

**IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI
ASSOCIATE CIRCUIT DIVISION
AT KANSAS CITY**

CITY OF KANSAS CITY, MISSOURI,)	
)	
Plaintiff,)	
v.)	
)	
LARABEE SERVICES, L.L.C.,)	
)	
Defendant/Third Party Plaintiff,)	CASE NO. 0516-CV08730-02
and)	DIVISION 27
)	
SOUTH & ASSOCIATES, P.C.,)	
)	
Third Party Defendant.)	

JUDGMENT NUNC PRO TUNC

FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT

On June 14, 2007, this matter was called to trial. At trial, Plaintiff appeared through counsel, Jesse Sendejas. Defendant/Third Party Plaintiff appeared through counsel, Ronald Muller. Third Party Defendant appeared through counsel, Nancy Wilson. The parties presented evidence and thereafter, the Court took the matter under advisement pending review of all evidence. After careful consideration of the evidence presented at trial, the Court makes the following Findings of Fact, Conclusions of Law and Judgment.

FINDINGS OF FACT

First Board-Up of 527 Indiana Avenue

1. The City of Kansas City, Missouri (hereinafter referred to as "City"), is a municipal corporation duly organized, created and existing under and by virtue of the Constitution and Laws of the State of Missouri.

2. The City operates under a constitutional charter adopted by its people for its own home rule and self-government.

3. Larabee Services, L.L.C., became the true owner of the Property located at **527 Indiana Avenue** (hereinafter referred to as the "Property"), legally described as **The South 25 feet of the North 95.05 feet of the West 8 feet of Lot 9, and the South 25 feet of the North 95.05 feet of Lot 10, RICKERT'S FIRST ADDITION**, a subdivision in Kansas City, Jackson County, Missouri, on May 1, 2002, by a Trustee's Deed Under Sale executed by South & Associates, P.C. The Trustee's Deed Under Sale was never recorded with the Jackson County Recorder's Office.

4. Carl Larabee, the corporate representative for Larabee Services, L.L.C., was responsible for and completed the purchase of the Property. He did not conduct a title search of the Property before the purchase.

5. The Trustee's Deed Under Sale that was executed on May 1, 2002, erroneously included in the legal description not only the Property that is the subject of this suit, but also language describing additional property (located at 529 Indiana Avenue).

6. Neither party intended for the additional property to be included in the deed, nor did the seller, South & Associates, P.C. have the authority to convey any property but that which the parties agreed was the subject of the sale (527 Indiana Avenue).

7. On February 20, 2003, a City inspector with the City's Dangerous Buildings Division found the Property to be open to unauthorized or unlawful entry and ordered it to be secured, pursuant to City Code Section 48-31.

8. The Order was mailed to the owners of record. By virtue of the fact that the Trustee's Deed Under Sale executed on May 1, 2002 was never recorded, the owners of record

on February 20, 2003, were Dennis and Rena Moll.

9. The Order directed the owners to secure the subject Property within 15 days. The Order notified the owners that if the structure was not secured within 15 days, the City was vested with the power to abate the danger to the public.

10. On April 2, 2003 the City's contractor completed the board-up, and the cost was assessed in accordance with City Code Section 48-66. The tax bill is a personal debt against the owner, which at the time of board-up was Larabee Services, L.L.C., and is also a lien on the Property until paid, pursuant to City Code Section 48-66(b).

11. The City issued the special assessment tax bill in the amount of \$244.00 on September 1, 2003.

12. The total amount due, including delinquent interest and a ten-percent collection fee authorized by Section 390 of the City Charter, is \$326.22.

13. Larabee Services, L.L.C., was the true owner at the time of demolition and is therefore personally responsible for the bill, pursuant to City Code Section 48-66(b).

14. Larabee Services, L.L.C., did not cease being the true owner of the Property until January 12, 2006, when the Property was conveyed by Jackson County, Missouri, to Land Trust of Jackson County, Missouri, in a Foreclosure of Liens for Delinquent Land Taxes action.

Second Board-Up of 527 Indiana Avenue

15. Larabee Services, L.L.C., was the true owner of the Property from May 1, 2002 until January 12, 2006, by an unrecorded deed.

16. On June 25, 2003, a City inspector with the City's Dangerous Buildings Division found the Property to be open to unauthorized or unlawful entry and ordered it to be immediately secured.

17. The Order was mailed to the owners of record. The owners of record on June 25, 2003, were Dennis and Rena Moll, Treball Corporation as Deed of Trust holder and South & Associates, P.C., as Trustee under the Deed of Trust. Carl Larabee admits that he received several notices forwarded to him by South & Associates, however he could not identify exactly which notices he received.

