

STATE OF MINNESOTA
COUNTY OF RAMSEY

RECEIVED
MAY 21 2012
CITY CLERK

IN DISTRICT COURT
SECOND JUDICIAL COURT

EJ Liquidation, LLC and
John Norris, Sr.
Plaintiff,

Case File No.:

v.

SUMMONS

City of Saint Paul. and
Buberl Recycling &
Composting,
Defendants.

THIS SUMMONS IS DIRECTED TO DEFENDANTS CITY OF ST. PAUL AND BUBERL RECYCLING & COMPOSTING:

1. **YOU ARE BEING SUED.** The Plaintiff has started a lawsuit against you. The Plaintiff's Complaint against you is attached to this summons. Do not throw these papers away. They are official papers that affect your rights. You must respond to this lawsuit even though it may not yet be filed with the Court and there may be no court file number on this summons.

2. **YOU MUST REPLY WITHIN 20 DAYS TO PROTECT YOUR RIGHTS.** You must give or mail to the person who signed this summons a **written response** called an Answer within 20 days of the date on which you received this Summons. You must send a copy of your Answer to the person who signed this summons located at:

325 Cedar Street; Suite 210, Saint Paul, MN 55101

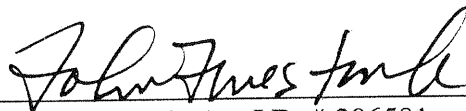
3. **YOU MUST RESPOND TO EACH CLAIM.** The Answer is your written response to the Plaintiff's Complaint. In your Answer you must state whether you agree or disagree with each paragraph of the Complaint. If you believe the Plaintiff should not be given everything asked for in the Complaint, you must say so in your Answer.


4. **YOU WILL LOSE YOUR CASE IF YOU DO NOT SEND A WRITTEN RESPONSE TO THE COMPLAINT TO THE PERSON WHO SIGNED THIS SUMMONS.** If you do not Answer within 20 days, you will lose this case. You will not get to tell your side of the story, and the Court may decide against you and award the Plaintiff everything asked for in the complaint. If you do not want to contest the claims stated in the complaint, you do not need to respond. A default judgment can then be entered against you for the relief requested in the complaint.

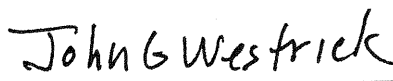
5. **LEGAL ASSISTANCE.** You may wish to get legal help from a lawyer. If you do not

have a lawyer, the Court Administrator may have information about places where you can get legal assistance. **Even if you cannot get legal help, you must still provide a written Answer to protect your rights or you may lose the case.**

6. ALTERNATIVE DISPUTE RESOLUTION. The parties may agree to or be ordered to participate in an alternative dispute resolution process under Rule 114 of the Minnesota General Rules of Practice. You must still send your written response to the Complaint even if you expect to use alternative means of resolving this dispute.


John G. Westrick, Att. I.D. # 206581
Signature


Dated


John G. Westrick
Print attorney's name

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

SECOND JUDICIAL DISTRICT

Case Type:

Court File No.:

EJ Liquidation, LLC and
John Norris, Sr.,

Plaintiff,

v.

COMPLAINT

City of Saint Paul, and
Buberl Recycling &
Composting,

Defendants.

Plaintiffs, for their claim against Defendants, and each of them, state and allege as follows:

PARTIES & VENUE.

1. Plaintiff, John Norris, Sr., is a citizen of the State of Minnesota and resides in Ramsey County. Norris is the owner of the equity in EJ Liquidation, LLC and the owner of the real estate located at 315 Larch Street, Saint Paul, MN 55117.

2. Plaintiff, EJ Liquidation, LLC, is a limited liability company organized under the laws of the State of Minnesota and is the owner of various personal property and inventory located at 315 Larch Street, Saint Paul, MN 55117.

3. Defendant, City of Saint Paul, is a municipality organized under the laws of the State of Minnesota.

4. Defendant, Buberl Recycling & Composting, is a demolition company acting as the agent of the Defendant City to demolish a condemned structure located at a property at 315

Larch Street, Saint Paul, MN 55117 pursuant to RESOLUTION LH SUBSTANTIAL ABATEMENT
ORDER : RLH RR 11-98.

5. Ramsey County, Minnesota is the proper jurisdiction and venue for this complaint as all of the claims are alleged to have taken place in Ramsey County, Minnesota and the municipal Defendant is located within the confines of said county.

ALLEGATIONS COMMON TO THE COMPLAINT.

