

IN THE MANSFIELD MUNICIPAL COURT
RICHLAND COUNTY, OHIO

CITY OF MANSFIELD, OHIO
30 N. Diamond St.
Mansfield, OH 44902

Plaintiff

v.

MCPHERSON APARTMENTS, LTD.
C/O Agent: Donald Graber
105 S. Main St.
Mansfield, OH 44902

Defendant

CASE NO. 13CVF.1743

JUDGE _____

COMPLAINT

DANIEL F. SMITH
CLERK OF COURTS

2013 AUG 29 AM 9:09

MUNICIPAL COURT
MANSFIELD, OHIO

COUNT ONE

1. Plaintiff, City of Mansfield (hereinafter "Plaintiff"), is a municipal corporation organized and operating pursuant to Article XVIII, Section 3 of the Constitution of the State of Ohio and to a Charter duly adopted by its citizens. Plaintiff has duly authorized the Ohio Attorney General's office to act as co-counsel in this matter.
2. Defendant McPherson Apartments (hereinafter "Defendant") is a limited partnership doing business in Richland County, Ohio. Donald Graber is the statutory agent and sole partner of McPherson Apartments.
3. At all times relevant to this Complaint, Defendant was the title owner of record for the real property located at 135-137 Willow St., Mansfield, Ohio (Parcel No. 03-065-16-000) together with all improvements situated thereon (hereinafter referred to as "the property").
4. Plaintiff issued a Notice of Violation to Defendant on February 4, 2009 for violations of provisions of Chapters 1321, 1335, and 1371 of the City Codified Ordinances, ordering Defendant to demolish the property. See Exhibit A.
5. Defendant failed to comply with or appeal the order of February 4, 2009.
6. On June 21, 2011, the property was officially declared to be a nuisance and Plaintiff was authorized to proceed with demolition of the property. See Exhibit B.

7. Commencing on or about February 26, 2013, Plaintiff through its private, independent demolition contractor demolished the structure located at the property.
8. Plaintiff paid its independent contractors *Eight Thousand Five Hundred and Fifty Six Dollars and 20 Cents (\$8,565.29)*, for the aforesaid demolition work performed at the property.
9. On April 26, 2013, Plaintiff issued an Invoice to Defendant for costs associated with demolition. See Exhibit C.
10. To date, Defendant has not paid the Invoice.
11. Pursuant to Ohio Revised Code Section 715.261, Defendant owes to Plaintiff the amount of *Eight Thousand Five Hundred and Fifty Six Dollars and 20 Cents (\$8,565.29)*, together with interest from February 26, 2009, and Defendant has failed or refused to pay said amount.

COUNT TWO

12. Plaintiff incorporates herein, by reference, each and every allegation contained in Paragraphs 1-11.
13. As a direct result of Plaintiff's expenditure of funds for the total cost of demolition of the property at 135-137 Willow, Defendant has been unjustly enriched at the expense of Plaintiff in the amount listed in Count I.
14. **This lawsuit is an attempt to collect a debt. Any and all information obtained will be used for that purpose.**

WHEREFORE, Plaintiff demands judgment against Defendants for the total amount of *Eight Thousand Five Hundred and Fifty Six Dollars and 20 Cents (\$8,565.29)*, together with interest, the costs of this action, and such other relief as this Court may deem appropriate.

Respectfully submitted,



JOHN R. SPON (0001805)

Law Director

30 N. Diamond St.

Mansfield, OH 44902

Phone: (419)755-9659

Attorney for Plaintiff

**MICHAEL DEWINE
OHIO ATTORNEY GENERAL**



JENNIFER L. MILDREN (008756)

Assistant Attorney General

30 E. Broad St., 15th Floor

Columbus, OH 43215

Phone: (614) 466-1795

Attorneys for Plaintiff



CITY OF MANSFIELD

DONALD R. CULLIVER, MAYOR

Mansfield Bureau of Building Inspections, Licenses and Permits
30 N. Diamond Street Mansfield Ohio 44902
Ph. 419 -755-9688 Fax 419 - 755-9453

