

COURT OF CHANCERY
OF THE
STATE OF DELAWARE

JOHN W. NOBLE
VICE CHANCELLOR

417 SOUTH STATE STREET
DOVER, DELAWARE 19901
TELEPHONE: (302) 739-4397
FACSIMILE: (302) 739-6179

March 13, 2012

Steven Schwartz, Esquire
Schwartz & Schwartz
1140 South State Street
Dover, DE 19901

William W. Pepper Sr., Esquire
Schmittinger and Rodriguez, P.A.
414 South State Street
Dover, DE 19903-0497

Re: *Statler v. City of Dover*
C.A. No. 7248-VCN
Date Submitted: March 12, 2012

Dear Counsel:

On January 23, 2012, the Code Enforcement Division of the City of Dover (“Code Enforcement”) inspected Plaintiff Deborah D. Statler’s home at 123 Blue Beach Drive, Dover, Delaware, with the aid of a search warrant. At the conclusion of the search, Statler’s home was administratively condemned as unfit for human habitation. Code Enforcement boarded up Statler’s home and she was no longer

allowed to live there.¹ On January 25, 2012, Defendant City of Dover (the “City”) sent Statler written notice (the “Notice”) that her home was found to be in violation of the City’s Dangerous Buildings Ordinance (the “Ordinance”). The Notice stated that “[t]his matter is scheduled to be presented to City Council as such on Monday, February 13, 2012, at 7:30 p.m. in accordance with the provisions of Article XI . . . [of the Ordinance], Section 22-388 Emergency Cases.” The Notice went on to state that Statler’s home was in violation of numerous provisions of the City Code, that the home had no utilities (furnace), and that it posed a fire hazard to its residents and the surrounding area. The Notice also cited portions of the definition of “Dangerous buildings” from the Ordinance, and suggested that Statler’s home met that definition. The Notice was the only document regarding the January 23 search that the City sent to Statler before the February 13, 2012 hearing (the “Hearing”) in front of the City Council.

¹ Statler has since moved back into the house. At oral argument, the parties disputed whether the City had given her permission to do so.

At the Hearing, the City Council voted, on the basis of the January 23 search, to demolish Statler's home, pursuant to Section 22-388 of the Ordinance,² if Statler did not make a significant number of repairs to her home by February 23, 2012. On February 16, 2012, the City sent Statler a letter enumerating nineteen specific problems with her home that she would need to fix by February 23, 2012, to avoid demolition. Although acknowledging some progress, the City contends that Statler has failed to fix all of the problems identified in the February 16 letter, and has informed Statler that it plans to demolish her home on or after March 14, 2012. Statler has moved to enjoin preliminarily the City from demolishing her home. This is the Court's decision on that motion.

* * *

In order to obtain a preliminary injunction, Statler "must demonstrate: (1) a reasonable probability of success on the merits; (2) that . . . [she] will suffer

² Section 22-388 is a fast track provision for dealing with "emergency cases." The Court need not decide whether the Statler residence qualified for emergency consideration.

irreparable injury if an injunction does not issue; and (3) that the balance of the equities favors the issuance of the injunction.”³

* * *

Statler has shown a reasonable probability that the Notice failed to inform her adequately of the subject matter of the Hearing in violation of her right to due process. The Ordinance could be read to require that a building owner be provided with notice of any action the City might take at a hearing before that hearing occurs, and if that is what the ordinance requires, then the City failed to meet the requirements of the Ordinance. But even if the Ordinance does not require such notice, the Due Process Clause of the Fourteenth Amendment to the United States Constitution does. “[D]ue process requires that the notice inform the party of the time, place, and date of the hearing and the subject matter of the proceedings.”⁴ The Notice informed Statler that her home violated the City Codes in several ways:

³ *In re Smurfit-Stone Container Corp. S’holder Litig.*, 2011 WL 2028076, at *10 (Del Ch. May 20, 2011, revised May 24, 2011) (citations omitted).

⁴ *Vincent v. E. Shore Mkts.*, 970 A.2d 160, 164 (Del. 2009) (citing *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976)) (other citation omitted).

that it did not have a furnace; that it posed a fire hazard;⁵ that it was unfit for habitation; that it threatened the general welfare; and that it was uninhabited. The City never informed Statler that the City Council might determine, at the Hearing, to demolish her house.⁶ Thus, Statler has shown a reasonable probability that the City violated the Due Process Clause by failing to provide her with adequate notice of the subject matter of the Hearing.

* * *

Statler has also shown that she will suffer irreparable harm if an injunction does not issue. The house is of some value, even after the charges imposed by the City are subtracted. That value would be lost—and not likely recovered from the City or elsewhere—after the home’s destruction. “[I]njury to real property is

⁵ The fire hazard (both as fuel and with respect to ingress and egress) was “the extreme amount of clutter.”

⁶ The Notice informed Statler that the “structure was found to be unlawful and unsafe due to the extreme amount of clutter and insanitary conditions within the home.” That such conditions could lead to demolition was not an obvious consequence. Focus on items such as “rotten garbage” provided no better guidance as to the possible outcome.

The City, in the Notice, identified many items—such as garbage and clutter—that could have been readily addressed. Part of the problem, according to the City, is that the cost of any interior work that it might have performed could not be recovered through the lien process for governmental assessments. *See 25 Del. C. § 2901.*

typically considered irreparable.”⁷ Moreover, the house at 123 Blue Beach Drive is Statler’s only home and she will become homeless if it is demolished.

* * *

Finally, although the City is understandably worried about this house, and there is evidence that it has been an ongoing problem, the equities, at least at this point, marginally balance in Statler’s favor. If the City demolishes Statler’s home, she will become homeless. The City’s interest in improving the neighborhood in which Statler’s house stands, while certainly important, is not likely to be materially affected by having to pursue another enforcement process (assuming that is what the City chooses to do).⁸

* * *

For the foregoing reasons, the City is enjoined preliminarily from demolishing, based on the City Council’s decision set forth in the February 16, 2012 letter, the house (and pool) at 123 Blue Beach Drive, Dover, Delaware, until

⁷ *Cochran v. Kent County Dept. of Planning Servs.*, 2006 WL 1510514, at *2 (Del. Ch. May 26, 2006).

⁸ In balancing the equities, it is important to recognize the negative impact of the Statler residence on her neighbors—from aesthetics (the poor maintenance) to odors (the rotting food) to mosquitoes (bred in her dysfunctional swimming pool).

Statler v. City of Dover

C.A. No. 7248-VCN

March 13, 2012

Page 7

further order of the Court. The City, in its discretion, may pursue another Code enforcement action, by providing appropriate notice and otherwise complying with the requirements of the Ordinance. This injunction is contingent upon the posting by Statler of an unsecured bond in the amount of \$5,000. A further requirement is her posting of a cash bond in the amount of \$2,500 by March 20, 2012. These bond amounts represent an estimate of the costs to the City if this order is entered improvidently. Finally, this order is also conditioned upon Statler's allowing the City reasonable opportunities to inspect the house and its grounds.

IT IS SO ORDERED.

Very truly yours,

/s/ John W. Noble

JWN/cap

cc: Register in Chancery-K