

**UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION - DIVISION**

In re:

Chapter 9

Case No. 13-53846

CITY OF DETROIT, MICHIGAN

Hon. Steven W. Rhodes

Debtor.

MOTION FOR RELIEF FROM STAY

ST. MARTINS COOPERATIVE, through its attorneys, LAW OFFICES OF LEE & CORRELL, moves for relief from the stay in this matter, pursuant to F.E.D. Mich. LBR 9014-1, for the purpose of pursuing a claim that is nearly forty (40) years old in litigation commenced in 2009, and for the purpose of being able to fully defend a counterclaim brought against it by the CITY OF DETROIT WATER AND SEWAGE DEPARTMENT AND CITY OF DETROIT BOARD OF WATER COMMISSIONERS (hereinafter referred to collectively as "Detroit Water"), and states as follows:

1. St. Martins Cooperative ("St. Martins") is a Michigan Non-Profit Cooperative, and is located in Detroit.

2. Since at least 1975, Detroit Water has been knowingly charging Plaintiff St. Martins a rate that is higher than the pre-approved rate for the water and sewage service.

3. Detroit Water charged St. Martins as if it were four times as large as it actually is in acreage, and therefore calculated the fees for St. Martins that were four times as large that they should have been.

4. In 2007, St. Martins approached Detroit Water with a request to reveal how Detroit Water calculated the water bills.

5. All of these requests for information and assistance were refused.

6. St. Martins shared its calculations with Detroit Water. (See, Exhibit A).

7. Detroit Water refused to comply with any of the St. Martins' requests for information.

8. In 2008, St. Martins finally petitioned the Detroit City Council. (See, Exhibit A).

9. In April 2008, Detroit Water granted St. Martins a meeting; at which the Detroit Water requested that the St. Martins make a written request under the Michigan Freedom of Information Act. (See, Exhibits B and C).

10. Detroit Water so mischaracterized St. Martin's FOIA request, that St. Martins was forced to clarify the history and nature of the request. (See, Exhibits D and E).

11. In January 2009, St. Martins shared its calculations with Detroit Water. (See, Exhibit F).

12. Detroit Water simply declared that it would rely upon its statute of limitations defense. (See, Exhibit G).

13. The general statute of limitations does not apply because Detroit Water fraudulently concealed the inaccuracy of its billings to St. Martins for nearly forty years.

14. Fraudulent concealment is a defense to a defense of the statute of limitations. MCL 600.5855.

15. The elements of fraudulent concealment are:

a) Wrongful concealment by the defendants of their actions;

- b) Failure of the plaintiffs to discover the operative facts that are the basis of the cause of action within the statute of limitations; and
- c) The exercise of due diligence until discovery of the facts. *State of Michigan ex fel. Kelley v McDonald Dairy Co.* 905 F Supp 447 (1995).

17. “The rule in question prohibits the defendant from doing at *anytime anything* to prevent the plaintiff from ascertaining [the facts upon the which the cause of action depends] either by affirmative action which conceals the truth, or by any device which avoids inquiry which would lead to discovery.” *Draws v Levin*, 332 Mich 447, 453; 52 NW 2d 180 (1952), (Italics supplied).

18. Detroit Water charged St. Martins as if it were four times as large as it actually is in acreage, and therefore calculated the fees for St. Martins that were four times as large that they should have been.

19. Detroit Water also purposely and consciously withheld its erroneous measurements of St. Martins’ acreage in order to succeed in overcharging St. Martins.

20. Certainly, Detroit Water sending erroneous bills to St. Martins qualifies as fraudulent concealment because the error in the bills was based on a four-fold exaggeration of the actual acreage that St. Martins covered.

21. Detroit Water engaged in further concealment by refusing to turn over documents.

22. St. Martins also exercised due diligence in trying to discover the concealment when it engaged in numerous requests for information under the Freedom of Information Act in order to ascertain how far back the misleading bills stretched.

23. On or about September 23, 2008, the Federal District Court issued its Notice, to St. Martins among others, of a proposed settlement of a Class Action Lawsuit based on Detroit Water's fraudulent billing practices. (Exhibit H).

24. The Notice gave the Class Members until January 9, 2009 to opt out of the Class Action Lawsuit. (Exhibit H).

25. On January 7, 2009, St. Martins opted out of the Settlement. (Exhibit I).

26. In August 2009, St. Martins filed a complaint in Federal District Court for the Eastern District of Michigan ("Federal Action").

27. On or about July 16, 2012, Detroit Water filed a Motion for Summary Judgment.

28. St. Martins filed its Response in Opposition on August 16, 2012.

29. On April 25, 2011, the Federal District Court issued an Opinion and Order. ("Opinion"). (Exhibit J).

30. The Opinion addressed only the federal equal protection claim; the Federal District Court ruled that there was no dispute of fact regarding whether Detroit Water owed St. Martins \$5,132.55.

31. The Federal Court therefore granted summary judgment to St. Martins on that issue.

32. The Federal District Court refused to take pendant jurisdiction or the remainder of the action, which was comprised of state law claims, and dismissed those without prejudice. (Exhibit J).

33. St. Martins then brought a civil action against Detroit Water based on the state law claims.

34. Detroit Water brought a counterclaim against St. Martins based on its miscalculations and refusing to give any further credit to St. Martins even though a Federal Court has granted summary judgment as to some of its charging methodology.

35. The Wayne County Circuit Court has entered an Administrative Stay against St. Martins' claims.

36. However, Detroit Water's Counterclaim has not been stayed.

37. This Court should lift the stay as to St. Martins so that it will not have to fight a lawsuit with the proverbial "one hand tied behind its back."

38. Cause exists to grant this Motion for several reasons; including, but not limited to, the following:

- A. This matter has been pending for more than four years;
- B. The damages at issue have been accruing for nearly forty (40) years;
- C. Detroit Water has a Counterclaim, which is not stayed by the Bankruptcy Petition;
- D. Fairness and equity indicate that St. Martins should have the opportunity to meet and defend that Counterclaim, which it cannot do without relief from the Stay in this matter;
- E. No preliminary bankruptcy issues are at risk;
- F. St. Martins chances of success are strong since it has already prevailed on summary judgment as to some of the charges (Exhibit J);
- G. There is no burden to the bankruptcy estate since Detroit Water has, for some decades, charged and collected monies to which it was not entitled.

39. In the absence of any genuine issue of material fact, this Court should bar the Defendant Detroit Water from using a statute of limitations defense.

WHEREFORE, the Plaintiff St. Martins Cooperative prays that this Honorable Court grant its Motion for Relief from Stay for the purpose of defending Detroit Water's Counterclaim and pursuing its own claim as setoff.

