

TO: Mayor and Members of Troy City Council
FROM: Lori Grigg Bluhm, City Attorney
Allan T. Motzny, Assistant City Attorney
DATE: May 11, 2005
SUBJECT: Papadelis v City of Troy

In 2003, the Papadelis family filed a federal court lawsuit against the City of Troy and employees Mark Stimac and Marlene Struckman. The lawsuit was initiated after Building Inspector Marlene Struckman issued two citations to Gust Papadelis for constructing two new greenhouses on the northern parcel (3301) without obtaining the required permits. In the complaint, the Papadelis family alleges that they are entitled to money damages under 42 USC Section 1983 (federal civil rights act), due to Troy's alleged continued ticketing and issuance of stop work orders on the property. In addition to requesting money, the Papadelis family also requested a court order enjoining the City from requiring building permits and zoning approvals for their properties at 3301 and 3305 John R Road. They claim that they are exempt from Troy's zoning provisions that prohibit expansion of a non-conforming use, since the property is currently being used as an "agricultural" use.

As you may recall, the Troy City Council had previously authorized our office to file a lawsuit in the Oakland County Circuit Court, seeking to compel compliance with our ordinances and with the Court order. This authorization was provided after the criminal tickets were issued. A few days after this authorization, the Papadelis family filed their federal case. For purposes of judicial economy, we filed a counter-complaint in the federal court, rather than initiating an action in the Oakland County Circuit Court. After extensive discovery had been completed in the federal case, the attorney for the Papadelis family filed a motion to dismiss our counter-complaint, based on the federal court's alleged lack of jurisdiction. The Court eventually granted this motion, and articulated reasons for the dismissal that were equally applicable to the federal complaint initiated by the Papadelis family. Most notably, Judge Tarnow wanted to defer the case to the Oakland County Circuit Court judge, since it is her opinion that would ultimately need to be interpreted prior to a final resolution of the matter. Therefore, we filed a similar jurisdictional basis motion to dismiss the Papadelis lawsuit, which was granted by the Court. We had also filed a second motion to dismiss, asserting that the Plaintiffs (Papadelis family) had not set forth a claim that entitled them to any relief. The Court did not need to entertain this motion, since he dismissed the case on jurisdictional grounds. A copy of the order that dismisses the case without prejudice and directs plaintiff to re-file in Oakland County Circuit Court is attached. The order also provides for a stay of proceedings for the misdemeanor tickets now pending in the 52/4 District Court to allow the Oakland County Circuit Court to issue a final ruling as to whether the Papadelises are exempt from Troy's ordinances, based on the current use of their property.

We assume that the Papadelis family will re-initiate their lawsuit in the Oakland County Circuit Court. If they file their lawsuit, then the City has the right to file a counter claim. In order to expedite final resolution of this matter, it is our recommendation that we initiate an injunctive relief lawsuit, as previously authorized by City Council, or at a minimum file an immediate counter claim that re-asserts the allegations raised in the federal lawsuit. This would allow us to request the removal of the greenhouses and all structures and facilities on the property that are used for commercial purposes on this residentially zoned northern parcel. We would also request clarification of any appropriate restrictions that would prevent the continued unlawful expansion of the non-conforming use of the property.

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

FILED

MAY 11 2005

CLERK'S OFFICE
U. S. DISTRICT COURT
EASTERN MICHIGAN

GUST PAPADELIS, NIKI PAPADELIS,
TELLY'S GREENHOUSE AND GARDEN
CENTER, INC., A MICHIGAN CORPORATION,
AND TELLY'S NURSERY, L.L.C.,
A MICHIGAN LIMITED LIABILITY COMPANY,

Plaintiffs/Counter-Defendants

Case No. 03-71490

Hon. Arthur J. Tarnow

Magistrate R. Steven Whalen

v

CITY OF TROY, A MICHIGAN MUNICIPAL
CORPORATION, MARK STIMAC, AND
MARLENE STRUCKMAN,

Defendants

and

ROSALIE ALLIE, YOUSEF ALLIE, PETER
DODORO, DONNA DODORO, and UTA JOHIMSTAL,

Intervening Counter-Plaintiffs

FILED

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CLERK'S OFFICE
U. S. DISTRICT COURT
EASTERN MICHIGAN

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ORDER ABSTAINING FROM EXERCISE OF JURISDICTION
AND DIRECTING THE PLAINTIFF TO RE-FILE IN STATE COURT

This matter having come before the Court on April 7, 2005 on the Defendants' Motions seeking to dismiss this case on jurisdictional grounds or, in the alternative, for summary judgment, and the Court, for the reasons stated on the record, having declined to exercise jurisdiction over this case and instead having determined that the entire case, in its current procedural status, shall be remanded to the Oakland County Circuit Court for further proceedings, NOW THEREFORE,

IT IS HEREBY ORDERED that this case is dismissed, without prejudice and without costs to any party and the Plaintiffs are directed to re-file this case in the Oakland County Circuit Court at which time the Intervening Counter-Plaintiffs shall be allowed to intervene, it being the Court's intention to remand this case to the Oakland County Circuit Court in its present procedural posture.

IT IS FURTHER ORDERED that, upon the filing of this case with the Oakland County Circuit Court, the Defendants shall not attempt to remove the case to the United States District Court for the Eastern District of Michigan.

IT IS FURTHER ORDERED that nothing contained in this order shall be deemed a determination on the merits of the Plaintiffs' claims; this dismissal is on procedural grounds only, and is not an adjudication of the facts of this case.

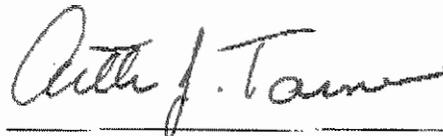
IT IS FURTHER ORDERED that the parties shall have the opportunity to conduct discovery in the Oakland County Circuit Court case as allowed by the Oakland County Circuit Court.

IT IS FURTHER ORDERED that until there has been a final decision from the Oakland County Circuit Court or any appellate court that subsequently obtains jurisdiction over this case, as to whether the Plaintiffs are required to obtain approval from the City of Troy Building Department

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and/or the Board of Zoning Appeals prior to constructing greenhouses on the subject property, the parties shall not proceed with the litigation of the 52-4 Judicial District Court misdemeanor cases entitled *City of Troy v Gust Papadelis*, ticket numbers 54613-M and 54614-M; the City of Troy shall withdraw its Motion to Set Aside Stay, which was taken under advisement by the 52-4 Judicial District Court on January 13, 2005, and a copy of this Order shall be submitted to the 52-4 Judicial District Court forthwith.

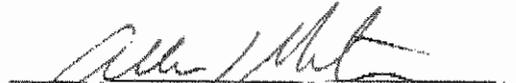
IT IS SO ORDERED.



United States District Court Judge

Approved as to form, only:


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