STATE OF MINNESOTA
IN COURT OF APPEALS
A19-2002

City of Mountain Lake,
Respondent,

vs.

Hiebert Greenhouses of Minnesota, Inc., et al.,
Appellants.

Filed August 3, 2020
Reversed
Connolly, Judge

Cottonwood County District Court
File No. 17-CV-19-228

MaryEllen Suhrhoff, Muske, Muske & Suhrhoff, Ltd., Windom, Minnesota (for respondent)

Joseph A. Gangi, Farrish Johnson Law Office, Mankato, Minnesota (for appellants)

Considered and decided by Connolly, Presiding Judge; Larkin, Judge; and Schellhas, Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

U N P U B L I S H E D O P I N I O N

CONNOLLY, Judge

In this appeal involving a hazardous-building action, appellants challenge the district court's order and judgment upholding respondent city's resolution ordering them to repair, remove, or raze certain buildings. Because respondent's resolution did not comply with the statutory requirement to identify the specific repairs that appellants needed to undertake, we reverse.

FACTS

In April 2019, respondent City of Mountain Lake passed Resolution 8-19 (the original resolution) under Minn. Stat. §§ 463.15-.261 (2018), which ordered the repair, removal, or razing of buildings located on real property in Cottonwood County. Appellant Hiebert Greenhouses of Minnesota, Inc. owns the subject property. Its chief executive officer is appellant Marjorie Christianson, while appellant Paul Christianson is its registered agent.

In concluding that the subject buildings were hazardous, the original resolution listed several supporting reasons:

> (a) There are several buildings on the property that have not been maintained for several years.
>
> (b) The buildings have been abandoned and have dilapidated to the point that they are not secure from the public and may pose a threat to the public safety, including attracting rodents and vermin.
>
> (c) The city council feels that it may pose a further public nuisance and safety issue if it continues without action soon.
>
> (d) The roof has caved in on several of the buildings causing a safety hazard to the public.

> (e) The interior[s] of the buildings are showing growth of seedling trees due to the lack of maintenance.

The original resolution required appellants to either "repair or raze such buildings" or serve an answer within 20 days. *See* Minn. Stat. § 463.18 ("Within 20 days from the date of service, any person upon whom the order is served may serve an answer in the manner provided for the service of an answer in a civil action, specifically denying such facts in the order as are in dispute."). The original resolution noted that respondent's prior correspondence to appellants about the buildings had gone unanswered.

Appellants timely answered in May 2019, asserting that the original resolution lacked the specificity required by statute and denying that the buildings at issue were hazardous or a public nuisance. After appellants answered, respondent passed an addendum to the original resolution (the amended resolution) that ordered appellants to replace the roofs on several buildings.

The case proceeded to a court trial, and the district court received testimony from respondent's building inspector, from Paul Christianson, and from Marjorie Christianson. Following the trial, the district court issued an order enforcing the amended resolution and entered judgment. In its order, the district court held that the buildings met the hazardous-building statute criteria.

Appellants now challenge that order and entry of judgment for respondent.

D E C I S I O N

Appellants argue that (1) the original resolution violated the statutory requirements by not listing the specific repairs they needed to complete, (2) the district court erred by

not giving them a chance to make the necessary repairs, and (3) the evidence cannot sustain the district court's order. We agree with appellants' first argument and reverse.

In attacking the adequacy of the original resolution, appellants raise both statutory and due-process arguments. Respondent counters that its amended resolution cured any defect in the original resolution by specifying the necessary repairs.

Municipalities should exercise caution when bringing building-removal proceedings under state statute and must freely provide notice and an opportunity to be heard because such actions represent a loss to the property owner without compensation. *Village of Zumbrota v. Johnson*, 161 N.W.2d 626, 630 (Minn. 1968).

An order for removal or repair of a hazardous building must "specify the necessary repairs, if any, and provide a reasonable time for compliance." Minn. Stat. § 463.17, subd. 1. Here, the original resolution stated that "the record owner of the above hazardous buildings [must] repair or raze such buildings[,]" but it did not identify the specific repairs necessary.

Respondent asserts that the specific repairs necessary were implied because the resolution noted that several buildings had deteriorating roofs and were sprouting seedlings from their interiors. But our reading of the caselaw interpreting the hazardous-building statutes leads us to conclude that the original resolution failed to satisfy Minn. Stat. § 463.17. *See Village of Zumbrota*, 161 N.W.2d at 630 (concluding that notice was defective because it told the property owner only to "eliminate the hazardous building" without detailing how the owner could comply with this directive and observing that the property owner was prejudiced because he had tried to make repairs of what he considered

hazardous conditions). Similarly here, Paul Christianson testified that he tried to alleviate possible hazardous conditions.

Respondent relies on *Ukkonen v. City of Minneapolis*, 160 N.W.2d 249 (Minn. 1968). But the property owner in *Ukkonen* never challenged the adequacy of the city's hazardous-building removal order. The issue presented was whether the evidence supported the district court's factual findings and ultimate legal conclusion that the buildings were hazardous. *Ukkonen*, 160 N.W.2d at 253. So the *Ukkonen* court did not address whether the city's order complied with the statute. *See Skelly Oil Co. v. Comm'r of Taxation*, 131 N.W.2d 632, 645 (Minn. 1964) ("[T]he language used in an opinion must be read in the light of the issues presented[.]" (quotation omitted)).

Because the original resolution gave appellants the option to repair the property but did not identify specific repairs, as required by statute, it was defective. Thus, appellants did not have a meaningful opportunity to comply with the repair option in the original resolution. In essence, appellants could comply only by serving an answer or razing the buildings. For these reasons, we conclude that the original resolution violated the statutory requirements and that the district court erred in upholding it.

Respondent also highlights the amended resolution, served on May 21, and argues that this cured any defects in the original resolution. We first note that the hazardous-building statutes do not grant municipalities the authority to amend an order or resolution and respondent offers no support for this argument.

Assuming that respondent was otherwise authorized to pass an amended resolution, we still conclude that the amended resolution here was not enforceable in the pending

action. When respondent served the amended resolution, appellants had answered the original resolution, transforming this action into a contested case governed by the rules of civil procedure. *See* Minn. Stat. § 463.20. And under the rules of civil procedure, once a responsive pleading has been served, a party may amend a pleading only by obtaining the other party's consent or leave of court. Minn. R. Civ. P. 15.01.

Respondent's adoption and service of the original resolution, akin to a complaint in a civil case, began the action here under the hazardous-building statutes. *See* Minn. Stat. §§ 463.16-17. And the amended resolution is similar to an amended complaint because it was served after this action became a contested case. The record does not show that respondent obtained appellants' consent or leave from the district court before it passed, served, and filed the amended resolution. As a result, the amended resolution could not cure the original resolution's failure to identify the required repairs. Because we conclude that the original resolution violated the statutory requirements, we decline to reach the other issues.

Reversed.