

IN THE COMMON PLEAS COURT FOR FRANKLIN COUNTY, OHIO
Civil Division

WC MANAGEMENT, LLC)
4866 East Broad Street)
Columbus, OH 43213,)

Plaintiff,)

v.)

Case No.

THE CITY OF WHITEHALL)
360 South Yearling Road)
Columbus, OH 43213,)

**COMPLAINT FOR
ABUSE OF PROCESS**

and)

THE FRANKLIN COUNTY)
PUBLIC HEALTH)
280 East Broad Street)
Columbus, OH 43215,)

Defendants.

Now comes Plaintiff, WC Management, LLC ("Plaintiff"), by and through its undersigned counsel, and for its Complaint against Defendants, The City of Whitehall ("Whitehall") and Franklin County Public Health ("FCPH") hereby states as follows:

PARTIES

1. Plaintiff is a limited liability company, registered and doing business in the State of Ohio, with its principal place of business being in Columbus, Franklin County, Ohio.

2. Whitehall is a local municipality organized and existing under the laws of the State of Ohio and located in Franklin County, Ohio.

3. FCPH is a county administrative body and organization existing under the laws of the State of Ohio and located in Franklin County, Ohio.

JURISDICTION AND VENUE

4. This Court has subject matter jurisdiction pursuant to Ohio Rev. Code 2305.01 et seq.

5. This Court has personal jurisdiction over Defendants pursuant to R.C. 2307.382 and Ohio Civ. R. 4.2 and 4.3.

6. Venue is proper in this Court pursuant to Ohio Civ. R. 3(B).

FACTUAL ALLEGATIONS

7. On or about July 12, 2007, Whitehall and FCPH (hereinafter collectively referred to as "Defendants"), jointly and severally, filed a Complaint with the Franklin County Municipal Court, alleging certain real property located in Whitehall, Ohio and part of Woodcliff Condominium property ("Woodcliff") was a public nuisance and praying that the public nuisances be abated ("Environmental Action").

8. On or about February 4, 2008, Defendants obtained a Permanent Injunction against the Defendants of the Environmental Action, Thomas Olander ("Olander") and Woodcliff Condominium Unit Owners Association ("Association").

9. During 2008, Plaintiff acquired certain mortgages against numerous units located within Woodcliff.

10. On or about February 24, 2009, Plaintiff was appointed, pursuant to Ohio Rev. Code Sec. 3767.41, the receiver for all units contained within Woodcliff that were titled in the name of Olander.

11. Plaintiff served as receiver in the Environmental Action until June 25, 2012 at which time Mr. Mark Froehlich was appointed and substituted receiver.

12. During and subsequent to Plaintiff's tenure as receiver, Plaintiff caused several Olander units to be sold pursuant to court orders in order and effort to cause the abatement of the various nuisances related to the units and Woodcliff Common Areas.

13. During its tenure as receiver, Plaintiff spent substantial funds of its own to cause the abatement of various nuisances including the filling in of an Association public pool, trash collection, grass and weed cutting, and payment of an outstanding water bill to the City of Columbus.

14. Since the time Plaintiff no longer served as receiver, Plaintiff has attempted on numerous occasions to assist with the sale/purchase of the various Olander units located within Association.

15. Since the time Plaintiff no longer served as receiver, Plaintiff has continued to abate numerous nuisances within Woodcliff, many of which were and are the responsibility of the Association.

16. As stated in the following paragraphs, Whitehall and FCPH have intentionally, continuously, and systematically interfered with the sale of units in an attempt to prevent the abatement of nuisances in an effort to acquire title to Woodcliff.

17. As stated in the numerous following paragraphs, Whitehall and FCPH have intentionally, continuously, and systematically interfered with the abatement of nuisances so as to advance its arguments and position that the Woodcliff Units should be demolished.

18. On or about April 7, 2007, the Environmental Court entered an Agreed Order whereas any mortgagees were entitled to proceed with the foreclosure of Units against which any mortgagee held a mortgage.

19. Plaintiff held and still holds the first and best lien/mortgage and a Judgment Decree of Foreclosure against numerous Olander Units.

20. On or about October 22, 2010, Plaintiff caused a receiver, Gryphon Asset Management, LLC ("Gryphon") to be appointed by the Franklin County Common Pleas Courts in an effort to cause the sale of the Olander units against which Plaintiff held first and best lien/mortgage and a Judgment Decree of Foreclosure.

21. It was then and remains to be the intention of Plaintiff to purchase said units and abate all nuisances related thereto.

