



COMMON PLEAS COURT
CUYAHOGA COUNTY, OHIO

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

Apex Mortgage Company
Plaintiff

201 ALB -3 P 12:50
Case No.

vs.

The City of Lakewood, et al.
Defendant

SEAN E. FLYNN Judge:
COURT

Judge: JOSE A VILLANUEVA

CV 11 761181

Has this case been previously filed & dismissed? Yes [] No []
Case #: Judge:
Is this case related to any cases now pending or previously filed Yes [x] No []
Case #: CV 11 755041 Judge: Ambrose

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
[] 1388 Consumer Debt
[] 1390 Cognovit Contract
[] 1391 Other Contract
[] 1490 Foreign Judgment
[] 1491 Stalking Civil Protection Order
[x] 1501 Misc Other
[] 1502 Petition to contest Adam Walsh Act

Amount of Controversy:
[] None Stated
[] Less than \$25,000
[x] Prayer Amount in excess of \$25,000.00

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

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Attorney of Record (Print or type)
Signature
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Email Address

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

201106-3 P 12:50

APEX MORTGAGE COMPANY)
1300 Virginia Drive, Suite 400)
Fort Washington, PA 19034)

CASE NO.

JUDGE

Complaint

Plaintiff,

JOSE A VILLANUEVA
CV 11 761181

v.

THE CITY OF LAKEWOOD)
12650 Detroit Avenue)
Lakewood, Ohio 44107)

**PETITION FOR WRIT OF
MANDAMUS AND COMPLAINT
FOR FRAUD**

and

(Jury Demand Endorsed Hereon)

NATHAN J. KELLY)
01551 Riverside Drive)
Lakewood, Ohio 44107)

and

DRU T. SILEY)
14773 Athens Avenue)
Lakewood, Ohio 44107)

Defendants.)

* . . . * . . . *

For its Petition for Writ of Mandamus against Defendant The City of Lakewood, and Complaint for fraud against Nathan J. Kelly, and Dru T. Siley, Plaintiff Apex Mortgage Company alleges and states as follows:

PARTIES

1. Plaintiff Apex Mortgage Company ("Apex") is a Pennsylvania Corporation that was established in September 1991 to provide lending to small business owners who are unable to obtain traditional commercial building financing or small

CV11761181

69727988



business mortgages. Apex is principally located in Fort Washington, Pennsylvania. Apex is the owner of the real property located at 11900 Madison Avenue, Lakewood, Ohio 44107 (the "Property").

2. Defendant The City of Lakewood ("Lakewood") is a municipality located in Cuyahoga County, Ohio. The Property is located in Lakewood.

3. Defendant Nathan J. Kelly ("Kelly") is individual that resides in Cuyahoga County, Ohio. Kelly was the former Director of Planning and Development for Lakewood.

4. Defendant Dru T. Siley ("Siley") is individual that resides in Cuyahoga County, Ohio. Siley was and is the Assistant Director of Planning and Development for Lakewood.

JURISDICTION

5. The Cuyahoga County Court of Common Pleas has jurisdiction over Apex's request for writ of mandamus under Article I, Section 19 of the Ohio Constitution and pursuant to Chapter 2731 of the Ohio Revised Code.

6. In addition, a property owner's pecuniary remedy for a taking of private property rights is to bring an action in mandamus to compel the public authority that committed the taking to institute appropriation proceedings under Chapter 163 of the Ohio Revised Code.

7. The Cuyahoga County Court of Common Pleas has jurisdiction over Kelly and Siley because they are residents of Cuyahoga County, Ohio.

FACTUAL BACKGROUND

8. On or about May 1, 2009, Apex obtained title of the Property, a sixteen

(16) unit boarding house, through a Master Commissioner's sale through the United States District Court for the Northern District of Ohio.

9. At the time that Apex received title and possession of the Property, certain maintenance issues existed at the Property, but through the income (*i.e.* the rents received) that was being generated from the Property, these maintenance issues could have been obviated.