LAW OFFICES OF LEE & CORRELL

By: /s/ Michael K. Lee
MICHAEL K. LEE (P40012)
Attorneys for St. Martins Cooperative
24901 Northwestern Highway, Suite 113
Southfield, Michigan 48075
mlee@leeandcorrell.com
(248) 350-5900

Dated: October 11, 2013

ST. MARTINS COOPERATIVE'S INDEX OF EXHIBITS

St. Martins Cooperative, through its attorneys LAW OFFICES OF LEE & CORRELL, submits the following as its index of exhibits to this Motion:

Exhibit 1- Order Granting Relief from Stay

Exhibit 2 –Notice of Opportunity to Respond

Exhibit 3 – Brief in Support

Exhibit 4 – Certificate of Service

Documentary Exhibits –

A – Memorandum dated March 21, 2008

B – Correspondence dated April 1, 2008

C – Memorandum dated April 4, 2008

D –Notice of Receipt of FOIA Request dated May 2, 2008

E – Letter dated May 19, 2008

F – Letter dated January 22, 2009

G – Letter dated March 3, 2009

H – Notice of Settlement of Class Action dated September 23, 2008

I – Letter dated January 7, 2009

J – Opinion and Order dated April 25, 2011

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EXHIBIT 1

**UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION - DIVISION**

In re:

Chapter 9

Case No. 13-53846

CITY OF DETROIT, MICHIGAN

Hon. Steven W. Rhodes

Debtor.

ORDER GRANTING ST. MARTINS' MOTION FOR RELIEF FROM STAY

The Court, having read St. Martins' Motion For Relief from Stay, ; and being advised that all parties in interest have been given notice; and being advised that no objections were filed or received; and being otherwise fully advised in the premises;

NOW THEREFORE IT IS HEREBY ORDERED AND ADJUDGED, that St. Martins Motion be, and hereby is, **GRANTED**;

IT IS FURTHER ORDERED AND ADJUDGED that St. Martins shall be, and hereby is, allowed to pursue its defense of a Counterclaim, as well as its claim, presently pending in the Wayne County Circuit Court, in Case No. 12-016332-CZ.

BANKRUPTCY COURT JUDGE

Dated:

EXHIBIT 2

**UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION - DIVISION**

In re:

Chapter 9

Case No. 13-53846

CITY OF DETROIT, MICHIGAN

Hon. Steven W. Rhodes

Debtor.

**NOTICE OF MOTION FOR RELIEF FROM STAY AND
OPPORTUNITY TO RESPOND**

To: All Interested Parties

Please take notice that St. Martins Cooperative filed a Motion seeking relief from stay for the purpose of pursuing a claim against the Detroit Water and Sewerage Department and to defend itself against a Counterclaim from Detroit Water and Sewerage Department.

Your rights may be affected. You should review these papers, and consult with an attorney if you choose.

You have 14 days from the date of this Notice to object if you oppose this Motion or if you want the Court to consider any views you have on the Motion. You may do so by: Filing an Objection or request for hearing, with an explanation with the United States Bankruptcy Court at 211 W. Fort Street, Suite 2100, Detroit Michigan 48226. You must also mail a copy of that Objection on the undersigned.

Upon the timely filing of an objection or request for a hearing, the clerk will schedule a hearing on this Motion and you will be notified of the date, time and location.

Failure to act within the 14 day time period may result in the Court deciding that you do not oppose the relief sought and the Court may grant the relief sought.

LAW OFFICES OF LEE & CORRELL

By: /s/ Michael K. Lee
MICHAEL K. LEE (P40012)
Attorneys for St. Martins Cooperative
24901 Northwestern Highway, Suite 113
Southfield, MI 48075
(248) 350-5900

Dated: October 11, 2013

EXHIBIT 3

UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION - DIVISION

In re:

Chapter 9

Case No. 13-53846

CITY OF DETROIT, MICHIGAN

Hon. Steven W. Rhodes

Debtor.

BRIEF IN SUPPORT OF MOTION FOR RELIEF FROM STAY

St. Martins Cooperative hereby incorporates by reference and relies upon the facts, arguments, authority and exhibits cited in the Motion for Relief from Stay as its Brief in Support of the Motion.

LAW OFFICES OF LEE & CORRELL

By: /s/ Michael K. Lee
MICHAEL K. LEE (P40012)
Attorneys for St. Martins Cooperative
24901 Northwestern Highway, Suite 113
Southfield, MI 48075
(248) 350-5900

Dated: October 11, 2013

EXHIBIT 4

**UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION - DIVISION**

In re:

Chapter 9

Case No. 13-53846

CITY OF DETROIT, MICHIGAN

Hon. Steven W. Rhodes

Debtor.

CERTIFICATE OF SERVICE

I hereby certify that on October 11, 2013, I filed with the Court via the Court's CM/ECF System the following papers: **Motion for Relief from Stay, Notice of Opportunity to Respond to Motion for Relief from Stay, Brief in Support, and this Certificate of Service.** The pleadings will be served on all parties who are required to receive service via the Court's Notice of Electronic Filing.

/s/ Michael K. Lee
MICHAEL K. LEE

EXHIBIT A

MEMORANDUM

TO: Honorable City Council

FROM: St. Martins Cooperative Board of Directors

RE: Request for an Audience: Water and Sewerage Department

DATE: March 21, 2008

For more than a year, St. Martins Cooperative ("Cooperative") has been unsuccessful in resolving a dispute with the City of Detroit Water and Sewerage Department ("Department") to recover overpayments made to the Department.

In an attempt to expedite resolution of this dispute, the Cooperative respectfully requests an audience before the Honorable City Council to ask it to monitor the Department so that the Cooperative can:

- 1) recover overpayments; and
- 2) be assigned a project manager from the Department who can provide assurances that overpayments have been fairly and accurately computed and that the same will be done for future bills in accordance with the City's Charter.

FACTS

As admitted by the City of Detroit, as reflected in the attached letter, the Water Department has been overcharging St. Martins Cooperative for services because of its assumption that St. Martins was on 25 acres of land, when in fact it only sits on approximately 6 acres of land.

In the attached letter, the City admitted the mistake but stated that it would only refund six years' worth of overpayments. The Cooperative has reason to believe that the City sends consumers bills for delinquent bills dating beyond six years so it seeks a refund for the *entire* duration of time that the Department has been overcharging the Cooperative.

Although one meeting with the law department has been held since this issue arose in January of 2007, the issue has not been resolved. The Cooperative has not paid its water bills because the Department has not explained how it is being billed.

Specifically, the City continues to bill it by deducting from the "surplus" what the City claims the Cooperative currently owes. However, although the Cooperative has asked the City to explain how it arrived at the surplus or how it is currently billing the Cooperative, the City has not complied.

ISSUES

I. Problem:

Water Department has been over-billing the Cooperative and will not fully refund money that has been paid.

The Board of Directors is here in its fiduciary capacity to seek assistance because it has been trying to resolve the problem so that it can pay St. Martins' water bills. It is responsible for managing funds for its shareholders and must recover funds unjustly expended or held (by the City's Department), as here.

For the Department to hold its money, having admitted that it erroneously charged it, and be unwilling to explain how it made the error or is currently billing the Cooperative, is similar to taking the Cooperative's property without due process of law.

Throughout the process, the Cooperative has had to expend additional money to hire counsel and experts to resolve a function that should be totally completed by the Department.