February 4, 2009

McPherson Apartments Ltd. ✓

A Limited Partnership

Attn: Don Graber

105 S. Main St.

Mansfield, OH 44902

91 7108 2133 3932 9729 6724

Records indicate that you are the owner or person in charge of property located at of the consecutive numbered lots in the City of Mansfield, Ohio. 135-137 WILLOW ST., LOT #2624 - PARCEL ID#027-03-065-16-000
The above described structure was inspected under the provisions of Chapters 1321, 1335 and 1371 of the City Codified Ordinances on **JANUARY 30, 2009** by **BILL VASSELL**, of the Bureau of Buildings, Inspections, Licenses and Permits and from such inspection it has been determined that the same is declared a nuisance and abandoned, based on the following:

2-STORY WOOD FRAME TWO FAMILY DWELLING: STRUCTURE IS VACANT, EVIDENCE OF THE ABANDONMENT HAS ACCELERATED THE DEMISE OF THE STRUCTURE. GUTTERS AND DOWN SPOUTS WERE RUSTED, HOLES, OR MISSING. ALL PAINTED SURFACES ARE PEELING. FOUNDATION HAS MORTAR JOINTS MISSING, HOLES, AND OPENINGS. REAR PATIO/PORCH IS PULLING AWAY FROM HOME, NOT SECURE, EXPOSED TRUSSES. GRAFFITI WRITTEN ON REAR WALLS. REAR DOOR WAS OPEN. GARBAGE, FIRE DAMAGED DEBRIS INSIDE. HOME HAS NOT BEEN OCCUPIED FOR SEVERAL YEARS. THIS STRUCTURE IS AN EYESORE, AND POSES AN IMMINENT THREAT TO HEALTH, POTENTIAL FIRE AND THE SAFETY OF THE NEIGHBORHOOD AND IS TO BE DEMOLISHED UNDER THE CRITERIA DESCRIBED IN CHAPTER 1335 OF THE CODIFIED ORDINANCES OF THE CITY OF MANSFIELD.

This structure is **DEEMED TO BE UNSAFE**, to the life and health of children and the community and is ordered demolished and dispose of properly all debris from premise within **TWENTY (20) DAYS FROM THE DATE OF THIS ORDER.**

You are hereby advised that this order can be appealed within TEN (10) from the date of this order under the provisions of Section 1335.07 of the City Codified Ordinances before the City Planning Commission, and if the inspection was made by the Bureau of Fire Prevention you may also appeal under the provisions of Section 3737.20 et. seq. of the Ohio Revised Code. PLEASE NOTE FAILURE TO APPEAL THIS ORDER WITHIN TEN (10) DAYS FROM RECEIVING THIS NOTICE WILL RESULT IN FURTHER PROCESSING OF DEMOLITION PROCEEDINGS.

Failure to adhere to the demolition order unless the same is appealed, may result in criminal charges being filed in court with possible penalties including a jail sentence of up to six (6) months and a fine of up to one thousand dollars (\$1,000.00) per Section 1335.99 ©) of the Codified Ordinances of the City of Mansfield, or the undersigned will cause the defects and conditions remedied through the use of city forces, materials and equipment, or by a contract for the same or both, all at your cost and expense. Upon failure to pay the costs and expenses, the same will be certified to the County Auditor as a lien or special charge against the land or premises and collected as are other taxes as provided for under Chapters 1335.09 and 1335.12 of the Codified Ordinances of the City of Mansfield.

Enclosed you will find an appeal form to this order.

Bill Vassel

Bill Vassel,
Housing Inspector
MANSFIELD CERTIFIED BUILDING DIVISION

Linda Price
Linda Price
Manager



BY: MRS. HIGHTOWER

Declaring the remains of a designated dwelling (135-137 Willow Street) to be insecure, unsafe, structurally defective and unsafe to life and other property; directing the demolition thereof by City forces or contract labor, materials and equipment, and declaring an emergency.

WHEREAS, under authority of Section 3, Article XVIII of the Ohio Constitution and §§ 715.26, 715.261, 3737.14 and 3737.28 of the Ohio Revised Code, the City has enacted Chapter 1335 of the Mansfield Codified Ordinances, 1997, relating to the removal and repair of buildings and structures for the purpose of safeguarding life and property and for the promotion of the peace, health, safety and welfare of the City of Mansfield and its inhabitants, and

WHEREAS, the Bureau of Buildings, Inspections, Licenses and Permits has, pursuant to Chapter 1335 of the Mansfield Codified Ordinances, 1997, made its inspection and issued its notice and order as pertains to the remains of the building and structure hereinafter described, and

WHEREAS, the owner or occupant has failed to comply with the order issued by the Bureau, and

WHEREAS, Council is fully advised in this matter by reason of the reports and proceedings of the Bureau.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MANSFIELD, STATE OF OHIO:

SECTION 1. That it is hereby determined and declared that the two (2) story wood-frame two family dwelling located on the premises described in Section 2 hereinafter is insecure, unsafe, structurally defective and unsafe to life and other property by reason of its hazardous and unsound condition, unsound and unsafe walls, floors, foundation and ceilings, and by reason of want of repair, age and dilapidation; and it is hereby further determined and declared that by reason thereof said building or structure is beyond repair and is a nuisance.

