STATE OF MICHIGAN

COURT OF APPEALS

YPSILANTI FIRE MARSHAL and CITY OF YPSILANTI,

Plaintiffs-Appellees,

V

DAVID KIRCHER,

Defendant-Appellant.

UNPUBLISHED
April 15, 2010

No. 288616
Washtenaw Circuit Court
LC No. 02-000434-CH

ROBERT C. BARNES,

Plaintiff-Appellee,

V

DAVID KIRCHER,

Defendant-Appellant

and

PATRICIA BROWN,

Defendant.

No. 288641
Washtenaw Circuit Court
LC No. 03-001380-CH

YPSILANTI FIRE MARSHAL and CITY OF YPSILANTI,

Plaintiffs-Appellees,

and

BARNES & BARNES,

Plaintiff,

V

DAVID KIRCHER,

Defendant-Appellant.

No. 288645
Washtenaw Circuit Court
LC No. 01-000560-CH

ROBERT C. BARNES,

Plaintiff-Appellee,

V

DAVID KIRCHER,

Defendant-Appellant,

and

CITIZENS BANK,

Defendant.

No. 288646
Washtenaw Circuit Court
LC No. 03-001264-CH

Before: Davis, P.J., and Donofrio and Stephens, JJ.

PER CURIAM.

In this consolidated appeal, defendant appeals as of right the order on remand determining the amounts of the liens on property located at 400-412 River Street (the "Thompson Building") (Docket Nos. 288616 and 288641) and the property located at 510 West Cross Street (the "Apartment Building") (Docket Nos. 288645 and 288646). This case has been before this Court twice previously. See *Ypsilanti Fire Marshal v Kircher*, unpublished opinion per curiam of the Court of Appeals, issued April 27, 2004 (Docket Nos. 242967 and 242857) ("*Kircher I*") and *Ypsilanti Fire Marshal v Kircher* (*On Reconsideration*), 273 Mich App 496; 730 NW2d 481 (2007) ("*Kircher II*"). We affirm in part, and remand to the trial court for further proceedings.

I

The litigation involves two Ypsilanti properties formerly belonging to Kircher. In the initial litigation, Ypsilanti alleged that the buildings were hazardous, and sought the appointment of a receiver for the Thompson Building, and the right to repair the Apartment Building, for the purpose of making both properties safe. The trial court granted Ypsilanti's request, and imposed liens on both properties for the costs of repairs. When Kircher did not repay the costs of repairs, the lienholder, Robert Barnes, sought to have the liens foreclosed, and the trial court did so.

Barnes purchased the Apartment Building at a sheriff's sale, and successor receiver Stewart Beal purchased the Thompson Building.

In his first appeal, Kircher raised a number of issues with respect to the appointment of the receiver and the foreclosure of the lien. We rejected most of his arguments, but agreed with him that (1) with respect to the Thompson Building, the trial court's order gave the receiver too broad authority in that it authorized repairs aimed at improving the economic viability of the property, (2) with respect to the Thompson Building, the receiver and successor receiver were not required to post a receiver bond as they should have been, and (3) with respect to the Apartment Building, Kircher was wrongfully deprived of an opportunity to contest the expenses claimed by the contractor to ensure they were appropriate and reasonable.

On remand, the trial court reviewed the expenses claimed by Barnes, and excluded from the lien amount any expenses incurred solely for economic viability. Kircher appealed the trial court's order on remand, raising several arguments with respect to each property, most of which we had already rejected in the first appeal. Again, we rejected most of Kircher's arguments and affirmed the trial court in great part. We agreed with Kircher, however, that the lien amount on both properties should only include expenses incurred to abate violations of Michigan's Fire Prevention Code, MCL 20.1 *et seq*. We remanded to the trial court a second time, to redetermine the lien amounts, excluding any expenses that did not fall under the State Fire Prevention Code.

On second remand, the trial court found that, with respect to the Thompson Building, all expenses that had previously been included in the lien fell under the State Fire Prevention Code. With respect to the Apartment Building, the court made findings as to what would be included in the lien amount, fixing the final amount at $211,159.27. $2,080 of the surplus was ordered paid to Barnes, and the remainder to Kircher. Kircher has appealed again, bringing several arguments, including some we have addressed previously.

II

This Court reviews decisions in foreclosure actions de novo, but reviews the findings of fact supporting those decisions for clear error. *Kircher II*, 273 Mich App at 523. We review de novo the legal question of whether the law of the case doctrine applies. *Id.* at 522. "The law of the case doctrine provides that, when an appellate court has made a ruling on a legal question and remanded the case for further proceedings, the legal question thus determined will not be differently determined on a subsequent appeal in the same case where the facts remain materially the same." *Id.* We review de novo the legal question of whether a trial court followed an appellate court's ruling on remand. *Schumacher v Dep't of Natural Resources*, 275 Mich App 121, 127; 737 NW2d 782 (2007).

The gravamen of Kircher's arguments is that the trial court has included expenses in the final lien amount that were incurred in order to improve the economic value of the property. Kircher claims that this violates our remand order, which required the exclusion of any expenses that were not attributable to the State Fire Prevention Code. Kircher fails to recognize that the two categories are not mutually exclusive. A condition on the property may simultaneously violate the state fire code and a city building or fire code, as well as constitute a nuisance and depress the economic value of the property. Similarly, a building repair may simultaneously abate violations of the State Fire Prevention Code a violation of some other regulation or law,

and a nuisance, in addition to improving the economic viability of the property. To prevail on appeal, Kirchner must show that these expenses were not incurred to abate a violation of the State Fire Prevention Code. Kircher's broad argument that all expenses beyond $51,000 for the Thompson Building and $54,376.74 for the Apartment Building were not properly included in the lien fails for this reason.

