

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION**

BRIAN J. STRAUSS, individually, and d/b/a 1572
NORTH MILWAUKEE AVENUE BUILDING
CORPORATION, an Illinois corporation,

Plaintiff

v.

The CITY OF CHICAGO, a municipal
corporation, ALDERMAN PROCO JOE
MORENO, and the CITY OF CHICAGO'S
COMMITTEE ON ZONING, LANDMARKS,
AND BUILDING STANDARDS.

Defendants

Case No. 17-cv-5348

Jury Trial Demanded

COMPLAINT

Plaintiff, BRIAN J. STRAUSS, individually, and doing business as 1572 NORTH MILWAUKEE AVENUE BUILDING CORPORATION, an Illinois corporation, by and through his attorney, James P. McKay, Jr., makes the following complaint against Defendants, CITY OF CHICAGO, ALDERMAN PROCO JOE MORENO and the CITY OF CHICAGO'S COMMITTEE ON ZONING, LANDMARKS AND BUILDING STANDARDS:

JURISDICTION AND VENUE

1. This action is brought pursuant to the United States Constitution and the Civil Rights Act, specifically 42 U.S.C. Sec. 1983 and 1988, and the Illinois Constitution and the laws of the State of Illinois, to redress deprivations of the civil rights of Plaintiff by the acts or omissions of Defendants committed under color of law.

2. This Court has jurisdiction under 28 U.S.C. Sec. 1331 and 1343.

3. This Court has supplemental jurisdiction over substantially related state claims under 28 U.S.C. Sec. 1367.

4. Venue is appropriate pursuant to 28 U.S.C. Sec. 1391 as all complained of acts occurred within the Northern District of Illinois.

PARTIES

5. Plaintiff Brian J. Strauss is a resident of Illinois (hereinafter referred to as “STRAUSS”). He is the President of 1572 North Milwaukee Avenue Building Corporation which owns and operates the property located at 1572 N. Milwaukee Avenue in Chicago, Illinois (hereinafter referred to as “1572 MILWAUKEE”).

6. Defendant, City of Chicago (“CITY”), is a municipal corporation, organized under the laws of the State of Illinois, with the power to zone and re-zone property within the limits of the city.

7. Defendant, Proco Joe Moreno (“MORENO”), is the Alderman for the 1st Ward of the City of Chicago, who at all times relevant, was acting under color of law and within the scope of his employment with the CITY.

8. Defendant, City of Chicago’s Committee on Zoning, Landmarks and Building Standards (“ZONING COMMITTEE”) is a committee of the City Council of Chicago consisting of eighteen (18) Aldermen including the Chairman, Alderman Daniel Solis. At all times relevant, MORENO was a member of the ZONING COMMITTEE. At all times relevant, the ZONING COMMITTEE was acting under the color of law, and has the power to vote on proposed zoning ordinances, defer said ordinances, hold them in committee or reject them outright.

9. Plaintiff sues Defendants CITY and the ZONING COMMITTEE in their official capacities, and sues Defendant MORENO in both his individual and official capacities.

FACTS

10. The property located at 1572 North Milwaukee Avenue in Chicago, Illinois has

been owned by the Strauss family for almost forty (40) years.

11. Harry Strauss started as a commercial tenant in the building in 1977 and bought the building a few years later.

12. The family ownership of the building was incorporated and Harry's son, Brian J. Strauss eventually became the President of the corporation.

13. The property is a four-story building, consisting of nearly 20,000 square feet and containing eleven (11) apartments. It is in the heart of the Milwaukee-North-Damen Avenue corridor of Chicago.

14. The property has been zoned as a B3-2 building since 1974.

15. B3-2 zoning allows for commercial property on the street level, such as shopping centers, large stores and retail storefronts, often along major streets such as the Milwaukee-North-Damen Avenue corridor. Apartments are permitted above the ground floor.

16. At all relevant times, all other buildings along the Milwaukee-North-Damen Avenue corridor have B3-2 or greater zoning.

17. In late 2015, 1572 MILWAUKEE initiated a forcible entry and detainer lawsuit against its commercial tenant, Double Door Liquors, Inc. ("DOUBLE DOOR"), in the Circuit Court of Cook County in Case Number 2015 M1-722312. The reason was simple: the tenant had violated the lease.

18. MORENO had a personal and financial relationship with the owners of DOUBLE DOOR.

19. During the court case between 1572 MILWAUKEE and DOUBLE DOOR, MORENO introduced a downzoning change before the ZONING COMMITTEE on April 13,

2016, in application number A-8221. This downzoning change was proposed only for the property owned by STRAUSS.