10. Apex intended to address the Property's maintenance issues, stabilize the Property's income, and then sell the Property.

11. In December of 2009, Lakewood became interested in purchasing the Property as apparent from Kelly's email to his colleague, Mary E. Leigh ("Leigh"), on December 28, 2009:

Would you dig around on the above? It's a nuisance property that is in foreclosure and would be a good one to purchase.

12. On January 2, 2010, Kelly emailed Leigh regarding the Property, stating in relevant part:

Dru [Siley] is going to see if he can get some info on the inside of the building. This is the kind of property that would warrant going to council, even if its under \$60k, to purchase.

13. On January 4, 2010, Leigh contacted Emma P. Barcelona, another employee of Lakewood, concerning the Property. Leigh inquired:

To my question. The property is 11900 Madison. Need to know if, based on the below circumstances, would qualify for NSP's.

Not sure if vacant (but obviously would need to be). A foreclosure action filed in 2007 but it appears that instead of going through that whole process, the owner signed the property over to the bank.

If vacant we could 1) nuisance? And/or purchase & either rehab or demolish with intent to redevelop with some new purpose (commercial or residential).

14. Thereafter, Lakewood targeted the Property for acquisition.

15. On September 13, 2010, Lakewood filed a criminal complaint against Theodore H. Kapnek, III (“Kapnek”), the President of Apex, under Section 1501.05(a) of the Lakewood Codified Ordinances, due to the alleged condition of the Property.

16. Upon information and belief, this criminal complaint was filed in order to induce Apex to sell the Property to Lakewood for a favorable price.

17. On September 22, 2010, Kelly contacted Kim Steigerwald (“Steigerwald”), an employee with the Cuyahoga County Land Bank, concerning the Property:

I’ve come across a property that has a number of blighting influences, will be vacant, and should probably be torn down. *My guess is that we could own it for \$80K, would cost about \$40k to tear it down. I’m using larger numbers.* It would be a nice development site in the long term and an [sic] nice place to park in the short term. It’s in our NSP II area. It is bank owned- Apex Mortgage.

(Emphasis added.)

18. On September 23, 2010, Steigerwald responded to Kelly’s email, in relevant part:

My first concern is the “will be vacant” note. *Last thing we want to do is consider a property w/tenants in it and trigger not only URA but the Tenant Protection Act.* Even discussing this property at this point is not a good idea –as it would trigger both.

(Emphasis added.) Steigerwald further stated:

To date, we’ve paid little, if nothing at all, for acquisition that are demolitions. It’s an issue that’s arose in Shaker as well. So, we would have to consider the long and short term impact of “expensive”

demolitions and ask how much Lakewood would contribute to the acquisition costs.

(Emphasis added.)

19. Upon information and belief, at this time, Lakewood no longer had an interest in purchasing the Property but instead sought to acquire the Property through less expensive nuisance/demolition process once the Property was vacated.

20. On or about October 5, 2010, Kapnek and Kelly had a conversation in which Kelly represented to Kapnek that Lakewood was interested in purchasing the Property but could only do so if the Property was vacated for at least ninety (90) days and the Property was not used in any manner.

21. Based upon Kelly's representation, Apex caused the Property to be vacated, which included filing several forcible entry and detainer actions. Once the Property was vacant, Apex refrained from making further repairs.

22. On November 12, 2010, in connection with the agreement reached between Kelly and Kapnek concerning the vacation and potential sale of the Property, Lakewood dismissed its criminal complaint against Kapnek.

23. In early 2011, on numerous occasions, Kapnek contacted Siley concerning Lakewood's interest in purchasing the Property. For example, on February 9, 2011, Kapnek emailed Siley:

we are committed to trying to work out a sale to your department, we do no want to see the building demolished until that transpires.

