

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

Central Residents Council

Court of Appeals No. L-09-1137

Appellee

Trial Court No. CI 200902483

v.

Lucas Metropolitan Housing Authority

DECISION AND JUDGMENT

Appellant

Decided: February 12, 2010

* * * * *

Aneel L. Chablani, Robert A. Cole, and Joshua Murnen,
for appellee.

Timothy R. Cleary, Thomas S. Amato, and Robert G. Stiefvater,
for appellant.

* * * * *

OSOWIK, J.

{¶ 1} This is an appeal from a judgment of the Lucas County Court of Common Pleas which granted appellant's motion to dismiss appellee's complaint pursuant to Civ.R. 12(B)(1). Although appellant prevailed on its motion to dismiss on jurisdictional

grounds, appellant disputes an advisory portion of the opinion. For the reasons set forth below, this court affirms the judgment of the trial court.

{¶ 2} Appellant, the Lucas Metropolitan Housing Authority ("LMHA"), sets forth the following sole assignment of error:

{¶ 3} "I. THE TRIAL COURT ERRED BY STATING THAT R.C. 3767.41 IS APPLICABLE TO THE TYPE OF PUBLIC HOUSING OWNED BY LUCAS METROPOLITAN HOUSING AUTHORITY."

{¶ 4} The following undisputed facts are relevant to the issues raised on appeal. This case stems from adverse environmental conditions discovered at several established, occupied housing developments owned by appellant. Appellant is the local government housing authority in Lucas County. Appellee is a citizens' group representing the interests of the residents of appellant's properties.

{¶ 5} In the fall of 2005, appellant received a detailed report prepared by a local engineering firm subsequent to an on-site inspection and assessment of a portion of the residential units in several of its housing developments. The report concluded that a significant percentage of the housing units at issue possessed unhealthy levels of mold. The report delineated specific recommendations designed to remediate the mold issue by correcting various underlying structural issues which were causing the mold growth.

{¶ 6} As of the fall of 2008, three years subsequent to first being notified of the mold issue, remediation had not occurred. On October 6, 2008, appellant ultimately contracted with another environmental service corporation to independently inspect and

test the units. Notably, appellant's own environmental contractor likewise concluded in its report that an estimated minimum of one-half of the residential housing units at issue contained the unhealthy mold issue. The report further concluded that many of the units were not fit for human habitation until the mold issue was remediated.

{¶ 7} Negotiations between the parties to cooperatively address and resolve this matter in a mutually acceptable fashion were unsuccessful. Given the failure of negotiations, on March 6, 2009, appellee filed a complaint in the Lucas County Court of Common Pleas against appellant seeking abatement of the above-described nuisance conditions. On March 20, 2009, appellant filed a motion to dismiss the complaint pursuant to Civ.R. 12(B)(1) and (6). On April 27, 2009, following opposing briefing to the court by the parties, the trial court granted appellant's motion to dismiss. The court prefaced its dismissal upon its conclusion that it lacked subject matter jurisdiction. The trial court determined that exclusive subject matter jurisdiction for this matter properly rests with the Toledo Municipal Housing and Environmental Court.

{¶ 8} In the course of its ruling in favor of appellant, the trial court noted its disagreement with the position argued by appellant in the court of seeking dismissal that state nuisance provision R.C. 3767.41 is inapplicable to the residential housing units underlying this case. The trial court concluded in relevant part, "Defendant does not escape possible inclusion in the general definition at R.C. 3767.41(A)(2)(a)." It is this advisory portion of the ruling from which appellant now appeals.

{¶ 9} In its sole assignment of error, appellant argues that the trial court erred in determining that R.C. 3767.41 is applicable to the residential housing units at issue in this case.

{¶ 10} We must initially note at the outset that appellant's characterization of the disputed portion of the ruling is inaccurate. The trial court did not definitively conclude that R.C. 3767.41 is applicable. Rather, the disputed portion of the ruling is clearly conditional. The court determined in relevant part, "Defendant first argues that the public housing owned by it does not fall into the definition of subsidized housing as set forth in the statute, and therefore the statute is inapplicable. The Court disagrees. Even presuming for purposes of argument, that Defendant's alleged public housing is not of the type defined in the statute as subsidized housing (therefore making the public nuisance definition at R.C. 3767.41(A)(2)(b) inapplicable), defendant does not escape possible inclusion in the general definition at R.C. 3767.41(A)(2)(a)."

{¶ 11} In order to assess the propriety of the disputed portion of the trial court's judgment, we are guided by the plain meaning doctrine. The plain meaning doctrine states that courts have no authority to bypass or modify the plain meaning of unambiguous legislative language. The practical implication is that judicial application must be constrained to the confines of the plain meaning of the language at issue. *State v. Sylvania Twp.*, 6th Dist. No. L-06-1395, 2007-Ohio-3108.

{¶ 12} The disputed portion of the trial court ruling states in relevant part, "defendant does not escape possible inclusion in the general definition of R.C.

3767.41(A)(2)(a)." Thus, we may examine the language of the cited statutory provision and assess its application to this case. The cited statutory provision states in pertinent part that a public nuisance, "means a building that is a menace to the public health, welfare, or safety; that is structurally unsafe, unsanitary, or not provided with adequate safety grass; that constitutes a fire hazard, is otherwise dangerous to human life, or is otherwise no longer fit and habitable." In conjunction with this, this same statutory chapter defines a building as, "any building or structure that is used or intended to be used for residential purposes."

{¶ 13} It is undisputed that the buildings at issue in this case are residential. It is undisputed that the buildings at issue in this case were found to possess unhealthy mold conditions by several private environmental service contractors, including the contractor retained by appellant.

{¶ 14} Given the plain and unambiguous meaning of the above statutory nuisance provisions, read in the context of the specific facts and circumstances of this case, we cannot say that, the trial court acted improperly or in any way erred merely by concluding that, assuming arguendo that the buildings do not fall within one of the specifically defined categories of "subsidized housing," such a potential determination would not preclude the buildings from being *possibly* found to be encompassed by the above-excerpted general portion of the nuisance statutory provisions. We find appellant's sole assignment of error not well-taken.

{¶ 15} On consideration whereof, the judgment of the Lucas County Court of Common Pleas is affirmed. Appellant is ordered to pay the cost of this appeal pursuant to App.R. 24.

JUDGMENT AFFIRMED.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See, also, 6th Dist.Loc.App.R. 4.

Peter M. Handwork, J.

JUDGE

Thomas J. Osowik, P.J.

JUDGE

Keila D. Cosme, J.
CONCUR.

JUDGE

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