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Neighborhood Revitalization Litigation & Legal Services Update September, 2019

The Neighborhood Revitalization and Ordinance Enforcement section of the City Attorney's Office improves the quality of life in Milwaukee's neighborhoods by prosecuting ordinance violations and abating public nuisance conditions. We facilitate lawful public safety efforts through litigation, legal opinions, education and outreach. Our community prosecution team collaborates with other city departments and governmental agencies, local businesses, community based organizations and residents to holistically address chronic neighborhood and housing-related problems. This includes investigating exploitative landlords and seeking receiverships and injunctive relief where appropriate, initiating and defending condemnation proceedings against blighted properties, investigating and prosecuting appropriate actions against municipal license holders, and developing unique legal strategies that target difficult and ongoing problem properties.

In 2018-2019, the Neighborhood Revitalization and Ordinance Enforcement section continued to litigate several large scale receivership actions and bankruptcy proceedings against exploitative landlords and chronic debtors. We continue to use the statutory tools we pushed for to close the sheriff sale loophole wherein objections to foreclosure sales were made where the bidders were tax delinquent or had outstanding municipal court judgments, resulting in payments of thousands of dollars owed to the City. The Neighborhood Revitalization and Ordinance Enforcement section conducted trainings for the Milwaukee Police Department (recruit mock trials, traffic enforcement, school resource officers, prostitution stings), the Department of Neighborhood Services (landlord training), the Health Department (citation drafting) and the City Clerk Licenses Division (PIVOT licensee training). In 2018, the Ordinance Enforcement Division located in the Police Administration Building conducted approximately 11,373 pre-trial conferences and 1,582 trials in the three branches of the Milwaukee Municipal Court, including the prosecution of 1,540 distinct building and zoning code cases. In addition, the section appears in circuit court for dozens of appeals of municipal court convictions and petitions for the return of seized property annually. In conjunction with the Municipal

Court and the Milwaukee Area Technical College, the Neighborhood Revitalization and Ordinance Enforcement section spearheads numerous problem-oriented initiatives to address recidivism and promote public safety through remedial consequences such as traffic safety and addiction counseling to offenders.

Looking forward to 2020, the Neighborhood Revitalization and Ordinance Enforcement section will focus on the free speech, civil disturbance, licensing and permitting preparations associated with the 2020 Democratic National Convention. Our community prosecution efforts will continue to focus on problems associated with exploitative landlords and businesses, street disorder associated with prostitution, homelessness and addiction, chronic building code violators, drug houses and other problem properties.

I. LITIGATION

A. Nuisance Abatement Litigation

1. City of Milwaukee v. Elijah M. Rashaed

Court: Milwaukee County Circuit Court

Case No: 17-CV-6823

City Counsel: DCA Adam Stephens & ACA Heather Hough

Opposing Counsel: David Halbrooks

Judge: Jeffrey Conen

Summary: (August 27, 2019) Public nuisance action against landlord that chronically violated building code ordinances and state ATCP laws protecting tenants. Defendant used limited liability company entities to insulate himself from consequences of his exploitative business practices.

Summary of Case: The city sued Elijah Mohammad Rashaed and 18 of his proxy entities that combined owned 166 residential buildings containing 302 living units in the city of Milwaukee. The city sought an injunction that prohibited him from managing residential rental properties, collecting rent, and acquiring or conveying property. The city sought the appointment of a receiver to manage the properties, bring them up to code standards and t sell them to pay for the cost of the receivership and satisfy all liens, building code judgments and delinquent taxes.

Case Status: By stipulation after the court appointed monitor process failed to abate code violations and pay judgments and taxes, the circuit court ordered a property manager manage and operate all residential rental buildings owned by the defendants as of April 4, 2018. Peter Ogden was appointed as the property manager and his firm, Ogden & Company, has been maintaining properties. As of August 3, 2019, 45 parcels containing 58 units have been sold and 14 parcels containing 23 units have been acquired by the city via in rem tax foreclosure. There is the potential of 31 additional parcels subject to in rem foreclosure. The remainder of the portfolio awaits disposition by sale by either the property manager or defendant after circuit court approval.

