveloping the Subject Property.

29. RACM intends to continue the use of the Subject Property as a parking lot. There has been no change in use of the Subject Property.

30. All rental payments under the Occupancy Agreement have been made in full to RACM on a timely basis. Tenant continues to tender such payments on a monthly basis. Through

the date of alleged termination, Tenant had fully and completely performed all obligations under and pursuant to the Occupancy Agreement.

31. From 1982 until the present date the Subject Property has been occupied and operated as a short term parking lot. The customers for this business are primarily shoppers at Boston Store, shoppers at Grand Avenue, guests and visitors of the Hilton Hotel, visitors to Midwest Express Center, conventioners, office workers and their clients. These people come and go on a daily, even hourly, basis necessitating that a parking booth on the Subject Property is manned throughout a normal business day into early evening. Overnight parking is unusual. The parking fees are collected from the parkers by Robison, his wife and other employees who occupy the Subject Property each day. Robison supervises or performs plowing and planting operations on the Subject Property as well as all other necessary care and maintenance.

32. RACM's purported Notice of Termination is silent as to relocation benefits including but not limited to failing to provide a comparable replacement property. The Notice of Termination is ineffective and the tenant is not required to move unless and until RACM makes available a comparable replacement property.

33. RACM has apparently entered into an agreement whereby it intends to lease the property to Milwaukee City Center, LLC, the company which operates the Hilton Hotel. This lease requires a payment by Milwaukee City Center of \$14,400 per month. The Subject Property constitutes one-half of the property so leased, which is the half furthest from the Hilton Hotel.

34. RACM further appears to have leased the other half to the Hilton for just \$500 per month while attempting to claim damages of \$13,900 from Defendant. It is patently obvious that Defendant's one-half (being the furthest from the Hilton) is of the lesser value to the Hilton. Yet

RACM apparently in conspiracy with Milwaukee City Center, LLC has leased the more valuable one-half to Milwaukee City Center, LLC for merely 7% of the price which would represent one-half of the whole. Thus, RACM has unjustly enriched Milwaukee City Center, LLC and is acting in bad faith in attempting to intentionally damage the Defendant.


35. RACM's actions constitute an unlawful taking of private property by a government agency under color of law in violation of 42 U.S.C. § 1983.

WHEREFORE, Defendant prays for judgment of the Court as follows:

- a. For a dismissal of Plaintiff's eviction complaint with prejudice, on its merits.
- b. For judgment in favor of Defendant in an amount not less than One Million Dollars (\$1,000,000.00) or, in the alternative:
 1. Granting relocation benefits pursuant to state and federal statute, including relocating Defendant to a comparable replacement property, payment of his moving expenses, reestablishment expenses, tenant displacement allowance and all other consequential damages;
 2. For his costs and expenses, including his actual, reasonable attorneys fees;
 3. For damages under 42 U.S.C. § 1983; and
 4. For such further and additional relief as may be just and proper.

Dated this 3rd day of May, 2001.

O'NEIL, CANNON & HOLLMAN, S.C.

By: 
Thomas A. Merkle, Attorney for Defendant
State Bar No. 1013294

P. O. Address:

Suite 1400
111 East Wisconsin Avenue
Milwaukee, Wisconsin 53202-4870
(414) 276-5000

February 28, 2001

DELIVERED BY MESSENGER

Ms. Julie Penman
Commissioner of City Development
Secretary, Redevelopment Authority of
the City of Milwaukee
200 East Wells Street
City Hall, Room 205
Milwaukee, Wisconsin 53202

Re: Central Parking, Inc.
633 North 4th Street
Milwaukee, Wisconsin

Dear Ms. Penman:

The undersigned represents Central Parking, Inc. On February 27, 2001 your office purported to give a notice of termination to Central Parking, Inc. with respect to its occupancy of the parking lot at 633-41 North 4th Street, Milwaukee, Wisconsin (the "Property"). This notice appears to be contrary to the understanding between the Redevelopment Authority of the City of Milwaukee ("RACM") and Mr. Robison of Central Parking that his occupancy would continue until the Property was actually developed. I am unaware of any proposed development on that parcel.

On behalf of Central Parking, Inc. and Mr. Gerald Robison, demand is hereby made that you:

1. Immediately rescind your Notice of Termination; and
2. Immediately provide the undersigned with any and all agreements, letters, notes, memoranda or other documents relating to any current development of the Property, the termination of the occupancy and lease agreement of the current tenant and any reletting of the Property to any other individual, corporation or entity.

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Ms. Julie Penman
February 28, 2001

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I would also note that if the notice were to properly terminate the tenancy due to RACM's development of the parcel, the notice is silent as to the relocation benefits which are proposed.

Finally, legal issues aside, I would be remiss in not commenting on the draconian nature of your department's actions. Without the courtesy of prior discussions, with no apparent development in process and with no offer of relocation benefits you simply give a 30 day notice to a long time tenant whose income is totally dependent upon this Property. One would certainly like to expect better from the City of Milwaukee.

Very truly yours,

Thomas A. Merkle

TAM:kam

c: Grant F. Langley, Esq.
Honorable Paul Henningsen
Honorable John O. Norquist



Department of City Development

Housing Authority
Redevelopment Authority
City Plan Commission
Historic Preservation Commission

Julie A. Penman
Commissioner

Michal A. Dawson
Deputy Commissioner

March 1, 2001

Thomas A. Merkle
O'Neil, Cannon & Hollman, S.C.
111 East Wisconsin Avenue, Suite 1400
Milwaukee, Wisconsin 53202-4870

Dear Mr. Merkle:

Subject: Central Parking lease termination – 4th & Wisconsin

We write in response to your February 28th letter. I regret to inform you that the Redevelopment Authority will not rescind its notice. We respectfully disagree with assertions made on behalf of Central.

The notice is not contrary to the agreement regarding the continued use and occupancy of the property. Central has occupied the Redevelopment Authority's property without interruption since the date of acquisition in 1982. Moreover, Central has had the benefit of operating the property without ever being subject to competitive bidding for such right, and has done so under what appear to be very favorable financial conditions. Central also had the benefit of expanding its parking operation by a significant number of spaces over what had existed prior to the time of the taking of property leased by Central back in 1982. The notice is silent on matters of relocation benefits because we are unaware of any unsatisfied obligations.

Central has operated the parking lot for approximately 19 years, and presently under a month-to-month lease with a 14-day termination clause dating back to 1986. We would not therefore agree with you that our 30-day notice was draconian. You should be aware that we in fact attempted to make personal service of the notice, as well as to deliver it via regular mail. Personal delivery was made to the other operator of the lot.

Unfortunately for Central, the Redevelopment Authority has a business need for its land. We do not have a redevelopment project for the site. At the same time, we are not legally required to have one as a prerequisite to lease termination.

Mr. Thomas A. Merkle

March 1, 2001

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We interpret your request for file information as an open records request. Consequently, we will respond under separate cover in a reasonable period of time with the information requested.

If we can provide any additional information or assistance to you at this time, please don't hesitate to contact me at 286-5820.

Sincerely,

**REDEVELOPMENT AUTHORITY
OF THE CITY OF MILWAUKEE**



Gregory J. Shelko
Asst. Executive Director – Secretary

cc: Ald. Paul Henningsen
Harry A. Stein, Asst. City Attorney