6. On or about, October 21, 2011 the City notified Plaintiff Norris that the 315 Larch Street property was a nuisance and must be abated rapidly.

7. Plaintiff Norris was unable to complete all repairs by October 24, 2011 and an abatement hearing was scheduled for February 1, 2012.

8. Plaintiffs their attorney attended the hearing and presented evidence to the Saint Paul City Council.

9. The Saint Paul City Council then resolved by RLH RR 11-98 dated March 13, 2012, that Norris had 15 days to repair the structure and correct all deficiencies or raze and remove the structure.

10. Plaintiff Norris was unable to meet the terms of the March 13, 2012 abatement order.

11. Defendant City of Saint Paul then requested bidding on a demolition contract for the condemned structure at 315 Larch Street, Saint Paul, MN 55117. Bidding began on April 19, 2012.

12. The low bid belonged to Defendant Buberl Recycling & Composting who was notified by letter on May 14, 2012 that it should proceed with the demolition.

13. Plaintiffs were notified on May 17, 2012 that demolition would begin on Monday, May 21, 2012.

14. Despite efforts by the Plaintiffs to remove them, the structure at 315 Larch Street, Saint Paul, MN 55117 still has vast quantities of valuable personal property and inventory belonging to the Plaintiffs with an approximate value of \$840,000.00.

15. Defendant City of Saint Paul has failed to give Plaintiffs sufficient time to remove Plaintiffs' property since Plaintiff Norris was unable to meet the terms of the March 13 abatement order.

**COUNT I:
UNCONSTITUTIONAL TAKING
SECTION 42 U.S.C. §§ 1983.**

16. Plaintiffs restate allegations 1 through 15 as if fully restated here.

17. The property belonging to the Plaintiffs is "property" within the meaning of the Fifth and Fourteenth Amendments to the Constitution of the United States and Article 1, Section 13 of the Minnesota Constitution.

18. Pursuant to the abatement order, and its contract with the city, Defendant Buberl Recycling and Composting is permitted to take possession of personal property in the structure located at 315 Larch Street, St. Paul, MN 55117 and dispose of it.

19. Neither Defendant City of St. Paul nor Defendant Buberl Recycling and Composting are required to compensate either Plaintiff for the loss of the personal property located within the structure to be demolished at 315 Larch St., St. Paul, MN 55117 pursuant to the abatement resolution passed by the City Council of the City of St. Paul.

20. While the City Council's abatement resolution met due process requirements with respect to the demolition of the structure, the issues regarding Plaintiffs' personal property

located within the structure are inadequate and have not provided sufficient due process to Plaintiffs, or either of them, because Plaintiffs have not been provided with sufficient time since the deadline contained in the demolition resolution dated March 13, 2012 to protect their interests and have the property removed in a timely and safe fashion.

21. The City Council of the City of St. Paul is an improper venue for determining constitutional issues arising under the Constitution of either the United States of America or the State of Minnesota.

22. The laws of the State of Minnesota, the ordinance or resolutions of the City Council, the City of St. Paul, or the contract between the City of St. Paul and Defendant Buberl Recycling and Composting do not provide adequate post-deprivation remedy sufficient to compare with due process and prevent the taking of the Plaintiffs' personal property located within the structure at 315 Larch Street, St. Paul, MN 55117.

COUNT II: DECLARATORY JUDGMENT

23. Plaintiffs restate the allegations of paragraphs 1-22 as if fully restated here.

24. Minnesota law provides that a party to a contract, or affected by a contract or affected by an ordinance, resolution or statute may seek review of an appropriate court to determine rights and obligations thereunder.

25. Inadequate time has been provided to Plaintiffs, and each of them, to move their personal property located at 315 Larch Street, St. Paul, MN 55117 since the March 13, 2012 deadline contained in the City Council's demolition/resolution RLH RR 11-98. Moreover, Plaintiffs were only notified on May 17, 2012 that demolition would begin on May 21, 2012.

26. As a result, Plaintiffs, and each of them, will be deprived of valuable interest in said personal property located within the structure at 315 Larch Street, St. Paul 55117 and,

pursuant to the agreement between Defendant City of St. Paul and Defendant Buberl Recycling and Composting, will deny Plaintiffs, and each of them, their interest in the personal property located therein.

27. Plaintiffs have been denied due process as a result of insufficient time to remove their personal property, having been informed on May 17, 2012 that demolition would begin on May 21, 2012 and that Plaintiffs would not be allowed to remove any more property from the structure at 315 Larch Street, St. Paul, MN 55117.