20. MORENO introduced this downzoning change in an effort to keep his friends at DOUBLE DOOR as tenants of STRAUSS' building.

21. MORENO'S proposed downzoning ordinance called for the zoning classification for STRAUSS' property to be changed from B3-2 to B1-1.

22. This lower zoning classification of B1-1 allows fewer options for the type of commercial or retail renters that would be allowed to occupy the building.

23. This change in zoning classification meant a dramatic decrease in property value and major restrictions in the types of businesses and tenants to rent space in STRAUSS' building.

24. There was no public outcry or demands for a downzoning of STRAUSS' building.

25. This downzoning ordinance proposed by MORENO, affecting only STRAUSS' property, constituted illegal spot zoning.

26. This downzoning ordinance proposed by MORENO singled out STRAUSS and treated the STRAUSS family business differently from others in the neighborhood.

27. This downzoning ordinance proposed by MORENO was arbitrary and capricious.

28. The ZONING COMMITTEE held MORENO'S downzoning proposal in committee on June 20, 2016.

29. On July 19, 2016, STRAUSS met with MORENO at MORENO'S office. Present at the meeting were witnesses. During the meeting MORENO told STRAUSS that only Double Door would be allowed in STRAUSS' building.

30. A Chicago alderman cannot tell a Chicago building owner to whom he can rent space.

31. On August 15, 2016, 1572 MILWAUKEE won its trial against DOUBLE DOOR. The Cook County Circuit Court Judge ruled the lease was violated by the tenant and ordered MORENO'S friends at DOUBLE DOOR to vacate the premises by December 31, 2016.

32. On February 6, 2017, DOUBLE DOOR was evicted from STRAUSS' building.

33. On February 8, 2017, David L. Reifman, the Commissioner of the Department of Planning and Development for the CITY held a private meeting at City Hall. Present at the meeting were STRAUSS, MORENO, DOUBLE DOOR, and various staff members for MORENO and Mr. Reifman. Also present at this meeting was ZONING COMMITTEE Chairman Daniel Solis, Alderman for the 25th Ward.

34. At this meeting, Mr. Reifman first advised the parties that he did not want to talk about the downzoning proposal that MORENO filed with the ZONING COMMITTEE in April. Instead, Mr. Reifman tried to broker a sale of the building between STRAUSS and DOUBLE DOOR for a purchase price far less than what the building was worth. This unusual move by Reifman was rejected by both parties. STRAUSS wasn't selling at such a low price, and DOUBLE DOOR wasn't buying.

35. Despite Reifman's admonishment, the downzoning proposal was discussed at this meeting during which MORENO warned STRAUSS that if DOUBLE DOOR wasn't allowed back into the building, MORENO would make the zoning process a very lengthy and expensive one. MORENO also warned STRAUSS that the building at 1572 N. Milwaukee Avenue could be vacant for two to five years. Further, MORENO told STRAUSS that MORENO decides what kind of tenant goes into STRAUSS' building. Finally, MORENO concluded these subtle threats with an option: all of the above problems could be avoided if his friends at DOUBLE DOOR were allowed back into the building at a rent far less than what the market would bear.

36. During the entire meeting of February 8th, ZONING COMMITTEE Chairman Solis sat and listened.

37. The subtle threats by MORENO turned into direct threats on February 25, 2017. On the sidewalk in front of 1572 N. Milwaukee Avenue, MORENO confronted STRAUSS and made clear his intentions to use his aldermanic power to harm the STRAUSS family's business of owning their building. During this confrontation MORENO said, among other things, the following:

- a. "Right, and part of life also that you're not gonna have a tenant in here for three years;"
- b. "I'm gonna have inspectors in here on a daily basis, you watch;"
- c. "You can come back to me on your knees, which is gonna happen;"
- d. "Ok, so when you're at, by the way, when the leases are up up there, since of the downzoning, you can't sign new leases for your tenants. So whenever those leases are up and those guys want to leave and you want to sign a new lease with a tenant you're not gonna be able to. I'm being up front with you. I'm being honest with you. It's gonna be an empty building with no income for you or your family."

38. These direct threats by MORENO were videotaped.

39. On May 10, 2017, STRAUSS entered into a written contract with a buyer to sell the building for 9.6 million dollars. The contract was cancelled by the buyer on or about June 8, 2017 due to MORENO'S downzoning proposal looming over the property.