18. On June 25, 2003 the City's contractor completed the board-up, and the cost was assessed in accordance with City Code Section 56-541. The tax bill is a personal debt against the owner, which at the time of board-up was Larabee Services, L.L.C., and is also a lien on the Property until paid, pursuant to City Code Section 56-541(d).

19. The City issued the special assessment tax bill in the amount of \$168.00 on November 1, 2003.

20. The total amount due, including delinquent interest and a ten-percent collection fee authorized by Section 390 of the City Charter, is \$227.19.

21. Larabee Services, L.L.C., was the true owner at the time of board-up and is therefore personally responsible for the bill, pursuant to City Code Section 56-541(d).

Demolition of 527 Indiana Avenue

22. Larabee Services, L.L.C., was the true owner of the Property from May 1, 2002 until January 12, 2006, by an unrecorded deed.

23. The City's Dangerous Buildings Division ordered the Property demolished on April 16, 2003, pursuant to City Code Section 56-535.

24. The City mailed the Order to Demolish to the owner of record as required by City Code Section 56-532(c). The owners of record on April 16, 2003, were Dennis & Rena Moll and South & Associates, P.C., as Trustee under the Deed of Trust. Carl Larabee admits that he

received several notices forwarded to him by South & Associates, however he could not identify exactly which notices he received.

25. The Order directed the owner to vacate the Property and demolish the structure located on the Property within 30 days. The Order was based on numerous ordinance violations. The Order notified the owner that if the structure was not repaired or demolished within 30 days, the City can proceed to abate the danger.

26. The City recorded a Certificate of Existence of Dangerous Building ("Certificate") with the Jackson County Recorder of Deeds on May 12, 2003, as required by City Code Section 56-538(a). The Certificate stated that the house located at the Property had been ordered demolished by the City on April 16, 2003. The Certificate cited to the relevant City Ordinances and provided the address of the Dangerous Buildings Division.

27. The Certificate provided notice to all subsequent purchasers that the Property had been ordered demolished by the City pursuant City Code Section to 56-538(b).

28. Because of the deteriorated condition of the Property the City's Dangerous Buildings Division ordered the Property demolished immediately through its emergency procedures on June 25, 2003, pursuant to City Code Section 56-540.

29. On June 25, 2003, the City issued a Notice to Proceed to Industrial Wrecking Co., Inc., the only bidder to place a bid for the demolition of the Property.

30. Demolition was completed in July of 2003 and the cost of the demolition was assessed pursuant to City Code Section 56-541.

31. The bill in the amount of \$7,000.00 was issued to the record owners, Dennis and Rena Moll, on March 1, 2004. The tax bill is a personal debt against the owner, which at the time of demolition was Larabee Services, L.L.C., and is also a lien on the Property until paid,

pursuant to City Code Section 56-541(d).

32. The tax bill has not been paid, nor has any portion of the bill been paid.

33. The total amount due, including delinquent interest, a ten-percent collection fee authorized by Section 390 of the City Charter, and cost of service of process is \$10,545.34

34. Larabee Services, L.L.C., was the owner at the time of demolition and is therefore personally responsible for the bill, pursuant to City Code Section 56-541(d).

CONCLUSIONS OF LAW

35. Pursuant to the authority granted through Sections 82.300.4 RSMo (1995 Supp.), Plaintiff has the authority to enact ordinances which establish procedures to determine when certain enumerated defects exist on a property that constitute a nuisance. The ordinances are contained in Article II of Chapter 48, entitled Nuisances, Sections 48-21 to 48-48 of the Code of Ordinances of the City of Kansas City. The ordinances prohibit owners and occupants of property from causing, permitting or maintaining such nuisances, pursuant to City Code Section 48-61. The ordinances provide that written notice of violation shall be served upon the owner or occupant by delivering to them personally or by leaving such notice at their usual place of abode, if the person cannot be found after diligent effort to do so, service may be made upon such person by posting the notice in or about the premises described in the notice or publishing it in a newspaper of general circulation, pursuant to City Code Section 48-63. The ordinances provide that if the owner fails to abate the nuisance, the City may take the necessary actions for abatement and certify the costs in a special assessment tax bill, pursuant to City Code Section 48-66. The special assessment is a personal debt against the owner and is also a lien on the property until paid, pursuant to City Code Section 48-66(b).