COUNT III STATE LAW TAKING

28. Plaintiffs restate the allegations of paragraphs 1 through 26 as if fully restated here.

29. Pursuant to its demolition resolution and its agreement with Defendant Buberl Recycling and Composting, Defendant City of St. Paul is in the process of violating Minnesota Constitution Article 1, Section 13 by taking personal property belonging to Plaintiffs and each of them.

30. By virtue of its contract and authority granted to it by the Defendant City of St. Paul, Defendant Buberl Recycling and Composting, is about to violate Minnesota Constitution Article 1, Section 13 by taking for public use, without compensation, personal property belonging to Plaintiffs, and each of them.

31. Eminent domain proceedings are not applicable to this matter because it involves personal property rather than real estate.

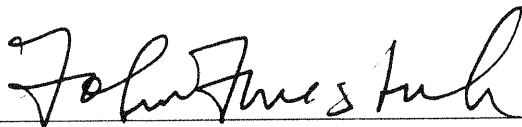
32. There are no post-deprivation remedies sufficient to meet the needs of the Plaintiff.

WHEREFORE Plaintiffs, each of them, pray for an order of this court:

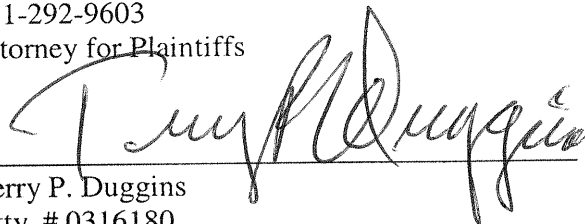
1. Enjoining and preventing the demolition of the premises located at 315 Larch St., City of St. Paul, State of Minnesota 55117 until adequate time has been permitted to Plaintiffs, and each of them, to remove their personal property from the structure located thereon;
2. Alternatively, ordering and directing the Defendant City of St. Paul and Defendant Buberl Recycling and Composting be required to pay Plaintiffs, and each of them, the value of their personal property located within the condemned structure at 315 Larch St., City of St. Paul, MN 55117 if removal cannot be effected;
3. Declaring and determining that the actions of Defendant City of St. Paul and Defendant Buberl Recycling and Composting and each of them constitute an unlawful taking of the Plaintiffs' property within the meaning of the Fifth and Fourteenth Amendments of the Constitution of the United States and constitutes a violation of Title 42, Section 1983 for which compensation is due to Plaintiffs;
4. Determining, pursuant to the Uniform Declaratory Judgment Act, that the policies, procedures and methodology by which the structure located at 315 Larch St., City of St. Paul, Minnesota 55117 was condemned without sufficient time to allow Plaintiffs, and each of them, to remove their personal property located therein constitutes a violation of due process of both the federal and State constitutions and hence;
5. Declaring that the actions of Defendant City of St. Paul and Defendant Buberl Recycling and Composting also constitutes the taking of property for public use within the meaning of Article 1, Section 13 of the Minnesota Constitution for which compensation is due and determining the amount of said compensation;
6. Granting Plaintiffs their costs, disbursements and attorney fees pursuant to the Minnesota Equal Access to Justice Act and 42 U.S.C. § 1988.

WESTRICK & McDOWALL-NIX, P.L.L.P

Dated: May 21, 2012



John G. Westrick, #0206581
Degree of Honor Building
325 Cedar St.
Suite 210
St. Paul, MN 55101
651-292-9603
Attorney for Plaintiffs



Terry P. Duggins
Atty. # 0316180
The Lowry Building
350 St. Peter Street, Ste 224
St. Paul, MN 55102
651-490-0222
651-254-1032 (fax)

ACKNOWLEDGMENT REQUIRED BY MINN. STAT. §549.21, SUBD.1

The undersigned hereby acknowledges that pursuant to Minn. Stat. § 549.21, Subd. 2, costs, disbursements, and reasonable attorney and witness fees may be awarded to the opposing party or parties in this litigation if the Court should find that the undersigned acted in bad faith, asserted a claim or defense that is frivolous and that is costly to the other party, asserted an unfounded position solely to delay the ordinary course of the proceedings or to harass; or committed a fraud upon the court.

Dated: _____

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

SECOND JUDICIAL DISTRICT

CERTIFICATE OF REPRESENTATION AND PARTIES

(Only the initial filing lawyer/party needs to complete this form)

EJ Liquidation, LLC and John Norris, Sr. VS City of Saint Paul, and Buberl Recycling & Composting

Pursuant to Rule 104 of the General Rules of Practice for District Courts, this form must be completed and filed with the Court Administrator's Office at the time the case is filed. The Court Administrator shall, upon receipt of the completed certificate, notify all parties or their lawyers of the date of filing the action and the file number assigned.

