



TO: MEMBERS OF THE TROY CITY COUNCIL
FROM: LORI GRIGG BLUHM, CITY ATTORNEY
ALLAN T. MOTZNY, ASSISTANT CITY ATTORNEY
DATE: MARCH 6, 2008
SUBJECT: LEROY S. NARDI V CITY OF TROY

Plaintiff Leroy S. Nardi filed a lawsuit against the City of Troy, the County of Oakland, and the State of Michigan. The case was filed in the United States District Court for the Eastern District of Michigan, and assigned to Judge Anna Diggs Taylor. On February 25, 2008, the Court granted Troy's Motion for Summary Judgment and dismissed the case.

Mr. Nardi's home at 97 East Wattles is located in an R-1C zoning district. The property was previously serviced by a septic system. On April 26, 2001, Mark Stimac, Troy's Director of Building and Zoning, notified Mr. Nardi that new public sewers were installed with the construction of the surrounding single-family residential development (Crestwood) and that he was required under Section 2.65 of Chapter 19 of the Troy City Code to connect his property to the public sewer within 18 months. Mr. Nardi was also advised of his obligation to pay a Sewer Benefit Fee as required by Section 8 of Chapter 20 of the Troy City Code. At that time, the Sewer Benefit Fee for property located in an R-1C district was \$3,400. Although Mr. Nardi had until November 1, 2002 to make the connection, his septic system failed prior to that date. On November 21, 2001, he signed a Sewer Contract and agreed to pay the fee in equal quarterly installments of \$57. Unfortunately, Mr. Nardi then failed to pay the quarterly installments. As with all delinquent assessments, the City turned over the collection of the unpaid assessments to the Oakland County Treasurer for collection. Oakland County initiated foreclosure proceedings.

Mr. Nardi initially filed this lawsuit to stop the foreclosure action against him. He also requested reimbursement of money he previously paid, and punitive damages in the amount \$500,000. He claimed his rights under the 5th, 7th, and 14th Amendments of the United States Constitution were violated. He also alleged fraud, extortion, a violation of Article VI, Section 2 of the Constitution, a taking of property without due process, and he claimed the Sewer Contract was signed under duress. Troy filed a Motion to Dismiss as its first responsive pleading. The motion was granted in part and all the state law claims (fraud, extortion, duress) were dismissed. However, the Court allowed Mr. Nardi an opportunity to file an amended complaint stating federal claims only. Subsequently, Mr. Nardi filed an amended complaint that challenged the validity of the Sewer Benefit Fee. He claimed the fee violated his constitutional right to due process and equal protection of the law. He also claimed the fee was an unlawful special assessment. After filing his amended complaint, Mr. Nardi voluntarily dismissed the State of Michigan from the lawsuit. He also voluntarily dismissed Oakland County in exchange for the County's agreement to stay foreclosure proceedings pending the outcome of his challenge to Troy's Sewer Benefit Fee. After concluding discovery, Troy filed its Motion for Summary Judgment. In granting the motion, Judge Taylor opined that Troy's ordinance imposing a Sewer Benefit Fee did not violate Mr. Nardi's constitutional rights. The Court dismissed the remaining claim for lack of subject matter jurisdiction because special assessments are governed by state law.

If you have any questions, please let us know.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

LEROY S. NARDI,

Plaintiff,

v.

CASE NUMBER 07-CV-10271
HON. ANNA DIGGS TAYLOR
REF JUDGE: R. STEVEN WHALEN

CITY OF TROY, COUNTY OF OAKLAND,
and the STATE OF MICHIGAN,

Defendants.

Campbell, O'Brien & Mistele, P.C.
Robert J. Figa (P47159)
Attorneys for Plaintiff
100 W. Big Beaver Rd., Suite 385
Troy, MI 48084
(248) 588-5800
Rfiga@Comlawone.com

City of Troy – City Attorney's Office
Lori Grigg Bluhm (P46908)
Allan T. Motzny (P37580)
Attorneys for Defendant City of Troy
500 W. Big Beaver Rd.
Troy, MI 48084
(248) 524-3320
motznyat@ci.troy.mi.us

**ORDER GRANTING DEFENDANT CITY OF TROY'S
MOTION FOR SUMMARY JUDGMENT [D/E 22]**

At a session of said Court held in
the Courthouse in the City of Detroit,
Wayne County, MI, on February 25, 2008

PRESENT: HONORABLE ANNA DIGGS TAYLOR, U.S. DISTRICT JUDGE

This matter came before this Court on the motion filed by Defendant, City of Troy, seeking summary judgment pursuant to Federal Rule of Civil Procedure 56(b); the Court has read the motions and briefs filed by the parties and heard argument of

counsel for Plaintiff and Defendant City of Troy on February 25, 2008; the Court decided to grant the motion for reasons stated on the record;

IT IS ORDERED that Defendant City of Troy's Motion for Summary Judgment is granted and Plaintiff's federal claims alleging a violation of due process and a violation of his right to equal protection are dismissed with prejudice;

IT IS FURTHER ORDERED THAT Plaintiff's state law claims are dismissed without prejudice because this Court lacks Subject Matter Jurisdiction.

Dated: March 10, 2008

s/ Anna Diggs Taylor
United States District Judge

Approved as to Form:

/s/ with consent of Robert J. Figa

Campbell, O'Brien & Mistele, P.C.
Attorney for Plaintiff
100 W. Big Beaver Rd., Suite 385
Troy, MI 48084
(248) 588-5800
Rfiga@Comlawone.com
(P47159)

/s/ Allan T. Motzny

City of Troy – City Attorney's Office
Attorney for Defendant City of Troy
500 W. Big Beaver Rd.
Troy, MI 48084
(248) 524-3320
motznyat@ci.troy.mi.us
(P37580)

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing Notice of Hearing was served upon counsel of record via the Court's ECF System to their respective email addresses or First Class U.S. mail disclosed on the Notice of Electronic Filing on March 10, 2008.

s/Johnetta M. Curry-Williams
Case Manager