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May 24, 2011

Minneapolis City Council
City Hall
350 S. 5th St.
Minneapolis, MN 55415

Mr. Joel Fussy
Assistant Minneapolis City Attorney
Minneapolis City Attorney's Office
City Hall, Room 210
350 S. 5th St.
Minneapolis, MN 55415

Re: Revocation of Rental License
DRB #24, LLC: 1424 Freemont Avenue

To the City Council and Mr. Fussy,

My firm has been hired to represent David Busch on behalf of DRB #24, LLC in defense of its rental license at 1424 Freemont Avenue in Minneapolis. At the April 29, 2011 meeting of the City Council, the Council adopted the recommendations of the Regulatory, Energy and Environment Committee to revoke the license based on assessments of unpaid citations on the property. Specifically, the City had cited the property for failure to tuck-point the chimney and paint the exterior of the house. The City Inspectors visited the property four times, and each time cited the property in increasing amounts for the re-inspection. Eventually, the City assessed the property and revoked the rental license.

Mr. Busch is seeking Writ of Certiorari to the Court of Appeals asking them to review this decision. He has sought review because he believes that the fines associated with the citations, and therefore the assessments, were made under the wrong statute, resulting in a demand for thousands of dollars more that should have been assessed. However, the decision of this Council is not automatically stayed pending the outcome of that case. At issue here is the collateral affects of the assessment on the 3 tenants who live in the house. Mr. Busch is asking the City to stay its revocation requiring the tenants to vacate the property during the pendency of the review by the Court of Appeals.

The law governing the stay of a City Council order pending appeal requires Mr. Busch to request a stay from this Council. The guidance the Court of Appeals provides in this situation is that this Council should balance the interests in maintaining the status quo with the Council's need to remain secure in victory.¹

In this case, the interests affected are not only those of Mr. Busch and the City Council, but those of the three men who are facing eviction. The administrative citation was for exterior painting of the house and for tuck-pointing on the chimney, which the Masonry Advisory Council defines as "to point masonry with a flush mortar joint that approximates the color of the masonry units and a mortar of contrasting color that is shaped into a thin strip."² Thus, the council in this case is not asked to address safety concerns, but to balance the harm of evicting three men from their home with the benefits of enforcing aesthetic ordinances during the pendency of the appeal.

The City has an interest in making sure the housing it allows to be rented meets minimum standards for the safety of the tenants. But the citations at issue with the

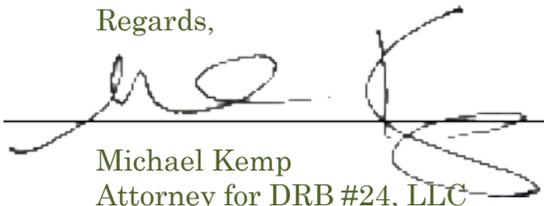
¹ *DRJ, Inc. v. City Of St. Paul*, 741 N.W.2d 141, 144 (Minn. Ct. App. 2007)

² Masonry Advisory Council, "Tuckpointing," available on its website at <http://www.maconline.org/tech/maintenance/point1/point1.html>.

property concern aesthetics, not safety. The City can stay the effect of its decision and still suffer no prejudice pending review by the Court of Appeals. Should the court decide in the City's favor, having granted the stay the City will have lost nothing: the revocation could be reinstated with no loss to the City. Should the court decide in favor of Mr. Busch, however, the City's failure to stay its decision will have resulted in the abrupt eviction of a three men who have done nothing to merit this.

Mr. Busch looks forward to addressing the City Council on this matter and hopes that it will see fit to stay the effect of its decision until the Court of Appeals has heard and decided on the matter.

Regards,

A handwritten signature in black ink, appearing to read 'Michael Kemp', is written over a horizontal line. The signature is stylized and cursive.

Michael Kemp
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