

09-12895

**FILED**  
IN THE COURT OF COMMON PLEAS  
CUYAHOGA COUNTY, OHIO

BAYVIEW LOAN SERVICING, LLC  
c/o Bayview Loan Servicing, LLC  
4425 Ponce De Leon Boulevard, 5th Floor  
Coral Gables, FL 33146

Plaintiff

-vs-

LAKEWOOD DIVISION OF HOUSING  
AND BUILDING, et al.

Defendants

CASE NO.

JU. ---

Judge: JOHN D SUTULA

CV 10 729948

**NOTICE OF APPEAL PURSUANT TO  
O.R.C. §2506.01**

Now comes Plaintiff, BAYVIEW LOAN SERVICING, LLC, and hereby gives Notice of Appeal pursuant to Ohio Revised Code §2506.01. O.R.C. §2506.01 (A) states, in pertinent part,

“every *final order*, adjudication, or decision of any officer, tribunal, authority, *board*, bureau, commission, department, or other division of any political subdivision of the state *may be reviewed by the court of common pleas* of the county in which the principal office of the political subdivision is located...” [emphasis added].

Plaintiff has an interest in the real property identified by the Defendant, LAKEWOOD DIVISION OF HOUSING AND BUILDING, (hereinafter “Defendant”) as 1549 - 1559 Lakewood Avenue, Lakewood, OH 44107 (hereinafter “Property”). Plaintiff is the owner and holder of a Note and Mortgage on the subject property.

Defendant, by and through its building department, initiated demolition proceedings against the subject Property, and did so prior to properly servicing Plaintiff with notice of said Notice of Violations. Plaintiff received notice that Defendant had begun demolition proceedings against the subject Property. Plaintiff filed a written Appeal to the Lakewood Division of Housing and Building. A copy of the written Appeal is attached hereto as Exhibit “A”.

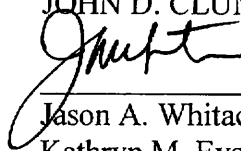
Plaintiff received notice, through its agent, advising that there were violations against the subject property. At no time during the commencement of this action or Plaintiff's foreclosure action, was Plaintiff properly served with the Notice of Violation. See Exhibit "B" a copy of the Notice of Violation attached hereto.

Upon immediate Discovery, Plaintiff, through its counsel sent a Certified Mail written Appeal to the Lakewood Division of Housing and Building asking that an administrative hearing be set prior to any actions of demolition. Despite the appeal and evidence presented by Plaintiff, the City voted to demolish the property.

Pursuant to O.R.C. §2505.07, an appeal must be perfected within thirty days of the entry of a final order of an administrative board. Plaintiff files this Notice of Appeal within thirty days of said decision at the hearing. Plaintiff is also filing a Complaint for Injunction and Motion for Temporary Restraining Order.

WHEREFORE, Plaintiff hereby gives to this Court its Notice of Appeal. Plaintiff reserves the right, pursuant to O.R.C. §2506.03, to review the transcript from the hearing of said appeal and to provide supplemental evidence of its position, supported by affidavit.

Respectfully submitted,  
THE LAW OFFICES OF  
JOHN D. CLUNK CO., L.P.A.



---

Jason A. Whitacre #0077330  
Kathryn M. Eyster #0074696  
Laura C. Infante #0082050  
Attorneys for Plaintiff  
4500 Courthouse Blvd., Suite 400  
Stow, OH 44224  
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CUYAHOGA COUNTY, OHIO

BAYVIEW LOAN SERVICING, LLC  
c/o Bayview Loan Servicing, LLC  
4425 Ponce De Leon Boulevard, 5th Floor  
Coral Gables, FL 33146

Plaintiff

-vs-

LAKEWOOD DIVISION OF HOUSING  
AND BUILDING, et al.

Defendants

CASE NO.

JUDGE

AFFIDAVIT

STATE OF OHIO

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) SS.

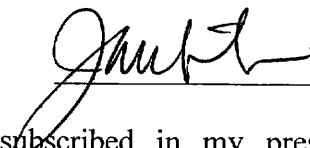
COUNTY OF SUMMIT

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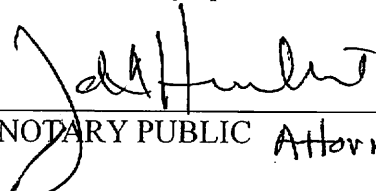
JASON A. WHITACRE, being first duly sworn, deposes and says:

1. That affiant is an attorney, employed by the Law Offices of John D. Clunk Co. LPA, counsel for Bayview Loan Servicing, LLC;
2. That affiant is duly authorized to make this Affidavit, has personal knowledge of this matter, and is competent to testify;
3. That the demolition of the subject property, 1549 - 1559 Lakewood Avenue, Lakewood, OH 44107, would cause immediate and irreparable harm and damage to Bayview Loan Servicing, LLC as it is the holder and owner of a Note and Mortgage on the property;
4. That Lakewood Division of Housing and Building's failed to perfect service on Bayview Loan Servicing, LLC, as it is the holder and owner of a Note and Mortgage on the property, and that Lakewood Division of Housing and Building demolition failed to acknowledge the written appeal request for an administrative hearing of the subject property and moved forward with initiating demolition proceedings herein.

FURTHER affiant sayeth naught.



SWORN TO BEFORE ME and subscribed in my presence this 22 day of June, 2010.