II. Status of the Problem:

Water Department has not agreed to fully compensate the Cooperative or to address short and long-term questions:

- A. Specifically, the Department has not clarified whether it has corrected the billing error, despite the Cooperative's request last May to get a Project Manager assigned to review whether mistake(s) have been corrected.
- B. Until the former issue is addressed, the Cooperative cannot resolve or settle pending issues: stated simply, how can it accept the Department's offer if it is not sure if it is being billed correctly or how can it pay future bills if it is not sure if the Department's bills are *now* being billed correctly?

III. Next Steps:

City law department has a meeting scheduled. However, time is of the essence in resolving this long-standing problem and the Cooperative seeks Council's assistance in monitoring and helping to expedite the resolution of this problem.

Time is of the essence because the budget for the Cooperative needs to be prepared. The water bill has historically caused assessments for Cooperative members to be artificially high (since the Department inaccurately computed the same).

On behalf of the Cooperative's shareholders, 95 families within the City of Detroit, Board members need assurances that the Department's bill(s) are accurate and that the Cooperative will be fully and fairly compensated for overpayments.

EXHIBIT B



CITY OF DETROIT
LAW DEPARTMENT

FIRST NATIONAL BUILDING
660 WOODWARD AVE., STE. 1650
DETROIT, MICHIGAN 48226-3535
PHONE 313-224-4550
FAX 313-224-5505
WWW.CI.DETROIT.MI.US

April 1, 2008

Florise Neville-Ewell
19535 Cumberland Way
Detroit, MI 48203

248. 649. 5667
Mark Brown

Re: St. Martin Cooperative

Dear Ms. Neville-Ewell

This is a confirmation of the meeting between the St. Martin Cooperative and the Detroit Water and Sewerage Department on Friday April 4 at 2:00 PM. The meeting will be in the office of Gary Watkins, Room 806 in the Water Board Building, located at 735 Randolph in Detroit.

Very truly yours,

Robert C. Walter
Senior Assistant Corporation Counsel
313-237-3074

RCW/trm

cc: George Ellenwood
Gary Watkins

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KWAME M. KILPATRICK, MAYOR

EXHIBIT C

Caybell
A41000 X/12

PAGE 1 OF 2

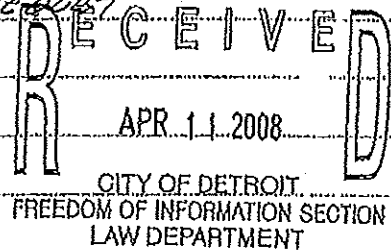
MEMORANDUM

To: ROBERT WALTER, Esq.

From: FARRISE NEVILLE-EWELL, Esq. *[Signature]*

Re: FREEDOM OF INFORMATION ACT REQUEST

DATE: APRIL 4, 2008



PLEASE FORWARD A COPY OF ANY AND ALL
STATEMENTS ISSUED BY THE CITY OF DETROIT
("CITY")
WATER DEPARTMENT¹ REGARDING THE FOLLOWING:

1. BILLS FOR PAST DUE WATER
BILLS WHERE THE CITY HAS
BILLED CUSTOMERS TO PAY
DELINQUENT OR OLD WATER
BILLS IN EXCESS OF 6 YEARS
OR FOR BILLS THAT ARE MORE
THAN 6 YEARS OLD ("BILLS"); AND/OR
2. BILLS, AS DEFINED ABOVE, FOR
RESIDENTIAL CUSTOMERS; AND/OR

PAGE 2 of 2

3. BILLS, AS DEFINED ABOVE,
FOR MULTI-FAMILY HOUSING;
OR HOUSING UNITS IN EXCESS
OF 5-10 UNITS; AND/OR

4. BILLS, AS DEFINED ABOVE,
FOR MULTI-FAMILY HOUSING
OR HOUSING UNITS IN EXCESS
OF 10-20 UNITS; AND/OR

5. BILLS, AS DEFINED ABOVE,
FOR ANY AND ALL CUSTOMERS
OF THE CITY.

Sincerely,

FLORISE R. NEVILL-EWELL

NEVILL-EWELL

EXHIBIT D



CITY OF DETROIT
LAW DEPARTMENT

660 WOODWARD AVE.
1650 FIRST NATIONAL BUILDING
DETROIT, MICHIGAN 48226-3535
PHONE: 313-224-4550
FAX: 313-224-5505
WWW.CITYOFDETROIT.MI.US

NOTICE OF RECEIPT OF FREEDOM OF INFORMATION ACT (FOIA) REQUEST

DATE: May 2, 2008

TO: Florise Neville-Bwell
19535 Cumberland Way
Detroit, MI 48203

Your FOIA request is dated: April 4, 2008

Your FOIA request was received on: April 11, 2008

If sent by fax, your request was consider received on:

Your FOIA request is for records pertaining to:

Copy of bill statements issued by the City of Detroit Water Department

From the following City of Detroit Department(s);

- | | |
|--|--|
| <input type="checkbox"/> Buildings and Safety Engineering | <input type="checkbox"/> Environmental Affairs |
| <input type="checkbox"/> Health and Wellness Promotions | <input type="checkbox"/> Assessor |
| <input type="checkbox"/> Finance | <input checked="" type="checkbox"/> Water and Sewerage |
| <input type="checkbox"/> Detroit Police Department | <input type="checkbox"/> Public Works |
| <input type="checkbox"/> Detroit Fire Department | <input type="checkbox"/> Public Lighting |
| <input type="checkbox"/> EMS/Fire Department | <input type="checkbox"/> Planning and Development |
| <input type="checkbox"/> Municipal Parking | <input type="checkbox"/> Dept of Transportation |
| <input type="checkbox"/> Other: Administrative Hearings Department | |

Your request will be processed immediately.

Your request has been assigned to:

Celesta Campbell
Assistant Corporation Counsel
Freedom of Information Section
City of Detroit Law Department
(313) 237-3068

C:\DOCS\FOIA\mayewh32000\m\WAM0169.WP1) KWAME M. KILPATRICK, MAYOR

EXHIBIT E

FLORISE R. NEVILLE-EWELL
Attorney and Counselor

19535 Cumberland Way
Detroit, Michigan 48203-1457
(313) 892-0940 (PH) • (313) 892-5556 (FAX)
FNEVCOMM@AOL.COM

May 19, 2008

Celesta Campbell, Esq.
Assistant Corporation Counsel
Freedom of Information Section
City of Detroit Law Department

Re: Response to letter dated May 2, 2008 regarding the "Notice of Receipt of Freedom of Information Act (FOIA) Request

Dear Ms. Campbell:

I am in receipt of the above-referenced letter regarding the FOIA request that I made on April 4, 2008; however, for the reasons noted, be advised that your letter reflects erroneous information that I feel compelled to correct and clarify.

First, be advised that the correct date that the law department received the FOIA request is April 4, 2008, not April 11, 2008. On that date, I hand delivered the same to Robert Walter, one of the lawyers in the law department, during a meeting at the Water Department (in the presence of my client's board members and officials at the Water Department). As a result, while I received a request for an extension from Robert Walter in accordance with the statute, the response from the law department is now untimely.