LIST ALL LAWYERS/PRO SE PARTIES INVOLVED IN THIS CASE

LAWYER FOR PLAINTIFF(S)

LAWYER FOR DEFENDANT(S)

(If not known, name party and address)

EJ Liquidation, LLC and John Norris, Sr.
Name of Party

City of Saint Paul, Minnesota
Name of Party

John G. Westrick
Attorney Name – Not firm name

City of Saint Paul, Attorney's Office
Attorney Name – Not firm name

325 Cedar Street, Suite 210
Address

400 City Hall
Address

Degree of Honor Building

15 Kellogg Blvd., West

St. Paul, MN 55101

St. Paul, MN 55102

651-292-9603
Telephone

651-266-8710
Telephone

0206581
Minnesota Attorney ID No.

Minnesota Attorney ID No.

May 21, 2012
Date

Filing Lawyer/Party

LAWYER FOR:

(If not known, name party and address)

EJ Liquidation, LLC and John Norris, Sr.
Name of Party

Terry P. Duggins
Attorney Name – Not firm name

350 St. Peter Street, Suite 224
Address

The Lowry Building

St. Paul, MN 55102

651-490-0222
Telephone

0316180
Minnesota Attorney ID No.

LAWYER FOR:

(If not known, name party and address)

Name of Party

Attorney Name – Not firm name

Address

Telephone

Minnesota Attorney ID No.

LAWYER FOR:

(If not known, name party and address)

Buberl Recycling & Composting
Name of Party

Unknown
Attorney Name – Not firm name

Address

Telephone

Minnesota Attorney ID No.

LAWYER FOR:

(If not known, name party and address)

Name of Party

Attorney Name – Not firm name

Address

Telephone

Minnesota Attorney ID No.

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

SECOND JUDICIAL DISTRICT

Case Type:

Court File No.:

EJ Liquidation, LLC and
John Norris, Sr.,

Plaintiff,

v.

AFFIDAVIT OF JOHN NORRIS

City of Saint Paul, and
Buberl Recycling &
Composting,

Defendants.

STATE OF MINNESOTA

Affidavit of John Norris, Senior

I, John Norris, Senior, being first duly sworn, upon oath deposes and states:

1. I am the sole owner of E. J. Liquidations, LLC;
2. I have no knowledge of a firm, of person doing business as E. J. Liquidators;
3. E. J. Liquidations, LLC is in the business of recycling and selling various industrial parts through-out the United States;
4. E. J. Liquidations, LLC has been in the business of providing used parts, mainly electrical, to customers through-out the United States for forty-four years;
5. E. J. Liquidations, LLC has been conducting its business from 315 Larch Street, Saint Paul, MN for approximately twenty-seven years;
6. Based on these facts, I have an in-depth knowledge of this business. I frequently receive telephone, faxed, or email inquiries about the appropriate parts to be used;
7. I also have an in-depth knowledge of how to avoid creating or releasing hazardous materials onto the site during the demolition process, which others who have bid on this project do not have;
8. E. J. Liquidations, LLC has approximately 120,000 individual parts for resale in its inventory at 315 Larch Street, Saint Paul, MN;
9. The conservative, estimated resale value of these items, over a two year period, is not less than \$840,000.00;
10. The salvage value of this same inventory, over a period of three months is not less than \$35,000.00;
11. E. J. Liquidations, LLC owns four over-the-road storage trailers, currently parked at 315 Larch Street, Saint Paul, MN.
12. New Location: E. J. Liquidations, LLC has now rented the industrial building and lot at 323 Larch Street, Saint Paul, MN.;
13. Since my attorney received the attached Resolution of the City of Saint Paul, on or about

March 16, 2012, E. J. Liquidations, LLC has been removing approximately 5,000 to 7,000 lbs. of recycled materials per week.

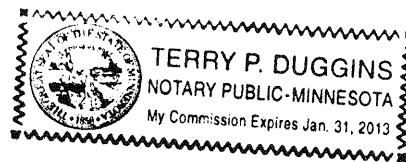
John E. Norris, Sr.
John E. Norris, Senior

DATED: this Eighteenth day of May, 2012

Sworn and subscribed to before me this

18th day of May, 2012.

