

People v 214 Eddy, LLC

2023 NY Slip Op 33995(U)

June 15, 2023

County Court, Tompkins County

Docket Number: Index No. SMZ-70306-22

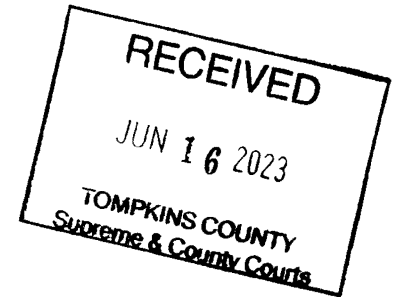
Judge: Joseph R. Cassidy

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At a term of the County Court of the State of New York, Tompkins County, held in Ithaca, New York on June 14, 2023

Present: Hon. JOSEPH R. CASSIDY
County Court Judge



**THE PEOPLE OF THE
STATE OF NEW YORK,**

Appellant,

vs.

DECISION and ORDER
SMZ-70306-22

**214 EDDY, LLC,
223 EDDY, LLC, et. al.,**

Respondents.



Index #: **SMZ-70306-22CR2023-03794**
06/16/2023 11:29:03 AM
DECISION AND ORDER
Maureen Reynolds, Tompkins County Clerk

Before the Court is an appeal from a Decision and Order entered on January 24, 2022, in which Ithaca City Court (Peacock, J.) dismissed 1,654 tickets for violations of the Ithaca City Code. The City of Ithaca appeals.

Procedural History

The posture of this case is highly unusual. The appeal was brought by the City Attorney after Ithaca City Court dismissed 1,654 tickets *sua sponte*, with no apparent notice to or participation by the defendants. There is no indication that City Court notified any of the defendants cited with tickets of the decision and the proceedings below. Only one defendant/respondent, 223 Eddy Street, LLC, contacted this Court through counsel with questions about its role in this appeal. The Court advised that the respondent had a right to submit a reply and provided a deadline by which to advise the Court if it intended to participate. The Court did not receive a reply.¹ The City Attorney

¹ The record on appeal is unclear, but it is possible that some of the defendants may have already plead guilty and paid their tickets, thus believing their matters to have concluded. There is no way for this Court to discern how many defendants may have done so.

requested that this Court dispense with the notice requirements on appeal for the hundreds of defendants with dismissed tickets. While appreciating the due process issue this presents, since it does not appear that Ithaca City Court noticed the defendants of the proceedings below, this Court will not require the City to notice and serve the appeal paperwork on each individual defendant.

Factual Background

Chapter 178 of the Ithaca City Code sets forth the Exterior Maintenance Property Ordinance (“EMPO”). Examples of EMPO violations include snow and ice removal, trash accumulation, and failure to maintain lawns. Up until 2021, EMPO enforcement actions were commenced when the City filed an accusatory instrument with Ithaca City Court (hereinafter “City Court”). City Court would then issue a summons providing a court appearance date that it would send defendants by mail. Around mid-2021, staff from Ithaca City Court and the New York State Office of Court Administration met with the Ithaca City Prosecutor to discuss notice and service in local law proceedings. After that meeting, the practice changed so that the City of Ithaca would issue an appearance ticket to defendants and file an accusatory instrument with the Court. The City generally serves the appearance tickets via first class mail.

On October 27, 2021, City Court scheduled 210 EMPO tickets to be heard. It is not clear from the record whether notice was provided to any of the defendants or that any defendants or their representatives were present in the courtroom when the matters came to be heard. It is also unclear whether October 27, 2021 was the date included on the appearance tickets, and if not, whether any defendants appeared in court on any other date. Without calling the cases individually or by name,² the Court engaged in the

² The record does not indicate whether City Court gave the City Prosecutor a list of the tickets on the docket. The Court’s docket lists various appearance times for the tickets, with most to be heard at 8:45 a.m., some at 9:30 a.m., and others at 3:00 p.m.

following exchange with the City Prosecutor:

“It looks like we have a few hundred cases on with [appearance tickets] ... and it appears as though [there has been] a long-term process in terms of how we go forward with our local law notifications and [appearance] tickets and the whole structure in general...I have a... few hundred cases here... I see the same issue present in these few hundred...”

