



To: Members of the Troy City Council
From: Lori Grigg Bluhm, City Attorney
Susan M. Lancaster, Assistant City Attorney
Date: February 27, 2008
Subject: Amber Creek East Apartments v. City of Troy

F-09

As required by state law, the City conducts inspections of all apartment rental units in the City of Troy. The City of Troy has also codified this state mandated requirement in Chapter 82-A of the City of Troy ordinances. These inspections are to occur every two to three years, and are extremely limited in scope to verify that the apartments meet the minimum health, safety, and welfare standards. Many apartment complex owners acknowledge this statutory inspection requirement, and reserve in each tenant's lease a provision allowing for this inspection to occur. This lease provides the landlord with the ability to give the housing and zoning inspector access to the apartment for the inspection.

In June 2007, City Administration sent notice of the proposed apartment inspections for the Amber Creek East Apartments. In response to this notification, the landlord sent a letter to each tenant, since Amber's lease did not contain a landlord's right of entry for the state mandated inspections.

Under state statute, if there is no right of entry for the landlord, and if the tenant has not otherwise given consent to the inspection, the City is empowered to request an Administrative Search Warrant from the Court to gain access to each dwelling for the mandated inspection. The City exhausts all avenues to obtain these inspections, since the City has an interest in making sure that the minimum code requirements are satisfied for each apartment unit, and that the risk of fire, etc. is minimized in the City.

After providing several notifications to the landlord and the tenants, the City was still required to seek an Administrative Search Warrant for 5 of the 24 Amber Creek East Apartments. After reviewing the City's request and the state law, 52-4 District Court Judge Michael A. Martone issued the requested search warrants for the inspections. The City notified the tenants and the landlord of the planned date for the inspection, and again asked for consent. Prior to the date of the inspections, the attorney representing five tenants filed a Motion To Quash the Administrative Search Warrant. This Motion was assigned to Judge William E. Bolle of the 52-4 District Court, who reviewed both the oral and the written legal arguments of the City and the tenants, and denied the request. Since this is a unique legal maneuver that is not covered by the Michigan Court Rules, the tenants could not appeal Judge Bolle's decision without filing a formal complaint in the case. The attached Complaint to Quash Administrative Search Warrant therefore has been filed and served on the City.

Absent objections from City Council, our office will continue to represent the City's interests in this case and/or any appeal.

STATE OF MICHIGAN 52-4 JUDICIAL DISTRICT JUDICIAL CIRCUIT COUNTY PROBATE	SUMMONS AND COMPLAINT	CASE NO. 2008 COO 415 GZ 01
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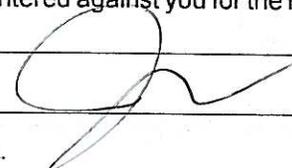
Court address: 520 West Big Beaver Road, Troy, MI 48084
 Court telephone no. (248) 528-0404

Plaintiff name(s), address(es), and telephone no(s).
 AMBER CREEK EAST APARTMENTS, a Michigan limited liability company, NICOLE HIGH, MICHAEL JONES, CAROLINE JONES, JACQULYNN FLACK, ROBERT ABROGAST, CHARLES BARTZ and ROBERT PLATER,

Defendant name(s), address(es), and telephone no(s).
 THE CITY OF TROY, a municipal corporation, 500 West Big Beaver Road, Troy, MI 48084 (248) 524-3300

Plaintiff attorney, bar no., address, and telephone no.
 Michael W. Hutson (P15310)
 292 Town Center Dr., Troy, MI 48084 (248) 689-5700
 Bruce T. Leitman (P16541)
 32710 Franklin Rd., Franklin, MI 48025 (248) 855-5200

SUMMONS NOTICE TO THE DEFENDANT: In the name of the people of the State of Michigan you are notified:
 1. You are being sued.
 2. **YOU HAVE 21 DAYS** after receiving this summons to **file a written answer with the court** and serve a copy on the other party **or take other lawful action with the court** (28 days if you were served by mail or you were served outside this state). MCR 2.111(C)
 3. If you do not answer or take other action within the time allowed, judgment may be entered against you for the relief demanded in the complaint.

Issued 2-8-08	This summons expires 5-9-08	Court clerk 
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*This summons is invalid unless served on or before its expiration date.
 This document must be sealed by the seal of the court.

