ORIGINAL

IN THE SUPREME COURT OF OHIO

SUNSET ESTATE PROPERTIES, LLC, *et al.*,	)	On Appeal from the Medina County Court of Appeals, Ninth Appellate District
Appellees,	)	
vs.	)	Case No. 13-1856
VILLAGE OF LODI,	)	
Appellant.	)	

APPELLEES' BRIEF IN OPPOSITION TO APPELLANT'S MOTION FOR IMMEDIATE STAY

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APPELLEES' BRIEF IN OPPPOSITION TO APPELLANT'S MOTION FOR IMMEDIATE STAY

I. INTRODUCTION

On November 12, 2013, the Ninth District Court of Appeals held Section 1280.05(a) of the Village of Lodi's Zoning Code was facially unconstitutional, in favor Sunset Properties, LLC and Meadowview Village, Inc. (collectively herein "Appellees"). The Ninth District reasoned that Section 1280.05(a) failed to pass rational basis scrutiny, as it treated prior nonconforming uses of land with manufactured homes differently than land with other types of housing, and without legitimate justification. In its holding, the Ninth District reversed the Medina County trial court's decision of March 14, 2012, which had granted summary judgment for the Village of Lodi ("Appellant"). The court then remanded this case to the trial court for the purpose of determining an appropriate remedy to compensate Appellees.

Now, Appellant moves this Court to stay any execution of judgment and the remand to the trial court, pending this Court's decision on whether to hear its jurisdictional appeal. This Court should deny Appellant's Motion for Immediate Stay because doing otherwise would prejudice Appellees' by causing them further economic loss. Appellees continue to be unable to rent homes in their manufactured home parks due to Appellant's refusal to reconnect utilities to the homes, thus making them uninhabitable. A stay and further delay would only compound this economic loss. Accordingly, this Court should deny Appellant's Motion for Immediate Stay.

II. LAW AND ARGUMENT

Under Ohio Supreme Court Practice Rule 7.01(A)(3), a party may file a motion for stay before filing its memorandum in support of this Court's jurisdiction. To comply with Rule 7.01(A)(3), a party must meet two requirements: (1) file the motion for stay with its notice of appeal, and (2) attach a copy of the court of appeals' opinion and entry with its motion for stay. But even if a party complies with these two requirements, a court need not grant a party's motion for stay as a matter of right. *See, e.g., Shelly Co. v. Karas Props., Inc.*, 2013-Ohio-347, 982 N.E.2d 726 (table) (denying motion to stay). This Court may still deny a motion for stay for reasons such as prejudice to the non-moving party or lack of a pressing need for delay.

A. A Stay Will Prejudice Appellees, as Appellees Have and Will Continue to Suffer Actual Economic Loss.

Prejudice against a non-moving party justifies denying a moving party's motion to stay. Here, a stay will unduly prejudice Appellees in three (3) ways. First, a stay will further compound the undue economic losses Appellees have already suffered. Second, a stay will make it impossible for Appellees to mitigate their losses. Finally, as Appellant asserts it cannot be required to post a supersedeas bond, a stay will leave Appellees' economic interests unprotected. For all these reasons, this Court should deny Appellant's motion.

Appellees have suffered undue economic loss for months and will continue to do so under a stay. Economic damages are a subset of consequential damages that represent a party's actual losses. *See Groch v. Gen. Motors Corp.*, 117 Ohio St.3d 192, 2008-Ohio-546, 883 N.E.2d 377, ¶ 86. Here, Appellees have suffered economic loss by their inability to rent out a number of homes and lots located within their manufactured home parks during the pendency of this case, due to Appellant's refusal to provide or reconnect utilities to the homes, namely electricity. Appellant, the Village of Lodi, operates the public electrical utility. Appellees requested

electrical service to seven (7) existing homes within their manufactured home parks, which are fully licensed by the Ohio Manufactured Homes Commission (the "OMHC"). (See Ex. A, Letter, attached). Appellant denied Appellees' request. As a result, Appellee Meadowview was even forced to tear down four homes because Appellant would not provide electricity. *Id.*

More importantly, Appellees' economic losses have already compounded over many years while awaiting adjudication of this issue. Appellees initially filed this lawsuit in February of 2011. Although Appellant characterizes Appellees' request to reconnect the homes' utilities as unreasonably quick, "a mere three days after the entry" of the Ninth District's decision (Appellant's Mtn. Stay p.3), the reality is that Appellee had already been waiting several years to regain its utilities, all the while incurring significant economic loss.

