

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF WISCONSIN

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In re:

City Wide Investments, LLC,

Case No. 17-22900-gmh  
(Chapter 11)

Debtor.

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**DEBTOR'S MOTION TO APPROVE COMPROMISE OF CONTROVERSY WITH  
THE CITY OF MILWAUKEE**

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City Wide Investments, LLC (the "Debtor"), by its undersigned attorneys, hereby moves for an order, pursuant to Federal Rules of Bankruptcy Procedure 2002 and 9019, approving a compromise of controversy with the City of Milwaukee (the "City"), as more fully set forth below. In support of this motion, the Debtor states as follows:

1. The above-captioned case was commenced by the filing of a voluntary petition on April 3, 2017. The Debtor remains in possession of its estate.
2. The principal assets of the estate as of the petition date were several rental properties having an aggregate gross scheduled value of \$398,000, and a potential avoidance action claim against the City for the value of an eight-unit rental property that had been lost to *in rem* tax foreclosure before the filing of the petition
3. The Debtor filed an adversary proceeding in this bankruptcy case, Adv. No. 17-02115 (the "Adversary Proceeding"), against the City on April 26, 2017. Trial of the

Leonard G. Levenson  
Levenson Lucey & Metz S.C.  
106 West Seeboth Street, Suite 204-1  
Milwaukee, WI 53204  
(414) 271-8503 (direct)  
(414) 271-8504 (fax)  
E-mail: lgl@levmetz.com

- Adversary Proceeding took place on September 19, 2017. This Court (the Honorable Susan V. Kelley presiding) issued a decision and order in favor of the Debtor and against the City on October 3, 2017, and judgment was entered in the amount of \$280,894.56 for the Debtor and against the City the same day.
4. The City took a timely appeal from the judgment entered in the Adversary Proceeding. On January 8, 2021, the United States District Court for the Eastern District of Wisconsin entered an order affirming the judgment entered in the Adversary Proceeding. The time for the City to appeal from that order has expired.
  5. Because the City had not paid the judgment entered against it, on November 13, 2018, the Debtor filed an objection, pursuant to Code sec. 502(d), to the City's claim in this Chapter 11 case, seeking to have the claim disallowed unless the City paid the judgment. By order entered on December 21, 2018, this Court required the City to pay the Debtor \$100,808.30 of the judgment entered against it or else have its claim disallowed in its entirety. On or about February 19, 2019, the City paid the Debtor \$100,808.30.
  6. Taking into account both the accrual of postjudgment interest at the applicable federal judgment rate and also the City's partial payment, the City's debt to the Debtor on the judgment is \$180,106.26 in principal and \$10,054.52 in interest through February 24, 2021, plus additional interest through the date of payment.
  7. The City also possesses prepetition and postpetition claims against the Debtor for real estate taxes. With interest (and not taking into account any future payments by the Debtor between now and July 31, 2021), the Debtor will owe the City \$196,335.46 as of July, 2021. (Interest is calculated on a monthly rather than daily

- basis on past due real property taxes.) This figure is for real estate taxes (prepetition and postpetition) only. It does not include any amounts owed on Municipal Court fines or debt to the City of Milwaukee Water Works.
8. The Debtor and counsel for the City have agreed, subject to the necessary approvals as set forth below, to the following resolution. The amount of the Debtor's judgment against the City, including interest through the date of setoff, would be a dollar-for-dollar offset against the Debtor's debt to the City for real property taxes, and would be credited as partial payment of those taxes, to be applied to the oldest taxes first. Municipal Court fines and Water Works debt would not be affected.
  9. This agreement is subject to approval first by the Judiciary and Legislation Committee of the City and subsequently by the Common Council of the City and mayoral signature on the Common Council resolution. That process is anticipated to take through late July, 2021, to be completed.
  10. This agreement is further subject to the approval of the United States Bankruptcy Court for the Eastern District of Wisconsin. The Debtor requests that the Court enter an order approving this settlement contingent on approval by the City's governing authorities, as set forth above in paragraph 9, since this matter will likely be before this Court before the full City approval process is complete.
  11. The Debtor believes that the proposed compromise is in the best interests of the estate. It gives the Debtor full, dollar-for-dollar credit against City real property taxes that constitute first priority secured claims against the Debtor's real estate. The proposed compromise is also the fastest way to collect the Debtor's judgment against the City. For the Debtor actually to collect money from the City, state law (Wis.

Stats. sec. 66.0117) would require that the amount of the judgment be added to the City's tax levy, and only after the next year's taxes are actually collected would the City be required to pay. Alternatively the Debtor could once again invoke Bankruptcy Code sec. 502(d) and seek to have the City's claim disallowed, but there are risks, delays, and costs to that possible course of action.

12. For these reasons, the Debtor and its counsel believe that the proposed compromise is in the best interest of the estate.

13. ANALYSIS OF PROPOSED COMPROMISE: The factors set forth in the case of *In re American Reserve*, 841 F.2d 159 (7<sup>th</sup> Cir. 1987), apply as follows:

(a.) Comparison of the settlement terms with litigation, probable costs and probable benefits: The settlement gives the Debtor full, dollar-for-dollar credit of the judgment it has obtained against real property taxes that are first priority liens on the Debtor's real estate. Attempting to collect the judgment in the form of cash would take at least a year longer, during which time real estate taxes would continue to accrue at a higher interest rate than the judgment itself. Attempting to have the City's claim disallowed pursuant to Code sec. 502(d) poses litigation risk, would also entail delay, and would cost the estate funds for litigation expenses – and the City in all likelihood could avoid the disallowance of its claim simply by paying or agreeing to offset the judgment.

(b.) Alternatives to compromise: See 13(a.).

(c.) Litigation's Complexity and Attendant Expense: See 13(a.).

14. Any inconvenience and delay including the possibility that disapproving settlement

will cause wasting of assets: The Debtor has not generally operated at a profit during the Chapter 11 case. It has been particularly impacted by the COVID-19 pandemic and the resulting moratorium on evictions. Remaining in Chapter 11 has significant costs to it, including U.S. Trustee quarterly fees and legal costs.

15. CREDITORS/CLAIMS FILED. Other than claims filed by the City and its instrumentalities and First Citizens State Bank (the holder of the mortgage on the property that was subject to the *in rem* tax foreclosure), only two claims were filed, one for \$267.31, and one for \$612.39. There is a significant amount of additional scheduled undisputed debt, but most of it is owed to related parties and insiders.
16. EFFECT ON CREDITORS: Without relief on its real property taxes, the Debtor faces the prospect that, outside bankruptcy, it could lose additional properties to tax foreclosure. The compromise will result in the Debtor owning its properties free from the vast majority of the real estate taxes that currently encumber them and in a far better position to be able to service its debts outside bankruptcy
17. For the above reasons, the Debtor respectfully requests an order approving the terms of the proposed compromise set forth above..

Dated this 28th day of May, 2021.

LEVERSON LUCEY & METZ S.C.

/s/ Leonard G. Levenson

Leonard G. Levenson

Attorneys for City Wide Investments, LLC

106 West Seeboth Street, Suite 204-1

Milwaukee, WI 53204

Phone: (414) 271-8503

Fax: (414) 271-8504

E-mail: [lgl@levmetz.com](mailto:lgl@levmetz.com)