

Reset



COMMON PLEAS COURT
CUYAHOGA COUNTY, OHIO

2009 DEC 18 P 12:41

DESIGNATION FORM TO BE USED TO INDICATE THE CLASSIFICATION OF THE CAUSE

Victoria Greenleaf
Plaintiff

vs.
City of Lakewood, OH
Defendant

GERALD E. FUERST
CLERK OF COURTS
CUYAHOGA COUNTY

Judge: RICHARD J MCMONAGLE
CV 09 713417

Has this case been previously filed & dismissed? Yes No

Case #: _____ Judge: _____

Is this case related to any cases now pending or previously filed Yes No

Case #: _____ Judge: _____

CIVIL CLASSIFICATIONS: Place an (X) in ONE Classification Only.

Professional Torts:

- 1311 Medical Malpractice
- 1315 Dental Malpractice
- 1316 Optometric Malpractice
- 1317 Chiropractic Malpractice
- 1312 Legal Malpractice
- 1313 Other Malpractice

Product Liability:

- 1330 Product Liability

Other Torts:

- 1310 Motor Vehicle Accident
- 1314 Consumer Action
- 1350 Misc Tort

Workers Compensation:

- 1550 Workers Compensation
- 1531 Workers Comp. Asbestos

Foreclosures:

Utilize Separate Foreclosure Designation Form

Commercial Docket:

- 1386 (Temp.Sup.R. 1.03)

Administrative Appeals:

- 1540 Employment Services
- 1551 Other

Other Civil:

- 1500 Replevin/Attachment
- 1382 Business Contract
- 1384 Real Estate Contract
- 1390 Cognovit Contract
- 1391 Other Contract
- 1490 Foreign Judgement
- 1491 Stalking Civil Protection Order
- 1501 Misc Other
- 1502 Petition to contest Adam Walsh Act

Amount of Controversy:

- None Stated
- Less than \$25,000
- Prayer Amount _____

Parties have previously attempted one of the following prior to filing:

- Arbitration
- Early Neutral Evaluation
- Mediation
- None

I certify that to the best of my knowledge the within case is not related to any now pending or previously filed, except as noted above.

Firm name (Print or type) _____

Address _____

Address _____

Phone _____

Margaret L. Simak (0040511)
Attorney/Recorder (Print or type)

Margaret L. Simak
Signature

Vgreenleaf21@yahoo.com
Email Address

MLSimak@Hdelpia.net
Email Address

COURT OF COMMON PLEAS
CUYAHOGA COUNTY

Complaint

VICTORIA GREENLEAF,
1783 Cadwell Ave.
Cleveland Hts., OH 44118
VGreenleaf21@yahoo.com
(216) 371-2189

Plaintiff,

v.

CITY OF LAKEWOOD, OHIO
12650 Detroit Road
Lakewood, OH 44107
(216) 529-6630

Defendant.

Case No.

RICHARD J MCMONAGI
CV 09 713417

APPEAL FROM CITY OF LAKEWOOD

BOARD OF BUILDING STANDARDS AND
BUILDING APPEALS

100-00
DEC 18 2009
FILED

GERALD E. FUERST
CLERK OF COURTS
CUYAHOGA COUNTY

2009 DEC 18 P 12:39

FILED

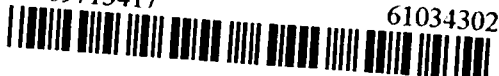
Subject Matter and Appellate Jurisdiction

This is a timely appeal from the City of Lakewood Board of Building Standards and Building Appeals (Board) which entered a final judgment on December 10, 2009. The Board upheld Appellee's declaration that the house at 1570 Woodward Avenue (Property) constituted a public nuisance. This Court has jurisdiction as the court of appeal pursuant to Ohio R.C. 2506.01. The property at issue is in the City of Lakewood, Ohio and the administrative hearing occurred in the City of Lakewood, Ohio. Thus, venue is proper in this judicial district.

