CLEVELAND MUNICIPAL COURT
HOUSING DIVISION
CUYAHOGA COUNTY, OHIO
Judge Raymond L. Pianka

City of Cleveland **DATE: January 11, 2010**

Plaintiff

-vs- **CASE NO.: 2008 CRB 42526**

Deutsche Bank National Trust Co.

Defendant **JUDGMENT ENTRY**

The City and Defendant have submitted this case to the Court based on stipulated facts, each party arguing through briefs that the facts support either conviction or acquittal on the charges of failing to comply with a notice issued under the City's Building Code and Housing Code. The Court, having reviewed the facts, finds Defendant guilty on all counts and continues the case for sentencing to 2/10/, 2010. at 9:00 AM

The parties have stipulated to the following facts. The City issued a notice of violations ("Notice") to Defendant in October 2008, ordering Defendant to correct city code violations by a "compliance date" of November 12, 2008 (*Stipulations* at ¶1 and *Exhibit A*). The City served the notice on Defendant by certified mail. Id. at ¶5. Defendant did not appeal the Notice. *Id.* at ¶11. Nor did Defendant make the required repairs by the compliance date. When the City inspected the property on December 2, 2008, the violations remained uncured. *Id.* at ¶8. Defendant was the titled owner of the property when the Notice was issued. *Id.* at ¶3. Its ownership interest was recorded with the county recorder. *Id.* at ¶10. Five days before the November 12, 2008 compliance date in the Notice, Defendant executed and delivered a quitclaim deed to three entities: Bryce Peters Financial Services Corporation, Mukash Patel Corporation and Alfred Benchmark and Associates Corporation. *Id.* at ¶6. The parties have not expressly stipulated that the deed was delivered and accepted by each of three grantees on the date it was executed; however, they have stipulated that Defendant "relinquished" its rights as of that date. *Id.* at ¶7. The Court concludes that by this statement the parties have stipulated to delivery and acceptance of the quitclaim deed by the three grantees. The quitclaim deed was not recorded until June 12, 2009. *Id.* at ¶10.

The question of law presented by these stipulated facts is whether Defendant violated C.C.O. §§3103.25(e) and 367.99(a) by failing to comply with the Notice. Defendant argues that it is not guilty because it no longer had an obligation to comply as of the date of the quitclaim deed, the transfer of its interest having terminated its status as a responsible party under the City's ordinances. The City argues that Defendant remained a responsible party under the City's ordinances despite the quitclaim deed

because Defendant continued to have a recorded ownership interest sufficient to make it a responsible party or "owner" under C.C.O. §§3101.05(j) and §363.12. The City's ordinances use the term "owner" to define who can be held responsible for correcting code violations—even when the responsible party is not an "owner" in the conventional sense but is instead a tenant or vendee or has direct control over the property. This broad understanding is reflected in the City's use the term "responsible party" rather than "owner" in its notices.

The Court concludes that Defendant remained a responsible party or "owner" under the ordinances after the execution of the quitclaim deed. The Court therefore finds Defendant guilty.

The question of whether Defendant remained a responsible party under the City's ordinances depends on statutory interpretation of those ordinances. A municipal corporation is entitled, through its administrative process, to order a person or business entity to correct code violations at real property located within the municipal corporation. R.C. §3781.01.

Municipalities have the power to hold a broad range of parties responsible for such abatement. The city may direct this order to either a titled owner or to a person or business entity that is otherwise responsible to abate the nuisance. *Hausman v. City of Dayton* (1995), 73 Ohio St.3d 671, 653 N.E.2d 1190, 1995-Ohio-277. A local ordinance may hold responsible "[t]he owner(s) of record of the premises of fee or lesser estate therein . . . [a] vendee in possession, land contract purchaser, assignee of rents, receiver, executor, administrator, trustee, or lessee, as determined by an examination of . . . public records . . . or any other person, firm, or corporation in control of a building, or their duly authorized agents" though not a mortgagee who is not in possession. *Id.* at 674.

The Cleveland Building Code and Housing Code uses the term "owner" to describe a responsible party. The Building Code defines an "owner" as:

> [T]he owner or owners of the premises, a vendee in possession, a mortgagee or receiver in possession, a lessee or joint lessees of the whole thereof, or an agent or any other person, firm, or corporation directly in control of the premises or having a legal or equitable interest in the property. C.C.O. §3101.05(j)

The Housing Code defines an "owner" as:

> [T]he owner or owners of the premises, including the holder of title thereto subject to contract of purchase, a vendee in possession, a mortgagee or receiver in possession, a lessee or joint lessees of the whole thereof or an agent or any other person, firm or corporation directly in control of the premises. C.C.O. §363.12

Defendant argues that it was not an "owner" under these definitions for the period charged, November 12, 2008 through December 2, 2008, because it had executed a quitclaim deed on November 7, 2008—five days before the beginning of the period

charged. The City argues that Defendant remained an "owner" under these definitions because it held record title from November 12, 2008 through December 2, 2008 and until June 2009. The Court concludes that record title is sufficient to make Defendant an "owner" under the City's ordinances since the intent of the ordinance is to authorize the City to enforce its safety codes by identifying responsible parties and ordering them to correct code violations.

The meaning of "owner" in the City's ordinances must be considered in the context of the City's administrative process for abating nuisances, recalling all the while that by definition, "owner" is synonymous with "responsible party.". The purpose of the administrative process is to declare that a property has code violations and order the appropriate responsible party to correct those code violations. Cleveland's ordinance defines "owner" broadly so that the City can appropriately order a responsible party to make needed corrections. The definition of "owner" in the ordinances is plainly not intended to fix responsibility in one "owner" as against others. It extends to a titled owner or the owner's agent. It extends to parties who do not have legal title but have control over real property—receivers in possession, vendees in possession or lessees. A party can therefore show that it is not an "owner" only by showing that it lacks the requisite responsibility—showing that another party has superior title or control is insufficient. Under the plain language of the ordinance, a property can have many "owners."

