



TO: Members of Troy City Council
FROM: Lori Grigg Bluhm, City Attorney *LG*
DATE: May 29, 2013
SUBJECT: Edward Belczak v. City of Troy

Enclosed please find a copy of a lawsuit that Edward Belczak filed against the City of Troy on May 28, 2013. This case has been assigned to the Honorable Judge Denise Langford Morris of the Oakland County Circuit Court.

Through this lawsuit, Plaintiff is seeking an Order from the Oakland County Circuit Court that would reverse the 52-4 District Court Magistrate's order freezing Mr. Belczak's account at Merrill Lynch. The order freezing the account was granted at the request of the Troy police department, on the basis that the City of Troy police detectives are pursuing a criminal investigation of Mr. Belczak for alleged embezzlement and other crimes. This investigation has resulted in volumes of documentation, which has taken some time to review. The investigatory documents have also been requested and turned over to the Internal Revenue Service and the Federal Bureau of Investigations for simultaneous investigatory purposes.

The Complaint alleges four separate counts. First, Mr. Belczak argues that the City has wrongfully frozen the Merrill Lynch account, and he requests termination of the order, and full access to the money in the account. Second, he asserts a claim of replevin, where he argues that the City has wrongfully taken the money in the account from him, and asks for its return to him. Third, he asserts a due process violation, where he claims that he was not provided with an opportunity to challenge the entry of the order freezing the assets. Fourth, he alleges that the City has violated his Fourth Amendment rights by seizing his property. Lastly, he argues that he should be entitled to receive a copy of the police detective's affidavit in support of the request to freeze the account. This affidavit has been sealed by Court order until the conclusion of the investigation.

In addition to the requested access to his Merrill Lynch account, Mr. Belczak is also seeking monetary damages, costs, and attorney fees.

A proposed resolution authorizing our office to defend the City's interests is provided for your consideration.

PROPOSED RESOLUTION:

RESOLVED, that the City Attorney is hereby authorized and directed to represent the City of Troy in any and all claims and damages in the matter of *Edward Belczak v. City of Troy (Oakland County Circuit Court Case No. 13-134158-PD)*. Furthermore, the City Attorney is authorized to pay necessary costs and expenses and to retain any necessary expert witnesses to adequately represent the City.

Approved, SCAO

Original - Court
1st copy - Defendant

2nd copy - Plaintiff
3rd copy - Return

STATE OF MICHIGAN JUDICIAL DISTRICT JUDICIAL CIRCUIT COUNTY PROBATE	SUMMONS AND COMPLAINT	CASE NO. 2013-134158-PD 13- -PD JUDGE LANGFORD MORRIS Court telephone no. (248) 858-1000
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Court address
1200 N. TELEGRAPH ROAD, DEPT. 404, PONTIAC, MI 48341-0404

Plaintiff's name(s), address(es) and telephone no(s).
EDWARD BELCZAK

v

Defendant's name(s), address(es), and telephone no(s).
CITY OF TROY, a Michigan municipal corporation
500 W. BIG BEAVER
TROY, MI 48084

Plaintiff's attorney, bar no., address, and telephone no.
ERNEST J. ESSAD, JR. (P32572)
WILLIAMS, WILLIAMS, RATTNER & PLUNKETT, P.C.
380 N. OLD WOODWARD AVENUE, SUITE 300
BIRMINGHAM, MI 48009; (248) 642-0333

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 an 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 MAY 22 2013	This summons expires AUG 21 2013	Court clerk Lisa Brown
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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

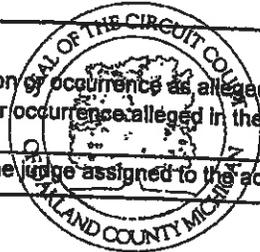
- There is no other pending or resolved action within the jurisdiction of the family division of circuit court involving the family or family members of the parties.
 - An action within the jurisdiction of the family division of the circuit court involving the family or family members of the parties 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 BLOOMFIELD HILLS, OAKLAND COUNTY, MI	Defendant(s) residence (include city, township, or village) CITY OF TROY, OAKLAND COUNTY, MI
Place where action arose or business conducted OAKLAND COUNTY, MI	

05/21/2013
Date

[Signature]
Signature of attorney/plaintiff **WILLIAM E. HOSLER (P41257)**

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.