COMPLAINT *Instruction: The following is information that is required to be in the caption of every complaint and is to be completed by the plaintiff. Actual allegations and the claim for relief must be stated on additional complaint pages and attached to this form.*

Family Division Cases
 There is no other pending or resolved action within the jurisdiction of the family division of circuit court involving the family or family members of the parties.
 An action within the jurisdiction of the family division of the circuit court involving the family or family members of the parties has been previously filed in _____ Court.
 The action remains is no longer pending. The docket number and the judge assigned to the action are:

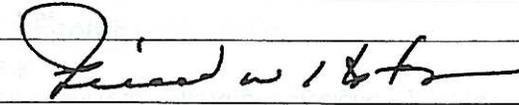
Docket no.	Judge	Bar no.
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General Civil Cases
 There is no other pending or resolved civil action arising out of the same transaction or occurrence as alleged in the complaint.
 A civil action between these parties or other parties arising out of the transaction or occurrence alleged in the complaint has been previously filed in _____ Court.
 The action remains is no longer pending. The docket number and the judge assigned to the action are:

Docket no.	Judge	Bar no.
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VENUE

Plaintiff(s) residence (include city, township, or village) City of Troy, Oakland County, Michigan	Defendant(s) residence (include city, township, or village) City of Troy, Oakland County, Michigan
Place where action arose or business conducted City of Troy, Oakland County, Michigan	

02/08/2008
 Date _____
 Signature of attorney/plaintiff 

If you require special accommodations to use the court because of a disability or if you require a foreign language interpreter to help you to fully participate in court proceedings, please contact the court immediately to make arrangements.

STATE OF MICHIGAN
IN THE 52-4 JUDICIAL DISTRICT COURT FOR THE
COUNTY OF OAKLAND

AMBER CREEK EAST APARTMENTS, a
Michigan limited liability company, NICOLE HIGH,
MICHAEL JONES, CAROLINE JONES,
JACQULYNN FLACK, ROBERT ABROGAST,
CHARLES BARTZ and ROBERT PLATER,

Plaintiffs,

-vs-

Case No. CO04-15 GZ 01

THE CITY OF TROY, a
municipal corporation,

Defendant.

Michael W. Hutson (P15310)
Attorney for Plaintiffs
292 Town Center Drive
Troy, MI 48084
(248) 689-5700

Bruce T. Leitman (P16541)
Attorney for Plaintiffs
32710 Franklin Road
Franklin, MI 48025
(248) 855-5200

COMPLAINT TO QUASH ADMINISTRATIVE SEARCH WARRANTS

NOW COME the Plaintiffs, AMBER CREEK EAST APARTMENTS, a Michigan limited liability company, NICOLE HIGH, MICHAEL JONES, CAROLINE JONES, JACQULYNN FLACK, ROBERT ABROGAST, CHARLES BARTZ and ROBERT PLATER, by and through their attorneys, MICHAEL W. HUTSON and BRUCE T. LEITMAN, and for their complaint say as follows:

1. AMBER CREEK EAST APARTMENTS is a Michigan limited liability company doing business in the City of Troy, County of Oakland and State of Michigan.

HUTSON, SAWYER,
REILLY, RUPP
& SCHROEDER
ATTORNEYS AT LAW
92 TOWN CENTER DRIVE
TROY, MI 48084-1774
(248) 689-5700
FAX (248) 689-5741

2. NICOLE HIGH, MICHAEL JONES, CAROLINE JONES, JACQULYNN FLACK, ROBERT ABROGAST, CHARLES BARTZ and ROBERT PLATER, are individuals residing in the City of Troy, County of Oakland and State of Michigan and tenants of AMBER CREEK EAST APARTMENTS.

3. Pursuant to MCL 125.401 et seq. and MCL 125.523 et seq. and The City of Troy's Ordinance, Chapter 82A, entitled "Rental and Dwelling Inspection Enforcement", the City of Troy is about to conduct an inspection of the housing complex owned by AMBER CREEK EAST APARTMENTS and the individuals units of the individual Plaintiffs in this matter.

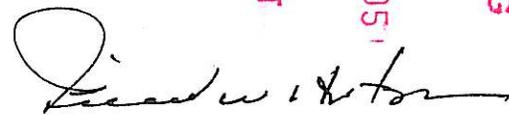
4. All the Plaintiffs have, pursuant to the statute, properly refused permission of the Defendant, THE CITY OF TROY, to inspect their units.

5. The Plaintiffs have refused consent to inspect for the reason that they believe the statutes and ordinance are unconstitutional.

6. THE CITY OF TROY has informed all the Plaintiffs that they will seek the issuance of administrative search warrants by a judicial officer of the 52nd Judicial District Court to inspect these units.

WHEREFORE, the Plaintiffs request this Court to quash any such search warrants that may be issued and declare the statutes and ordinance unconstitutional.

Dated: February _____, 2008



MICHAEL W. HUTSON (P15310)
Attorney for Plaintiffs



BRUCE T. LEITMAN (P16541)
Attorney for Plaintiffs

524 DISTRICT COURT
TROY, MI
2008 FEB - 8 2:05 PM
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