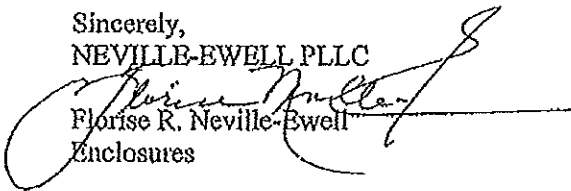
Second, please also note that the description of the FOIA request is inaccurate. Your letter states that it pertains to "copy of bill statements issued by the City of Detroit Water Department." As labeled, complying with the request would be impossible; indeed, the net effect of stating the request as you have done is to make a mockery of my request.

In fact, the FOIA request asked for records reflecting any delinquent water bills that the Water Department has charged clients that date back six years or more. In addition, at the meeting, I specifically provided Robert Walter with an address of a customer who had represented to me that her family had been charged for water bills dating back in excess of six years.

Celesta Campbell, Esq.
Assistant Corporation Counsel
Freedom of Information Section
City of Detroit Law Department
Page Two

The inaccurate characterization of the FOIA request concerns me and makes it appear as if the City of Detroit Law Department is attempting to avoid complying with the request. Accordingly, please mail a copy of the document that you received so that I can make sure that the request that I delivered is the same one that your letter references. In that letter, please also advise of the status of the request.

Sincerely,
NEVILLE-EWELL PLLC



Florise R. Neville-Ewell
Enclosures

FN-E/bh

EXHIBIT F

Michigan Facility Management LLC

124 Highland - Lake Orion, MI 48362

313-790-3298

jpphillipsss@gmail.com

January 22, 2009

Gary Watkins, Commercial Operations Manager
City of Detroit, Water and Sewer Department
735 Randolph Street
Detroit, MI 48226-2830

Dear Mr. Watkins,

Regarding St. Martins Cooperative, this letter is my follow up to your letter dated June 24, 2008. I have completed my review and documentation of the five St. Martins Cooperative water and sewer bills. I want to thank your staff for their help in researching this problem. A. B. Covington was able to help me understand how the bills are actually calculated by your department. Dejuay McKay working with Deloris Greer from the property management company was able to fill in several blanks in our documentation by providing copies of old bills. Accurate documentation and calculation of the bills would not have been possible without your staff's assistance.

As we have all now agreed the root of the problem was an error made prior to 1975 when the size of the property was mistakenly documented as 24.05 acres. The actual size of the property totals 4.63 acres. This error resulted in incorrect drainage billing calculations starting in 1975 for all five accounts.

In our review of the actual bills from June 1999 through October 2008 we also discovered St. Martins was being charged an inappropriate Industrial Waste Charge. These charges are included in our calculations of the overpayments and are also included in the refund balance due to St. Martins.

The actual old bills and the copies of the actual checks cashed by the City of Detroit made it possible for me to reconstruct the entire billing and payment history from June, 1999 through December, 2008 for all five accounts. I also was able to construct a calculation of the overpayments made by St. Martins Cooperative from September, 1975 through May, 1999. The actual old bills and copies of the payment checks were not available for this time period. Since the overpayments were a calculated number based on acreage, rather than a metered calculation, the overpayments were simple to calculate based on the billing rates for the months in question. Using the billing rates provided by your department we were able to accurately calculate the overpayments made from September, 1975 through May, 1999.

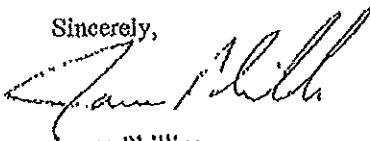
Several billing calculation corrections have been made by DWSD since we started this investigation in the fall of 2006; the latest was in June, 2008. As new bills arrived with new calculation methods in place the new numbers were included in our documentation of the bills and payments. All of these adjustments have been included in the final calculations. As of the June 27, 2008 billing date the DWSD calculation of the 5 accounts appears to be correct.

The following numbers are my calculation of the amount due to St. Martins Cooperative due to overpayments made since 1975. I have included the DWSD refund calculation from your June 24, 2008 letter for comparison. Copies of the complete documentation and calculation of these numbers are available for your review.

ACCOUNT #	20-0920.300	20-0921.301	20-0922.301	20-0923.300	20-0924.300	TOTAL
DWSD CALCULATION OF REFUND DUE PER 6/24/08 LETTER						
	\$838.64	(\$37,171.87)	(\$42,219.88)	\$35,491.05	(\$14,703.43)	(\$57,785.49)
OUR CALCULATION OF REFUND DUE FOR ONLY THE LAST 6 YEARS IF STARTING WITH A \$0.00 BALANCE ON 1/01/02						
1/01/02 - 12/31/08	\$10,217.62	(\$100,353.05)	(\$55,185.17)	\$31,272.95	(\$21,066.81)	(\$135,115.36)
OUR CALCULATION OF TOTAL REFUND DUE FROM 9/76 - 12/08						
9/76 - 5/99	(\$14,377.92)	(\$132,787.87)	(\$86,198.24)	(\$16,892.24)	(\$40,888.01)	(\$291,142.08)
6/99 - 12/08	\$4,894.05	(\$146,050.50)	(\$84,965.63)	\$26,755.45	(\$35,321.30)	(\$235,677.93)
TOTAL 9/76 - 12/08	(\$9,383.87)	(\$278,838.17)	(\$171,161.87)	\$8,863.21	(\$76,209.31)	(\$526,720.01)

The combined credit balance for the five accounts now totals \$526,720.01 and would have been higher if, by agreement with DWSD, St. Martins had not suspended paying any bills at all in 2006. We are recommending the St. Martins Cooperative Board of Directors request a full refund in this amount.

Sincerely,



James Phillips

EXHIBIT G



CITY OF DETROIT
LAW DEPARTMENT

660 WOODWARD AVENUE
1650 FIRST NATIONAL BUILDING
DETROIT, MICHIGAN 48226-3535
PHONE: 313-224-4550
FAX: 313-224-5505
WWW.CLDetroit.MI.US

March 3, 2009

Florise Neville-Bwell
19535 Cumberland Way
Detroit, MI 48203

Re: St. Martin Cooperative

<u>Address</u>	<u>Account No.</u>
19820-38 Monte Vista	20.0920.300
19780 Monte Vista	20.0921.301
19781-815 Monte Vista	20.0922.301
10710 St. Martin	20.0923.300
10600 St. Martin	20.0924.300

Dear Ms. Neville-Bwell:

The Detroit Water and Sewerage Department has reviewed the documents that you submitted on February 10, 2009 concerning the accounts of the St. Martin Cooperative. DWSD does not believe that there is any legal basis for giving the Cooperative a credit or refund for bills and payments that are over six years old.