Kircher does make specific challenges to five categories of expenses, which are discussed below.

A. Debris (Thompson Building)

Kircher argues that the removal of debris from the Thompson Building was not an expense that can properly be considered to fall under the State Fire Prevention Code. Kircher's argument depends on a very narrow misreading of the code, and he appears to believe that the code only finds a fire hazard in something that can ignite or explode. The relevant language of the code at issue is much broader:

> [T]he court . . . may make any order or decree as considered necessary or expedient to ensure the safety and security of human life, and may direct that a building . . . be repaired and in what manner and to what extent. The court . . . may direct and command the removal of occupancies of a building, and the discontinuance of any use of the building constituting a fire hazard or menace to human life, and may direct and command the clearing and improvement of premises. . . . [1973 PA 199, § 1 (effective January 11, 1974).[1]]

The testimony indicated that Barnes believed that the debris in the Thompson Building constituted a fire hazard, because it blocked access to certain areas of the building, or to the building itself. Barnes testified that he considered that, if a fire were to break out, the debris could endanger the lives of firefighters trying to reach blocked-off areas of the building. The trial court appears to have found that the debris was a fire hazard. The finding is supported by the law and the evidence, and we find no clear error.

B. Attorney fees and receiver fees (both properties)

Kircher has brought his challenge to the inclusion of attorney fees and receiver fees in the lien amounts before, and we have rejected these challenges, twice with respect to the Thompson Building, *Kircher I*, unpub slip op at 7 and *Kircher II*, 273 Mich App at 543, and once with respect to the Apartment Building, *Kircher II*, 273 Mich App at 553. When this Court decides a legal question in a case and remands for further proceedings, it will not determine those legal questions differently on a subsequent appeal in the same case. *City Nat'l Bank of Detroit v Westland Towers Apartments*, 152 Mich App 136, 148; 393 NW2d 554 (1986).

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[1] The current version of this statute, effective June 19, 2006, is found at MCL 29.23 and contains only minor changes.

C. Architect fees and engineering fees (Thompson Building)

In *Kircher II*, 273 Mich App at 536, we directed the trial court to "engage in a searching review of each individual cost" and determine whether each cost was incurred to abate a violation of the State Fire Prevention Code. On remand, the trial court stated with respect to architect fees and engineering fees that they were "obviously necessary."

The only testimony on the purpose and utility of the architect's work indicated that Barnes paid the architect a fee for "brainstorming" ideas to make the property structurally and economically viable, and that the money went to "nothing physical." On this evidence, it is not clear that the architect fees were expended to abate a violation of the State Fire Prevention Code.

Conversely, Barnes testified that the engineering fees were spent for inspections and reports from an engineering firm. It is very reasonable to employ engineering services where both structural and electrical services were required. We read the trial judge's findings that the engineering fees were obviously necessary to mean that the fees were supported by the evidence, which established that the structural and electrical work was authorized to abate State fire Prevention Code Violations.

On remand, the trial court shall explain why the architect fees were necessary to abate violations of the State Fire Prevention Code, or it shall exclude those fees from the lien amount.

IV

The remainder of Kircher's issues on appeal lack merit. His arguments (1) that the courts lacked jurisdiction over the initial cases, (2) that there were legal remedies available which made the appointment of a receiver for the Thompson Building inappropriate, and (3) that Kircher's counterclaim should not have been dismissed, have all been before us at least once, and rejected. Reexamination of these arguments is barred by the law of the case doctrine. *City Nat'l Bank of Detroit*, 152 Mich App at 148. The argument that there were legal remedies available which made the appointment of a receiver for the Thompson Building inappropriate has also not been properly presented to this Court. "An appellant may not merely announce his or her position and leave it to this Court to discover and rationalize the basis for his or her claims." *In re Temple Marital Trust*, 278 Mich App 122, 139; 748 NW2d 265 (2008).

As for the argument that the trial court violated the remand instruction by failing to require a showing that the expenditures were "in good faith" and "beneficial" is without merit, Kircher cites no controlling authority in support. Even so, the remanding order required that only expenses that were incurred to abate violations of the State Fire Prevention Code be included in the lien amount. *Kircher II*, 273 Mich App at 556-557. It should go without saying that a repair that abates a violation of the state fire code is "beneficial." As for the question of "good faith," the trial court took testimony as to the amounts that Barnes had actually paid in improving the buildings, and Barnes submitted invoices that purported to show those amounts. The trial court clearly found that the expenditures had actually been paid in good faith, and this finding was supported by the evidence and is not clearly erroneous.

V

Although the parties did not raise the issue, we note that the trial court appears to have made arithmetical errors with respect to the calculations of both lien amounts. The amount the court determined as being due the successor receiver of the Thompson Building appears to have been derived from the amount due the original receiver, rather than based on an addition of the expenses incurred by the successor receiver. The court did not fully explain how it reached the numbers it did with respect to the Thompson Building, so it is impossible for us to determine exactly what the error was. With respect to the Apartment Building, the court found individual items totaling $213,239.27 to be properly included in the lien amount, but then found that the lien amount was only $211,159.27. Either the lien amount or the explanation of how the court reached it (or both) is incorrect. On remand, the trial court shall correct these errors, or explain why they are not errors.

We remand for the trial court to (1) explain why the architect fees were necessary to abate a violation of the State Fire Prevention Code or exclude those fees from the lien on the Thompson Building, (2) recalculate the lien amounts on both buildings, explaining how it reached the totals, and (3) order the disbursement of any surplus to Barnes and Kircher, according to our instructions in *Kircher II*, 273 Mich App at 556-557. We affirm the trial court's decision in all other respects. We do not retain jurisdiction.

/s/ Alton T. Davis
/s/ Pat M. Donofrio
/s/ Cynthia Diane Stephens