

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

JOSEPH R. REISINGER,	:	CIVIL ACTION-LAW
	:	
Plaintiff	:	JURY TRIAL DEMANDED
	:	
vs.	:	Case No.
	:	
THE CITY OF WILKES-BARRE,	:	
THOMAS LEIGHTON,	:	
FRANCIS KRATZ,	:	
MICHAEL SIMONSON,	:	
TED KROSS,	:	
JOSEPH RODANO, and	:	
EDWARD PESOTSKI	:	
	:	
Defendants	:	

COMPLAINT

The Plaintiff, Joseph R. Reisinger, *pro se*, files this Complaint, and in support hereof, respectfully submits the following:

INTRODUCTION

The Plaintiff now files this Complaint asserting various claims against the Defendants, because of all of the damages that the Plaintiff has sustained as a result of the Defendants sending the Plaintiff illegal citations and illegal notices in regard to certain property matters, for which he has no legal responsibility to address, said actions by the Defendants being in violation of

the Plaintiff's constitutional rights and also constituting tortious acts, all as detailed in this Complaint.

Specifically, twenty-five of the Plaintiff's properties located in the City of Wilkes-Barre were exposed to an upset price sale by the Luzerne County Tax Claim Bureau (the "TCB"), on December 5, 2008, and no bids were received for any of them, and after that date, pursuant to the Real Estate Tax Sales Act of 1947 (the "RETSA"), the Plaintiff no longer owned those properties, but in spite of same, the Defendants sent a substantial number of illegal citations and illegal notices to the Plaintiff for various maintenance matters related to the above properties.

THE PARTIES

1. The Plaintiff, Joseph R. Reisinger, is an adult individual who resides at 444 South Franklin Street, Apt. # 1, Wilkes-Barre, Luzerne County, PA.

2. The Defendant, the City of Wilkes-Barre (the "City"), is a municipality duly incorporated within the Commonwealth of Pennsylvania, with a principal place of business at 40 East Market Street, Wilkes-Barre, Luzerne County, PA.

3. The Defendant, Thomas Leighton ("Leighton"), at all times relevant hereto, was the Mayor of the City of Wilkes-Barre, with a principal

place of business at 40 East Market Street, Wilkes-Barre, Luzerne County, PA.

4. The Defendant, Francis Kratz (“Kratz”), although not qualified to do so, at all times relevant hereto, was formerly serving as the Director of the Code Enforcement Office for the City of Wilkes-Barre, with a principal place of business at 40 East Market Street, Wilkes-Barre, Luzerne County, PA.

5. The Defendant, Michael Simonson (“Simonson”), at all times relevant hereto, was the Assistant Director of Operations for the City of Wilkes-Barre, with a principal place of business at 40 East Market Street, Wilkes-Barre, Luzerne County, PA.

6. The Defendant, Ted Kross (“Kross”), at all times relevant hereto, was the Director of the Health Department for the City of Wilkes-Barre, with a principal place of business at 71 N. Franklin Street, Wilkes-Barre, Luzerne County, PA.

7. The Defendant, Joseph Rodano (“Rodano”), at all times relevant hereto, was a representative of the Health Department for the City of Wilkes-Barre, with a principal place of business at 71 N. Franklin Street, Wilkes-Barre, Luzerne County, PA.

8. The Defendant, Edward Pesotski (“Pesotski”), at all times relevant hereto, was a representative of the Health Department for the City

of Wilkes-Barre, with a principal place of business at 71 N. Franklin Street, Wilkes-Barre, Luzerne County, PA.

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A. The Upset Price Sale

9. As stated above, the Plaintiff, on January 1, 2008, owned twenty-five properties in the City of Wilkes-Barre, Luzerne County (the “Plaintiff’s Properties”), all of which had unpaid real estate taxes, and a list of same is attached as Exhibit A, Property List.

10. Also, as stated above, in July of 2008, the TCB instituted real estate tax sales procedures, pursuant to the RETSA, listing the Plaintiff’s Properties for exposure at the upset price sale then scheduled for December

5, 2008, and at the time of the above upset price sale of the Plaintiff's Properties, no bids for any of the Plaintiff's Properties were received.

B. Effect of RETSA

11. Because of the above upset price sale of the former Plaintiff's Properties, and because no bids were received, pursuant to the RETSA, the TCB then became the owner of the Plaintiff's Properties, as a trustee, by operation of law, based on the following statutes and case law.