24. On March 18, 2011, Kapnek again emailed Siley as to Lakewood's interest in purchasing the Property:

I need to get a written agreement for the sale of this property completed soon. The most important thing is to decide, one way or another, what is

happening to this property. I gave up \$3,000 a month in gross rents to get this deal done. If we are not going to agree on something and close on a sale in a short time frame, I need to re-rent the property.

25. Siley intentionally failed to inform Kapnek that Lakewood did not have an interest in purchasing the Property. Siley omitted to inform Kapnek of this information so that Apex would continue to keep the Property vacant for at least 90 days to prevent Apex from operating a boarding house at the Property.

26. On March 22, 2011, Lakewood's Division of Housing and Building wrongfully declared the Property a public nuisance thereby depriving Apex of its property rights including, but not limited to, preventing Apex from operating a boarding house at the Property.

27. On March 31, 2011, Apex appealed the determination of Lakewood Division of Housing and Building declaring the Property a nuisance to the The Lakewood City Board of Building Standards and Building Appeals.

28. On April 14, 2011, The Lakewood City Board of Building Standards and Building Appeals affirmed the decision of the Lakewood Division of Housing and Building declaring the Property a nuisance.

29. On or about April 24, 2011, the Property was broken into and certain copper plumbing supply lines were stolen because the Property was unoccupied. This vandalism has rendered the Property economically unfeasible to repair.

30. On May 9, 2011, Lakewood informed Apex that it would never permit Apex to operate a boarding house at the Property again. Lakewood further informed Apex that it had two options with respect to the Property: 1) donate the Property to the

Cuyahoga County Land Bank and receive a tax deduction; or 2) pay for Lakewood's demolition of the Property.

31. On May 10, 2011, Lakewood sent a letter Apex stating that it intended to demolish the Property.

32. On May 12, 2011, Apex filed a Notice of Appeal of The Lakewood City Board of Building Standards and Building Appeals' decision to affirm the declaration that the Property was a nuisance to the Cuyahoga County Court of Common Pleas. The appeal is captioned *Apex Mortgage Company v. The Lakewood City Board of Building Standards and Building Appeals*, Case No. CV 11 755041.

33. Based upon the above, Apex asserts a claim of inverse condemnation against Lakewood as Lakewood's wrongful actions have damaged Apex's property right to the extent of an actual taking entitling Apex to compensation. Also, asserts claims of fraud against Harris and Siley, individually.

COUNT ONE

34. Apex incorporates all of the allegations of paragraphs 1 through 33 as if fully rewritten herein.

35. As a result of Lakewood's wrongful actions, including the unjust declaration that the Property as a nuisance, Apex has been deprived of its property rights without due process of law.

36. Apex has suffered a loss of its distinct investment backed expectations due to Lakewood's wrongful actions.

37. Such actions by Lakewood amount to an “inverse condemnation” as they constitute a unlawful taking in violation of Article 1, Section 19 of the Ohio Constitution and the Fifth and Fourteenth Amendment of the United States Constitution.

38. Accordingly, Lakewood should be compelled to institute appropriation proceedings pursuant to Chapter 163 of the Ohio Revised Code and compensate Apex in an amount in excess of \$25,000.00.

COUNT TWO

39. Apex incorporates all of the allegations of paragraphs 1 through 38 as if fully rewritten herein.

40. On numerous occasions, including on or about October 5, 2010, Kelly intentionally misrepresented to Apex that Lakewood was interested in purchasing the Property in order induce Apex to cease using the Property as a boarding house and to cause the Property to be vacated.

41. These representations made by Kelly were false and fraudulent. Apex did not know that these representations were false.

42. At the time Kelly made these representations, he knew or should have known that the representations were false.

43. Apex actually and reasonably relied upon these representations made by Kelly by causing the Property to be vacated and ceasing to use the Property as a boarding house.

44. As a direct and proximate result of these intentional misrepresentations made by Kelly, Apex is entitled to compensatory and punitive damages in an amount in excess of \$25,000.