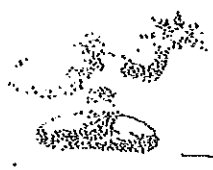
As I explained in my letter of June 21, 2007, these matters are governed by a six-year statute of limitations. The credits for overcharges that DWSD has already given to the Cooperative represent the extent of its legal liability. It will go no further and will offer no further compensation to your client. If your client wishes to pursue this matter further, it will have to do so in court.

Some of the accounts have large credit balances. DWSD is still willing to apply the credit balances to the amounts owed on the other accounts and refund the balance to the Cooperative. If the Cooperative wishes to take advantage of that, it can send a written request to Mr. Gary Watkins at the Water Board Building.

Very truly yours,

Robert C. Walter
Senior Assistant Corporation Counsel
313-237-3074

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RCW/lrm

cc: George Ellenwood, DWSD
Gary Watkins, DWSD
A.B. Covington

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EXHIBIT H

NOTICE OF PENDENCY AND SETTLEMENT OF CLASS ACTION

TO: ALL PERSONS OR ENTITIES WHO OR WHICH:
ON JULY 28, 2008 OWNED A RESIDENTIAL PROPERTY CONSISTING OF MORE THAN 4 RESIDENTIAL UNITS WHICH PROPERTY, BASED ON WATER AND SEWAGE METERS APPLICABLE TO SUCH PROPERTY, WAS ASSESSED SEWAGE CHARGES FROM THE DETROIT WATER BOARD AND SEWAGE DEPARTMENT CONTAINING AN IWC (INDUSTRIAL WASTE CONTROL) CHARGE AT ANY TIME FROM AND AFTER JUNE 1, 2001.

THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN, SOUTHERN DIVISION (THE "COURT") AUTHORIZED THIS NOTICE. THIS IS NOT A SOLICITATION FROM A LAWYER, THIS IS NOT A NOTICE THAT YOU HAVE BEEN SUED. THIS IS TO INFORM YOU THAT A CLASS ACTION HAS BEEN SETTLED FOR THREE MILLION DOLLARS (\$3,000,000) UNDER THE TERMS AND CONDITIONS DESCRIBED BELOW AND THAT ACCORDING TO THE RECORDS REVIEWED BY CLASS COUNSEL AS DESCRIBED BELOW, DEFENDANT'S COUNSEL, DEFENDANT AND THE COURT, YOU FIT INTO THE CLASS DEFINITION SET FORTH ABOVE AND WILL BE DEEMED PART OF THE CLASS UNLESS YOU EXPRESSLY EXCLUDE YOURSELF FROM THE CLASS IN WRITING PURSUANT TO THE INSTRUCTIONS BELOW.

The settlement is subject to Court approval, resolves a lawsuit over whether the Detroit Water Board can be held liable for restitution and reimbursement of IWC charges that erroneously were assessed Class Members during the time period above set forth. If you are a Class Member, your legal rights are affected by this settlement unless further steps are taken by you. Accordingly, read this notice carefully. This notice is also to inform you that the Court has scheduled a hearing on February 3, 2009 at 10:00 o'clock at AM to determine whether the settlement should be determined as being fair, reasonable and adequate, whether the plan for allocation of the settlement funds is fair and reasonable and should be approved and whether the attorney fees and costs payable to the attorneys respecting the class under the settlement are fair and reasonable.

BACKGROUND OF THE ACTION

The factual basis of the lawsuit is that the Defendant had been charging IWC charges to entities and persons which or who were not generating industrial waste. The initial complaint sought to enjoin further charging of IWC charges to those person and entities making up the class and claimed lack of governmental immunity for reimbursement of such charges under the Equal Protection clauses of Constitutions of the United States and the State of Michigan. The statute of limitations for such a claim was only 3 years. A subsequent amendment of the complaint alleged an exception to governmental immunity under a theory of restitution for involuntary payment, given the lien rights granted the Defendant under Michigan statutes to enforce payment of water and sewage charges. Based on such statutory lien rights, Plaintiff's lawyers contended that the payments made by Class Members were involuntary. Defendant has defended on the basis that there is no statute permitting the reimbursement of such funds

and no waiver of governmental immunity. Further, Defendant claims payments were voluntary and the charges were acceptable over a substantial period of time by all of those parties who make up the Plaintiff Class.

THE REASONS FOR THE SETTLEMENT, PROPOSED SETTLEMENT AND PLAN OF ALLOCATION

Given the extensive discovery that would have to be continued as well as the relative risks inherent in both the Plaintiff(s) position and the Defendant's defenses, Plaintiffs and Defendant agreed to settle the lawsuit. That way they avoid the costs of trial, extensive discovery and complex legal issues as well as appeals by the named parties. Attorneys for Plaintiff and Defendant have met on multiple occasions, separately and with the Court in negotiating a resolution and mutually compelling information necessary to determine the extent and breadth of the class and the claims being made. Plaintiffs' lawyers believe that the proposed settlement is fair and reasonable and in the best interest of the class because the settlement creates a Three Million Dollar (\$3,000,000) settlement fund and avoids considerable risks and delays involved in continuing the lawsuit. Because the Detroit Water Board is a non-profit entity that by ordinance may not generate a profit, credits will have to be issued in order to properly budget reimbursement into the future as there presently is no budget reserve created or authorized to satisfy this litigation.

Even though Defendant contends that it is not liable and would be protected under existing law, settlement means that Defendant does not have to continue to spend money, time and effort on a lawsuit when it can give money to class members instead and resolve their claims.

SETTLEMENT BENEFITS - WHAT YOU GET

Defendant has agreed to create a Three Million Dollar (\$3,000,000) fund to settle the lawsuit. All of this money will be paid out by way of credit and cash as described hereinafter. The costs of administering the settlement are to be borne exclusively by the Defendant including necessary notices to class members and generation of data approved by Class Counsel for purposes of allocating the credits to Class Members. The amount approved by the Court for Class Counsel's fees and expenses for their efforts on behalf of the class will be the only sum deducted from the fund. The Class Counsel have not received any payment for their services in connection of the initiation of this litigation, nor have they been reimbursed for their out of pocket expenses. Further, each one of their retainer agreements with the named class members called for a 1/3 contingency fee of the settlement fund; however, following complete and full negotiations it was agreed that the contingency fee would be reduced to 21.67% respecting the class members named as plaintiffs and the class members participating in this settlement or \$650,000. From the net remaining fund of \$2,350,000, credits will be issued to all of those persons who make up the class excluding those Class Members who opt out as provided below. The credits will be issued over 24 months in equal monthly amounts. The credits will be determined as follows: The formula for that determination will be by taking the

entire amount of the improper IWC charges covered by this settlement for the period of time covered by the settlement, determine each meter's percentage of that charge since June 1, 2001 and then take that meter's percentage against \$2,350,000 to determine the credit applicable to each meter and then divide that result by 24 to determine the amount of credit to be issued monthly per meter to each Class Member. For example, the entire amount of the IWC charges is \$4,700,000.00. If a meter's charge represents .10% of that amount, then .10% times \$2,350,000 would be \$2,350 representing the amount available to the owner of residential property to which the meter is applicable. Accordingly, each credit for a 24 month period would be \$97.92 per month..