12. More specifically, the above automatically occurs by operation of the provisions provided in 72 P.S. § 5860.608 of the RETSA, which reads, in part, as follows:

“§ 5860.608. Deed

After the court has confirmed the sale and the purchaser has paid the amount of his bid, it shall be the duty of the bureau to make to the said purchaser, his or their heirs or assigns a deed in fee simple for the property sold. Each such deed shall be in the name of the bureau as trustee grantor...” (emphasis added)

13. Additionally, 72 P.S. § 5860.615 of the RETSA provides for basically the same as the above, which reads, in part, as follows:

“§ 5860.615. Deeds

When the price for the private sale of any said property has been finally approved or confirmed, as hereinbefore provided, the bureau shall upon payment over of the purchase price less the option money, if any, make to the purchaser, his or their heirs or assigns, a deed in fee simple for the property sold. Each such deed shall be in the name of the bureau, as trustee grantor and shall be executed and duly acknowledged before the

prothonotary by the director. Such deed shall convey title to the purchaser free, clear and discharged of all tax claims and tax judgments, whether or not returned, filed or entered, as provided by this or any other act.” (emphasis added)

14. Finally, the Court, in *Commonwealth of Pennsylvania v. Sprock*, 795 A.2d 1100 (Pa. Commw. 2002), dealt with a situation where there was a citation by a municipality to the prior record owners in reference to a property that had been listed at an upset price sale and for which no bids were received, and in that regard held as follows:

“Sections 608 and 615 of the Law instruct that the deed to a tax delinquent property sold at an upset sale shall be conveyed by the bureau as trustee, which is a person or entity holding legal title to property for the benefit of another. Thus, it is clear that a tax claim bureau must become trustee of a property at the moment it concludes the upset sale, that is, when the property is struck down, and legal title to the tax delinquent property passes to the tax claim bureau, as trustee, at that time, which is the most appropriate time for that to happen because the owner's right of redemption at that time is extinguished. We so hold.” (emphasis added)

15. In summary, if bids are received for a listed property at an upset price sale, the person who submitted the acceptable bid becomes the new owner of record of the listed property, and said person is to be the proper recipient of any maintenance citations after the date of the upset price sale in regard to the listed property, which the new owner just purchased.

16. Further, if there were no bids received for a listed property at an upset price sale, at that point, the TCB becomes the owner of the property, but does not become the owner of record, because it does not need to do so,

because of the above statute, and in those instances where the TCB becomes the owner, the municipality within which the property is located maintains the subject property, because the TCB never has the staff to accomplish that task.

17. Finally, under no circumstances does the prior record owner continue to have any legal responsibility in regard to any of the maintenance matters related to any of the listed properties at a prior upset price sale, which is what happened on numerous occasions in this case.

18. Also, part of the sales process initiated by the TCB, as required by the RETSA, when the TCB is conducting the upset price sale of properties, involves an extensive amount of public advertising, whereby, for example, advertising by a local newspaper is required on a periodic basis in advance of the above upset price sale, and therefore it is impossible for the Defendants not to have known that the Plaintiff's Properties were all listed for the upset price sale on December 5, 2008.

19. Further, the above statutes were enacted in Pennsylvania in 1947 as part of the RETSA, and therefore, obviously the Defendants in 2010, 63 years after the above statutes were enacted, knew what the effect of the above statutes were on the administration and enforcement of the City's construction code and property maintenance code.

20. Therefore, because of the above statutes and case law, the substantial advertising and the passage of 63 years since the enactment of the RETSA, the Defendants obviously had an obligation to determine, after each upset price sale is conducted by the TCB, which properties in the City were listed for which no bids were received, because thereafter, in reference to those properties, obviously the TCB is treated as the owner of those properties, and not the prior record owner, for purposes of future citations by the City's representatives in regard to maintenance matters, etc.

21. In sum, because of all of the above, for all of the properties located in the City for which no bids were received at an upset price sale, the prior record owner should receive no further property citations, etc.

C. Illegal Citations and Notices

22. However, even though it is obvious, because of the above statutes and case law, substantial advertisement and the passage of 63 years since the enactment of the RETSA, that the Plaintiff has not been the owner of the former Plaintiff's Properties since December 5, 2008, attached as Exhibit B, Citations, is a copy of twenty four citations (each a "Citation"), all dated on or after December 5, 2008, that some of the named Defendants herein have illegally been forwarding to the Plaintiff, complaining about garbage cleanup and other maintenance matters relating to some of the

former Plaintiff's Properties, many of which Citations to date the Plaintiff has properly addressed, fearing prosecution by the Defendants.