22. Despite Plaintiff and Gryphon's best efforts to sell the units at public and/or private sale in compliance with the relevant Environmental Court orders so that the respective nuisances could and would be abated, Whitehall and FCPH have intentionally, continuously, and systematically interfered so as to delay and ultimately prevent the sale of the Units.

23. In the various attempts to delay and ultimately prevent the sale of the Units, Whitehall and FCPH have offered legal arguments and taken positions that are not warranted under existing law, cannot be supported in good faith for an extension, modification, or reversal of existing law and cannot be supported by a good faith argument for the establishment of new law.

24. Upon information and belief, Defendants have filed several Motions for Contempt, including criminal contempt, against Plaintiff, its principal, Steve Close and employee, Alex Close in an effort to obtain an advantage and influence the outcome of the Environmental Court action.

25. In February 2015, Defendants obtained an order of demolition after making an offer of settlement to Plaintiff to dismiss a criminal contempt allegations in favor of demolition of a building located within Woodcliff ("Manor House").

26. As of the filing of this Complaint, Defendants have taken no steps or made any effort to demolish the Manor House.

27. Upon information and belief, it is and has been the intention of Whitehall to acquire ownership and/or control of the land upon which Woodcliff is located in order to demolish the existing residential property and use same for future commercial development.

28. Despite Defendants being ordered, by way of Agreed Orders, dated April 3, 2012 and November 1, 2012 ("Agreed Orders") to conduct all necessary inspections in a reasonable and timely manner and issue appropriate approval upon compliance, Defendants have refused to do the same.

29. Despite Defendants bringing an action for public nuisance and demanding the abatement of the nuisances, Whitehall refused to issue work permits to Plaintiff's construction contractors for more than eighteen (18) months.

30. On July 26, 2013, without notice, agreement, motion or opportunity to be heard and over the objection of Plaintiff, Defendants submitted to and received from the Environmental Court an order relieving it of its obligations under the Agreed Orders.

31. The obligations of which Whitehall was relieved were material and instrumental in Plaintiff agreeing to the terms of the Agreed Orders.

32. Since obtaining the July 26, 2013 Order, Defendants have attempted to enforce, through motions for contempt and criminal contempt, other terms and conditions of the Agreed Orders, such as the payment of attorneys' fees to Defendants by Plaintiff.

33. Not until questioned by the Franklin County Common Pleas Court did Whitehall begin again complying with the Agreed Orders by issuing permits for work to be completed and Certificates of Occupancy so that units may be occupied.

34. Subsequent to again issuing permits and only after entering into another Agreed order on February 3, 2015, Defendants admitted, through counsel, that it was previously "refusing to issue permits because it was attempting to purchase the property."

35. On July 30, 2015, Whitehall and FCPH argued to the Environmental Court, contrary to Ohio Rev. Code Sec. 3767.41, that the condition of the subject units should no longer be relevant and despite the abatement of the nuisances, units should be demolished.

36. Whitehall's and FCPH's actions demonstrate that each maintain the Environmental action in bad faith and their continuous and systematic interference, has caused substantial damage to Plaintiff by way of lost rents, diminished values, lost sales, legal fees, and other monetary damages.

RELEVANT FILINGS 1

37. Plaintiff realleges Paragraphs 1-36 of the Factual Allegations above as Paragraph 37 of this Complaint, and incorporates the same by reference, as if fully set forth herein.

38. On or about July 12, 2007, Defendants filed a Complaint with the Franklin County Municipal Court, alleging certain real property located in Whitehall, Ohio and part of Woodcliff was a public nuisance and praying that the public nuisances be abated.

39. On or about February 7, 2012, Defendants requested an order of demolition related to the Olander units.

40. On April 3, 2012, Defendants entered into an Agreed Order whereby it was required to conduct all necessary inspections in a reasonable and timely manner and issue appropriate approval upon compliance.

1 The following is not intended to be a complete statement or recap of the history of these proceedings but only a sample of the numerous and most recent attempts by Whitehall and FCPH to interfere and prevent the sale of the units and abatement of nuisances.

41. On September 5, 2012, Defendants filed a Motion for Contempt against Plaintiff for the sole purpose of obtaining an undue influence and leverage over Plaintiff.

42. On October 25, 2012, Defendants again requested demolition of units.

43. On November 1, 2012, Defendants entered into an Agreed Order whereby Defendants were again required to conduct all necessary inspections in a reasonable and timely manner and issue appropriate approval upon compliance.

44. On April 18, 2013, the Environmental Receiver filed motions to sell the Olander units at public and private sale, which would have resulted in the abatement of all nuisances.

45. On May 2, 2013, Defendants filed a Memorandum Contra to the Motions filed April 18, 2013.

46. On July 24, 2013, Defendants filed a Motion for Contempt against Plaintiff for the sole purpose of obtaining an undue influence and leverage over Plaintiff.