Payments will not be made unless and until the Court grants final approval to the settlement and a Final Approval Order has been completed and entered and not appealed from. Any amounts that otherwise would have been available to Class Members who opt out of the class, will be disbursed by credits to all remaining settlement class members in conformity with the same formula as above set forth. The Defendant Detroit Water Board will have a list of Class Members and an estimate of the total credits available on a per meter basis to eligible Class Members. It can be found at www.dwb.org, and/or whatever other website is chosen by the City for such posting. It is an estimate since, if an eligible Class Member opts out that Member's credits will be allocated to the whole class per the formula above. This same list is also available for review at the Law Offices of Becker & Wasvary, P.L.L.C., 2301 W. Big Beaver Rd, STE 318, Troy, MI 48064.

If you do not exclude yourself from the settlement, you will start receiving credits as soon as the next billing following final approval and judgment in this case. The Court will hold a hearing on February 3, 2009 to decide whether to approve the settlement. Please note, however, if this settlement is approved it is possible that there might be an appeal by someone, therefore please be patient.

Unless you exclude yourself, you are staying in the class. That means you will give up any claims relating to the lawsuit and cannot individually sue the Detroit Water Board for charging the IWC charge to you. The United States District Court for the Eastern District of Michigan, Southern Division is in charge of the case and the case is known as "Village Center, et al v City of Detroit, Department of Water and Sewerage, Case No. 07-12983". (the "Lawsuit")

The people who sued are called the Plaintiffs and the City of Detroit is called the Defendant.

EXCLUDING YOURSELF FROM THE CLASS.

If you do not want credits from this settlement and instead want to keep your claims and right to sue the Detroit Water Board on your own, then you must take steps to get out of the class. This is called "excluding yourself from or opting out of the class".

If you decide to exclude yourself from the class, you will need to hire your own lawyer at your own expense. Class Counsel cannot and will not represent class members who exclude

themselves from the settlement. To exclude yourself from the class you must send a letter by first class mail stating that you want to be excluded from "Village Center, et al v City of Detroit, Department of Water and Sewerage, Case No. 07-12963". Be sure to include your name, address, telephone number, account number and your signature as well as the date. To be valid an exclusion request must be received no later than January 9, 2009 by the Detroit Water Board at:

City of Detroit
Department of Water and Sewerage
735 Randolph Street, Suite 806
Detroit, Michigan 48226.

If you ask to be excluded from the class, you will not receive any settlement credit and you can not object to the settlement. If you exclude yourself you will not be legally bound by anything that happens in this lawsuit.

The law firm that brought the lawsuit has been representing you and other class members, these lawyers are called Class Counsel and are Carl G. Becker and Mark Wasvary from Becker & Wasvary, PLLC. You can send any questions you might have to them by contacting them at:

Carl G. Becker, Esq.
Mark Wasvary, Esq.
2301 W. Big Beaver, Suite 318
Troy, Michigan, 48064.

Class Counsel has worked on this case so far without receiving any payments at all for their work or their out of pocket expenses. They will ask the Court for attorney fees plus reasonable out of pocket costs and expenses of up to 21.67% of the settlement fund for all of the lawyers that worked on the case. Defendant and Defendant's counsel have agreed that the fees are fair and reasonable under the circumstances and will not oppose the request. The fees are tied to the settlement agreement and if not approved, the settlement will not be consummated. The payment of the fees will come out of the settlement fund.

OBJECTIONS TO SETTLEMENT

If you are a class member you can object to the settlement if there is some part of the settlement you do not like. You can give reasons why the Court should not approve it. The Court will consider the views of all objections. The objector must send a letter stating that he/she/it objects to the settlement. At the top of your letter objecting to the settlement write "notice of intent to appear in "Village Center, et al v City of Detroit, Department of Water and Sewerage, Case No. 07-12963". Be sure to include your name, address, account number and telephone number, your signature, date and the reason you object to the settlement. In order for your objection to be considered by the Court, it must be received by the Defendant at the address set forth below no later than January 9, 2009 at:

City of Detroit
Department of Water and Sewerage
735 Randolph Street, Suite 808
Detroit, Michigan 48226.

COURT'S FAIRNESS HEARING

The Court will hold a hearing to decide whether to approve the settlement. You do not need to attend that hearing but are welcome to attend if you so desire. The court will hold a fairness hearing on February 3, 2009 at 10:00 o'clock a.m. in the courtroom of Judge John Faikens on the 8th Floor of the Theodore Levin United States Courthouse located at 231 W. Lafayette Blvd, Detroit, Michigan, 48226. At this hearing, the Court will consider whether the settlement is fair, reasonable and adequate. If there are objections the Court will consider them. The Court will listen to people who have made a written request to speak at the hearing as above provided. After the hearing the Court will decide whether to approve the settlement including payment to Class Counsel. We do not know how long these decisions will take. In order to speak at the hearing, you must have sent in a timely objection that was received by the Defendant no later than January 9, 2009. You cannot speak at the hearing if you exclude yourself from the class.

IF YOU DO NOTHING AT ALL, YOU WILL BE CONSIDERED PART OF THE SETTLEMENT CLASS AND YOU WILL RECEIVE CREDITS FROM THE SETTLEMENT.

GETTING MORE INFORMATION

This notice summarizes the most important aspects of the proposed settlement. For more detailed information, the complete Court file in the lawsuit is available for inspection in the office of the Clerk of the Court during regular business in the United States District Court, Eastern District of Michigan, Southern Division at 231 W. Lafayette Blvd, Detroit, Michigan, 48226. Should you have any questions in respect to this notice, the proposed settlement, or the litigation generally please address your request to Class Counsel for the class or to your own attorney. Do not contact the Court regarding these questions.

Dated: September 23, 2008

BY ORDER OF THE UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF MICHIGAN, SOUTHERN DIVISION

EXHIBIT I

A Non-Partnership Affiliation of Professional Corporations

24901 Northwestern Highway, Suite 113
Southfield, MI 48075
(248) 350-5900
(248) 350-9865 (Facsimile)

Of Counsel
Richard B. Beemer

2009-10-27 PM 4:09


NEW SERVICES OF LEE & CORRELL

Michael K. Lee

EXHIBIT J

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

St. Martins Cooperative,

Plaintiff,

v.

Case No. 09-13128

City of Detroit Water and Sewerage
Department, *et al.*,

Honorable Sean F. Cox

Defendants.

OPINION & ORDER

In this action, Plaintiff St. Martins Cooperative ("Plaintiff") asserts claims against the City of Detroit Water and Sewerage Department ("DWSD") and the Detroit Board of Water Commissioners (collectively "Defendants") relating to various charges that Plaintiff incurred for water and sewerage services. The matter is currently before the Court on Defendants' Motion to Dismiss and/or for Summary Judgment. The Court finds that the issues have been adequately presented in the parties' briefs and that oral argument would not significantly aid the decisional process. *See* Local Rule 7.1(f)(2), U.S. District Court, Eastern District of Michigan. The Court therefore orders that the motion will be decided upon the briefs. For the reasons that follow, the Court shall GRANT Defendants' motion to the extent that the Court shall rule that Plaintiff is entitled to judgment in the amount of \$5,132.55 with respect to Plaintiff's equal protection claim. In addition, because this Court is disposing of Plaintiff's only federal-claim prior to discovery or issuance of a scheduling order, this Court shall decline to exercise supplemental jurisdiction over

Plaintiff's remaining state-law claims, which clearly predominate in this action, and shall dismiss those claims without prejudice.