23. Also, the Plaintiff received seven notices (each a "Notice") from Simonson, after December 5, 2008, which deal with attempts to force the Plaintiff to address certain alleged hazardous conditions that exist with four of the former Plaintiff's Properties that, since December 5, 2008, have been left vacant and have now been the victim of arson, which caused substantial damage, and a copy of each said Notice is attached as Exhibit C, Notices.

24. For example, one of the Notices that the Plaintiff received since December 5, 2008 from Simonson that threatens him pertains to 6 Monroe St. and reads as follows:

"The structure located at 6 Monroe Street in Wilkes-Barre, PA has been deemed unsafe and a danger to public welfare. According to the Wilkes-Barre City Code of Ordinances section 7-25(a) Unsafe buildings:

- (a) Removal or repair of buildings. Whenever any building, structure or part thereof or appurtenances thereto shall have been declared dangerous or unsafe by the building inspector or his designee or the fire inspector, be demolished, taken down or removed

The penalties for not completing the work according to Section 7-26 (c)(2) of the City Code of Ordinances states:

- (a)(2) The owner of a building, structure or premises where anything in violation of these building regulations shall be... guilty of a separate offense and upon conviction thereof be liable

to a fine of not more than one thousand dollars (\$1,000.00) for each offense. Each day that the violation or unsafe condition shall continue shall constitute a separate offense and shall be liable to a fine of not more than one thousand dollars (\$1,000.00).” (emphasis added)

25. Therefore, as set forth above, each illegal Notice that the Plaintiff has received since December 5, 2008 threatens the Plaintiff that if he did not make substantial repairs to or demolish the former Plaintiff's Property involved with the particular Notice, Simonson would subject him to a \$1,000 per day fine and possible imprisonment, if he did not pay the fine.

26. Further, because it costs approximately \$20,000 to \$25,000 to demolish a single family home, have all of the debris hauled from the site, and then to have the site leveled, as required by each above Notice, the Plaintiff was confronted with a situation where Simonson, on behalf of the City, and at Leighton's direction, was going to fine the Plaintiff \$1,000 per day for each of the above four properties (\$4,000 per day in total), unless the Plaintiff expended a total of \$80,000 to \$100,000 to demolish the above four buildings that the Plaintiff no longer owned or had any legal responsibility to address.

27. Thus, Simonson gave the Plaintiff the choice of either paying \$4,000 per day in penalties, until he exhausted all of his funds, and then he could potentially be imprisoned for contempt, or to pay the \$80,000 to \$100,000, as illegally required by Simonson, in demolition costs.

28. Also, there has been a substantial history of the City, specifically by Leighton and Kratz (in matters not involved herein that occurred in 2006 and 2007, including a three week forced closure and an immediate evacuation of four successive law practice settings established by the Plaintiff to allow him to then try to continue to serve his law clients and his tenants) previously (i) violating the Plaintiff's constitutional rights, and also (ii) making him the victim of a substantial amount of tortious acts, all as detailed in the complaint filed by the Plaintiff in the United States District Court for the Middle District of Pennsylvania against various defendants, including the City, Leighton and Kratz (the "1983 Complaint"), and a copy of the 1983 Complaint is attached as Exhibit D, 1983 Complaint.

29. Also, it is most troublesome that Simonson, who serves at Leighton's direction, is the signatory to all of the illegal Notices that the Plaintiff has received that obviously present the imposition of very severe financial consequences to the Plaintiff irrespective of whether he did or did not comply with the illegal Notices.

30. Simonson, by being in the above position, at Leighton's direction, to force the Plaintiff to now pay the above \$80,000 to \$100,000 in funds to demolish four of the former Plaintiff's Properties, that the Plaintiff has no legal responsibility to address, would obviously make it much more difficult, after the Plaintiff expended the above funds, for the Plaintiff to

continue to fund the costs of the litigation related to the 1983 Complaint, and this extreme difficulty would obviously benefit Leighton, who was one of the primary perpetrators of all of the illegal actions on behalf of the City as referenced in the 1983 Complaint.