Terry P. Duggins
Notary/Court Clerk



STATE OF MINNESOTA
COUNTY OF RAMSEY

DISTRICT COURT
SECOND JUDICIAL DISTRICT

Court File No: _____

EJ Liquidation, LLC and
John Norris, Sr.,

Plaintiff,

v.

City of Saint Paul, and
Buberl Recycling & Composting,

Defendants.

**MEMORANDUM OF LAW IN
SUPPORT OF MOTION FOR
TEMPORARY RESTRAINING ORDER**

INTRODUCTION

This memorandum of law is in support of Plaintiff EJ Liquidation, LLC and John Norris, Senior's motion for a temporary restraining order.

FACTS

This case involves a parcel of real property located with Ramsey County, City of Saint Paul, located at 315 Larch Street, Saint Paul, MN 55117.

Plaintiff EJ Liquidation, LLC is a limited liability company and is the owner of various personal property and inventory located at the 315 Larch Street in Saint Paul. On or about October 21, 2011 the City notified Plaintiff Norris that the property was a nuisance and must be abated rapidly. Plaintiff Norris was unable to complete all repairs by October 24, 2011 and an abatement hearing was scheduled for February 1, 2012. The Saint Paul City Council then resolved by RLH RR 11-98 dated March 13, 2012 that Plaintiff Norris had 15 days to repair the structure and correct all deficiencies or raze and remove the structure. Plaintiff was not able to meet these terms.

Defendant, Buberl Recycling & Composting is a demolition company acting as the agent

of the Defendant City to demolish a condemned structure located at the property pursuant to Resolution LH Substantial Abatement Order: RLH RR 11-98. Plaintiffs were notified on May 17, 2012 that demolition would begin on Monday May 21, 2012. Despite efforts by the Plaintiffs to remove them, the structure at 315 Larch Street, still has vast quantities of valuable personal property and inventory belonging to the Plaintiffs.

ARGUMENT

I. THIS COURT HAS SUBJECT MATTER JURISDICTION TO CONSIDER PLAINTIFF'S MOTION FOR INJUNCTIVE RELIEF.

A. Legal Background.

Subject matter jurisdiction is a question of law for this Court. Clerk of Court's Comp. v. Commissioners, 308 Minn. 172, 176-177, 241 N.W.2d 781, 783-784 (1976); Larson v. New Richland Care Center, 538 N.W.2d 915, 918 (Minn.Ct.App. 1995); Neighborhood School Coalition v. Independent School No. 279, 484 N.W.2d 440, 441 (Minn.Ct.App. 1992), rev. denied.

When a statute gives a court the power to hear cases dealing with a specific subject, then that court has subject matter jurisdiction to hear the case. See Fridlund Securities v. Commissioner of Revenue, 430 N.W.2d 154, 165 (Minn. 1988); Larson, 538 N.W.2d at 918; In re Estate of Sangren, 504 N.W.2d 786, 788 (Minn.Ct.App. 1993).

Minn.Stat. § 555.02 provides:

Any person¹ interested under a deed, will, written contract or other writings constituting a contract, or whose rights, status, or other legal relations are affected by a statute, municipal ordinance, contract or franchise may have determined any question of

¹ Plaintiffs meet the statutory definition of a "person." Minn.Stat. § 555.13.

construction or validity arising under the instrument, statute, ordinance, contract or franchise and obtain a declaration of rights, status, or other legal obligations thereunder.

This statute provides an alternate form of relief to persons affected by an ordinance.

Montgomery v. Minneapolis Fire Dept. Relief Ass'n, 218 Minn. 27, 30, 15 N.W.2d 122, 124 (1944); Barron v. City of Minneapolis, 212 Minn. 566, 569, 4 N.W.2d 622, 624 (1942). This is so, even though relief might also be sought by writ of certiorari. Connor v. Township of Chanhassen, 249 Minn. 205, 209, 81 N.W.2d 789, 793-94 (1957).

Thus, this Court has "discretion" to issue a temporary restraining order to preserve the *status quo* pending the determination of the parties' rights in a declaratory judgment action even where quasi-judicial determinations are involved. See Minneapolis Fed. of Men Teachers, Local 238, AFL v. Board of Educ. of City of Minneapolis, 238 Minn. 154, 158, 56 N.W.2d 203, 206 (1953).

Furthermore, this Court has concurrent subject matter jurisdiction to hear cases arising under 42 U.S.C. § 1983. Maine v. Thiboutot, 448 U.S. 1, 3 at note 1 (1980). This includes the discretion to issue injunctive relief. Section 1983 provides:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be

considered to be a statute of the District of Columbia.

