

Cleveland Municipal Court
Housing Division
Judge Raymond L. Pianka

CITY OF CLEVELAND,
Plaintiff(s)

Date: SEPTEMBER 15, 2010

-v-

Case No: 2010 CRB 09822

GO INVEST WISELY, LLC.,
Defendant(s)

JUDGMENT ENTRY

This matter is before the Court on the issue of the City of Cleveland's presentation of evidence regarding its assertion of victim status and its claim for restitution.

The City's Claims

The City argues that it is a victim under R.C.2929.28 and that it is entitled to restitution for its economic losses. Specifically, the City requests restitution for the cost of clean-up and maintenance of the subject property at 840 E. 141st Street. It also asserts a claim for restitution to offset the decreased tax revenue it has received because of decrease in the value of real estate affected by Defendant's conduct.

The Scope of Restitution

Restitution is limited to "the amount of the economic loss suffered by the victim as a direct and proximate result of the commission of the offense." R.C. 2929.28(A)(1). As such, any losses occurring prior to the commission of the convicted offense are not part of the restitution calculation. *See, e.g., Columbus v. Cardwell*, 176 Ohio App.3d 673, 2008-Ohio-1725, 893 N.E.2d 526, at ¶13. The starting point, therefore, must be the 26 offenses for which the Defendant pled "no contest" and was found guilty, none of which involve clean-up at the property.¹

¹ In this case, those are: (1) failure to abate a public nuisance, (2) failure to abate dangerous conditions, (3) immediate hazard to human life and health, (4) deteriorated, damaged, missing or inoperable kitchen sink, (5) deteriorated, damaged, missing or inoperable sanitary facilities, (6) no supply of hot water, (7) improper provision for running water, (8) unapproved, damaged, deteriorate or missing heating facilities, (9) damaged and deteriorated electrical facilities, (10) deteriorated, damaged or missing interior trim, (11), damaged or missing door casings, (12) damaged or missing entrance door and locks, (13) damaged, deteriorated or missing entrance, interior and storm doors, (14) deteriorated and/or missing porch structure, (15) damaged, deteriorated and/or missing interior stairs, (16) damaged and/or missing cabinets, (17) damaged and/or missing window components, (18) failing foundation permitting rodent access, (19) unsanitary interior, (20) non-weathertight exterior walls, (21) decayed, missing or deteriorated gutters and downspouts, (22) missing roofing material, (23) missing, deteriorated siding and/or exterior trim, (24) non-water-resistant bathroom floor, (25) weakened, damaged and cracked interior walls and floors, and (26) failure to comply with an order from the Director of Building and Housing.

Because Defendant was not convicted for its failures to clean up at the property, restitution is not available for the costs the City sustained in addressing that issue. “[A]s a matter of law, an offender cannot be ordered to pay restitution for * * * a crime of which he was not convicted.” *State v. Williams*, 3rd Dist. No. 8-03-25, 2004-Ohio-2801, at ¶ 23.

Limits to Governmental Claims

More importantly, had Defendant been convicted for such offenses, the City would still be precluded from claiming restitution for its costs. It has been widely accepted in Ohio that government entities are not “entitled to restitution for their expenditure of public funds for fighting crime.” *E.g.*, *State v. Ham*, 3rd Dist. No. 16-09-01, 2009-Ohio-3822, at ¶48; *State v. Pietrangelo*, 11th Dist. No 2003-L-125, 2005-Ohio-1686.

Courts have also ruled that humane societies are not entitled to restitution for the costs incurred in caring for injured and abused animals. *Ham*, 2009-Ohio-3822, at ¶50. The *Ham* court determined that humane societies serve a law-enforcement function and are not victims within the meaning of the statute for carrying out their intended function. Caring for an animal and nursing it back to health is in many ways analogous to cleaning up a property. But even where the animal’s neglected state is a direct result of the offense for which the offender was convicted, courts have been reluctant to award restitution. Across the board— whether it be the cost of law enforcement, investigation, or humane societies, courts have declined to award restitution to public entities for doing what it is that they are supposed to do. *E.g. Ham*, 2009-Ohio-3822 (caring for seized animals); *State v. Toler*, 174 Ohio App.3d 335, 2007-Ohio-6967, 882 N.E.2d 28 (extraditing an offender); *State v. Christy*, 3rd Dist. No. 16-04-04, 2004-Ohio-6963 (towing and storing a vehicle); *State v. Wolf*, 176 Ohio App.3d 165, 2008-Ohio-1483 (fighting fires).