Statement of the Issues

1. The Board's holding that Appellee met their burden showing that the Property is a public nuisance is error as a matter of law because none of the evidence presented was sworn to or given under oath.

CV09713417



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Statement of the Facts

On March 24, 2009 the premises and contents at 1570 Woodward Ave., Lakewood, OH 44107 were damaged by fire, smoke and water used to put out the fire. Farmer's insurance company denied a claim on the policy in force at the time.¹ On October 19, 2009 Appellee declared the Property a *nuisance* pursuant to Lakewood Ordinances § 1306.521 and 1306.522. Also, on October 19, 2009 Appellee declared their intent to demolish the Property. Appellant is a tenant in common and as an owner requested review of Appellee's declaration of public nuisance by the Board of Building Standards and Building Appeals pursuant to Lakewood Ordinance § 1306.522. The Board heard Appellant's appeal on December 10, 2009. None of the evidence presented to the Board was under oath. This appeal timely follows.

Statement of the Case

In an administrative hearing, testimony, "[i]n order to contain any evidentiary value, must be made under oath." *Arcaro Bros. Builders, Inc. v. Zoning Bd. of Appeals* (1966), 7 Ohio St.2d 32, at 33. While this rule may be waived, "when no such waiver is apparent on the record, unsworn testimony cannot provide the preponderance of substantial, reliable, and probative evidence necessary to support an administrative decision." *Gibraltar Mausoleum Corp. v. Toledo* (1995), 106 Ohio App.3d 80, at 85, citing *Dudukovich v. Lorain Metro. Hous. Auth.* (1979), 58 Ohio St.2d 202, 206.

Here, the record clearly shows no waiver of the rule that testimony be under oath. Further, because Appellant was prevented from addressing the Board prior to

¹ Litigation of the insurance claim is a separate and unrelated matter pending before this Court in the action *Barbara Lachman et Al v. Farmer's Insurance of Columbus*, Case: CV-09-712192

Appellee's presentation of evidence Appellant had no opportunity to demand testimony be sworn.

The Board is not permitted to consider *unsworn* testimony. There was no testimony presented under oath. Thus, there was no testimony presented the Board was permitted to consider. Appellee has the burden of producing credible evidence. None was presented. Appellee has the burden of persuasion to prove their claim beyond a preponderance. They failed to meet this burden because they presented no evidence the Board was permitted to consider.

Thus, as a matter of law, Appellant failed to meet its burden of proof beyond a preponderance supporting their declaration of public nuisance. The Board's holding in Appellee's favor is error. Appellant respectfully requests this Court reverse the Board's holding. Appellant respectfully requests this Court vacate Appellee's declaration of the Property as a *public nuisance* as they have failed to meet their burden.

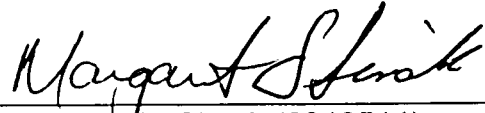
PRAYER FOR RELIEF

Plaintiff prays this Court:

1. GRANT a Temporary Injunction enjoining Appellee from demolishing the Property until this Court can consider a preliminary injunction. See attached motion
2. GRANT a Preliminary Injunction enjoining Appellee from demolishing the Property until this Court can adjudicate this appeal. See attached motion.
3. REVERSE the holding of the City of Lakewood Board of Building Standards and Building Appeals that the building at 1570 Woodward Avenue is a public nuisance.
4. GRANT DECLARATORY RELIEF by VACATING Appellee's declaration of the Property as a public nuisance.

5. AWARD Appellant both the costs of this Appeal and the costs levied by the Board.
6. OTHER RELIEF as the Court may deem appropriate.

Respectfully submitted,



Margaret L. Simak (0040511)
2361 Demington Dr.
Cleveland Heights, Ohio 44106
(216) 321-3209

Dated this 18th day of December, 2009

I certify that a true and accurate copy of this Appeal has been delivered to Appellee, City of Lakewood, Ohio, 12650 Detroit Road, Lakewood, OH 44107 via first class mail or in person.