BACKGROUND

In *Village Center Assoc. v. City of Detroit*, Case No. 07-12963, owners of multi-unit residential buildings brought a class action suit against the City of Detroit alleging that they were improperly assessed an Industrial Waste Control ("IWC") charge in violation of Michigan and Federal Equal Protection clauses and Detroit's municipal code. More specifically, the residential building owners alleged that it was a "constitutionally improper classification" to apply an IWC charge to those who owned residential buildings with five or more units, while not collecting the IWC charge from those who owned residential buildings with four or less units, where, allegedly, neither group generated industrial waste and/or the cost of controlling industrial waste was the same among the two groups when measured on a per-unit basis. *Village Center* was assigned to the Honorable John Feikens. *Village Center* ultimately settled, with St. Martins being the only putative class member opting out of the class-action settlement. (Pl.'s Resp., Ex. J (*Village Center*, No. 07-12963 (E.D. Mich. Feb. 3, 2009) (final judgment and order)).

On August 10, 2009, Plaintiff, acting through counsel, filed this action in federal court. The action was originally assigned to the Honorable George Caram Steeh.

Plaintiff's complaint alleges that the Court "has jurisdiction because this matter arises out of a previous matter before this Court, specifically Case No. 2:07-cv-12963, which has been dismissed." (Compl. at ¶ 3). Plaintiff's complaint alleges the following four counts: "Breach of Contract" (Count I); "Actual Fraud/Intentional Misrepresentation" (Count II); "Constructive Fraud / Negligence Or 'Innocent' Misrepresentation" (Count III); and "Unjust Enrichment"

(Count IV).

In addition, in the body of the complaint, in a section titled "Common Allegations," Plaintiff alleges that:

Since at least 1975, the Defendant Detroit Water Dept. has been knowingly charging the Plaintiff St. Martins a rate that is higher than the pre-approved rate for the water and sewerage services and based on a constitutionally improper classification of the Plaintiff St. Martins.

(Compl. at ¶ 9).

On August 24, 2009, this action was reassigned from Judge Steeh to Judge Feikens.

(Docket Entry No. 5).

On April 27, 2010, Judge Feikens issued an Order to Show Cause (Docket Entry No. 7), which directed Plaintiff's counsel to respond in writing and explain why Plaintiff's counsel had ignored correspondence from the Court. Thereafter, Judge Feikens held a status conference, at which time Defendants indicated they would be filing an early dispositive motion. Neither Judge Steeh nor Judges Feikens issued a scheduling order in this action and it does not appear that discovery has begun.

Defendants filed their Motion to Dismiss and/or for Summary Judgment on July 15, 2010. Plaintiff filed its Response Brief on August 16, 2010, and Defendants filed their Reply Brief on August 18, 2010.

On October 22, 2010, Judge Feikens asked the parties for supplemental briefing. Defendants filed their Supplemental Brief on November 19, 2010.

On November 24, 2010, this action was reassigned to this Court, along with Case No. 77-1100 and several other cases.

On December 13, 2010, Plaintiff filed its supplemental brief.

ANALYSIS

A. This Court Has Federal Question Jurisdiction Over Plaintiff's Inartfully Pleased Equal Protection Claim.

It is undisputed that the parties in this action are all Michigan citizens and therefore diversity jurisdiction does not exist. Moreover, each of the enumerated counts in Plaintiff's complaint (Counts I, II, III and IV) assert state-law claims.

Defendants contend that this Court lacks subject matter jurisdiction over this action and ask this Court to dismiss it under FED. R. CIV. P. 12(b)(1).

A motion to dismiss under FED. R. CIV. P. 12(b)(1) for lack of subject-matter jurisdiction comes in two varieties: a facial challenge, which tests the sufficiency of the pleading, or a factual challenge, which, as the name implies, attacks the factual basis for jurisdiction. *See RMI Titanium Co. v. Westinghouse Elec. Corp.*, 78 F.3d 1125, 1134 (6th Cir. 1996) (quoting *Mortensen v. First Fed. Savings and Loan Ass'n*, 549 F.2d 884, 890-91 (3d Cir. 1977)); *Ohio Nat'l Life Ins. Co. v. United States*, 922 F.2d 320, 325 (6th Cir. 1990). Under a facial challenge, the court must accept as true all the allegations in the complaint, and draw all reasonable inferences in favor of the non-moving party. *See Ohio Nat'l Life Ins. Co.*, 922 F.2d at 325. On the other hand, in a factual attack, the allegations in the complaint are not presumed true, and a district court may look beyond the pleadings and weigh competing evidence to determine whether subject-matter jurisdiction exists. *Id.*; *RMI Titanium Co.*, 78 F.3d at 1134.

Here, Defendants assert that "[P]laintiff has *failed to plead* a claim based on a federal question, and as such" the Court lacks subject-matter jurisdiction. (Docket Entry No. 10 at 1)

(emphasis added). Because Defendants have made a facial challenge, in determining the existence of subject-matter jurisdiction the Court shall accept as true the allegations in the Complaint, and draw all reasonable inferences in Plaintiff's favor.

In response to Defendants' motion, Plaintiff asserts that this Court has subject-matter jurisdiction over the claims asserted in its Complaint because Plaintiff has alleged a violation of the Federal Constitution pursuant to 42 U.S.C. § 1983. Although not asserted in one of the enumerated counts of the complaint, Plaintiff does allege that "[s]ince at least 1975, the Defendant Detroit Water Dept. has been knowingly charging the Plaintiff St. Martins a rate that is higher than the pre-approved rate for the water and sewerage services and based on a *constitutionally improper classification* of the Plaintiff St. Martins." (Compl. at ¶ 9) (emphasis added).¹

Although St. Martins' equal protection claim could have been pleaded better, and presented in a separate count, viewing the Complaint in the light most favorable to St. Martins, and drawing reasonable inferences therefrom, the Court finds that a federal question exists on the face of the Complaint. It is not unreasonable to construe the phrase "constitutionally improper classification" as alleging that by collecting the IWC charge from St. Martins, DWSD has violated the Equal Protection Clause of the Fourteenth Amendment of the Federal Constitution. *Cf. Wittstock v. Mark A. Van Sile, Inc.*, 330 F.3d 899, 901-902 (6th Cir. 2003) (upholding district court's finding that complaint alleged a cause of action based on 42 U.S.C. § 1983 and, therefore,

¹Plaintiff also asserts that it should be allowed to amend its complaint if the Court finds that its complaint does not adequately plead its equal protection claim. (Docket Entry No. 12 at 5).

that there was subject-matter jurisdiction, where the complaint merely stated “[t]his action arises under the due process clause of the Fifth and Fourteenth Amendments to the Constitution of the United States.”).