Given the above authority, this Court has subject matter jurisdiction to consider injunctive relief as part of the declaratory judgment issue raised in the Complaint, as jurisdiction was specifically authorized by Minn.Stat. § 555.02. Fridlund Securities, 430 N.W.2d at 165; Larson, 538 N.W.2d at 918; Estate of Sangren, 504 N.W.2d at 788.

Likewise, the United States Supreme Court's decision in Thiboutot confirmed this Court's jurisdiction to hear the § 1983 action and grant injunctive relief thereunder.

This Court should not misunderstand the distinction between reversing the decision of the City Council on the merits (which it lacks jurisdiction to do) and restraining the City from executing its decision while litigation ensued over the validity of the Plaintiff's due process claim arising from the loss of personal property. Cf. Ram v. Heckler, 792 F.2d 444, 446 (4th Cir. 1986) (District court had jurisdiction over doctor's constitutional claim regarding due process of his Medicare suspension, even though Circuit Court of Appeals had certiorari jurisdiction over merits of suspension itself); National Juvenile Law Cntr. v. Regnery, 738 F.2d 455, 458-59 (D.C.Cir. 1984) (District Court had jurisdiction over plaintiff's due process claims over funding process even though Circuit Court of Appeals had certiorari jurisdiction over merits of final funding decision).

Like the plaintiffs in Ram and N.J.L.C., Plaintiffs challenge the constitutionality and validity of the post-resolution process insofar as it affects the personal property that will be lost, not the merits of the action itself.

Thus, this Court's grant of an injunction, while it determines Plaintiffs' rights, is not an impermissible review of the Council's fact-findings and conclusions, but simply the maintenance

of the *status quo* pending its ultimate decision on the validity of the city ordinance itself. See Minneapolis Fed. of Men Teachers, 238 Minn. at 158, 56 N.W.2d at 206.

This is an important distinction. Plaintiffs are not requesting this Court to impinge on the quasi-judicial power of the Saint Paul City Council. Instead they seek injunctive relief pending a declaration as to the legality and constitutionality of an ordinance enacted by the Council as a legislative body. Courts routinely exercise the power of judicial review, which is to ensure that legislative enactments are legal and/or constitutional.

Plaintiffs' request is especially appropriate since the Council itself lacks the ability -- in a quasi-judicial capacity -- to adjudicate Plaintiffs' legal and constitutional challenges to the ordinance it enacted. See e.g., Seemann v. Little Crow Trucking, 412 N.W. 2d 422, 425 (Minn.Ct.App. 1987); Padilla v. Minnesota State Board of Medical Examiners, 382 N.W. 2d 876, 882 (Minn.Ct.App. 1986) (only courts have jurisdiction to resolve legal or constitutional questions).

II. THIS COURT SHOULD GRANT A TEMPORARY RESTRAINING ORDER PREVENTING DEMOLITION.

The analysis that the trial court must complete in granting a TRO is the same as that to be shown before a temporary injunction is based. Bio-Line, Inc. v. Burman, 404 N.W.2d 318, 321 (Minn.Ct.App. 1987) (quoting M.G.M. Liquor Warehouse Int'l, Inc. v. Forsland, 371 N.W.2d 75, 77 (Minn.Ct.App. 1985)). The factors to be considered in determining whether to grant an injunction include:

- (1) the nature and background of the relationship between the parties preexisting the dispute giving rise to the request for relief;
- (2) the harm to be suffered by plaintiff if the temporary restrain is

denied as compared to that inflicted on defendant if the injunction issues pending trial; (3) the likelihood that one party or the other will prevail on the merits when the fact situation is viewed in light of established precedents fixing the limits of equitable relief; (4) the aspects of the fact situation, if any, which permit or require consideration of public policy expressed in the statutes, State and Federal; (5) the administrative burdens involved in judicial supervision and enforcement of the temporary decree.

Dahlberg Brothers, Inc. v. Ford Motor Co., 272 Minn. 264, 274-75, 137 N.W.2d 314, 321-22 (1965); Overholt Crop Ins. Serv. Co., Inc. v. Berdeson, 437 N.W.2d 698, 701 (Minn.Ct.App. 1989).

A temporary injunction is issued to maintain the status quo pending a decision on the merits. Pickerign v. Pasco Mktg., Inc., 303 Minn. 442, 444, 228 N.W.2d 562, 564 (1975).

1. Nature of the Relationship Between the Parties.

Here, the Plaintiffs seek to enjoin the demolition of the property so that their personal property may be removed from the condemned real property. They are not seeking to undo the condemnation.