MC 01 (3/08) **SUMMONS AND COMPLAINT**

MCR 2.102(B)(11), MCR 2.104, MCR 2.105, MCR 2.107, MCR 2.113(C)(2)(a), (b), MCR 3.206(A)

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This case has been designated as an eFiling case. To review a copy of the Notice of Mandatory eFiling visit www.oakgov.com/clerkrod/efiling.

STATE OF MICHIGAN
6th JUDICIAL CIRCUIT COURT
OAKLAND COUNTY

EDWARD BELCZAK

Plaintiff,

v

Case No. 2013- 134158 -PD
Hon. JUDGE LANGFORD MORIS

CITY OF TROY, a Michigan
municipal corporation

Defendant.

Ernest J. Essad, Jr (P32572)
William E. Hosler (P41257)
WILLIAMS, WILLIAMS, RATTNER & PLUNKETT, P.C.
Attorneys for Plaintiff
380 N. Woodward Avenue, Suite 300
Birmingham, Michigan 48009
PH: (248) 642-0333; FAX: (248) 642-0856
ejc@wwrplaw.com
weh@wwrplaw.com

There is no other civil action between these parties arising out of the same transaction or occurrence as alleged in this complaint pending in this court, nor has any such action been previously filed and dismissed or transferred after having been assigned to a judge.

/s/ Ernest J. Essad, Jr.

Ernest J. Essad, Jr (P32572)

COMPLAINT FOR CLAIM AND DELIVERY AND OTHER RELIEF

NOW COMES plaintiff EDWARD BELCZAK ("Plaintiff"), by and through his attorneys WILLIAMS, WILLIAMS, RATTNER & PLUNKETT, P.C., and for his Complaint against the defendant City of Troy, states:

1. Plaintiff is an individual residing in Oakland County, Michigan.
2. Defendant CITY OF TROY ("Troy") is a Michigan municipal corporation whose offices are in the City of Troy, Oakland County, Michigan.

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3. Troy has a police department ("Troy PD") whose offices are also in Troy, Oakland County, Michigan.

4. The events giving rise to this action took place in Oakland County, Michigan.

5. The amount in controversy is within the jurisdiction of this court because Plaintiff claims not only equitable relief in the form of affirmative relief, but money damages in excess of \$25,000, exclusive of interest, costs, and attorney fees.

6. Venue is proper in this Court.

GENERAL ALLEGATIONS

7. On or about February 5, 2013, the Troy PD sought and obtained, through an affidavit signed by Detective Michelle Cooney, a search warrant adversely affecting the Plaintiff (See Exhibit A, the partially redacted "Search Warrant".)

8. The Search Warrant has been served upon Merrill Lynch (ML). The Search Warrant states that ML shall "freeze and seal all funds" and/or safe deposit boxes belonging to the Plaintiff.

9. This act has caused the Plaintiff's account at ML to in fact be frozen and inaccessible to the Plaintiff.

10. The Plaintiff has not been charged with any crime. He is innocent until proven guilty and he vehemently denies he has committed any crime whatsoever.

11. The affidavit supporting the Search Warrant has not been provided to the Plaintiff or his counsel. The grounds for the issuance of the Search Warrant are unknown to the Plaintiff.

12. Without free access to his Property (defined below), including but not limited to all funds at ML, the Plaintiff is being wrongfully deprived of his lawful rights thereto, in violation of his state and federal constitutional rights.

13. The Troy PD has publicly announced that it is no longer investigating Plaintiff for an embezzlement yet refuses to release the Search Warrant and consequential freeze on the Plaintiff's account(s) despite demands to do so.

14. Upon information and belief, Troy has transferred Plaintiff's entire file to the federal authorities who, like Troy, have also concluded that no bases exist to continue any further investigation into allegations of any criminal wrongdoing by the Plaintiff.

COUNT I – CLAIM AND DELIVERY

15. Plaintiff re-alleges and incorporates by reference Paragraph 1 through 14 as though fully restated verbatim.

16. Upon information and belief, there is no evidence of a crime or criminal conduct involving the Plaintiff and pursuant to MCL 780.652, the grounds for continuing the issuance of the Search Warrant are baseless.