Additionally, Appellees will suffer prejudice under a stay because a stay will prevent them from mitigating their damages. An injured party has a duty to mitigate its damages by exercising reasonable effort, without taking undue risk or expense, to avoid incurring further damages. *Chicago Title Ins. Co. v. Huntington Nat'l Bank*, 87 Ohio St.3d 270, 276, 719 N.E.2d 955 (1999). Here, Appellees have attempted to mitigate their damages by asking Appellant to reconnect utilities to a number of homes that are presently uninhabitable only as a result of Appellant's denial of utilities. Appellant's refusal to reconnect utilities has and will continue to prevent Appellees from mitigating their economic loss. As such, granting a further stay would only prevent Appellees' future efforts to mitigate.

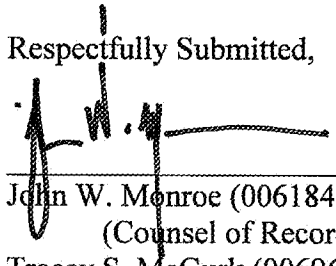
Finally, as Appellant asserts it is exempt from posting a supersedeas bond, a stay will further prejudice Appellees by leaving their economic interests unprotected. The purpose of a supersedeas bond is to preserve the status quo by protecting the non-appealing party's economic interests. While a court may generally order posting of a supersedeas bond before granting a

stay under R.C. § 2505.09, a political subdivision is exempted from this bond requirement per R.C. § 2505.12(A)(2). *See State ex rel. Elec. Classroom of Tomorrow v. Cuyahoga Cnty. Ct. of Common Pl.*, 129 Ohio St.3d 30, 2011-Ohio-626, 950 N.E.2d 149, ¶ 29. Here, without the protection that a supersedeas bond normally provides, Appellees will be further prejudiced by a stay that prolongs the time period when their economic interests remain unprotected.

III. CONCLUSION

For the reasons above, this Court should deny Appellant's Motion for Immediate Stay.

Respectfully Submitted,



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CERTIFICATE OF SERVICE

A copy of the foregoing ***Appellees' Brief in Opposition to Appellant's Motion for Immediate Stay*** was served on the following parties by email and regular U.S. Mail on this 27th day of November, 2013:

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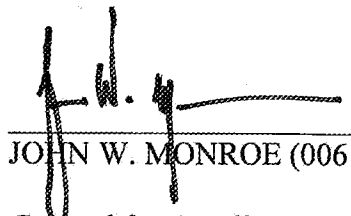

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November 18, 2013

BY REGULAR U.S. MAIL AND FACSIMILE
Irving B. Sugerman, Esq.
Brouse McDowell
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Re: ***Sunset Estates Properties, LLC v. Village of Lodi, et al.***
Medina County Court of Common Pleas Case No. 11CIV0221

Mr. Sugerman:

As you know, given the recent Court of Appeals decision, Plaintiffs went to the Village of Lodi the morning of November 15, 2013 requesting utility hook-ups for numerous homes located in their respective manufactured home parks. The Village of Lodi would not reactivate the electrical service to these homes without first consulting with you. You indicated that you were thinking "about it."

Per our conversation, you requested a list of the homes which Plaintiffs were requesting immediate utility hook-ups. The following is a list of the lots for which Plaintiffs seek utility hook-ups immediately:

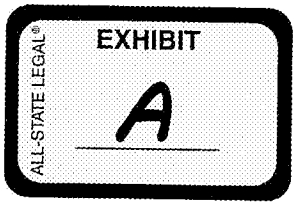
Sunset Estates - Lots 1, 9, 10, 16, 25 and 32; and,

Meadowview Village - Lot 41.

Meadowview Village was forced to tear down four (4) homes due to the inability to get electrical power. In any event, we would expect electrical service to any of the licensed pads in either park.

Please advise as soon as possible when the Village of Lodi will reconnect electrical service to the homes listed above. If you have any questions or concerns, please do not hesitate to contact me at (216) 523-1500, ext. 290.

Sincerely,

John W. Monroe

JWM/dat
cc: **Meadowview Village, c/o Mr. Joe LaMonica and Mr. Gary Sparano**
Sunset Estates, c/o Mr. Brady McCann