40. STRAUSS' commercial space, vacant since DOUBLE DOOR'S eviction in February 2017, would garner rents of \$35,000.00 per month, conservatively speaking. STRAUSS received several written letters of intent to rent that space at market rates, but these potential tenants refused to sign a lease unless the zoning classification remained at B3-2. MORENO'S downzoning proposal, still looming over the property, prevented STRAUSS from leasing his space to these potential but reluctant tenants.

41. In what can only be described as a blatant and arrogant abuse of power, MORENO clearly showed his intent to harm STRAUSS by proposing a **new** downzoning ordinance. In early June 2017, MORENO proposed to downzone STRAUSS' property from B3-2 to RS-3 under application number A-8221.

42. The zoning classification for RS-3 is intended to accommodate the development of single-unit detached houses on individual lots. RS-3 zoning is to be applied in areas where the land-use pattern is characterized predominantly by detached houses on individual lots or where such a land use pattern is desired in the future.

43. STRAUSS' building is not a "residential single-unit." It never has been, nor is it now, utilized as a single-unit. In fact, the building currently houses multiple units.

44. Further, STRAUSS' building is not detached. The building shares a common wall with the south-east neighbor, which is also a commercial/business establishment with upper-level apartments.

45. More telling of MORENO'S intent to harm STRAUSS, the land-use pattern of the entire area encompassing the Milwaukee-North-Damen Avenue corridor is not characterized predominantly by detached houses. The stretch of Milwaukee Avenue is solidly zoned for commercial/business for at least a half-mile on either side of STRAUSS' property. The situation is similar for Damen Avenue, where STRAUSS' property sits in the middle of a nearly half-mile stretch of commercial/business zoning.

46. Downzoning STRAUSS' property to RS-3 is completely out of harmony with the general zoning of the community. It would be akin to putting a single-unit detached house at the corner of State and Madison in Chicago.

47. There was no public outcry or demands for a downzoning of STRAUSS' building this time either.

48. This new downzoning ordinance proposed by MORENO, affecting only STRAUSS' property, constitutes illegal spot zoning.

49. This new downzoning ordinance proposed by MORENO, singles out STRAUSS and treats the STRAUSS family differently from others in the neighborhood.

50. This new downzoning ordinance proposed by MORENO is worse than arbitrary and capricious. It is intentional and punitive.

51. On June 22, 2017, the ZONING COMMITTEE deferred MORENO'S new downzoning proposal to its next meeting, July 21, 2017.

52. Instead of rejecting both of MORENO'S downzoning proposals regarding STRAUSS' property, neither of which offers any benefit to the public, the ZONING COMMITTEE assisted and continues to assist MORENO in his vindictive and irresponsible attack against an innocent land owner who refused to let MORENO'S evicted friends back into the building.

53. The acts or omissions by all of the Defendants were in bad faith, corrupt or in furtherance of a personal rather than a public interest.

APPLICABLE LAW

54. The Fifth Amendment of the United States Constitution guarantees that no person shall be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

55. The Fourteenth Amendment, Section One, of the United States Constitution guarantees that no State shall make or enforce any law which shall abridge the privileges or

immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

56. Section 1983 of Title 42 of the United States Code 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.

57. Article One, Section Two of the Constitution of the State of Illinois guarantees that no person shall be deprived of life, liberty or property without due process of law nor be denied equal protection of the laws.

58. Article One, Section Fifteen of the Constitution of the State of Illinois guarantees that private property shall not be taken or damaged for public use without just compensation as provided by law.

COUNT I

(Civil Rights Violations Committed by All Defendants)

59. Each of the previous paragraphs of this Complaint is incorporated as if fully restated here.

60. Defendants CITY, MORENO and ZONING COMMITTEE, acting in their official capacities under color of law, intentionally deprived STRAUSS of rights guaranteed to him by the United States Constitution, the Illinois Constitution, the Civil Rights Act, Federal law and Illinois law, including, but not limited to, his right not to be deprived of his property without due process of law and his right to equal protection of the laws.

61. The Defendants deprived STRAUSS of these rights by proposing two separate spot zoning ordinances that singled out his building, that were completely out of character with both the zoning and actual uses of the neighborhood, that were proposed in bad faith, that offered no benefit to the general community, that were done for personal rather than a public interest, and last but not least, the Defendants allowed both of these proposed ordinances to loom over the property like a dark cloud, depriving STRAUSS of all economically beneficial uses of the property, in violation of the Fifth and Fourteenth Amendments of the United States Constitution, 42 U.S.C. 1983 and the Illinois Constitution.

62. The misconduct described in this Count was objectively unreasonable, intentional, willful and wanton and was undertaken with malice and deliberate indifference to STRAUSS' constitutional rights.

