STATE OF MICHIGAN

COURT OF APPEALS

CITY OF HOLLAND,

Plaintiff-Appellee,

v

JERRY WOLTERS,

Defendant-Appellant.

UNPUBLISHED
May 26, 2000

No. 218288
Ottawa Circuit Court
LC No. 97-027934-CH

Before: Doctoroff, P.J., and Sawyer and Cavanagh, JJ.

PER CURIAM.

Defendant appeals as of right from the circuit court's order and grant of injunctive relief in favor of plaintiff. We affirm.

This case arises from defendant's actual use of newly constructed "sleeping rooms" in four, and proposed use of such rooms in two, rental properties in Holland in violation of the Holland Zoning Ordinance (hereinafter "HZO"). Defendant first argues that the trial court's decision was based on incorrect interpretations of the relevant sections of the HZO. We disagree. A trial court's findings of fact may not be set aside unless clearly erroneous. MCR 2.613(C). A finding is clearly erroneous when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been made. *Tuttle v Dep't of State Hwys*, 397 Mich 44; 243 NW2d 244 (1976). We review questions of law de novo. *Bennet v Weitz*, 220 Mich App 295, 299; 559 NW2d 354 (1996).

On November 6, 1996, plaintiff amended the HZO to require a special use exception from the zoning board for the "conversion of an existing building to allow for two or more roomers or boarders." Before November 6, 1996, under § 39-90(2), a special use exception was needed only for the conversion of a building to accommodate more than five roomers or boarders. Before enactment of the amendment, defendant sought permission from plaintiff to increase the number of rental units in each of the properties at issue in this case. While defendant did receive construction permits for two properties, defendant did not receive authorization to use any of the properties as rooming houses or multi-unit properties. Defendant actually constructed additional rooms or apartments in four houses. Defendant concedes that all of the apartments and additional rooms in these properties are "keyed units," and that

each tenant has access only to the unit that he or she has rented. Defendant testified that he intended to convert the other properties into rooming houses, but that plaintiff refused to grant him the necessary permits.

Defendant argues that because either the additional boarding rooms in his rental properties were actually completed or construction plans had been submitted to plaintiff for approval before the November 6, 1996, amendment of the HZO, defendant is not subject to the requirements of the amendment. Instead, defendant claims he is subject only to the requirements of § 39-90(2) of the HZO, which allows a building to be used for the "boarding or lodging" of up to five people without the need for a special exception from the zoning board. However, the trial court correctly held that the proposed and actual construction of the additional rooms in defendant's rental properties were not governed by either § 39-90(2) or the amended § 39-407 because the rooms did not qualify as boarding or lodging rooms. We find that because the additional "sleeping rooms" in defendant's rental properties, both proposed and actual, constitute a violation of § 39-189 of the HZO, the trial court properly granted plaintiff's request for injunctive relief.

If a statute provides its own glossary, the terms must be applied as expressly defined. *Tryc v Michigan Veterans' Facility,* 451 Mich 129, 136; 545 NW2d 642 (1996). Otherwise, a court may consult dictionary definitions. *Popma v Auto Club Ins Ass'n,* 446 Mich 460, 470; 521 NW2d 831 (1994). There is no evidence that the HZO provided its own definitions of the terms "boarder" or "lodger." Therefore, the trial court did not err when it consulted the dictionary definitions of these terms. According to *Random House Webster's College Dictionary* and the fifth edition of Black's Law Dictionary, a "boarder" is a lodger who is supplied with regular meals. *Random House Webster's College Dictionary* (2d ed), p 146; Black's Law Dictionary (5th ed), p 158. There is no evidence that defendant either actually provided, or planned to provide, the tenants of the additional rooms with regular meals. Therefore, the trial court did not err in finding that the additional rooms in defendant's rental properties were not to be used for boarding.