2. City of Milwaukee v. Mohammad Choudry, et al.

Court: Milwaukee County Circuit Court
Case No: 16-CV-8057
City Counsel: DCA Adam Stephens
Opposing Counsel: Timothy Baldwin
Judge: William Sosnay

Summary: (August 27, 2019) From 2009 to 2016, Mohammad Choudry amassed a portfolio of neglected rental properties. The defendant 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 several 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: The case is pending before the District I Court of Appeals; briefing has been completed. At the conclusion of the circuit court action, the defendants' 77 properties were transferred to a trust for the purpose of paying down approximately \$2 million in debt and liquidating assets. The previously appointed receiver was thereafter ordered trustee by the circuit court.

3. City of Milwaukee v. Wheatfalls

Court: Milwaukee County Circuit Court
Case: 2017-CV-012279
City Counsel: ACA Heather Hough
Opposing Counsel: Coral Pleas
Judge: Carl Ashley

Summary: (August 28, 2019) In October, 2017, the City filed a nuisance property action for property located at 3526-28 West Villard Ave. due to the owners allowing multiple after set parties weekly, primarily occurring early Friday, Saturday and Sunday mornings between the hours of 1:00am-4:00am. In November, 2017 the property was ordered closed and in March, 2019 an Order to Continue Temporary Closure was signed by Judge Ashley, closing the property until June 30, 2019. A status conference is scheduled 10:00 a.m. on September 23, 2019. Defendants are still not code compliant.

4. City of Milwaukee v. James Crosbie

Court: Milwaukee County Circuit Court
Case No. 18-CV-010059
City Counsel: ACA Heather Hough
Opposing Counsel: Michael Heller

Judge: William Pocan

Summary: (August 28, 2019): In December, 2018, City filed suit against James Crosbie and his various LLCs alleging nuisance and fraudulent conveyance for Crosbie's mismanagement of five large apartment buildings containing 175 rental units at 2904 W. Wisconsin Avenue, 2625 W. Juneau Avenue, 2635 W. Juneau Avenue, 2929 W. Wisconsin Avenue and 2848 W. Wells Street. The assessed value of the portfolio is \$3,810,000. The properties had over 600 DNS Orders and enforcement actions with 38 municipal court convictions. In addition, two of the properties were considered MPD nuisance properties for assorted criminal activity that has not been abated. The property tax delinquency of this portfolio was approximately \$420,000. The City requested the appointment of a receiver and the ability to levy execution against Crosbie on all property including personal property, and an order to Crosbie to sell the five properties.

Case status: Pursuant to stipulation, the defendant complied with MPD requests and abated outstanding DNS orders and paid a total of \$191,573.72 for outstanding taxes and outstanding municipal court judgments. The City continues to actively monitor this case and the defendant's payments by a stipulated court order to insure payment and code compliance.

5. City of Milwaukee v. Leticia Gomez

Court: Milwaukee County Circuit Court

Case No. 18-CV-1947

City Counsel: ACA Heather Hecimovich Hough

Opposing Counsel: Tristan Pettit

Judge: Clare Fiorenza

Summary: (August 28, 2019) Issue(s): Since 2012, MPD has had ongoing issues with nuisance/drug related activity occurring at the Gomez properties. MPD has attempted numerous times to work with the Gomez family to abate the nuisance activity to no avail.

Summary of Case: The City sued Gomez under Wis. Stat. § 823.113 alleging that two properties located on 5th place are drug house nuisance, and also under 823.02 alleging that Gomez's mismanagement of her properties constitutes a public nuisance.

Case Status: Stipulated dismissal settlement that included reimbursement for the cost of litigation and MPD warrant execution; a property manager to manage all Gomez property holdings; the sale of the two 5th place properties to a buyer vetted by the City; court approval for any property purchases in the City of Milwaukee, and any change in property manager must be vetted by the City. The City continues to actively monitor this case by a stipulated court order.