63. As a direct and proximate cause of these violations, Plaintiff STRAUSS suffered economic harm, e.g. loss of a sales contract, loss of rental income, as well as physical and emotional damages, which will be proven at trial.

WHEREFORE, Plaintiff STRAUSS prays for judgment against Defendants CITY, MORENO and ZONING COMMITTEE, as to Count I, jointly and severally, for compensatory damages in the amount of the cancelled contract, \$9,600,000.00, plus rents of \$35,000.00 per month from March 1, 2017 to the present, and damages for physical and emotional harm, and further prays for punitive damages, costs and reasonable attorney's fees, as well as any other relief deemed just and proper by this Court, including injunctive relief.

COUNT II

(Civil Rights Violations Committed by All Defendants – Inverse Condemnation)

64. Each of the previous paragraphs of this Complaint is incorporated as if fully restated here.

65. As described above, the acts and omissions of the Defendants, while acting under the color of law, created two separate downzoning proposals that were truly spot zoning in nature and allowed them to exist before the ZONING COMMITTEE, without a vote or a withdrawal of either ordinance.

66. Both proposed ordinances, even without legislative action, substantially limited the use of STRAUSS' property and caused a devastating loss of income for the STRAUSS family, just as MORENO threatened on February 25, 2017.

67. These acts and omissions by the Defendants amounts to inverse condemnation.

68. The deprivation of the economically viable uses of STRAUSS' property caused by the looming spot zoning ordinances amounts to a *de facto* taking of STRAUSS' property without just compensation, in violation of the Fifth and Fourteenth Amendments of the United States Constitution, 42 U.S.C. 1983 and Article One, Section 15 of the Illinois Constitution.

69. As a direct and proximate cause of this inverse condemnation of the property, STRAUSS has suffered economic harm, e.g. loss of a sales contract, loss of rental income, as well as physical and emotional damages, which will be proven at trial.

WHEREFORE, Plaintiff STRAUSS prays for judgment against Defendants CITY, MORENO and ZONING COMMITTEE, as to Count II, jointly and severally, for compensatory damages in the amount of the cancelled contract, \$9,600,000.00, plus rents of \$35,000.00 per month from March 1, 2017 to the present, and damages for physical and emotional harm, plus punitive damages, costs and reasonable attorney's fees, as well as any other relief deemed just and proper by this Court, including injunctive relief.

COUNT III

(Civil Rights Violations Committed by Defendant MORENO)

70. Each of the previous paragraphs of this Complaint is incorporated as if fully restated here.

71. As described earlier, Defendant MORENO, acting in his official capacities, under the color of law as Alderman of the 1st Ward, and individually, intentionally deprived STRAUSS of rights guaranteed to him by the United States Constitution, the Illinois Constitution, the Civil Rights Act, Federal law and Illinois law, including but not limited to, his right not to be deprived of his property without due process of law and his right to equal protection of the laws.

72. MORENO deprived STRAUSS of these rights intentionally because STRAUSS had his friends from DOUBLE DOOR evicted from the building.

73. The vengeful actions by MORENO, including the threats and political intimidation behind the two separate spot zoning proposals, clearly show that these actions were not legislative actions, but rather personal in nature and not in the best interests of the community. As such, MORENO is not immune for his misconduct.

74. MORENO abused his power when he singled out STRAUSS with these proposed zoning amendments.

75. MORENO meant for the STRAUSS family to lose income and end up with an empty building, and the misuse of his aldermanic power was a perfect way to accomplish it.

76. The political strong-arming by MORENO was exactly what the Civil Rights Act was designed to protect people from.

77. As a direct and proximate cause of MORENO's actions, STRAUSS has suffered economic harm e.g., loss of a sales contract, loss of rental income, as well as physical and emotional damages, which will be proven at trial.

WHEREFORE, Plaintiff STRAUSS prays for judgment against Defendant MORENO as to Count III, for compensatory damages in the amount of the cancelled sales contract, \$9,600,000.00, plus rents of \$35,000.00 per month from March 1, 2017 to the present, and damages for physical and emotional harm, plus punitive damages in an amount that will adequately punish MORENO for his misconduct, plus costs and reasonable attorney's fees, as well as any other relief deemed just and proper by this Court, including injunctive relief.

COUNT IV

(Civil Rights Violations Committed by Defendants CITY and ZONING COMMITTEE)

78. Each of the previous paragraphs of this Complaint is incorporated as if fully restated here.

79. As described earlier, Alderman Daniel Solis, Chairman of the ZONING COMMITTEE, sat in on the meeting held at City Hall on February 8, 2017, and listened to David Reifman try to broker a deal between STRAUSS and MORENO'S friends from DOUBLE DOOR. Solis also sat and listened to MORENO warn STRAUSS what would happen to STRAUSS'S building if DOUBLE DOOR was not allowed back in.

