

[Cite as *Cleveland v. City Rose, Ltd.*, 2006-Ohio-4525.]

COURT OF APPEALS OF OHIO, EIGHTH DISTRICT

COUNTY OF CUYAHOGA

NO. 87157

CITY OF CLEVELAND,	:	
	:	
Plaintiff-Appellee	:	JOURNAL ENTRY
	:	
v.	:	AND
	:	
CITY ROSE LTD., ET AL.,	:	OPINION
	:	
Defendants-Appellants	:	

DATE OF ANNOUNCEMENT
OF DECISION: AUGUST 31, 2006

CHARACTER OF PROCEEDING: Civil Appeal from
Cleveland Municipal Court,
Case No. 2005 CVH 11683.

JUDGMENT: REVERSED AND REMANDED.

DATE OF JOURNALIZATION:

APPEARANCES:

For Plaintiff-Appellee: Robert J. Triozzi
Law Director, City of Cleveland
William H. Armstrong, Jr.
Assistant Director of Law
Room 106, City Hall
601 Lakeside Avenue
Cleveland, OH 44114

For Defendants-Appellants: John M. Manos
739 East 140th Street
Cleveland, OH 44110

CHRISTINE T. McMONAGLE, J.:

{¶ 1} Defendants-appellants City Rose Ltd. ("City Rose") and Buckeye Trailer Sales and Rental, Inc. ("Buckeye Trailer") appeal the decision of the trial court granting summary judgment in favor of plaintiff-appellee, the City of Cleveland, and thus thereby granting injunctive relief in favor of the City. For the reasons that follow, we reverse and remand.

{¶ 2} City Rose is the owner of a storage yard identified as parcel numbers 112-06-001 and 112-06-002 located on East 140th Street in Cleveland, Ohio. This five-acre tract is leased to Buckeye Trailer. Buckeye Trailer also leases property from City Rose directly across the street from the storage yard at 781 East 140th Street. Employees of Buckeye Trailer report to work at 781 East 140th Street.

{¶ 3} The City filed a complaint for injunctive relief requesting "that [appellants] be prohibited from using the storage yard until all maneuvering areas are paved as required by Cleveland Codified Ordinance 349.07(a)."¹ The City did not allege that there was insufficient off-street parking for the employees of Buckeye Trailer, nor did they allege that the off-street parking at 781 East 140th Street was in any manner deficient.

¹The City's original complaint cited Chapter 337 of the Codified Ordinances of the City of Cleveland, which is the zoning code for residential districts. The City amended its complaint to cite Chapter 349, which governs industrial districts.

{¶ 4} Civ.R. 56(C) provides that summary judgment is appropriate when: 1) there is no genuine issue of material fact, 2) the moving party is entitled to judgment as a matter of law, and 3) after construing the evidence most favorably for the party against whom the motion is made, reasonable minds can reach only a conclusion that is adverse to the nonmoving party. *Zivich v. Mentor Soccer Club, Inc.* (1998), 82 Ohio St.3d 367, 369-370; *Temple v. Wean United, Inc.* (1977), 50 Ohio St.2d 317, 327. The moving party bears the initial burden of informing the court of the basis of the motion and identifying those portions of the record which support the requested judgment. *Vahila v. Hall*, 77 Ohio St.3d 421, 1997-Ohio-259. If the moving party discharges its initial burden, the party against whom the motion is made then bears a reciprocal burden of specificity to oppose the motion. *Id.* See, also, *Mitseff v. Wheeler* (1998), 38 Ohio St.3d 112. We review the trial court's judgment de novo using the same standard that the trial court applies under Civ.R. 56(C). *Grafton v. Ohio Edison Co.* (1996), 77 Ohio St.3d 102, 105.

{¶ 5} Cleveland Codified Ordinances 349.07(a) provides as follows:

{¶ 6} "Accessory off-street parking spaces, driveways and maneuvering areas shall be properly graded for drainage so that all water is drained within the lot providing such parking spaces, surfaced with concrete, asphaltic concrete, asphalt or similar

surfacing material, maintained in good condition and free of debris and trash."

{¶ 7} It was uncontroverted in the summary judgment practice that the parking and maneuvering areas at 781 East 140th Street were paved and contained sufficient off-street parking for the employees of Buckeye Trailer, as required by law. It was also uncontroverted that the storage lot in question is not used for off-street parking by Buckeye Trailer. The sole question before this court is whether the owners or occupiers of a storage yard must pave all areas where a vehicle might maneuver.