31. Additionally, in regard to the above illegal Citations and illegal Notices, the Defendants have now undertaken improper enforcement actions against the Plaintiff in reference to same, because of the Plaintiff's failure to address some of the matters in the most recent illegal Citations and illegal Notices, and attached as Exhibit E, Summonses, is a copy of seven summonses that have been served on the Plaintiff to date, related to matters set forth in certain outstanding illegal Citations and illegal Notices, and the total amount of the fines threatened to be assessed against the Plaintiff at this time is \$15,462.00

32. Further, attached as Exhibit F, Bench Warrant, is a copy of a "Bench Warrant" related to the Plaintiff's non-compliance with one of the illegal Citations issued by one of the Defendants, that was served on the Plaintiff by a Constable on Monday, June 21, 2010, and attached as Exhibit G, Copy of Check, is a copy of a check in the amount of \$614.50, made payable to District Court 11-1-01, that the Plaintiff had to pay on June 21, 2010 in reference to the above Bench Warrant to avoid immediate arrest.

D. Costs Incurred

33. As stated above, after the upset price sale of twenty-five of the former Plaintiff's Properties on December 5, 2008, the Plaintiff began to receive illegal Citations related to some of them.

34. After the above first illegal Citation was sent to the Plaintiff, the Plaintiff then reviewed the list of the twenty-five former Plaintiff's Properties in the City to determine which ones were still being managed by the Cadle Company II, Inc. ("Cadle"), who is the nefarious company that is named as a co-defendant, with the City, Leighton and Kratz in the 1983 Complaint, and that amount was three, and therefore the remaining number of twenty-two of the former Plaintiff's Properties are referred to herein as the "Remaining Properties".

35. The Plaintiff, then fearing an ongoing avalanche of illegal Citations and illegal Notices by the Defendants because of the tremendous amount of animosity already displayed towards the Plaintiff, by virtue of the outrageous conduct of the Defendants as described in the 1983 Complaint, the Plaintiff undertook addressing all of the maintenance needs, such as hauling and garbage removal, related to all of the former Plaintiff's Remaining Properties.

36. Therefore, from December 5, 2008, the date of the first illegal Citation related to one of the twenty-five former Plaintiff's Properties, the

Remaining Properties were put on a list to have all of their respective maintenance needs addressed, irrespective of whether they had previously been listed at the upset price sale on December 5, 2008.

37. The types of maintenance issues the Plaintiff addressed, related to the Remaining Properties, from December 5, 2008, until present date, a total of nineteen months, were snow removal, lawn care, garbage cleanup and hauling, making the exteriors secure of some of the listed properties as needed, and addressing the needs of any nearby neighbors, for purposes of resolving any concerns that they had with any of the above Plaintiff's Remaining Properties.

38. In sum, it is obvious, based on all of the above, that the Plaintiff had absolutely no legal responsibility to address any of the above maintenance matters, but did so because of his fear of possibly antagonizing the Defendants, who could then potentially illegally attempt to close his law office again in the future, and undertake again attempts to destroy his remaining law practice, and all of those prior attempts to do so by the Defendants are described in detail in the 1983 Complaint.

39. Further, because of the fact that the Plaintiff addressed many of the above maintenance matters, he incurred substantial expenses since December 5, 2008 to pay for the payroll expenses and hauling costs, etc., related to all of the above, and at this time, the costs related thereto have

been determined to be \$43,836.81, as set forth on the attached as Exhibit H, Costs Incurred.

40. Based on the above determination of the Plaintiff's total costs of \$43,836.81, related to the above, included in that amount is \$37,576.23, for maintenance services, and at \$15/hour, it would indicate that from December 5, 2008, to June 11, 2010, there had been a total of 2505 hours of maintenance services provided by the Plaintiff's employees.

41. Further, it is believed that the City's hourly rate for employees in its Street Department, including compensation, pension plan contributions, health care benefits, in addition to the other portions of their compensation package, total \$23.50/hour, and at that hourly rate, assuming that all of the other maintenance costs of the Plaintiff remained the same, the total cost to the City would be \$56,696.31, as set forth on the attached Exhibit I, City's Cost.

42. Clearly, the above Citations and Notices were all illegal because, pursuant to the above provisions of the RETSA, the Plaintiff obviously has not been the owner of the former Plaintiff's Properties since December 5, 2008, that were the subject of the above illegal Citations and illegal Notices submitted to him by the Defendants.

43. Also, because of the above illegal conduct by the Defendants, the Plaintiff has been irreversibly injured by being threatened with criminal

finer and imprisonment for matters for which he has absolutely no responsibility legally to address.

COUNT I
§1983
Equal Protection
Plaintiff v. All Defendants

44. Paragraphs 1 through 43 are incorporated by reference as though same were fully set forth herein.

45. The Plaintiff has the right to enjoy equal protection of the law pursuant to the 14th Amendment of the United States Constitution.