The City's notice of violations tells the party to whom it is issued that the City views that party as an "owner" under the ordinance. In this case, there is no dispute regarding ownership—actual or otherwise—as of the time when the notice was issued. Defendnat was both an actual and record owner at this point, and consequently was properly subject to the administrative order. Parties who are subject to an administrative order finding them responsible for abating a nuisance have the remedy of appeal. In Cleveland, the appeal of a notice is heard by the Cleveland Board of Building Standards and Building Appeals (BBS). Defendant concedes that it did not appeal the notice the City issued to it to the BBS. *Stipulations* at ¶11.

While Defendant's execution of a deed on November 7, 2008 gave a new owner some rights superior to those of Defendant, execution did not relinquish all of Defendant's rights as against the rest of the world. Under Ohio law, had Defendant transferred the property after November 7, 2008 to a second buyer who recorded the transfer, the second buyer would have held title as against the earlier buyer who failed to record its interest. *See* R.C. §5301.25. The second buyer's rights would have derived from Defendant's continuing recorded interest—an interest that survived after the execution of the quitclaim deed on November 7, 2008 and did not expire until the deed was recorded on June 12. 2009. To be sure, Defendant might be liable in such a case for damages to the first buyer.

But the City's statutory scheme for enforcing its safety codes does not function to distinguish between the competing rights of various "owners" and does not depend on those distinctions. It seeks instead to use the City's police powers to issue valid orders to

any "owner" who is responsible to abate a nuisance. The City used this power to declare in October 2008 that Defendant was an "owner" by virtue of its recorded interest and was therefore responsible for complying with the City's order to abate nuisance conditions. The execution of the quitclaim deed did not serve to terminate Defendant's responsibility. Defendant therefore remained an "owner" after November 7, 2008 with a duty to comply with the Notice.

A municipality can hold a party responsible based on its recorded interest in property "as determined by an examination of . . . public records." *Hausman*, at 674-685. While C.C.O. §363.12 and §3101.05(j) do not expressly refer to the examination of public records, the definitions of "owner" are expansive, including parties who are the agents or other owners or how have any "legal or equitable interest in the property." The breadth of the definitions supports the conclusion that the intent of the ordinances is to define "owner" expansively, thus including the holder of a recorded ownership interest.

The function of the ordinances serves to further clarify the legislative intent. Were recorded ownership interests not included within Cleveland's definition of ownership, the City would have no reliable way to determine who to hold responsible for correcting code violations. This would frustrate the purpose of the Building and Housing Codes: to allow the City to order responsible parties to correct code violations. The intent of the City's codes would be particularly frustrated with respect to those purchasers of real property who deliberately choose not to record their ownership interests in order to avoid responsibility for the conditions at their properties. To read the ordinance as lacking teeth in this respect would be inconsistent with the purpose and scope of C.C.O. §363.12 and §3101.05(j).

The state's process for recording title to real property increasingly serves two functions: (1) its traditional private function of providing protection for parties who wish to establish the primacy of their rights against other claimants by recording those rights (a function that also helps simplify disputes between parties claiming competing interests); and (2) a new public purpose of providing for the public's benefit a reliable method for determining ownership and responsibility for real property. Recognition of this new public purpose is growing—the Ohio legislature recently amended the foreclosure statutes to require that a deed issued under a foreclosure sale be recorded within fourteen (14) days of the sale. R.C. §2329.36. The recording statute also provides for a party experienced in real estate transfers, such as Defendant Deutsche Bank, to protect itself by filing record of transfer through an affidavit of fact regarding title, particularly in a case such as this one where the Defendant knows that a notice of violations has been issued.

Defendant here may argue in mitigation of sentence that the Court should be lenient if Defendant honestly and reasonably believed that the new owner had recorded the deed and would abate the conditions.

The Court does not reach here the question of whether a notice to abate conditions can create a legal obligation that survives a recorded transfer of ownership. At one end of the spectrum, a notice that declared a current "owner" to be perpetually responsible

would obviously be beyond the police power granted to municipal corporations to enforce safety codes. But at the other end of the spectrum, a notice might reasonably declare that an owner must actually abate an emergency condition and that an immediate transfer of its property interest would not constitute abatement. For example, if the City declares that a landlord must, within 24 hours, vacate all tenants from an apartment building because an imminent danger of fire from faulty electrical wiring, that notice could specify explicitly or implicitly that the landlord may not avoid compliance with the order by preparing, executing and recording a deed within the 24 hour period.

If the City lacked this power, owners could defeat all notices to abate nuisance conditions by executing and recording quitclaim deeds prior to the date set for compliance by a notice of violations. (The City's ordinances establish that the notice would bind the new owner but the prior owner could evade responsibility by finding – or creating – a new owner who would be essentially "judgment proof," that is, without assets or interests that would allow the City to coerce that new owner to comply with the City's order, as with a shell corporation.) The scope of the City's power to order abatement without transfer is not at issue in this case and must remain an open question of law to be determined in any later cases where the issue is presented.

Based on the stipulated facts, the Court finds Defendant guilty and continues the case for sentencing to 2/15/10 9:00 AM

JUDGE RAYMOND L. PIANKA

SERVICE

A copy of this judgment entry was sent to the parties by regular mail on 1/25/10.