{¶ 8} In *Saunders v. Zoning Dept.* (1981), 66 Ohio St.2d 259, 261, the Ohio Supreme Court held that "*** zoning resolutions are in derogation of the common law and deprive a property owner of certain uses of his land to which he would otherwise be lawfully entitled. Therefore, such resolutions are ordinarily construed in favor of the property owner. *In re Univ. Circle, Inc.* (1978), 56 Ohio St.2d 180, 184; *Pepper Pike v. Landskroner* (1977), 53 Ohio App.2d 63, 76; 3 Anderson, *American Law of Zoning* (2nd Ed.) 4, Section 16.02."

{¶ 9} Neither party to this action has led this court to any ordinance, statute or case that requires outdoor storage yards to be paved. The ordinance cited by the City, and by which appellants herein were prosecuted, by its very terms and in context

of the Chapter in which it is located, concerns off-street parking for employees.²

{¶ 10} Accordingly, the trial court erred by applying this ordinance to a storage yard and the judgment of the court is reversed.

Reversed and remanded.

This cause is reverse and remanded for further proceedings consistent with the opinion herein.

It is, therefore, ordered that appellants recover from appellee costs herein.

It is ordered that a special mandate be sent to said court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

CHRISTINE T. McMONAGLE
JUDGE

²Chapter 349 of the Codified Ordinances of the City of Cleveland deals exclusively with off-street parking; the requirements for such parking, the location of such parking, the required maintenance of the off-street parking, the required lighting for the off-street parking, etc.

SEAN C. GALLAGHER, J., CONCURS;

ANN DYKE, A.J., DISSENTS.

N.B. This entry is an announcement of the court's decision. See App.R. 22(B), 22(D) and 26(A); Loc.App.R. 22. This decision will be journalized and will become the judgment and order of the court pursuant to App.R. 22(E) unless a motion for reconsideration with supporting brief, per App.R. 26(A), is filed within ten (10) days of the announcement of the court's decision. The time period for review by the Supreme Court of Ohio shall begin to run upon the journalization of this court's announcement of decision by the clerk per App.R. 22(E). See, also, S.Ct.Prac.R. II, Section 2(A)(1).

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NO. 87157

CITY OF CLEVELAND :
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 Plaintiff-Appellee :
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 -vs- :
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 CITY ROSE LTD., ET AL. :
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 Defendants-Appellants :

D I S S E N T I N G
O P I N I O N

DATE OF ANNOUNCEMENT
OF DECISION:

AUGUST 31, 2006

ANN DYKE, A.J., DISSENTING:

{¶ 11} I respectfully dissent. Pursuant to Chapter 349 of the Cleveland Codified Ordinance ("C.C.O."), Buckeye Trailer must provide one off-street parking space for its two employees. Defendants acknowledge that they do not provide any off-street parking spaces that are compliant with C.C.O. 349.07(a) on the storage lot designated as parcels 112-06-001 and 112-06-002 ("storage lot"). Instead, defendants contend that sufficient off-street parking spaces are available for its employees at 781 E. 140th Street. The majority agrees with the defendants and asserts that the 781 E. 140th Street lot contains sufficient paved off-street parking and maneuvering areas for the employees of Buckeye Trailer as required by law.

{¶ 12} The record, however, is void of any evidence establishing that the off-street parking spaces available at 781 E. 140th Street comply with the requirements of C.C.O. 349.05. This ordinance states in relevant part:

{¶ 13} "(a) The required accessory off-street parking facility shall be located on the same lot as the use of which it is provided or on a lot within 400 feet of the nearest boundary of the lot upon which the use is located measured by a straight line between the two points * * *. All such parking spaces shall be located behind the setback building line. * * * ."

{¶ 14} The defendants in this matter did not provide the trial court or this court with any evidence establishing that the off-

street parking spaces available at 781 E. 140th Street are within 400 feet from the nearest boundary of the storage lot or that the spaces are located behind the setback line, as required by C.C.O. 349.05. Without such evidence, I believe we cannot conclude, pursuant to C.C.O. 349.05, that the 781 E. 140th Street off-street parking spaces are a legally sufficient substitute for the off-street parking spaces required for the employees of Buckeye Trailer. Accordingly, I would affirm the trial court's ruling that the defendants violated C.C.O. 349.07(a) by not paving off-street parking spaces, driveways and maneuvering areas on the storage lot.