80. As described earlier, the ZONING COMMITTEE held in committee the first downzoning proposal filed by MORENO against STRAUSS in 2016.

81. As described earlier, the ZONING COMMITTEE also deferred the second downzoning proposal filed by MORENO against STRAUSS on June 22, 2017 to its next meeting of July 21, 2017.

82. Defendants CITY and ZONING COMMITTEE knew or should have known, through Alderman Solis, acting in his official capacities and under color of law, and Commissioner David Reifman, also acting under color of law, of the wrongdoings committed or about to be committed by MORENO against STRAUSS, and did nothing about it.

83. Defendants CITY and ZONING COMMITTEE had the power and the duty to instruct, supervise, control and discipline MORENO, and yet did nothing.

84. Defendants CITY and ZONING COMMITTEE had the power and duty to prevent or aid in preventing the commission of said wrongdoings by MORENO against STRAUSS, and could have done so by voting to reject both proposed downzoning ordinances or instructing MORENO to withdraw them, but the Defendants failed to do so.

85. Defendants CITY and ZONING COMMITTEE directly or indirectly, under color of law, approved or ratified the unlawful, deliberate, malicious, reckless and wanton conduct of MORENO by allowing these spot zoning proposals to continue to linger over STRAUSS' property, to the detriment of STRAUSS and the community.

86. The actions or omissions by CITY and ZONING COMMITTEE deprived STRAUSS of rights guaranteed to him by the United States Constitution, the Illinois Constitution, the Civil Rights Act, Federal law and Illinois law, including but not limited to, his right not to be deprived of property without due process of law and his right to equal protection of the laws.

87. As a direct and proximate cause of CITY and ZONING COMMITTEE'S actions or omissions, STRAUSS has suffered economic harm, e.g., loss of a sales contract, loss of rental income, as well as physical and emotional damages, which will be proven at trial.

WHEREFORE, Plaintiff STRAUSS prays for judgment against Defendants CITY and ZONING COMMITTEE, as to Count IV, for compensatory damages in the amount of the cancelled sales contract, \$9,600,000.00, plus rents of \$35,000.00 per month from March 1, 2017 to the present, and damages for physical and emotional harm, plus punitive damages, costs and reasonable attorney's fees, as well as any other relief deemed just and proper by this Court, including injunctive relief.

COUNT V

(Tortious Interference with Contract Committed by Defendant MORENO)

88. Each of the previous paragraphs of this Complaint is incorporated as if fully reinstated here.

89. STRAUSS entered into a valid and enforceable sales contract with a third party in May 2017, to sell the property at 1572 N. Milwaukee Avenue in Chicago for a purchase price of \$9,600,000.00.

90. MORENO knew about the sales contract during meetings with the third party.

91. MORENO'S intentional and unjustifiable actions described above induced the third party to cancel the contract.

92. As a result, STRAUSS suffered the loss of \$9,600,000, other economic harm, and physical and emotional harm.

WHEREFORE, Plaintiff STRAUSS prays for judgment against Defendant MORENO as to Count V for compensatory damages in the amount of \$9,600,000.00 plus damages for other economic harm plus physical and emotional harm, plus costs and reasonable attorney's fees and any other relief deemed just and proper by this Court, including injunctive relief.

COUNT VI

(Intentional Infliction of Emotional Distress Committed by Defendant MORENO)

93. Each of the previous paragraphs of this Complaint is incorporated as if fully reinstated here.

94. As described earlier, the conduct of MORENO was extreme and outrageous.

95. MORENO intended to cause STRAUSS severe emotional distress or knew that there was a high probability that his conduct would cause such distress.

96. Indeed, MORENO was exerting this intentional pressure to force STRAUSS to let MORENO'S friends from DOUBLE DOOR back into the building.

97. MORENO'S conduct did cause STRAUSS to suffer severe emotional distress.

WHEREFORE, Plaintiff STRAUSS prays for judgment against MORENO as to Count VI for compensatory damages for the pain and suffering for the physical and emotional harm caused by MORENO.

PLAINTIFF DEMANDS TRIAL BY JURY.

BRIAN STRAUSS, INDIVIDUALLY, AND D/B/A 1572 N.
MILWAUKEE AVENUE BUILDING CORPORATION

By: /s/ James P. McKay
One of Its Attorneys

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