6. City of Milwaukee v. Brenden M. Julien, Sr.

Court: Milwaukee County Circuit Court

Case No. 19-CV-6840

City Counsel: ACA Heather Hecimovich Hough

Opposing Counsel:

Judge: Ellen R. Brostrom

Summary: (September 18, 2019) City filed drug house/bawdy house nuisance complaint against owner of 1513 N. 37th Street with motion for temporary injunction (seeking closure of the property due to its close proximity to a grade school). Hearing scheduled for October 17th.

B. Condemnation & Raze Litigation

1. Black Spruce v. COM

Court: Milwaukee County Circuit Court

Case No. 2019-CV-006570

City Counsel: ACA Nicole Larsen

Opposing Counsel: Mark F. Foley

Judge: William S. Pocan

Summary: (September 18, 2019) Black Spruce appealed the April 11, 2019 raze orders for the old Northridge Mall, and it was heard by the Standards & Appeals Commission on July 18, 2019. The Commission found the raze orders reasonable. On August 23, 2019, Black Spruce filed a petition to enjoin the raze orders in Milwaukee County Circuit Court. On September 16, the City filed its Answer, Affirmative Defenses and Counterclaim for public nuisance. The Court scheduled a scheduling conference for Sept. 24, 2019.

2. Roger and Ilona Stank v. COM

Court: Milwaukee County Circuit Court

Case No. 2019-CV-1270

City Counsel: ACA Heather Hough

Opposing Counsel: Christopher S. Carson

Judge: Kevin Martens

Summary: (August 27, 2019) Hoarding case. Case dismissed upon City's motion; counsel for Ilona Stank filed motion to reconsider, City responded with brief in opposition, motion hearing scheduled for September 26th.

3. 1511 W. Plainfield Ave. property.

Court: Milwaukee County Circuit Court
Case No: TBD
City Counsel: ACA Heather Hough

Summary: Hoarding and bug infestation situation at a condo/townhouse-style property on Plainfield Avenue. Human health hazard conditions. Working with health department and expect to file request in circuit court for special inspection warrant and direct order for abatement to allow health and DNS inspectors entry and ability to abate issues without owner's voluntary permission.

C. Bankruptcy Litigation

1. In re Larry Hopson bankruptcy

Court: U.S. Bankruptcy Court
Case No. 17-27269
City Counsel: ACA Hannah Jahn
Judge: Hon. Brett H. Ludwig

Summary: (August 28, 2019) Mr. Hopson and his solely-owned LLCs own 27 residential rental properties and together owe over \$800,000 to the City, including \$579,190.98 in delinquent real estate taxes as of July 2017. In his 2017 bankruptcy, Mr. Hopson attempted to reduce the City's secured claim by reducing the property values. The City prevailed at a trial proving its opinion of property value. However, that case was dismissed in September 2018 due to the debtor's failure to make monthly payments. As the plan had not been confirmed, no money was paid to the City.

The debtor filed another Chapter 13 bankruptcy on February 12, 2019. Of the 27 properties, five were sold, five are subject to the automatic stay with the Treasurer filing claims for payment, ten became subject to in rem foreclosure, and the seven owned by LLCs are not subject to bankruptcy stay. Mr. Hopson has not made regular payments to the bankruptcy court. Mr. Hopson is behind on payments and there is a pending motion to dismiss by trustee.

2. In re City Wide Investments, LLC bankruptcy

Court: U.S. District Court for the Eastern District of Wisconsin
Case No. 17-CV-1403
City Counsel: ACA Hannah Jahn
Judge: Hon. Pamela Pepper

Summary: (August 28, 2019) City Wide Investments, LLC owns eight or nine rental properties in the City of Milwaukee. At the time of filing, delinquent property taxes

totaled \$100,808.30, municipal court judgments totaled \$41,331.50, and \$11,300.17 was owed to Water Works.