That conclusion is supported by the fact that the Complaint also avers, “This court has jurisdiction because this matter arises out of a previous matter before this court, specifically [*Village Center Assoc. v. City of Detroit*].” (Compl. ¶ 3.) As discussed, *Village Center* was a class-action alleging that the City of Detroit violated the Federal Equal Protection Clause by improperly billing an IWC charge to some residential building owners but not others similarly situated. Further, St. Martins explains that it “opted-out of the Class Action on January 7, 2009; and then . . . filed the present action, based on the same transaction and occurrences.” (Pl.’s Resp. at 4.) Thus, the Complaint’s reference to a “constitutionally improper classification,” along with its express reference to the claims asserted in the *Village Center* case, are sufficient to plead an equal protection claim under §1983.

Because a federal Equal Protection Clause violation may be brought pursuant to 42 U.S.C. § 1983, *see e.g., Fitzgerald v. Barnstable School Committee*, 555 U.S. 246, 129 S.Ct. 788, 796-97 (2009); *Reynolds v. Sims*, 377 U.S. 533, 537 (1964), this Court has subject-matter jurisdiction over Plaintiff’s Federal Equal Protection claim.

B. It Is Undisputed That Plaintiff Is Entitled To Judgment In The Amount Of \$5,132.55 With Respect To Its Equal Protection Claim.

The only federal claim presented in Plaintiff’s complaint is the equal protection claim. Because that is the only federal claim and this case is at an early stage of the litigation, this Court will evaluate Defendants’ summary judgment argument as to this claim before determining

whether or not to exercise supplemental jurisdiction over the state-law claims.

Again, Plaintiff's equal protection claim in this action, like the equal protection claims in *Village Center*, is based upon the allegation that it was a "constitutionally improper classification" for DWSD to apply an IWC charge to those who owned residential buildings with five or more units, while not collecting the IWC charge from those who owned residential buildings with four or less units. Plaintiff's equal protection claim does not involve drainage charges.

Plaintiff's expert, James Phillips, conducted an analysis of DWSD billing records in order to determine: 1) the amount of IWC charges that Plaintiff was charged from 1999 to 2008; and 2) the amount of drainage charges² that Plaintiff was overcharged during that same period. (See Exs. K & L to Pl.'s Brief). Exhibit L to Plaintiff's Brief is a spreadsheet showing Plaintiff's expert's calculations. In the far right-hand side of the various pages, he states the various IWCs that DWSD charged to Plaintiff. The total amount of those charges, \$5,132.55, is found on page 19, the last page of the spreadsheet, in the lower right-hand corner. Thus, as to the IWC charges – the only charges at issue with respect to Plaintiff's equal protection claim – Plaintiff's expert states that Plaintiff was improperly charged a total of \$5,132.55.

Notably, Defendants do not dispute that Plaintiff is entitled to \$5,132.55 on its equal protection claim. In Defendants' Motion, Defendants states that "DWSD consents to payment of" that amount to Plaintiff "and/or Judgment being entered in the amount of \$5,132.55." (Defs.' Br., Docket Entry No. 10, at 11). Defendants contend that Plaintiff "never had to file suit to get this money" because DWSD acknowledged this amount was owed to Plaintiff before this action

² Plaintiff's state-law claims are based upon drainage charges.

was filed. (See Docket Entry No. 10 at 11; Docket Entry No. 15 at 2).

Accordingly, the Court shall grant summary judgment in favor of Plaintiff with respect to its equal protection claim and issue a judgment in favor of Plaintiff in the amount of \$5,132.55.

C. Having Resolved The Only Federal Claim In This Action At An Early Stage In The Litigation, The Court Declines To Exercise Supplement Jurisdiction Over The Remaining State-Law Claims.

The Court is resolving Plaintiff's only federal claim in this action because the parties agree, prior to discovery or issuance of a scheduling order in this case, that Plaintiff is owed the amount it seeks for IWC charges in connection with its equal protection claim. As such, the Court must consider whether it should exercise supplemental jurisdiction over Plaintiff's remaining state-law claims:

The applicable statute regarding supplemental jurisdiction, 28 U.S.C. § 1367, provides, in pertinent part, that district courts may decline to exercise supplemental jurisdiction over a claim when:

- 1) the claim raises a novel or complex issue of State law;
- 2) the claim substantially predominates over the claim or claims over which the district court has original jurisdiction;
- 3) the district court has dismissed all claims over which it has original jurisdiction, or
- 4) in exceptional circumstances, there are other compelling reasons for declining jurisdiction.

28 U.S.C. § 1367(c).

In addition, the Sixth Circuit has stated that a federal court that has disposed of a plaintiff's federal-law claims "should not ordinarily reach the plaintiff's state-law claims." *Moon v. Harrison Piping Supply, et al.*, 465 F.3d 719 (6th Cir. 2006). "Residual jurisdiction should be exercised only in cases where the 'interests of judicial economy and the avoidance of multiplicity

of litigation' outweigh" concerns "over needlessly deciding state law issues.'" *Id.* (quoting *Landefeld v. Marion Gen. Hosp., Inc.*, 994 F.2d 1178, 1182 (6th Cir. 1993)).

Here, the Court is resolving Plaintiff's only federal claim prior to the commencement of discovery or issuance of a scheduling order. In addition, the Court concludes that Plaintiff's state-law claims clearly predominate over the federal claim over which this court has original jurisdiction. Indeed, Plaintiff's complaint does not even include its equal protection claim in a separate count and DWSD acknowledged that Plaintiff was entitled to \$5,132.55 for IWC charges before this action was filed. Accordingly, this Court declines to exercise supplemental jurisdiction over Plaintiff's state-law claims and shall dismiss those claims without prejudice.

CONCLUSION & ORDER

For the reasons set forth above, IT IS ORDERED that Defendants' Motion to Dismiss and/or for Summary Judgment is GRANTED to the extent that the Court concludes that Plaintiff is entitled to a judgment in the amount of \$5,132.55 with respect to Plaintiff's equal protection claim.

IT IS FURTHER ORDERED that, for the reasons set forth above, this Court DECLINES TO EXERCISE SUPPLEMENTAL JURISDICTION over Plaintiff's remaining state-law claims and DISMISSES Counts I, II, III, and IV WITHOUT PREJUDICE.

IT IS SO ORDERED.

S/Sean F. Cox

Sean F. Cox

United States District Judge

Dated: April 25, 2011

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

St. Martins Cooperative,

Plaintiff,

v.

Case No. 09-13128

City of Detroit Water and Sewerage
Department, *et al.*,

Honorable Sean F. Cox

Defendants.

_____ /

PROOF OF SERVICE

I hereby certify that a copy of the foregoing document was served upon counsel of record
on April 25, 2011, by electronic and/or ordinary mail.

S/Jennifer Hernandez
Case Manager