46. Pursuant to the 14th Amendment of the United States Constitution “no state shall deny to any person within its jurisdiction the equal protection of laws.”

47. The Plaintiff was denied the equal protection of the laws in this case.

48. The Plaintiff has an extensive history of abuse by the City of Wilkes-Barre as well as other local governmental agencies.

49. The City of Wilkes-Barre and its various agents and employees have routinely undertaken enforcement actions against the Plaintiff that they have not taken against other individuals who are similarly situated as the Plaintiff.

50. The Plaintiff is being singled out for disparate treatment by the City of Wilkes-Barre.

51. The outrageous, malicious and willful actions of the City Defendants against the Plaintiff were done with no rational basis.

52. The Plaintiff has been injured as a result of the selective enforcement actions taken against him, which have not been taken against others who are similarly situated as the Plaintiff.

WHEREFORE, because of all of the above, the Plaintiff demands judgment against all of the Defendants, individually and jointly, for all of the above damages suffered by the Plaintiff in an amount far in excess of \$80,000.

COUNT II
§1983
Substantive Due Process
Plaintiff v. All Defendants

53. Paragraphs 1 through 52 are incorporated by reference as though same were fully set forth herein.

54. The Plaintiff has a right to substantive due process, whereby no governmental body can deprive any individual of a protected property interest or a protected liberty interest by arbitrary or capricious government action

55. Here, the Defendants, by governmental action, illegally issued Citations and Notices to the Plaintiff, forcing the Plaintiff to pay for the maintenance costs that the City should have paid for in regard to the Plaintiff's Remaining Properties.

56. Additionally, the Defendants, by governmental action, illegally used the Citations and Notices to force the Plaintiff to waste his working capital reserves, thereby making it more difficult for him to pay for all of the costs of continuing his litigation against the City, Leighton and Kratz, for all of the abuses that he has suffered because of their tortious conduct and their violation of his constitutional rights in the past, all as set forth in the 1983 Complaint, said current actions by the Defendants herein also constituting a violation of his constitutional rights to be able to try the above case without illegal interference by some of the named Defendants therein.

57. In sum, the Plaintiff clearly has a constitutional right to be able to litigate the 1983 Complaint without interference by the named Defendants herein, some of whom are named as defendants in the 1983 Complaint.

58. The Defendants, by sending the Plaintiff the illegal Citations and illegal Notices which threatened him with fines and imprisonment if he failed to comply, forced the Plaintiff to expend his precious funds.

59. Further, Simonson also violated the Plaintiff's right to substantive due process by illegally attempting to take \$80,000 to \$100,000

from the Plaintiff to pay for the costs of demolishing four buildings that were also the sole responsibility of the City to pay for.

60. Simonson, at Leighton's direction, is trying to have the Plaintiff waste \$80,000 to \$100,000 of his funds in order to devastate the Plaintiff's ability to sustain the litigation that he has in regard to the 1983 Complaint, described above, in which Leighton is one of the primary defendants.

61. Therefore, Simonson and Leighton were obviously using governmental action to force the Plaintiff to spend the above funds, which would have advanced Leighton's defense in the litigation related to the 1983 Complaint, by ensuring that the Plaintiff would not be able to afford to continue to pay for the costs to maintain the litigation related to the 1983 Complaint against Leighton, thereby violating the Plaintiff's constitutional right to be able try the case related to the 1983 Complaint without the illegal interference by the Defendants.

62. The Plaintiff was deprived of a protected liberty interest and protected property interest by all of the Defendants without due process, and the Defendants were acting under the color of state law, and the Plaintiff suffered injuries as a result of this deprivation without due process

63. The actions of the Defendants were not rationally related to a legitimate government interest, but were rather motivated by bias, bad faith and other improper motives in fact.

64. As mentioned above, the City has a prior history of singling out the Plaintiff for disparate treatment.

65. The Plaintiff believes that many of the City employees have not only a strong bias against him, but also may have an actual hatred for the Plaintiff.

66. By committing the above acts, the Defendants have clearly deprived the Plaintiff of his right to substantive due process in violation of his rights pursuant to the Fourteenth Amendment of the United States Constitution and all of the rights that the Plaintiff has pursuant to 42 U.S.C. §1983 and the United States Constitution.