The business filed a Chapter 11 bankruptcy to get back an 8-unit apartment building located at 8940 N. Michele St., which the City acquired through in rem foreclosure on and then sold to a third party. After a September, 2017 trial on the property value, the court ordered judgment in favor of the Plaintiff in the amount of \$280,894.56.

The City appealed to District Court and still awaits a decision. By court order, the City paid \$100,808.30 to the Debtor (because the City admitted it owed a portion of the Michele St. property value) in order for the City to file claims for tax liens on City Wide's other properties. It is possible that the growing tax liens on City Wide's other properties will be offset by the judgment against the City.

3. In re James Miicke bankruptcy

Court: U.S. Bankruptcy Court
Case No. 17-23177
City Counsel: ACA Hannah Jahn
Judge: Hon. Susan V. Kelley

Summary: (August 28, 2019) Over a decade of operating rental properties, resulting in citations for building code violations, Mr. Miicke incurred \$272,680.70 in municipal court judgments. While the bulk of those properties were foreclosed, the judgments remained as unsecured debt. When Mr. Miicke filed a Chapter 13 bankruptcy, the City Attorney's Office objected to confirmation of any plan until Mr. Miicke agreed to pay 100% of the unsecured debt through the plan. A plan was confirmed that provided for monthly payments in addition to requiring Mr. Miicke to sell four of his remaining seven rental properties to pay the City's claim.

Through the bankruptcy plan, Mr. Miicke has so far paid \$38,301.02 toward the municipal court judgments. The trustee's motion to dismiss is pending, which Mr. Miicke proposed to resolve by amending the plan to extend the deadline to sell the properties to December 31, 2019.

4. In re. Paul M. Bachowski bankruptcy

Court: United States Bankruptcy Court Eastern District of Wisconsin
Case No: 16-30646-beh; Ch. 13
City Counsel: ACA Kevin P. Sullivan
Opposing Counsel: Todd C. Esser
Judge: Beth E. Hanan

Summary: (August 27, 2019) The City has sought relief from automatic stay with respect to the 16 parcels Debtor proposes to sell ("Relief Stay") and has objected to confirmation of his plan with respect to Debtor's remaining 17 parcels ("Objection"). Debtor has been in bankruptcy since October, 2016.

Case Status: In resolution of the City's motion for relief from stay, an order has been entered by the bankruptcy court incorporating agreed-upon deadlines for code compliance and listing for sale with respect to the debtor's properties and providing for increased monthly payments. Sale of the property at 617 W. Hadley has received bankruptcy court approval. Mr. Bachowski has continued to make monthly payments and DNS has determined that he is in substantial compliance with their issued orders.

By order dated April 18, 2019, the debtor has received court authority to sell his property at 2235-37 N. Martin Luther King, Jr. Dr. for \$370,000.00. Upon the recent closing of this sale transaction, the City has received a payment of approximately \$40,000.00 for delinquent taxes and \$116,000.00 for outstanding judgments. The Treasurer's Office is disbursing payments which should resolve outstanding judgments.

5. In re Patsy S. James Bankruptcy.

Court: United States Bankruptcy Court Eastern District of Wisconsin
Case No: 18-31857-GMH; Ch. 13
City Counsel: ACA Kevin P. Sullivan
Opposing Counsel: William H. Green
Judge: G. Michael Helfenger

Summary: (August 23, 2019) The City Attorney's Office, using an Expert Witness Report from DCD (Matt Haessly) persuaded the Bankruptcy Court to abandon the debtor's parcel at 840 S. Barclay Street, thus preventing this serial bankruptcy filer from continuing to avoid property taxes and water bills, and allowing the City to go forward with the Common Council's approved (File # 180779) transaction with Ivy House LLC (George Cashou). Under the Council-approved transaction, the Council approved City acquisition by tax foreclosure of this environmentally tainted parcel by $\frac{3}{4}$ Council vote under MCO 308-22-2-c and then conveyance by the City, post foreclosure, to Ivy for Ivy to demolish the building and pave the parcel as a parking lot (and an environmental cap) for Ivy's adjoining, successful business operation at 906 S. Barclay.