17. Under MCL 600.2920, a civil action may be brought to recover possession of any goods or chattels which have been unlawfully taken or unlawfully detained and to recover damages sustained by the unlawful taking or unlawful detention.

18. The Plaintiff has had his goods and/or chattels in the form of money, negotiable instruments (and/or their equivalent), investments, and all respective rights thereto (hereafter "Property") wrongfully taken from him by and through the continuing action of the Defendant. The Plaintiff seeks an order from this Court terminating the Search Warrant, and ordering that the Plaintiff have immediate access to and return of all of his Property.

19. Under MCL 440.2716 and/or MCL 440.2971, the Plaintiff seeks any form of supplemental decree from the Court for specific performance or equitable relief, directing the Defendant to release and return his Property to him upon such terms and conditions as to payment, damages, or other relief as the court may deem just.

WHEREFORE, the Plaintiff Edward Belczak respectfully requests that this Honorable Court enter relief in his favor against the Defendant as set forth below.

COUNT II – REPLEVIN

20. Plaintiff re-alleges and incorporates by reference Paragraph 1 through 19 as though fully restated verbatim.

21. The Plaintiff's Property taken by the Defendant was his personal property.

22. The Plaintiff is entitled to the immediate return of his Property.

23. The Defendant has wrongfully taken the Plaintiff's Property, or wrongfully caused it to have been taken from him.

24. Despite repeated requests, the Defendant has refused to return the Plaintiff's Property to him, or caused it to be returned to him as of the filing of this complaint.

WHEREFORE, the Plaintiff Edward Belczak respectfully requests that this Honorable Court enter relief in his favor against the Defendant as set forth below.

COUNT III – DENIAL OF DUE PROCESS

25. Plaintiff re-alleges and incorporates by reference Paragraph 1 through 24 as though fully restated verbatim.

26. The Plaintiff has expressed his ongoing interest in preserving his rights to and interests in, and to, his Property.

27. The constitutional guaranty of due process, in its most fundamental sense, is a guarantee against arbitrary legislation, demanding that the law shall not be unreasonable, arbitrary, or capricious, and that the means selected shall have a real and substantial relation to the object sought to be attained.

28. In this case, an underlying due process safeguard for the Plaintiff is the right not to have determinations about his Property made in an arbitrary and capricious manner without reasonable standards.

29. For example, but not limitation, the Plaintiff's due process rights were violated by the Search Warrant being obtained and issued without providing the Plaintiff notice and an opportunity to be heard.

30. In violation of the Plaintiff's due process rights, the Defendant has wrongfully seized the Plaintiff's Property rights and interests.

WHEREFORE, the Plaintiff Edward Belczak respectfully requests that this Honorable Court enter relief in his favor against the Defendant as set forth below.

COUNT IV – VIOLATION OF FOURTH AMENDMENT

31. Plaintiff re-alleges and incorporates by reference Paragraph 1 through 30 as though fully restated verbatim.

32. The Plaintiff has expressed his ongoing interest in preserving his rights to and interests in, and to, his Property.

33. Under the 4th Amendment of the United States Constitution, as well as article 1, section 11 of the Michigan Constitution, the people have a right to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures.

34. As set forth in this complaint, this constitutional protection owed to the Plaintiff against unreasonable searches and seizures has been violated by this Defendant concerning the rights and interests of the Plaintiff in and to his Property.

WHEREFORE, the Plaintiff Edward Belczak respectfully requests that this Honorable Court enter relief in his favor against the Defendant as set forth below.

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COUNT V – F.O.I.A REQUEST

35. Plaintiff re-alleges and incorporates by reference Paragraph 1 through 34 as though fully restated verbatim.

36. The Plaintiff is entitled to obtain a copy of the Search Warrant affidavit pursuant to MCL 780.651(8) and MCL 15.231, *et seq.*, the Michigan freedom of information act (“F.O.I.A.”)

37. The Plaintiff, through counsel, has requested a copy of the subject affidavit, but such request has been rejected.

38. Plaintiff denies any and all civil or criminal liability or behavior, either in his personal or professional capacity. He is entitled to know about all statements and allegations which assert anything to the contrary.