SECTION 2. That the premises referred to in Section 1 hereof are described as follows: Situated in the City of Mansfield, County of Richland and State of Ohio: Being lot number two thousand six hundred twenty-four (2624) of the consecutively numbered lot as shown at volume 4 page 20 of Plat records, and a private alley on the westerly 10 feet.

Permanent Parcel No. 027-03-065-16-000
Owner: McPherson Apartments Ltd.
Address: 135-137 Willow Street

SECTION 3. That the Bureau of Buildings, Inspections, Licenses and Permits is hereby authorized and directed to enter into a contract according to law with a competent and licensed contractor for the provision of labor, materials and equipment for the demolition and removal of the building(s) or structure(s) hereinbefore described, together with the removal of all debris and leveling to grade, or to proceed by force account, in execution of its order



under § 1335.09 of the Mansfield Codified Ordinances, 1997, and to otherwise comply with the provisions of said Chapter 1335.

SECTION 4. That the costs authorized in Section 3 above shall be paid from Organizational Set 207.65.25 (Community Development Programs/Contractual Services/Demolitions).

SECTION 5. That the Bureau shall notify the owner or occupant to remove all chattels and personal property from the building(s) not less than three (3) days prior to the commencement of demolition and the failure of the owner or occupant to so remove such personal property and chattels shall be deemed an intentional abandonment thereof by such owner or occupant. The Bureau shall forward a copy of this Ordinance along with the notice herein provided.

SECTION 6. That the debris and all materials resulting from the demolition of the structure(s) or building(s) shall become the property of the contractor; the contract for demolition shall state the salvage value offered for such debris and materials by the contractor which will result in reduction of the contract price for such demolition.

SECTION 7. That by reason of the immediate necessity of removing a nuisance which is insecure, unsafe, structurally defective and dangerous to life and other property, this measure is determined to be an emergency Ordinance for the immediate preservation of the public peace, health, safety and welfare of the City of Mansfield and its inhabitants and providing it receives the affirmative vote of two-thirds of all members elected to Council, it shall take effect and be in force immediately upon its adoption, otherwise from and after the earliest time allowed by law, after its passage and approval by the Mayor.

PASSED 21 June, 2011

SIGNED /s/ Phillip E. Scott
President

ATTEST /s/ Lisa M. Grove
Asst. Clerk of Council

APPROVED /s/ Donald R. Culliver
Mayor

APPROVED AS TO FORM: David L. Remy
Law Director
City of Mansfield, Ohio

CITY OF MANSFIELD

30 N. DIAMOND STREET
MANSFIELD, OHIO 44902
755-9688
Fax: 419/755-9453

SERVICE INVOICE

INVOICE DESCRIPTION:

135-137 WILLOW, LOT #2624
PARCEL.ID # 027-03-065-16-000

INVOICE NUMBER | 2013-DMO-8
USER ID # | #1303
JOB DESCRIPTION | DEMOLITION
BILLING DATE | April 26, 2013

DON GRABER AKA DONALD D GRABER AKA
GRABER FAMILY LIMITED PARTNERSHIP
1225 PLEASANT VALLEY ROAD
MANSFIELD, OH 44903

DATE	SERVICE DESCRIPTION		RATE	AMOUNT
3/11/13	SOFT COSTS	1	558.24	558.24
3/11/13	HARD COSTS	1	7800.00	7800.00
3/11/13	ADMINISTRATIVE COSTS	1	207.05	207.05
				\$8,565.29
				TOTAL DUE

MAKE CHECKS PAYABLE TO: CITY OF MANSFIELD -
CODES DEPT. WITHIN 15 DAYS OF RECEIPT
30 N. DIAMOND STREET, MANSFIELD OH 44902