D. Municipal Prosecution of Building & Zoning Code cases

2019 YTD – 1638 cases; 43 trials
2018 - 1,124 cases; 29 trials

E. Appellate Collection Actions (Kohn Law Firm conducts the city's trial-level collections litigation pursuant to contract)

1. City of Milwaukee v. Kevin D. Luckett and Paul E. Simmons d/b/a Brothers II

Court: Milwaukee County Circuit Court; the Wisconsin Court of Appeals
Case No: 2017SC038161; 2018AP001000
City Counsel: ACA Greg Kruse
Judge: William S. Pocan; Joan F. Kessler; Laura Gramling Perez

Issue(s): (August 26, 2019) The City sought to garnish rent owed by Paul Simmons that was owed to his landlord Kevin Luckett in order to satisfy outstanding judgments owed to the City by the Mr. Luckett. Judge Pocan dismissed the City's case claiming that the rent could not be garnished pursuant to Chapter 812 of the Wisconsin Statutes. The City appealed that dismissal.

Case Status: The City successfully appealed the dismissal of the rent garnishment action. After the matter was remanded, the City successfully argued that Chapter 812 allows for garnishment of rent from a tenant to satisfy outstanding judgments owed by landlord. Judge Gramling Perez entered an order allowing the rent garnishment to proceed. This decision allows the City an alternate route for collecting municipal court judgments against problem landlords by allowing the City to capture rental payments that would otherwise end up going to the problem landlords.

2. City of Milwaukee v. Kersmtly LLC and Ali Omar Investments LLC, d/b/a Money Flash, a/k/a Cash for Gold and MG Multiservicios Milwaukee Corporation.

Court: Milwaukee County Circuit Court; the Wisconsin Court of Appeals
Case No: 2018SC006912; 2019AP000712
City Counsel: ACA Greg Kruse
Judge: Timothy M. Witkowiak

Issue(s): (August 26, 2019) The City sought to garnish rent owed by Ali Omar Investments and MG Multiservicios that was owed to their landlord Kersmtly LLC in order to satisfy outstanding judgments owed to the City. Similar to Judge Pocan did earlier in the Luckett case, Judge Witkowiak dismissed the City's case claiming that the rent could not be garnished pursuant to Chapter 812 of the Wisconsin Statutes. The City appealed that dismissal.

Case Status: The City submitted its brief in the matter on June 20th, 2019. No brief has been filed by either respondent as of August 26th, 2019.

F. In Rem Property Tax Foreclosure Actions

1. In Rem 2019-01 (Circuit Court Case No. 2019-CV002034)
Order for Judgment signed by Judge Conen on 7/10/2019 for 72 parcels.
2. In Rem 2019-02 (Circuit Court Case No. 2019-CV-003624)
Default Judgment Hearing scheduled for 9/9/2019 Judge Gramling Perez for 182 parcels. (Note: Order for Judgment has not been signed by the judge as of September 20, 2019)
3. In Rem 2019-03 (Circuit Court Case No. 2019-CV-005609)
Default Judgment Hearing scheduled for 11/21/2019 Judge Van Grunsven
399 parcels were included in this filing

II. LEGAL SERVICES

A. Community outreach, trainings and community prosecution efforts in conjunction with other city departments regarding property investigations, exploitative landlords, licensed premises and holistic crime & safety initiatives.

Department of Neighborhood Services – Instruction provided at citywide landlord training programs, Reclaiming our Neighborhoods meetings.

City Clerk License Division – Instruction provided at PIVOT licensed premise training.

MPD District 1 – Dozens of meetings regarding BID 21, Downtown Security Network, 6th & Clybourn homeless encampment, July abortion protests, Homicide Review Commission Criminal Justice Homicide and Nonfatal Shooting Review property investigations.

MPD District 2 – 18 property investigations and landlord/licensed premise call ins for laundromat, 2 illegal assembly halls, drug store (07 & 08/2019), Weekly Neighborhood Safety Team Meetings to review nuisance properties, and aldermanic and constituent complaints.