Accordingly, the City may not claim restitution for its costs of clean-up at the subject property and is not entitled to present evidence on this claim. Should the City wish to recover for its costs, it has other avenues to do so, including a claim for *reimbursement* of costs under C.C.O. §3103.99. The City might also have taken its costs into account when making its sentencing recommendation.

The City’s Claim for Lost Tax Revenue

The City’s primary claim, however, appears to be for restitution for lost tax revenues resulting from reductions in property value. That the City is a victim of Defendant’s conduct in some way is beyond dispute—as is everyone else who lives on the same street, in the neighborhood, and throughout the City. The purpose of the ordinances in play in this case—as well as that of a large range of City’s building, housing and related codes—is to protect the City and its residents from the effects of neglected properties. When neglect occurs, the City, along with its residents and property owners, suffers the effects—though some clearly suffer more than others. And those who suffer the most may cross the threshold from victim in a common sense to victim in the sense contemplated by the restitution statute and ordinance.

Realistically, not all victims can be victims for purposes of restitution. The question faced by the court, then, is how close to home the suffering must be in order for a victim to be entitled to compensation through restitution. Guidance as to what is close enough is provided by the misdemeanor sentencing statute in this case, as well as provisions of the municipal code. In adhering, as it must, to the overriding purposes of misdemeanor sentencing, this Court “consider[s] the impact of the offense upon the victim and the need for changing the offender’s behavior, rehabilitating the offender, and making restitution to the victim of the offense, the public, or the victim and the public.” R.C. 2929.21(A).²

R.C. 2929.28(A)(1) requires that to recover restitution, a victim must (1) suffer an economic loss, and that (2) such a loss must be the direct and proximate result of the conduct for which the defendant is convicted. The victim must also prove by a preponderance of the evidence the amount claimed. C.C.O. 601.99(b)(3) likewise contemplates and provides guidance for a court ordering restitution for certain misdemeanor crimes: “the court may require the offender to make restitution for all or part of the property damage that is caused by his offense.” Victim restitution even takes priority over fines when assessing an offender’s ability to pay. C.C.O. 601.13(f). The Court will take all of this guidance into consideration when determining to whom and in what amount it will award restitution.

The Court is not unmoved by Defendant’s arguments as to the apparent tenuousness of the City’s claims under the applicable restitution standards. But, while there may be, as Defendant asserts, numerous other factors contributing to the City’s economic losses, split causation alone is not enough to preclude the City’s claim as a matter of law: “The standard is a direct and proximate cause of the loss, not *the* direct and proximate cause. More than one proximate cause can exist.” *Columbus v. Repine*, 10th Dist. No. 07AP-250, 2007-Ohio-5015, at ¶7.

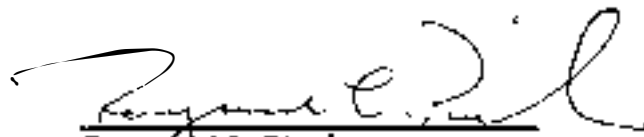
The Court recognizes that the City must overcome significant hurdles to show that it is a victim entitled to restitution, but the Court is not prepared to declare as a matter of law that the City cannot be a victim for the purpose of claiming restitution for lost tax revenue under the present circumstances. The City is therefore entitled to the opportunity to present evidence on its theory that it is entitled to restitution for its decreased revenues as a result of the conduct for which Defendant has been convicted.

Summary

At hearing on September 16, 2010, the Court will hear evidence from the City on its claim for restitution under the theory of lost tax revenues due to reduction in value.

² Though another defendant in a case involving similar restitution issues (*City v. FNMA*, Cuy. Mun. No. 2009 CRB 41868) suggests that state law sentencing provisions have no role in municipal code violation cases, R.C. 2929.21(A) clearly contemplates the application of statutory guidelines to a range of violations of municipal ordinances. *Cincinnati v. Howard*, which FNMA cites, is also distinguishable—where the *Howard* court noted that the Cincinnati municipal code gave no authority to impose community service for a minor misdemeanor, Cleveland’s ordinances do contemplate misdemeanor restitution. See C.C.O. 601.13(f), 601.99(b)(3).

The Court will not hear evidence on the City's claim for restitution for expenses it incurred to maintain the property.



Raymond L. Pianka
Judge

SERVICE

A copy of this judgment entry and order was sent by email to counsel on 9/15/10. ~~RF~~