District Courts have enjoined demolition of buildings pending litigation, albeit in different circumstances. E.g. State by Powderly v. Erickson, 301 N.W.2d 324, 326-27 (Minn. 1981).

2. Balance of Harms Analysis.

Plaintiffs recognize the City's interest in abating nuisances. But, it suffers little harm if that condition continues while the Court determines the legality of the City's post-condemnation procedures. All Plaintiffs are asking for is additional time to gather their remaining property. Again Plaintiffs are not contesting the Abatement Order's merits.

The Plaintiffs risks losing personal property in the amount over \$840,000, and it may not be, entitled to any recompense from the City (though Plaintiff's believe they are). what very well may be the principal value of its security interest in the property, and it may not be entitled to any recompense from the City.

3. Demolition is a Taking.

The determination of whether property is "taken" for public use is a judicial one which the courts construe broadly. Wegner v. Milwaukee Mut. Ins. Co., 479 N.W.2d 38, 40 (Minn. 1991); City of Duluth v. State, 390 N.W.2d 757, 763 (Minn. 1986).

Amendment V to the United States Constitution provides:

...nor shall private property be taken for public use, without just compensation.

This Amendment was made applicable to the several States through the due process clause of the Fourteenth Amendment. First English Evangelical Lutheran Church of Glendale v. County of Los Angeles, 482 U.S. 304, 310 at note 4 (1987).

Article I, § 13 of the Minnesota Constitution provides:

Private property shall not be taken, destroyed or damaged for public use without just compensation therefor, first paid or secured.

Both of the above prohibitions were:

designed to bar Government from forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole.

Armstrong v. United States, 364 U.S. 40, 49 (1960); Wegner, 479 N.W.2d at 40.

Under Minnesota law, the constitutional prohibition against "taking, destroying or damaging property" imposes a condition on the exercise of the State's inherent supremacy over

private property rights." Wegner, 479 N.W.2d at 40 *quoting* Johnson v. City of Plymouth, 263 N.W.2d 603, 605 (Minn. 1978).

The fact that the damage or destruction of property is the result of the state's exercise of its police power "cannot justify the disregard of the constitutional inhibitions" which condition that damage or destruction upon payment of compensation. Wegner, 479 N.W.2d at 40; Petition of Dreosch, 233 Minn. 274, 282, 47 N.W.2d 106, 111 (1951); *see also* McGovern v. City of Minneapolis, 480 N.W.2d 121, 126-27 (Minn.Ct.App. 1992) *rev. denied* (following Wegner); *but see* Village of Zumbrota v. Johnson, 280 Minn. 390, 394-95, 161 N.W.2d 626, 629-30 (1968); Powell v. City of Clearwater, 389 N.W.2d 206, 209 (Minn.Ct.App. 1986) (municipalities not required to pay owner for razing hazardous structures).

Furthermore, the complainant must also demonstrate that the property has been taken or damaged for public use. Wegner, 479 N.W.2d at 40; AFSCME Councils 6, 14, 65 and 96 v. Sundquist, 338 N.W.2d 560, 575 (Minn. 1983) *appeal dismissed sub nom.* Minneapolis Police Relief Ass'n v. Sundquist, 466 U.S. 933 (1984). "Public use" is synonymous with "public purpose." City of Duluth, 390 N.W.2d at 763. The notion of "public use" is coterminous with the scope of the police power. Hawaii Hous'g Auth. v. Midkiff, 467 U.S. 229, 240 (1984).

Finally, the complainant must also demonstrate a direct and substantial loss of enjoyment of the property right of such magnitude that there is a deprivation of enjoyment and that there was a definite and measurable diminution of the market value of the property. *See* Alevizos v. Metropolitan Airports Comm'n of Minneapolis and St. Paul, 298 Minn. 471, 662, 216 N.W.2d 651, 662 (1974).

Our Appellate courts have noted that "protection of property values" is a promotion of the

public welfare. E.g. Twin City Red Barn, Inc. v. City of St. Paul, 291 Minn. 548, 550, 192 N.W.2d 189, 191 (1971); County of Wright v. Kennedy, 415 N.W.2d 728, 729 (Minn.Ct.App. 1987).