NOTARY PUBLIC Attorney - No expiration

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IN THE COURT OF COMMON PLEAS  
CUYAHOGA COUNTY, OHIO

2010 JUN 22 10 20  
GERALD E. FUERST  
CLERK OF COURTS  
CUYAHOGA COUNTY, OHIO

BAYVIEW LOAN SERVICING, LLC  
c/o Bayview Loan Servicing, LLC  
4425 Ponce De Leon Boulevard, 5th Floor  
Coral Gables, FL 33146

CASE NO.  
10-0729948

Judge: JOHN D SUTULA  
CV 10 729948

Plaintiff

-vs-

LAKEWOOD DIVISION OF HOUSING  
AND BUILDING  
12650 Detroit Avenue  
Lakewood, Ohio 44107

**COMPLAINT FOR INJUNCTION--  
CONCERNING DEMOLITION OF  
PROPERTY**

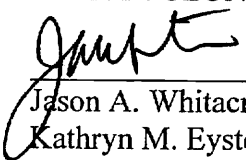
Defendants

Now comes Plaintiff, BAYVIEW LOAN SERVICING, LLC, and for its Complaint to enjoin the demolition of its property by LAKEWOOD DIVISION OF HOUSING AND BUILDING, states as follows:

1. Plaintiff has an interest in the real property identified by 1549 - 1559 Lakewood Avenue LLC as 1549 - 1559 Lakewood Avenue, Lakewood, OH 44107 (hereinafter "Property").
2. LAKEWOOD DIVISION OF HOUSING AND BUILDING, by and through its building department, has initiated demolition proceedings and has solicited bids for the demolition of the structures on Property. The rationale for the demolition being that the Property is a public nuisance pursuant to definition set forth in the codified ordinances of LAKEWOOD DIVISION OF HOUSING AND BUILDING.
3. Plaintiff states that the structure in question does not meet the definition of public nuisance.
4. Plaintiff states that the demolition of the structure described would constitute an unlawful taking resulting in damages to Plaintiff.

5. Plaintiff states that the solicitation of bids and awards granted by LAKEWOOD DIVISION OF HOUSING AND BUILDING by and through its Building Department are excessive and unreasonable resulting in the potential for unnecessary costs and damages.
6. Plaintiff states that the Property is the subject of a foreclosure action. The foreclosure action is Case No. 706074 in the Cuyahoga County Court of Commons Pleas. There was a Sheriff Sale on May 10, 2010 and Plaintiff purchased the property back at the Sale. Having been confirmed on May 24, 2010 Plaintiff's intentions have been to bring this property into compliance and put the subject property on the market.
7. Plaintiff states that there is no adequate remedy at law other than to enjoin LAKEWOOD DIVISION OF HOUSING AND BUILDING from pursuing its intended demolition of the described structures.

Respectfully submitted,  
THE LAW OFFICES OF  
JOHN D. CLUNK CO., L.P.A.



---

Jason A. Whitacre #0077330  
Kathryn M. Eyster #0074696  
Laura C. Infante #0082050  
Attorneys for Plaintiff  
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**FILED**  
IN THE COURT OF COMMON PLEAS  
CUYAHOGA COUNTY, OHIO  
2010 JUN 22 P 2:28

BAYVIEW LOAN SERVICING, LLC  
c/o Bayview Loan Servicing, LLC  
4425 Ponce De Leon Boulevard, 5th Floor  
Coral Gables, FL 33146

CASE NO.

GERALD E. FUERST  
CLERK OF COURT  
CUYAHOGA COUNTY

Judge: JOHN D SUTULA

Plaintiff

CV 10 729948

-vs-

LAKEWOOD DIVISION OF HOUSING  
AND BUILDING, et al.

**PLAINTIFF'S MOTION FOR  
TEMPORARY RESTRAINING ORDER**

Defendants

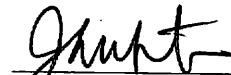
Plaintiff, BAYVIEW LOAN SERVICING, LLC, having filed a Complaint for permanent injunction against LAKEWOOD DIVISION OF HOUSING AND BUILDING, moves this Court, pursuant to Rule 65(A) of the Ohio Rules of Civil Procedure, for a temporary restraining order to prevent the demolition of structures located at 1549 - 1559 Lakewood Avenue, Lakewood, OH 44107 (hereinafter "Property"). An affidavit in support of this Motion is attached hereto as Exhibit "A".

Plaintiff, as the owner of a Note and Mortgage on the subject Property, indicates that it has no adequate remedy of law should the demolition proceed prior to its arguments being heard under its Complaint for an injunction and other relief. Plaintiff bases this Motion on the grounds that, unless a Temporary Restraining Order is issued, Plaintiff will suffer immediate and irreparable injury, loss and damage. Plaintiff states that the Property is the subject of a foreclosure action. The foreclosure action is Case No. 706074 in the Cuyahoga County Court of Commons Pleas. There was a Sheriff Sale on May 10, 2010 and Plaintiff purchased the property back at the Sale. Having been confirmed on May 24, 2010 Plaintiff's intentions have been to bring this property into compliance and put the subject property on the market.

Plaintiff further requests that no bond be required pending full hearing on its Complaint for permanent injunction.

WHEREFORE, Plaintiff respectfully requests that this Court grant its Motion for Temporary Restraining Order and set this Matter for a hearing.

Respectfully submitted,  
THE LAW OFFICES OF  
JOHN D. CLUNK CO., L.P.A.



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Jason A. Whitacre #0077330

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requests@johndclunk.com

**CERTIFICATE OF SERVICE**

A copy of the foregoing Motion was mailed by regular U.S. Mail this 21<sup>st</sup> day of June, 2010, to all parties appearing in this action or their attorneys, as set forth below:

LAKEWOOD DIVISION OF HOUSING AND BUILDING  
12650 Detroit Avenue  
Lakewood, Ohio 44107

THE LAW OFFICES OF  
JOHN D. CLUNK CO., L.P.A.



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Kathryn M. Eyster #0074696  
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