WHEREFORE, because of all of the above, the Plaintiff demands judgment against the Defendants, individually and jointly, for all of the above damages incurred by the Plaintiff in an amount in excess of \$80,000.

COUNT III
§1983
Procedural Due Process
Plaintiff v. All Defendants

67. Paragraphs 1 through 66 are incorporated by reference as though same were fully set forth herein.

68. The most obvious requirement of the Due Process Clause is that states must afford certain procedures (“due process”) before depriving individuals of certain interests, such as life, liberty or property.

69. The Due Process Clause is essentially a guarantee of basic fairness.

70. Fairness can, in various cases, have many components, such as (a) notice, (b) an opportunity to be heard at a meaningful time in a meaningful way, and (c) a decision supported by substantial evidence, etc.

71. In general, the more important the individual right in question, the more process that must be afforded, and no one can be deprived of their property interests without the appropriate protections

72. The Plaintiff has a constitutional right to not be subject to harassment by public officials.

73. The Defendants should only send a citation or notice to the proper person who, pursuant to Pennsylvania law, has the legal responsibility to address the maintenance matters that are set forth in the citation or notice.

74. The Defendants sent illegal Citations and illegal Notices to the Plaintiff related to maintenance matters pertaining to the Plaintiff Remaining Properties, none of which were the legal responsibility of the Plaintiff to address.

75. Because of the above illegal Citations and illegal Notices, and the abuse suffered by the Plaintiff by virtue of the prior course of conduct by the City, Leighton and Kratz towards the Plaintiff, as set forth in the 1983

Complaint, the Plaintiff has expended \$43,836.81 of his own funds for the maintenance expenses that were related to the Plaintiff's Remaining Properties, said expenses really being the legal obligation of the City, and not the Plaintiff.

76. The actions of the City Defendants were not rationally related to a legitimate government interest, but were rather motivated by bias, bad faith and other improper motives in fact.

77. As mentioned above, the City has a prior history of singling out the Plaintiff for disparate treatment.

78. The Plaintiff believes that many of the City Defendants have not only a strong bias against him, but also may have an actual hatred for the Plaintiff.

79. The Plaintiff was deprived of a protected liberty interest and property interest by all of the Defendants without due process, and all of the Defendants were acting under the color of state law or as agents of the state, and the Plaintiff has suffered injuries as a result of this deprivation without due process.

80. Because of the above, the Defendants violated the Plaintiff's right to procedural due process, i.e., to be free from harassment from governmental bodies for matters that do not concern him.

81. Also, Simonson sent to the Plaintiff three illegal Notices, each of them setting forth dreadful financial consequences to the Plaintiff in each instance.

82. Again, the Plaintiff had no legal responsibility to address any of the matters set forth in each of the illegal Notices, and therefore Simonson sent the illegal Notices intentionally to the wrong person.

83. In sum, because of all of the above illegal Citations, illegal Notices, improper Summonses and the ludicrous Bench Warrant that have been forwarded to the Plaintiff by the Defendants or because of the Defendants, the Plaintiff has been deprived of his right to procedural due process in violation of his rights pursuant to the Fourteenth Amendment of the United States Constitution and all of the rights that the Plaintiff has pursuant to 42 U.S.C. §1983 and the United States Constitution.

WHEREFORE, because of all of the above, the Plaintiff demands judgment against the Defendants, individually and jointly, for all of the above damages incurred by the Plaintiff in an amount in excess of \$80,000.

COUNT IV
Unjust Enrichment
Plaintiff v. All Defendants

84. Paragraphs 1 through 83 are incorporated by reference as though same were fully set forth herein.

85. The elements necessary to prove unjust enrichment are: (i) a benefit conferred on the defendant by the plaintiff; (ii) an appreciation of such benefit by the defendant; and (iii) the acceptance and retention of such benefit by the defendant under circumstances that it would be inequitable for the defendant to retain the above benefit without making payment to the plaintiff for its value.

86. Where unjust enrichment is found, the law implies a contract, referred to as either a quasi contract or contract implied in law, which requires that the defendant pay to the plaintiff the value of the benefit conferred; in short, the defendant makes restitution to the plaintiff in quantum meruit.

87. In this case, the three above elements are obviously met, and in regard to the first element, i.e., a benefit conferred on the defendant by the plaintiff, it is obvious that, for all the above reasons, the City, and not the Plaintiff, had the legal responsibility to address all the above maintenance costs, and in fact, the Plaintiff is the party who actually paid for all of the costs related to the above maintenance needs.