The trial court correctly noted that the fifth edition of Black's Law Dictionary defines "lodger" as "[a]n occupant who has mere use without actual or exclusive possession." Black's Law Dictionary (5th ed), p 848. The seventh edition of Black's Law Dictionary defines a "lodger" as "a person who rents and occupies a room in another's house." Black's Law Dictionary (7th ed), p 952. However, in *Random House Webster's College Dictionary*, the term "lodger" is defined simply as a "roomer." *Random House Webster's College Dictionary* (2d ed), p 772. A "roomer" is defined as "a person who lives in a rented room." *Id.* at 1127. This Court has stated that "statutory language should be construed reasonably, keeping in mind the purpose of the act." *People v Seeburger,* 225 Mich App 385, 391; 571 NW2d 724 (1997). Section 39-90 of the HZO allows five persons to occupy a building as lodgers "in addition to family members." Because of the section's reference to "family members," the reasonable definition of the term "lodger" is a person who rents a room in the house of another individual or family. Thus, for the purposes of the HZO, a room cannot reasonably be said to be used for "lodging" unless the tenant of the room is able to have some interaction and contact with the occupants of the main house. The evidence presented at trial supports the trial court's finding that "the rooms [in defendant's properties] are physically separated from the dwelling unit by locks, walls,

partitions or disabled doors." Therefore, the trial court correctly held that, for the purposes of the HZO, defendant's additional rooms should not be considered either boarding or lodging rooms.

Section 39-189 of the HZO provides:

> The conversion of an existing building into a dwelling, or conversion of any existing dwelling to increase the number of dwelling units, shall be permitted only as a special exception use, approved by the Zoning Board following a public hearing.

The trial court did not err when it concluded that the proposed and actual rooms in defendant's properties constituted separate "dwelling units" for the purposes of § 39-189 of the HZO. At trial, defendant admitted that each room had its own lock, the key to which was given to the tenant by defendant upon occupancy. Furthermore, on appeal, defendant does not deny that the rooms are completely separated from the main dwelling areas of the houses. Defendant simply argues that "unfettered access is not the issue." However, by physically separating these rooms from the main dwelling units, giving the tenants exclusive possession of the rooms, and seeking to separately meter each room for electricity and heating, defendant essentially created, or sought to create, separate apartments in these houses. As the trial court noted, the fact that these dwellings do not have kitchen and bath facilities does not make them boarding or lodging rooms. Instead, it simply makes them substandard housing, and plaintiff has a "legitimate interest in requiring suitable living arrangements for its citizens."

Defendant either actually converted the dwellings in question into multiple-dwelling units, or proposed to do so, without being granted a special exception from the Holland zoning board. Therefore, we find that the trial court acted correctly when it enjoined defendant from renting the additional dwelling units in these homes, enjoined him from proceeding with the construction of other illegal dwelling units, and ordered him to remove "all barriers, structures and conditions" being used in these homes to create separate dwelling units.

Defendant next argues that plaintiff should be denied equitable relief because it does not have "clean hands." We do not agree. Defendant argues that plaintiff should not be granted equitable relief because "had [plaintiff] timely and properly reviewed [defendant's] housing rental registrations, then a valid non-conforming use would have existed as of the date the HZO changed." However, as explained above, defendant's actual and proposed use of the properties was illegal under § 39-189 of the HZO. Because the additional rooms were not for "boarding" or "lodging," §§ 39-90 and 39-407 of the HZO are inapplicable, and the November 6, 1996, changes to these sections are irrelevant.

Defendant also argues that plaintiff should be estopped from enforcing the relevant sections of the HZO because plaintiff has not "uniformly applied the requirements it sought to apply to [defendant]." This Court has stated that a city can only be estopped from enforcing its zoning code under "exceptional circumstances." *City of Holland v Manish Enterprises*, 174 Mich App 509, 514; 436 NW2d 398 (1988). An example of such circumstances is "where a building is created in good faith reliance on a permit issued by the city, and the only reasonable use for the property is in fact outside the regulations." *Id.* Defendant in the present case has presented no evidence of exceptional

circumstances warranting the application of the equitable defense of estoppel. Defendant has not presented any evidence to support the allegation that plaintiff has not uniformly enforced the relevant HZO sections. Furthermore, defendant's properties may be rented out as either single or two-family homes, according to their registration, and defendant may rent to one boarder or lodger in these properties without having to apply for a special exception from the zoning board. Thus, defendant's reasonable use of his properties has not been limited. Therefore, the trial court correctly found that plaintiff should not be estopped from enforcing its zoning code against defendant.

Affirmed.

/s/ Martin M. Doctoroff
/s/ David H. Sawyer
/s/ Mark J. Cavanagh