The Court went on to question whether the proceedings were criminal or civil in nature and the legal authority for the notice procedures that had been in place. It pointed out that the requirements for service were not being met; that service of an appearance ticket by mail is insufficient. It based its concern on two prior Ithaca City Court decisions, *People v. Timmons*, CR-3352-17 [ICC 2018] and *People v. Yuan*, CR-2042-17 [ICC 2018]. The Court supplied the City Prosecutor with a copy of the decisions. The Court also noted that the form of the accusatory instrument presented problems because it instructs defendants how to plead guilty but lacks language about the option to plead not guilty and the right to a hearing. The Court indicated that there were “serious problems with our process and how we’re handling these tickets. Those need to be addressed and corrected going forward.” The Court indicated it would “go though each [case] individually.”

After advising of its concerns with respect to service, the Court indicated that it would provide the City Attorney with time and the opportunity to address the issues it raised. The Court asked the City “to provide the Court with your argument on why this is an appropriate way to proceed ...and why these cases don’t have the same defects that require dismissal [as in *Timmons* and *Yuan*]...” It added, “there’s also the issue of the few hundred cases that are pending as older cases that I’ve looked at as well, and I think some of those might have some of the same issues. I’m prepared to address these issues with a decision that’s going to cover these cases and potentially cover a lot of the backlog cases that we have as well.” The City Prosecutor responded that *Timmons* and *Yuan* concerned

the prior procedure under which defendants were served by a summons that City Court issued and served by mail. He asked whether there were any pending motions, or whether the Court was raising the issue *sua sponte*. The Court confirmed it was raising the issue *sua sponte* because it questioned whether it had jurisdiction to entertain the tickets and whether there is any authority to collect pleas and fines by mail.

The City filed a memorandum of law on or about December 21, 2021. The record does not reveal that any of the defendants appeared or submitted responses.³ On January 24, 2022, Ithaca City Court issued a Decision and Order dismissing not only the 210 tickets that were noticed to be heard on October 27, 2021, but an additional 1,472 dockets listed in an attachment to the decision.

Appellant filed a Notice of Appeal and a Notice of Argument and Supporting Brief on January 14, 2023, along with an Affidavit of Service indicating service on the first two named defendants by the New York Secretary of State. None of the respondents submitted a response. As the due date for submission of a response has passed, and due to the unusual procedural and notice issues created by the proceedings below, the Court deems this matter fully submitted.

Discussion

Local governments are empowered to adopt local laws and to authorize the issuance of an appearance ticket by a public servant tasked with the enforcement of any statute, local law, ordinance, rule or regulation relating to health and sanitation, building, zoning and planning. Municipal Home Rule § 10[4]. They may provide for the enforcement of local laws by legal or equitable proceedings and may also prescribe that violations of local laws shall constitute misdemeanors, offenses or infractions and provide

³ It does not appear the defendants were put on notice of the Court's *sua sponte* motion.

for the punishment of violations thereof by civil penalty, fine or imprisonment. *Id.* Local law ordinances can be civil or criminal in nature, depending on the penalties that may be imposed for a violation. *United States v. Ward*, 448 U.S. 242, 248–49, 100 S. Ct. 2636, 2641, 65 L. Ed. 2d 742 [1980]. Whether a local law is civil or criminal in nature can be ambiguous, and such proceedings are sometimes referred to as “quasi-criminal” because of this ambiguity.

Whether a matter is civil or criminal in nature determines whether personal jurisdiction is conferred by service on the defendant or by the defendant’s appearance in court. CPLR Article 3; CPL § 150.40[2], *People v. Dillin* 148 Misc.2d 311, 314-315, 560 NYS2d 940 [Crim Ct. NY County 1990], *People v. Grant*, 16 N.Y.2d 722, 723, 262 N.Y.S.2d 106, 209 N.E.2d 723 [1965]. In civil cases, personal jurisdiction is established through service of process, whereas a criminal court does not obtain jurisdiction over the person until the defendant appears in court. *Id.*

City Court relied on two prior Ithaca City Court decisions, *People v. Timmons* and *People v. Yuan*. In *Timmons*, the Court pointed out that the City chose to bring an EMPO matter as a criminal proceeding even though the Ithaca City Code appears to present a civil remedy for EMPO violations. Regardless of whether the EMPO violation was considered civil or criminal in nature, the Court found the manner of service improper in either event because the defendant was not served personally. The Court vacated the default judgment against the defendant. In *Yuan*, the Court could not determine whether the City intended to enforce EMPO tickets as civil, criminal or both. It found that the service requirements had not been met by either standard and granted the defendant’s motion to vacate the default judgment against him. In the instant case, while City Court questioned whether the proceedings were civil or criminal in its oral *sua sponte* motion, it did not address this issue in its written decision, in which it squarely treated the matters as

criminal proceedings.