88. Further, in regard to the above second element, that there has been an appreciation of the conferred benefit by the defendants, in this case, based on the above statutes and case law, etc., (i) the City had the legal responsibility to address all of the above, (ii) the Plaintiff has paid for all of

the above, (iii) there has obviously been a substantial benefit conferred on the City by the Plaintiff, and (iv) after reading this Complaint, if not before, at this point the City is aware of the above benefit conferred on it by the Plaintiff.

89. Finally, the third element, that retention of the above benefit by the defendant would be inequitable, under the facts and circumstances of this case, it is without a doubt that it would be inequitable for the City to ever be able to retain the gain that it secured by virtue of the above Plaintiff's expenditures, particularly because of the fact that those expenditures were solely a result of the tortious acts, i.e., the illegal Citations and illegal Notices, that the Defendants issued to the Plaintiff for all of the maintenance needs for properties for which they knew that the Plaintiff had no legal responsibility to address.

90. Therefore, because (i) the Plaintiff has paid for of all of the above maintenance expenses, in reference to properties for which he had no legal responsibility to address, (ii) the City actually had the legal liability to pay for all of those above expenses, and did not, solely because of the above actions by the Plaintiff, and (iii) all of the above payments made by the Plaintiff were made solely in response to the illegal Citations and the illegal Notices sent to the Plaintiff by the Defendants, it would be inequitable, in this case, for the City to retain the benefit of all of those above expenditures

by the Plaintiff, without being required to now pay the Plaintiff for same, in the amount of \$56,696.31, as determined above on Exhibit I, City's Cost.

91. In sum, it is clear, based on the above facts in this case, that the City has been unjustly enriched by virtue of all of the above expenditures by the Plaintiff.

WHEREFORE, because of all of the above, the Plaintiff demands judgment against the Defendants, individually and jointly, for all of the above damages incurred by the Plaintiff in an amount in excess of \$80,000.

COUNT V
Abuse of Process
Plaintiff v. All Defendants

92. Paragraphs 1 through 91 are incorporated herein as though same were fully set forth herein.

93. To prove abuse of process, the plaintiff must establish four elements, as follows: (1) the defendant *intentionally* (2) employed some *court process* (civil or criminal) (3) for a *purpose other than that for which the process was designed*; and (4) the plaintiff sustained *damages* related to the above.

94. As set forth above, the Plaintiff's Properties were subject to an upset price sale on December 5, 2008, for which no bids were received, at which time the TCB became the trustee, and therefore the legal owner of

each of the former Plaintiff's Properties, pursuant to 72 P.S. § 5860.608 and 72 P.S. § 5860.615 of the RETSA, in addition to the *Sprock* case.

95. Additionally, after the upset price sale on December 5, 2008, the Plaintiff has received numerous illegal Citations and illegal Notices, that have now been submitted to him by the Defendants, thereby forcing the Plaintiff to pay for substantial maintenance costs related to addressing hauling debris, etc. related to certain of the former Plaintiff's Properties that were involved in the recent numerous illegal Citations and illegal Notices.

96. Because of the above, the Defendants intentionally improperly employed court processes when (i) they forwarded numerous illegal Citations and various illegal Notices ordering the Plaintiff to maintain properties that he does not own, enforceable by outrageous monetary penalties and prison time for noncompliance, for the purpose of intimidating the Plaintiff and strong-arming him into paying maintenance fees on properties for which he had no legal responsibility to maintain, and also precluding him from being able to continue to litigate his claims against the defendants in the 1983 Complaint, and (ii) they had a Bench Warrant issued for the Plaintiff and served on the Plaintiff by a Constable, who was prepared to immediately arrest the Plaintiff if he did not pay the outstanding fines related to one of the illegal Citations in the amount of \$614.50.

97. The purpose of complaining about unkempt properties is normally to have the owner of record maintain said property, but here the illegal Citations and illegal Notices were issued to the Plaintiff, not for him to make the necessary repairs to any of the properties that he actually owns, but to cause him to waste his finances by maintaining properties that he has no legal responsibility to maintain, which would then cause him to waste his financial resources, and thereby making it much more difficult for him to pursue the 1983 Complaint litigation against the City, Leighton and Kratz.

98. The cost to the Plaintiff of complying with all of the above illegal Citations and illegal Notices to date is \$43,836.81, as set forth in the attached Exhibit H, Costs Incurred, which includes paying all related costs of the payroll of maintenance men, hauling costs, payroll taxes, workmen's comp., and buying maintenance supplies as needed.