WHEREFORE, the Plaintiff Edward Belczak respectfully requests that this Honorable Court enter relief in his favor and against the Defendant City of Troy as follows:

- A. Enter a judgment or order setting aside the Search Warrant; and
- B. Enter a judgment or order granting Plaintiff’s claim and delivery request, ordering immediate unrestricted access to all of his Property, including but not limited to all accounts at ML, or the collateral equivalent thereto, and/or a judgment for the value of the collateral in the account(s) at the time the Search Warrant was first issued; and
- C. Enter a judgment or order granting Plaintiff’s replevin request, ordering immediate access to all of his Property, including but not limited to all accounts at ML, or the collateral equivalent thereto, and/or a judgment for the value of the collateral in the account(s) at the time the Search Warrant was first issued; and
- D. Enter a judgment or order granting Plaintiff’s request that the Defendant be found in violation of the Plaintiff’s due process rights, ordering the appropriate relief including but not limited to the Plaintiff’s immediate access to his Property, including but not limited to all accounts at ML, or the collateral equivalent thereto, and/or a judgment for the value of the collateral in the

account(s) at the time the Search Warrant was first issued, in addition to recovery of all his costs and actual attorney fees to date; and

E. Enter a judgment or order granting Plaintiff's request that the Defendant be found in violation of the Plaintiff's 4th Amendment rights, ordering the appropriate relief including but not limited to the Plaintiff's immediate access to his Property, including but not limited to all accounts at ML, or the collateral equivalent thereto, and/or a judgment for the value of the collateral in the account(s) at the time the Search Warrant was first issued, in addition to recovery of all his costs and actual attorney fees to date; and

F. Enter a judgment or order granting the Plaintiff's F.O.I.A. request, and order that the Troy PD and/or Detective Cooney immediately provide the Plaintiff a copy of the affidavit supporting the Search Warrant, in addition to copies of whatever other documents are in the possession or control of the Troy PD or Detective Cooney that in any way pertain to the allegations in the affidavit; and

G. Award Plaintiff such other and further interim and final relief, including monetary damages and costs, as justice and equity require.

Respectfully submitted,

WILLIAMS, WILLIAMS, RATTNER & PLUNKETT, P.C.

By: /s/ Ernest J. Essad, Jr.

ERNEST J. ESSAD, JR. (P32572)

WILLIAM E. HOSLER (P41257)

Attorneys for Plaintiff

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Dated: May 21, 2013

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EXHIBIT A

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EXHIBIT A

SEARCH WARRANT

STATE OF MICHIGAN)
) SS
COUNTY OF OAKLAND)

TO THE SHERIFF OR ANY OFFICER OF SAID COUNTY:

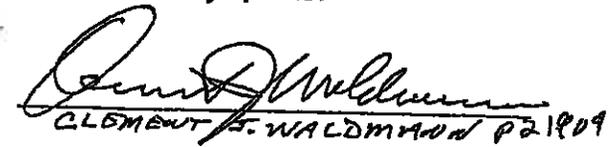
THE ATTACHED AFFIDAVIT having been sworn to by the Affiant, Detective Michelle Cooney, before me this day, based upon the facts stated therein, probable cause having been found, in the name of the People of the State of Michigan I command that you enter the following described place:

Merrill Lynch located at 1800 Merrill Lynch Dr., 2nd Floor, Pennington, NJ 08534

IT IS ORDERED that Merrill Lynch shall freeze and seal all funds contained in any and all of the accounts identified as belonging to Edward Belczak and account number [REDACTED] and prevent entry into any safe deposit boxes until such time as a locksmith can be made available to open the safe deposit box(es) in the presence of the police officer executing this warrant or until such time as the executing officer acquires a key to the safe deposit box(es). All accounts shall remain frozen and sealed until further order of the court.

IT IS FURTHER ORDERED that this Order and the application, therefore, shall be sealed and should not be disclosed to the account holders or any other party, except for service of this Order upon Merrill Lynch.

ISSUED UNDER MY HAND this 5th day of February 5, 2013.


CLEMENT F. WALDMAN P21909
MAGISTRATE Judge in and for the

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5-2-4 DISTRICT Court,
Oakland County, State of Michigan.

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