MPD District 3– 7 property investigations and 1 landlord/licensed premise call in (07 & 08/2019), participation in Washington Park Partners Housing Committee, anti-prostitution related nuisance activity along the Vliet Street Corridor; 1 Licensed Premise Investigation for month of August 2019 in MPD D3 (gas station), meeting with residents of North 15th Street with Alderman Stamper to discuss nuisance property and neighborhood concerns and strategy for resolving issues.

MPD District 4 – 7 district meetings, 5 property owner meetings, 4 neighborhood & business walks, 7 CPU & DNS trainings.

MPD District 5 – 2 property investigations and 1 landlord/licensed premise call in (07 & 08/2019).

MPD District 6 – Homeless encampment investigation, hoarding investigation, 1 Licensed Premise investigation (auto body repair) (07/2019).

MPD District 7 - 10 district meetings (2019).

B. Monitoring Sheriff Sales for Compliance with State Statutes

Summary: (August 23, 2019) The City Attorney’s Office, working with DOA-IRD, persuaded the Wisconsin Legislature to amend the state mortgage foreclosure statutes in Wis. Stat. Ch. 846 to, among other things, require 3rd party bidders at any sheriff sale auction in the state to meet 3rd party bidder eligibility requirements in order to be able to buy at a sheriff sale on a mortgage-foreclosed parcel. Under this new state law (Wis. Stat. 846.155), neither the 3rd party bidder, nor an entity they own or control, can buy if they owe property taxes on any property in the state that is more than 120 days delinquent, or if they have an outstanding unsatisfied municipal judgment against them concerning noncompliance with building codes; and in order to get their bid/sale confirmed by the Court overseeing the mortgage foreclosure, they must file with the Court an affidavit to that effect that also discloses an in-state agent for service of process. This new law stopped the notorious problem landlords from bidding at Milwaukee County Sheriff sales. With DNS and City Attorney monitoring of the sheriff sales (through negotiated cooperation with the Sheriff’s Office on data sharing), the City Attorney has been able to collect \$25,451.75 (as of August 26, 2019) in property taxes and municipal court judgments owed to the City from winning 3rd party bidders.

C. Investigation of Property Owners for In Rem Redemption Process before Common Council Judiciary & Legislation Committee in 2019.

By month, number of applications investigated for municipal court judgments or other debts or delinquencies owed to the City of Milwaukee prior to Common Council approval:

January:	09
February:	08
March:	08
April:	16
May:	05
June:	05
July:	10
August:	18
September	09

D. Legal Opinions & Outreach

July 2019 Opinion to DPW regarding legality of service of parking citations by first class mail.

May 2019 Opinion to MPD regarding hate speech on private property.

May 2019 Opinion to Assessor and Treasurer regarding waiver of interest for failure to correct tax roll.

January 2019 Opinion to Mayor regarding the consolidation of position and appointment of the Emergency Management and Communications Director

January 2019 Opinion regarding tow lot inventory searches

E. Collaborative program with RACM, City, MATC, SDC, JCP Construction.

Summary: (August 23, 2019) The City Attorney's Office helped create the collaborative relationship among MATC, the City, RACM, JCP Construction, and SDC. RACM Resolution 10778. Common Council Resolution 190403. Under this new model, MATC students (and SDC program students), under MATC/SDC supervision, and coordinated by JCP, will rehab property-tax foreclosed homes. The students will gain valuable and practical hands-on experience and college credit. The homes will then be sold with part of the proceeds going back into the program for more homes to be rehabbed. The first home selected for this model is 2606 N. Holton Street. A Rehab Plan, Budget and Timeline will now be prepared for that home. This collaborative model will be featured at the National 2019 Reclaiming Vacant Properties Conference in Atlanta, Georgia so that attendees from around the country can learn about the model and hopefully replicate it in their respective jurisdictions. That conference is sponsored by the Center for Community Progress.

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