99. Further, the Plaintiff has also sustained considerable non-monetary damages, including extreme emotional distress manifesting itself in physical stress symptoms, sleep issues, and general malaise.

100. In summary, the Defendants committed abuse of process because they (i) intentionally (ii) employed a court process when they issued illegal Citations and illegal Notices to the Plaintiff, for which the Plaintiff's noncompliance triggered court action when a Bench Warrant was issued and served on the Plaintiff (iii) for a purpose other than that for which the

process was designed because here the purpose of the illegal Citations and illegal Notices was to cause the Plaintiff to waste his personal funds maintaining properties that he had no legal responsibility to address, which would then deplete his financial reserves and make it more difficult for him to be able to continue the 1983 Complaint litigation, and not for the reason that the process was designed for, which is to make the true owners of properties maintain their properties, and(iv) the Plaintiff sustained damages as a result of the above when he had to expend a substantial amount of money in maintenance costs and also now suffers from extreme emotional distress that has manifested itself in physical stress symptoms.

WHEREFORE, because of all of the above, the Plaintiff demands judgment against the Defendants, individually and jointly, for all of the above damages incurred by the Plaintiff in an amount in excess of \$80,000.

COUNT VI
Intentional Infliction of Emotional Distress
Plaintiff v. All Defendants

101. Paragraphs 1 through 100 are incorporated herein as though same were fully set forth herein.

102. To prove intentional infliction of emotional distress the plaintiff must show: (1) the defendant committed an *extreme and outrageous act*, (2) with the *intent* to cause severe emotional distress and (3) the plaintiff

thereby suffering *severe emotional distress*, and (4) the defendants' conduct being the *proximate cause of said tort*.

103. In this case, the Defendants committed an extreme and outrageous act when they continuously cited the Plaintiff, a respected member of the bar, threatening him with absolutely absurd punishments, such as imprisonment, for failing to maintain properties that he did not own and had no legal responsibility to maintain.

104. Also, the Defendants had a Bench Warrant signed and issued for the Plaintiff's arrest, which was served on the Plaintiff by a Constable, who was prepared to immediately arrest the Plaintiff if he did not pay the outstanding fine related to one of the illegal Citations in the amount of \$614.50.

105. It is clear that the Defendants intended to cause the Plaintiff severe emotional distress, given the extensive history of intentional harassment of the Plaintiff by the Defendants, as is laid out in the attached 1983 Complaint.

106. Given the fact that the Defendants have harassed the Plaintiff in the past, and are now inexplicably citing him to maintain properties that he does not own, it is clear that the Defendants have a bias against, and potentially an actual hatred for, the Plaintiff, and will continue to harass, intimidate, and make life miserable for the Plaintiff in the future.

107. The Plaintiff has suffered extreme emotional distress because of the Defendants' actions, in that, he now suffers from mental anguish, has difficulty sleeping, and physical manifestations of stress symptoms, such as headaches, nervousness, and elevated blood pressure.

108. The Plaintiff is also now suffering from depression symptoms because of the Defendants' outrageous and illegal acts, which have caused the Plaintiff to be the subject of misplaced public ridicule and humiliation.

109. Also, the Plaintiff is a member of the bar, and is extremely fearful that the actions of the Defendants might adversely affect his professional license, which could effectively eradicate the Plaintiff's livelihood.

110. The Defendants have caused the Plaintiff severe emotional distress because, but for the Defendants' outrageous acts, the Plaintiff would not be suffering from the above ailments.

WHEREFORE, the Plaintiff demands judgment against the Defendants, individually and jointly, for all the damages incurred by the Plaintiff, including punitive damages, in an amount in excess of \$80,000.

COUNT VI
Punitive Damages
Plaintiff v. All Defendants

111. Paragraphs 1 through 110 are incorporated herein as though same were fully set forth herein.

112. The conduct of Defendants, as more fully set forth above, was outrageous, intentional, malicious, willful and in blatant disregard to the rights of the Plaintiff.

113. As a result of said conduct, the Defendants should be held liable to the Plaintiff for punitive damages, to further deter them from taking such outrageous actions in the future.

WHEREFORE, the Plaintiff demands judgment against the Defendants individually, jointly and severally for all of the damages, including punitive damages, that the Plaintiff has suffered, as a consequence of all of the illegal above-referenced notices, citations and complaints, and all of his costs incurred, and attorney's fees related thereto.

Respectfully Submitted,

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