HPP

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Micro-Litigation As A Tool To Revitalize Our Blighted Areas After the Foreclosure Crisis

Jane Bowman[2]
Staff Attorney, Foreclosure Relief Law Project

Introduction

There isn't one remedy to solving our current foreclosure crisis. There are many remedies and many solutions that all have to be marshaled to address the biggest economic crisis since the Great Depression. This session will focus on one such remedy: micro-litigation. This concept paper highlights a micro-litigation success story, as well as discusses the process of micro-litigation.

What is Micro-Litigation?

Micro-litigation is a targeted approach to revitalize blighted areas. It is intended to be used in conjunction with or parallel to larger, systemic lawsuits, but has the advantage of being quicker and showing more immediate results. The legal claims alleged in a micro-litigation case are public nuisance or negligence claims, which are rooted in a violation of municipal ordinances or state building code violations.

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[2] Mark Ireland, supervising attorney with the Foreclosure Relief Law Project, contributed to writing this concept paper.

I. Hawthorne Area Community Council v. CitiMortgage – A Success Story



On January 23, 2008, the Hawthorne Area Community Council ("HACC") filed a lawsuit against CitiMortgage and David Keith related to 415 31st Avenue North, located in North Minneapolis. The property at issue is currently vacant, and it is a major obstacle for a planned community -- the EcoVillage redevelopment project -- to move forward. The Hawthorne EcoVillage is an innovative demonstration project in North Minneapolis that uses best practices in community-based development, neighborhood revitalization and sustainable green building and landscaping.

Overview

The lawsuit has two causes of action. First, HACC asked for the court to establish and recognize a cause of action for negligent and improvident lending. This is the first case to allege this cause of action in these circumstances, either in Minnesota or nationally. Specifically, CitiMortgage's negligent actions allegedly frustrated HACC's mission of redeveloping the neighborhood and blocked the EcoVillage project from moving forward.

Second, HACC has alleged that CitiMortgage and David Keith created and maintained a nuisance. Minneapolis City ordinances define a nuisance as any property that has been boarded for more than sixty days. In this case, not only has the property been boarded, it has also been a magnet for crime and vandalism. For example, in the fall, its basement was broken into and lit on fire. The front yard was regularly used as a dumping ground.

The lawsuit's goal was simple: eliminate a blighted property from the neighborhood. It is unacceptable to negligently underwrite loans, and then knowingly allow a property to be a vacant, eyesore. Lenders have a legal duty to expedite the foreclosure process and either sell the property or bring it up to code. They cannot allow it to remain vacant and boarded. Depending on the outcome, this legal strategy may be used to address other vacant and abandoned nuisance properties throughout Minnesota or nationally, but particularly in neighborhoods that have been hard-hit by the foreclosure crisis.

Background of Property History

As for the property, itself, on February 22, 2007, the owners of 415 31st Avenue were approached and HACC toured the property. The property was appraised for $119,000, and HACC made a reasonable offer to purchase the property based upon its appraisal. Their offer, however, was rejected. Much to their surprise, HACC learned that the property had been sold to another party.

The recorded mortgage, originated by CitiMortgage, was nearly double the appraised value ($235,000). CitiMortgage had sold the property to David Keith, a poor candidate for homeownership due to his repeated jail visits. It was never occupied, and the property was soon boarded and vacant. CitiMortgage was approached in the summer by HACC, and then twice this fall in an effort to abate the nuisance and move the EcoVillage project forward. CitiMortgage, however, never substantively responded to HACC's proposals.

On January 23, 2008, HACC initiated a lawsuit against CitiMortgage. It was the first lawsuit of its kind in Minnesota, and likely the first nationally. The lawsuit alleged that CitiMortgage was liable to the community for damages that resulted from its negligent lending as well as creating and maintaining a nuisance property. On August 22, 2008, HACC and CitiMortgage reached a settlement agreement. Although the specific terms of the settlement agreement are confidential, the property has been sold to HACC and the development project will go forward.

II. What is the Process of Micro-Litigation?

There are four steps to effective micro-litigation. First, discuss priorities with community members, community leaders, police, and property inspection staff to identify specific properties that are injuring the city and using an excessive amount of government resources. Second, identify the goal of the litigation. What does the city want to accomplish though this litigation? Third, send a warning letter outlining the legal claim, potential damages, and how you would like the owner to respond and set a specific deadline for that response. Fourth, promptly follow-through with the warning letter that was sent to the owner. If an owner is not responsive, prepare and file the lawsuit. If there is more than one property at issue, the properties may be combined in an individual lawsuit. This is particularly effective and important when the properties are in close geographic proximity to one another or the properties are owned by the same person.

a. The Four Steps to Successful Micro-Litigation

Step One: Establish Community Priorities

Micro-litigation only works when addressing strategic, deliberate properties. Micro-litigation was successful regarding the HACC property because the property was the last vacant property in a community undergoing a significant amount of revitalization.

When establishing your community's priorities, ask: Are there problem properties that, if rehabbed, could significantly bring a neighborhood away from blight? Is there a pattern of a problem landowner or landowners that are not maintaining their properties? Are we willing to commit to litigation as a means to revitalize our community/communities?

Step Two: Identify the Goals of Litigation

Should your micro-litigation suit be successful, what are your end goals? Does the local government unit want to gain title to the property? Does a non-profit neighborhood development association want to gain title to the property? Do you just want the property brought up to code? Do you want the property out of the hands of a "slum-lord," and into the hands of homeowners? Do you simply want reimbursement for the money your local government unit spent on the property?

During settlement negotiations, your goal or goals will be important aspects of the discussion. Since the touchstone of your goal is likely about rehabilitating the property, you'll want to make sure you leave settlement with this goal accomplished.

Step Three: Warning Letters

The purpose of sending a warning letter is to let the homeowner know of your intent and give them an opportunity to rectify their wrong. The warning letter should clearly state your intent – if the property is not brought up to code, you will sue the homeowner in a nuisance or negligence action. State the basis for bringing your action; identify specific circumstances in which the local unit of government had to expend resources to keep up the property. The more specific you can be, the better. For example, use city or county records regarding police and fire calls to the property, snow, ice, weed, and garbage removal, etc. Lastly, give a specific time

during which the owner has an opportunity to respond to the letter. If there is no response, or the response is inadequate, swiftly file your lawsuit.

See **Exhibit A** for a Sample Warning Letter.

Step Four: Litigate!

The goal of micro-litigation is to put the homeowner in position to deal with the property immediately, as opposed to continuing to let it sit vacant and abandoned. With a lawsuit filed, you have leverage to negotiate an immediate resolution.

Litigation can bring about several different positive results: a TRO instructing the homeowner to bring the property up to code, damages, etc. or a mediated settlement resulting in the local government unit getting ownership of the property, damages, or any other result that would benefit to community. If a major lender is involved, they will be under media-pressure to act in the community's best interest; they will not want to be seen as standing in the way of neighborhood revitalization.

See **Exhibit B** for the Complaint and Motion for Temporary Restraining Order and Preliminary Injunction in *Cleveland Housing Renewal Project, Inc. v. Wells Fargo Bank, N.A. as Trustee.* The plaintiffs were successful in getting a TRO, whereby Wells Fargo was required to bring 140 of its REO properties up to code before those properties could be placed on the market.

For questions or comments, I can be reached at 651.642.0102 x117 or jbowman@hppinc.org.