36. The Trustee's Deed Under Sale executed on May 1, 2002, did convey good title to

Larabee Services as to the Property located at 527 Indiana Avenue. The erroneous inclusion of the additional property in the legal description does not operate to void the entire sale. The deed conveyed only what South & Associates, P.C. had legal right and authority to convey, which was the property at 527 Indiana Avenue. It was the intent of the parties for the deed to convey the property at 527 Indiana Avenue only.

37. The Plaintiff followed all proper procedures, including providing adequate notice, for securing a structure that is open to unauthorized or unlawful entry when it first boarded-up 527 Indiana Avenue on April 2, 2003.

38. The Plaintiff properly assessed the fees for the first board-up and properly issued a special assessment tax bill on September 1, 2003.

39. Defendant, Larabee Services, L.L.C., as the true owner of 527 Indiana Avenue from May 1, 2002 until January 12, 2006, owes Plaintiff \$326.22, for the cost of the first board-up, fees and interest. To rule otherwise would encourage those who purchase property to shield themselves from responsibility simply by failing to record the instruments that convey title to them.

40. Pursuant to the authority granted through Sections 67.400, et seq, RSMo (1997 Supp.), Plaintiff has enacted ordinances which establish procedures to determine whether a building is dangerous, to prohibit owners from causing, maintaining or permitting certain enumerated nuisances and whether the building should be ordered repaired, demolished, and/or vacated. The ordinances are contained in Article V of Chapter 56, entitled Dangerous Buildings or Structures, Sections 56-531 to 56-547 of the Code of Ordinances of the City of Kansas City. City Code Section 56-535 provides that an Order shall be issued to all parties of a building or structure determined to be a dangerous building and shall be served upon all parties by regular

mail, or if the party cannot be found after a diligent search, service may be had by posting the Order on the building or structure described in the Order. The ordinances provide that if the owner fails to abate the nuisance, the City may take the necessary actions for abatement and certify the costs in a special assessment tax bill, pursuant to City Code Section 56-541. The special assessment is a personal debt against the owner and is also a lien on the property until paid, pursuant to City Code Section 56-541(d).

41. Under City Code Section 56-540 the City is authorized to use emergency procedures to order an owner or occupant to immediately abate a nuisance when a nuisance creates an emergency requiring immediate action to protect the public health, safety or welfare. The City is allowed to immediately abate or correct such nuisances when the owner does not do so.

42. The Plaintiff followed all proper procedures for declaring the structure at 527 Indiana Avenue open to unauthorized or unlawful entry and ordering it immediately secured, the second board-up, on June 25, 2003.

43. The Plaintiff properly assessed the fees for the second board-up and properly issued a special assessment tax bill on November 1, 2003.

44. Defendant, Larabee Services, L.L.C., as owner of 527 Indiana Avenue from May 1, 2002 until January 12, 2006, owes Plaintiff \$227.19, for the cost of the second board-up, fees and interest.

45. The Plaintiff followed all proper procedures, including adequate notice, when it declared the structure at 527 Indiana Avenue a dangerous building and ordered it demolished on April 16, 2003. The Plaintiff further followed all proper procedures when it declared the same structure at 527 Indiana Avenue immediately demolished, because of deteriorated conditions, on

June 25, 2003.

46. The Plaintiff properly assessed the fees for demolition and properly issued a special assessment tax bill on March 1, 2004.

47. Defendant, Larabee Services, L.L.C., as the true owner of 527 Indiana Avenue from May 1, 2002 until January 12, 2006, owes Plaintiff \$10,545.34, for the cost of demolition, fees and interest.

48. Pursuant to the authority of Section 817, Kansas City Charter which states, "A fee of ten percent (10%) of the amount of the delinquent taxes and penalties shall be taxed up as costs to go to the city in every suit for the collection of delinquent taxes under this article," Plaintiff is entitled to a fee of 10% of the amount of the delinquent tax and penalty as assessed against the Property and represented by the special tax bills contained herein. This ten percent fee is already included in the amounts contained in paragraphs 37, 42 and 45.

JUDGMENT

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that judgment is for Plaintiff against Defendant for Counts I and Count II for a total amount of \$11,098.75. Interest on the judgment shall accrue at the statutory rate of 9 percent per annum, pursuant to 408.040 RSMo.

BE IT FURTHER ORDERED, ADJUDGED AND DECREED that Judgment is for Third Party Defendant, South & Associates, P.C. and against Third Party Plaintiff Larabee Services, L.L.C.

IT SO ORDERED.

DATE

JUDGE GREGORY B. GILLIS

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