COUNT THREE

45. Apex incorporates all of the allegations of paragraphs 1 through 44 as if fully rewritten herein.

46. Despite Apex's numerous inquiries relating to Lakewood's interest in purchasing the Property, Siley intentionally omitted to inform Apex that Lakewood had decided not to purchase the Property so that Apex would continue to keep the Property vacant and not operate a boarding house at the Property.

47. Siley's omissions made were false and fraudulent. Apex did not know that these omissions were false.

48. At the time Siley omitted to inform Apex of Lakewood's intention, he knew or should have known that his omissions were false.

49. Apex actually and reasonably relied upon Siley's omissions by not using or occupying the Property in any manner.

50. As a direct and proximate result of these intentional misrepresentations/omissions made by Siley, Apex is entitled to compensatory and punitive damages in an amount in excess of \$25,000.00.

WHEREFORE, Plaintiff Apex Mortgage Company prays for judgment as follows:

1. On Count One, a writ of mandamus issued compelling Defendant The City of Lakewood to institute appropriation proceedings pursuant to Title 163 of the Ohio Revised Code and determination of just compensation for the taking of Plaintiff Apex Mortgage Company's property right in an amount in excess of \$25,000.00;

2. On Count Two, an award of compensatory and punitive damages against Defendant Nathan J. Kelly and in favor of Plaintiff Apex Mortgage Company in an amount in excess of \$25,000.00;

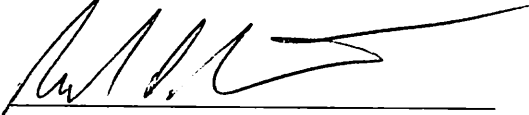
3. On Count Three, an award of compensatory and punitive damages against Defendant Dru T. Siley and in favor of Plaintiff Apex Mortgage Company in an amount in excess of \$25,000.00;

4. Prejudgment and post judgment interest at the maximum legal rate;

5. Costs of this action; and

6. Such other relief as this Court deems just and equitable.

Respectfully submitted,



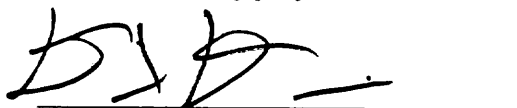
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dmd@dvorinlaw.com
Attorneys for Plaintiff Apex Mortgage
Company

JURY DEMAND

Plaintiff Apex Mortgage Company demands a trial by jury as to all triable issues.



David M. Dvorin

SUMMONS IN A CIVIL ACTION COURT OF COMMON PLEAS, CUYAHOGA COUNTY JUSTICE CENTER
CLEVELAND, OHIO 44113

CASE NO.
CV11761181

D1 CM

SUMMONS NO.
17905555

Rule 4 (B) Ohio

Rules of Civil
Procedure

APEX MORTGAGE COMPANY
VS

PLAINTIFF

CITY OF LAKEWOOD, ET AL

DEFENDANT

SUMMONS

CITY OF LAKEWOOD
12650 DETROIT AVENUE
LAKEWOOD OH 44107-0000

You have been named defendant in a complaint (copy attached hereto) filed in Cuyahoga County Court of Common Pleas, Cuyahoga County Justice Center, Cleveland, Ohio 44113, by the plaintiff named herein.

You are hereby summoned and required to answer the complaint within 28 days after service of this summons upon you, exclusive of the day of service.

Said answer is required to be served on:



Plaintiff's Attorney

Said answer is required to be served on Plaintiff's Attorney (Address denoted by arrow at left.)

MARK I WACHTER
30195 CHAGRIN BOULEVARD

Your answer must also be filed with the court within 3 days after service of said answer on plaintiff's attorney.

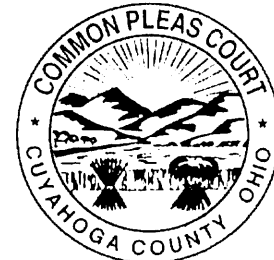
SUITE 300 PEPPER PIKE PLACE
CLEVELAND, OH 44124-0000

If you fail to do so, judgment by default will be rendered against you for the relief demanded in the complaint.

