

COURT OF COMMON PLEAS
CUYAHOGA COUNTY

PETER MACHLUP,
1783 Cadwell Ave.
Cleveland Hts., OH 44118
Machlup@hotmail.com
(216) 371-2189
Pro se

Plaintiff,

v.

JEFF T. ASHBY, Individually, and in his
official capacity as Assistant Director Division
of Building and Housing, City of Lakewood
12650 Detroit Road
Lakewood, OH 44107
Jeffrey.Ashby@lakewoodoh.net
(216) 529-6270

Defendant 1,

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

Defendant 2.

Case No: CV-09-714390

Judge: John J. Russo

COMPLAINT FOR VIOLATION
OF CIVIL RIGHTS AND
VIOLATION OF
DUE PROCESS RIGHTS AND
VIOLATION OF FIRST AMENDMENT
RIGHT OF REDRESS OF GRIEVANCES

The case within **is related** to a pending or previously filed case. Some of these facts were previously filed to this Court in an Administrative Appeal case #CV-09-713417, assigned to Judge **Richard J. McMonagle**. Further, and less relevant, this property is the subject of an insurer's denial of claim pending before this Court in case #CV-09-712192. Plaintiff complains and for causes of action alleges as follows:

Preliminary Statement

1. Plaintiff, Peter Machlup, brings this action for declaratory relief, compensatory, and punitive damages, and fees pursuant to 42 U.S.C. § 1983, 42 U.S. § 1988, and Ohio Const. Art. I § 16 for violation of civil rights and violation of due process rights. Plaintiff's rights are secured by the Constitutions and statutes of the State of Ohio

and the United States. Defendant declared Plaintiff's house a nuisance and declared their intent to demolish it. Plaintiff timely requested review to the Appeals Board. Defendant refused to grant Plaintiff a hearing. This suit follows.

Parties

2. Plaintiff, PETER MACHLUP, at all times relevant, was and is an owner and tenant in common of the property 1570 Woodward Avenue, Lakewood Ohio (Property).
3. Defendant 1, JEFF ASHBY, at all times relevant, was and is the Assistant Director of the Division of Building and Housing for the City of Lakewood, Ohio.
4. Defendant 2, City of Lakewood, was and is a municipal corporation under Ohio law.
5. Defendant 1 at all times relevant was acting under the supervision of Defendant 2.

Jurisdiction, Venue, and Standing

6. This complaint alleges violations of Plaintiff's rights under the Ohio Constitution Article I § 16 and rights under the First, Fifth, Fourth, and Fourteenth Amendments of the United States Constitution actionable through 42 U.S.C § 1983. Thus, jurisdiction is proper pursuant to Ohio Const. Art. IV § 4(B).
7. The violations occurred in Cuyahoga County. Thus, venue is proper in this judicial district.
8. Defendant 1 was acting under color of state law and in accordance with the official policy, customs, usages or practices of the City of Lakewood.
9. All the acts of Defendant 1 alleged herein were done willfully and while acting within the scope of and in furtherance of employment by Defendant 2.
10. As a direct and proximate result of Defendants' violation of Plaintiff's civil rights protected by Ohio and U.S. law, Plaintiff has been damaged as his interest in property has been severely burdened.

Statement of the Facts

11. Plaintiff was deeded an interest in 1570 Woodward Avenue, Lakewood on January 3, 2007 by co-owner Victoria Greenleaf in exchange for valuable consideration.
12. Plaintiff has not recorded his deed with the Cuyahoga County Recorder.
13. 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.
14. On October 19, 2009 Jeff Ashby and Assistant Building Commissioner, James Fillar, declared the Property a *nuisance* pursuant to Lakewood Ordinances § 1306.521 and 1306.522. Also, on October 19, 2009 Defendants declared and gave notice of intent to demolish the Property.
15. On October 29, 2009, Plaintiff, as an owner and tenant in common, requested review of Defendant's declaration of *public nuisance* by the Lakewood Board of Building Standards and Building Appeals (Board) pursuant to Lakewood Ordinance § 1306.522.
16. Plaintiff's request for review was sent to the Board via certified mail. And,
17. Notice of appeal was also served October 29th to Defendant 1, Jeff Ashby, via email because he was a signatory, and the adverse party claiming the Property to be a *public nuisance*.
18. Friday, October 30th, in his 12:28 p.m. email, Jeff Ashby stated receipt of the request for appeal. Additionally, he conditioned adding the appeal to the Board's docket upon submission to him by Plaintiff of additional notarized documents, submission of a completed "formal application", and a \$25 fee.