47. On July 26, 2013, Defendants submitted an Entry to the Environmental Court, over the objection of Plaintiff and without motion or notice to be heard that relieved Defendant of its obligation to issue permits and Certificates of Occupancy.

48. On August 12, 2013, Plaintiff filed a Motion to Intervene in the Environmental Action.

49. Despite Plaintiff owning units within Woodcliff and holding the first mortgage against numerous Units located within Woodcliff, on August 22, 2013, Defendants filed a Memorandum Contra to Plaintiff's Motion to Intervene.

50. On October 3, 2013, Gryphon filed motions to sell certain Olander units, against which Plaintiff held the first mortgage and a judgment decree of foreclosure.

51. On January 15, 2014, Defendants filed a motion to intervene in the Common Pleas foreclosure actions.

52. Subsequent to filing its motions to intervene, Defendants objected at a status conference to the sale of the Olander units, which would have resulted in the abatement of the nuisances.

53. On or about January 21, 2014, Defendants filed motions and notices to transfer and consolidate the Common Pleas foreclosure proceedings into the Environmental Action.

54. On September 12, 2014, the Environmental Receiver filed a motion to sell the Olander units at public sale in order to cause the abatement of the public nuisances.

55. On September 16, 2014, Gryphon filed motions to sell certain Olander units, against which Plaintiff held the first mortgage and a judgment decree of foreclosure to which Defendants filed a memorandum contra on September 25, 2014.

56. On September 19, 2014, Defendants filed a memorandum contra to the Environmental Court Receiver's motion to sell at public sale.

57. Despite Plaintiff owning Units within Woodcliff and holding the first mortgage against numerous units located within Woodcliff, on September 19, 2014, Defendants opposed a stay of the Environmental Action pending Plaintiff's appeal of its Motion to Intervene.

58. On December 1, 2014, Defendants filed a Motion for Contempt against Plaintiff, its principal Steve Close, and its employee Alex Close, for the sole purpose of obtaining an undue influence and leverage over Plaintiff.

59. On January 12, 2015, Defendants dismissed the pending criminal contempt in exchange for the consent of Plaintiff to demolish the Manor House, thereby exchanging the threat of prosecution for criminal contempt to advance its civil action.

60. On February 3, 2015, Defendants entered into an agreed order whereby the Olander units could be sold only under certain terms and conditions, including the payment of Defendant's attorneys' fees.

61. Subsequent to entering into the February 3, 2015 Order, it became evident that the Environmental Receiver did not have statutory authority to sell the real estate.

62. Despite there being a Final Judgment, on March 10, 2015, for the purpose of delay and interference, Defendants filed a motion to dismiss the Common Pleas foreclosure proceedings arguing Plaintiff must re-file the foreclosure actions.

63. On March 16, 2015, Defendants filed a Motion for Contempt against Plaintiff, Steve Close and Alex Close for the sole purpose of obtaining an undue influence and leverage over Plaintiff.

64. On June 9, 2015, Defendants filed a motion to vacate the February 3, 2015 Agreed Order and for the Court to schedule an evidentiary hearing on the motion for demolition.

65. At the July 30, 2015 demolition hearing, Defendants introduced evidence that is wholly irrelevant to the units in question.

CLAIM FOR RELIEF
(Abuse of Process)

66. Plaintiff realleges Paragraphs 1-65 of the Factual Allegations above as Paragraph 66 of this Complaint, and incorporates the same by reference, as if fully set forth herein.

67. Upon information and belief, at the time of the filing the initial Complaint, Defendants set the action in motion in proper form and with probable cause.

68. Through the continuous efforts of Defendants to interfere with the sale of the Olander Units and abatement of nuisances, Defendants have perverted the process in an effort to accomplish an ulterior purpose for which it was not designed.

69. As of the filing of this Complaint, Defendants continue to file frivolous motions and take legal positions that are wholly unsupported by law and/or fact.

70. If not for Defendants continuous and systematic interference in sales and nuisance abatement, all nuisances of previous and existing Olander units would have been abated.

71. As a direct result of Defendants' actions stated above, Plaintiff has been damaged in an amount to be determined at trial but in any case not less than \$1,000,000.00.

WHEREFORE, Plaintiff prays that the Court enter a Judgment Order in its favor and against Defendants for compensatory damages in an amount to be determined at trial but in any event not less than \$1,000,000.00, plus punitive damages, interest, the costs of this action, and attorneys' fees and such other and further relief as the Court deems appropriate under the circumstances.

Respectfully submitted,

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