Case has been assigned to Judge:

JOSE A VILLANUEVA
Do not contact judge. Judge's name is given for attorney's reference only.

GERALD E. FUERST
Clerk of the Court of Common Pleas



DATE

Aug 4, 2011

By

Deputy

COMPLAINT FILED 08/03/2011



SUMMONS IN A CIVIL ACTION COURT OF COMMON PLEAS, CUYAHOGA COUNTY JUSTICE CENTER
CLEVELAND, OHIO 44113

CASE NO.
CV11761181

D2 CM

SUMMONS NO.
17905556

Rule 4 (B) Ohio

Rules of Civil
Procedure

APEX MORTGAGE COMPANY
VS

PLAINTIFF

CITY OF LAKEWOOD, ET AL

DEFENDANT

SUMMONS

NATHAN KELLY
1551 RIVERSIDE DRIVE
LAKEWOOD OH 44107-0000

You have been named defendant in a complaint (copy attached hereto) filed in Cuyahoga County Court of Common Pleas, Cuyahoga County Justice Center, Cleveland, Ohio 44113, by the plaintiff named herein.

Said answer is required to be served on:



Plaintiff's Attorney

MARK I WACHTER
30195 CHAGRIN BOULEVARD

SUITE 300 PEPPER PIKE PLACE
CLEVELAND, OH 44124-0000

You are hereby summoned and required to answer the complaint within 28 days after service of this summons upon you, exclusive of the day of service.

Said answer is required to be served on Plaintiff's Attorney (Address denoted by arrow at left.)

Your answer must also be filed with the court within 3 days after service of said answer on plaintiff's attorney.

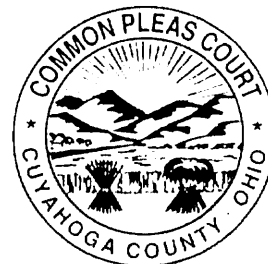
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Case has been assigned to Judge:

JOSE A VILLANUEVA

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GERALD E. FUERST
Clerk of the Court of Common Pleas



DATE

Aug 4, 2011

By

Deputy

COMPLAINT FILED 08/03/2011



SUMMONS IN A CIVIL ACTION COURT OF COMMON PLEAS, CUYAHOGA COUNTY JUSTICE CENTER
CLEVELAND, OHIO 44113

CASE NO.
CV11761181 D3 CM

SUMMONS NO.
17905557

Rule 4 (B) Ohio

Rules of Civil
Procedure

APEX MORTGAGE COMPANY
VS

PLAINTIFF

CITY OF LAKEWOOD, ET AL

DEFENDANT

SUMMONS

DRU T. SILEY
14773 ATHENS AVENUE
LAKEWOOD OH 44107-0000

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You are hereby summoned and required to answer the complaint within 28 days after service of this summons upon you, exclusive of the day of service.

Said answer is required to be served on:



Plaintiff's Attorney

Said answer is required to be served on Plaintiff's Attorney (Address denoted by arrow at left.)

MARK I WACHTER
30195 CHAGRIN BOULEVARD

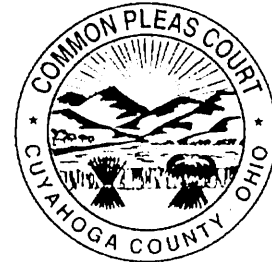
SUITE 300 PEPPER PIKE PLACE
CLEVELAND, OH 44124-0000

Your answer must also be filed with the court within 3 days after service of said answer on plaintiff's attorney.

If you fail to do so, judgment by default will be rendered against you for the relief demanded in the complaint.


Case has been assigned to Judge:

JOSE A VILLANUEVA
Do not contact judge. Judge's name is given for attorney's reference only.



GERALD E. FUERST
Clerk of the Court of Common Pleas

DATE
Aug 4, 2011

By 
Deputy

COMPLAINT FILED 08/03/2011