19. The formal application is noteworthy in its lack of "Appeal" as an option for *actions requested* because it is an application for the Board to review building plans, signs, or code variance.
20. Plaintiff emailed Jeff Ashby a reply, Oct. 30th 1:59 p.m., requesting the statutory basis for Defendant's additional requirements.
21. October 30, 2009, 4:08 p.m. email, Defendant "refused to accept" Plaintiff's appeal. Defendant stated "since you are not formally recognized as a registered stake holder on the property, I cannot accept an appeal from you."
22. Friday, October 30th, in telephone communication, Jeff Ashby stated to Plaintiff "he had talked with the law department about this."

Cause of action I

(Deprivation of Rights under 42 U.S.C. § 1983)

Defendant's refusal to grant Plaintiff a hearing violated Plaintiff's due process rights, right to redress, and right to an opportunity to confront and object to Defendant's declaration.

23. Plaintiffs reiterate each and every allegation contained in paragraphs 1 through 22 with the same force and effect as if set forth herein.
24. The aforementioned acts deprived Plaintiff of rights guaranteed to citizens of the United States by the first, fifth and fourteenth Amendments to the Constitution of the United of America, and in violation of 42 U.S.C. § 1983. These acts also violated Plaintiff's rights to legal redress guaranteed by Ohio Const. Art 1 § 1.16. Further, these acts violated Lakewood ord. § 1306.522 guaranteeing the right to appeal.
25. Defendant acted with reckless or callous disregard of Plaintiff's rights by refusing to grant Plaintiff an appeal hearing.

Cause of action II

(Deprivation of Rights under 42 U.S.C. § 1983)

Defendant 1 violated Plaintiff's procedural due process rights because he both represented the adverse party and withheld Plaintiff's appeal from the Board's docket. This policy is a direct conflict of interest and violates Plaintiff's rights to due process.

26. Plaintiffs reiterate each and every allegation contained in paragraphs 1 through 22 with the same force and effect as if set forth herein.

27. Defendant acted with reckless or callous disregard of Plaintiff's rights by his directly conflicting roles as complaintant and scheduler of the Board's docket.

28. The aforementioned acts deprived Plaintiff of rights guaranteed to citizens of the United States by the first, fifth and fourteenth Amendments to the Constitution of the United of America, and in violation of 42 U.S.C. § 1983.

Cause of action III

(Deprivation of Rights under 42 U.S.C. § 1983)

The Board's fee provision is unconstitutional because it takes property arbitrarily and with out process due.

29. Plaintiffs reiterate each and every allegation contained in paragraphs 1 through 22 with the same force and effect as if set forth herein.

30. Lakewood ordinance § 156.04 setting the Board's fee at \$25 is unconstitutional because there is no provision for returning costs to a prevailing party. As applied, this law violates Plaintiff's rights protected by the fifth and fourteenth Amendment to the U.S. Constitution, and similar Ohio provisions. These provisions guarantee that Plaintiff's property not be taken without due process.

31. There is imminent risk, likely to be repeated, that Defendant will improperly assess the Board fee, and not return the fee upon a successful appeal, thus taking Plaintiff's property arbitrarily and in violation of Plaintiff's protected rights.

Cause of action IV

(Municipal Liability under 42 U.S.C. § 1983)

32. Plaintiffs reiterate each and every allegation contained in paragraphs 1 through 22 with the same force and effect as if set forth herein.

33. The aforementioned customs, policies, practices and procedures and rules of the City of Lakewood included, but were not limited to, preventing Plaintiff legal redress. Additionally, the City of Lakewood engaged in the policy and practice of supervising and training its employees that was the moving force behind the violation of Plaintiff's rights. As a result of the failure of the City Lakewood to properly train and supervise its employees, including Jeff Ashby, defendant CITY OF LAKEWOOD has tacitly authorized, ratified, and has been deliberately indifferent to, the acts and conduct complained of herein.

34. The foregoing customs, policies, practices, procedures and rules of the City of Lakewood were the direct and proximate cause of the violation to Plaintiff's constitutional rights resulting in damage to Plaintiff's property.

PRAYER FOR RELIEF

Plaintiff prays this Court:

1. GRANT declaratory relief vacating Defendant's declaration of Plaintiff's property as a *public nuisance*.
2. GRANT declaratory relief declaring void Lakewood ordinance Art 1 Title 5 § 156.04.

3. ORDER Defendant enjoined from submitting matters to the Board of Building Standards and Building Appeals until Defendant adopts a docketing procedure respectful of due process.
4. GRANT Plaintiff full and fair compensatory damages in an amount to be determined by a jury.
5. GRANT punitive damages in an amount to be determined by a jury.
6. AWARD reasonable attorney's fees and the costs of this action.
7. OTHER RELIEF as the Court deems just and appropriate.

Respectfully submitted,

Peter Machlup, *pro se*
1783 Cadwell Avenue
Cleveland Heights, Ohio 44118
Machlup@hotmail.com
(216) 371-2189

Dated this 29th day of December, 2009

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