As the property is condemned and the structure is to be destroyed -- at least in part -- to remove its "blighting influence on the community," Plaintiff believes the condemnation necessarily was ordered for the benefit of the public. See City of Duluth, 390 N.W.2d at 762; City of Minneapolis v. Wurtele, 291 N.W.2d 386, 390 (Minn. 1980)(urban revitalization is "public goal" which is public use under Article 1 § 13). If the condemnation were not for a public purpose, then the City could not have ordered it in the first place.²

4. Public Policy Considerations.

Plaintiffs again acknowledge that City's important role in avoiding urban blight. But, Plaintiffs have rights too. A lawful business should not be have its stock-in-trade destroyed or lost except to the extent found imperatively necessary to a reasonable protection of another's proper enjoyment of life or property. Roukovina v. Island Farm Creamery Co., 160 Minn. 335, 200 N.W. 350 (1924).

5. Other Considerations Such as Supervision.

Plaintiffs sees no special problems in the supervision of this injunction.

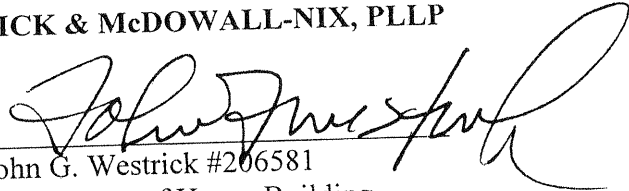
² If no such public purpose exists, Plaintiffs doubts that the City has the authority, even under the police power, to roam about its territorial jurisdiction ordering the destruction of private buildings willy-nilly. See Olson v. City of Minneapolis, 263 Minn. 1, 13, 115 N.W.2d 734, 742 (1962) (police power does not authorize city to meddle with private property).

CONCLUSION

For the reasons stated above, this Court should grant Plaintiffs' request.

Dated: May 21, 2012

WESTRICK & McDOWALL-NIX, PLLP



John G. Westrick #206581
210 Degree of Honor Building
325 Cedar Street
Saint Paul, MN 55101

Terry P. Duggins #0316180
The Lowry Building
350 St. Peter Street, Ste 224
Saint Paul, MN 55102

STATE OF MINNESOTA
COUNTY OF RAMSEY

DISTRICT COURT
SECOND JUDICIAL DISTRICT

Court File No: _____

EJ Liquidation, LLC and
John Norris, Sr.,

Plaintiff,

v.

City of Saint Paul, and
Bubert Recycling & Composting,

Defendants.

**NOTICE OF MOTION AND MOTION
FOR TEMPORARY RESTRAINING
ORDER**

**TO: DEFENDANT AND ITS ATTORNEY, SAINT PAUL CITY ATTORNEY SARA
GREWING, ESQ. AT 400 CITY HALL AND COURTHOUSE 15 KELLOGG BLVD. W.
SAINT PAUL, MINNESOTA 55102**

NOTICE

YOU WILL PLEASE TAKE NOTICE that as soon as counsel may be heard in a courtroom in Ramsey County before an Honorable Judge of the District Court, Plaintiffs EJ Liquidations, LLC and John Norris, Sr., through the undersigned counsel will request the following relief.

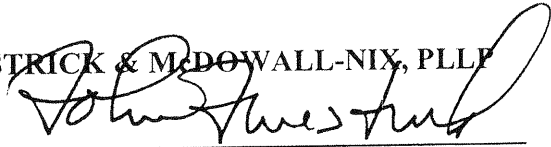
MOTION

1. Asking the court to issue a temporary restraining order so Plaintiffs have time to remove personal property from their condemned real property before it is destroyed.

SAID MOTION is based upon the files and records of proceedings herein, along with an Affidavit of John Norris and Memorandum of Law in Support of Motion For Temporary Restraining Order.

Dated: May 21, 2012

WESTRICK & McDOWALL-NIX, PLLP



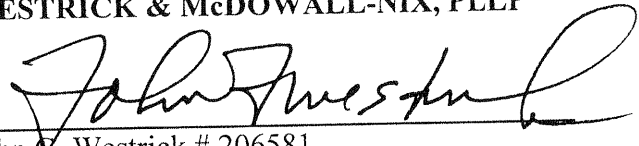
John G. Westrick # 206581
210 Degree of Honor Building
325 Cedar Street
Saint Paul, Minnesota 55101

ACKNOWLEDGMENT REQUIRED BY SECTION 549.211

Plaintiff, through the undersigned attorney, hereby acknowledges that costs, disbursements, and reasonable attorney and witness fees may be awarded pursuant to Minn. Stat. § 549.211, to the party against whom the allegations in this pleading are asserted.

Dated: May 21, 2012

WESTRICK & McDOWALL-NIX, PLLP



John G. Westrick # 206581
210 Degree of Honor Building
325 Cedar Street
Saint Paul, Minnesota 55101