I. City Court Did Not Have Jurisdiction to Dismiss the Tickets

A criminal action is commenced by the filing of an accusatory instrument in a criminal court. CPL § 1.20[17]. For local law violations, the City Attorney or their designee may serve an appearance ticket directing the defendant to appear in City Court at a particular date and time, and must follow the issuance of the appearance ticket by filing an accusatory instrument with the court. CPL §§ 150.10[1], 150.20[3]; Mun. Law § 10[4][a]. Ithaca City Code § 178-10[A][4]. Service of a criminal appearance ticket is prescribed by CPL § 150.40[2] which requires personal service, except that an appearance ticket issued for violation of a local zoning law or a building or sanitation code may be served in any manner authorized in CPLR § 308. CPLR § 308 authorizes alternative means of service, but first class mail, on its own, is not included as an acceptable means.⁴ If a defendant fails to answer an appearance ticket, the court may secure the defendant's appearance by issuing a criminal summons or an arrest warrant. CPL § 150.60.

Here, City Court dismissed the tickets for lack of personal jurisdiction because none of the appearance tickets had been personally served. This was error. In a criminal proceeding, jurisdiction over the person of the defendant is acquired when the defendant appears before the court, notwithstanding the lawfulness of the means used to obtain his

⁴ The Ithaca City Code does contain a provision indicating that EMPO tickets can be served by first class mail. If the City Court determines that the local law's service provisions could supersede the CPL, and that it is impracticable to serve the defendants pursuant to CPLR §308(1)(2) or (4), it could determine whether the Ithaca City Code's first class mail provision may be lawful alternate service under CPLR §308(5), especially given the expense of personal service vis-a-vis a violation punishable by a \$25 civil penalty.

or her presence. *People v. Grant*, 16 N.Y.2d 722 at 723; *People v. James*, 147 A.D.3d 1211, 48 N.Y.S.3d 524 [3rd Dept. 2017]. If the defendant appears in court, improper service of an appearance ticket does not deprive the court of jurisdiction over the person. *People v MacFarlane Co.*, 130 Misc.2d 70, 494 N.Y.S.2d 826 [Crim. Ct. City of New York 1985]. An appearance ticket “is merely an invitation to appear,” and a defendant’s failure to accept the invitation may result in the Court issuing a criminal summons or an arrest warrant to secure the defendant’s appearance. *People v. Byfield*, 131 Misc.2d 884, 885-886 [Crim. Ct., NY County 1986]. Accordingly, while City Court was correct that it lacked personal jurisdiction over the defendants, it was error for it to dismiss the tickets on that basis.

Other than for facial insufficiency of an accusatory instrument, a criminal proceeding may only be dismissed on motion after the defendant has been arraigned. CPL § 170.30[1], *People v. Marzban*, 172 Misc.2d 987, 988-989 [Sup. Ct. Queens Co. 1997]. A court lacks jurisdiction to entertain a motion to dismiss a criminal accusatory if it has not obtained personal jurisdiction over a defendant. *Marzban* at 988-989, *People v Byfield*, 131 Misc.2d at 885; *People v Thompson*, 107 Misc.2d 258, 433 N.Y.S.2d 961 [Franklin Co. Ct. 1980]. City Court dismissed the tickets because they were not served personally pursuant to CPL § 150.40, yet the record does not reveal how each ticket was served. It appears some defendants had been issued a summons by City Court and others were served by the City Attorney via an appearance ticket by mail. It is entirely possible that some tickets and/or summonses were served personally. It is impossible to tell on this record as City Court did not go through each ticket individually.

While it acknowledged that personal jurisdiction in a criminal matter is acquired though the defendant’s appearance in court, City Court nonetheless found that the City’s

failure to attempt personal service justified dismissal of all the tickets.⁵ Citing the meeting in which the City and court staff discussed service in local law cases, City Court relied primarily on *People v. Baxter*, in which the court stated, “there is a difference between defects in service which are mistaken and what appears to be a continuing and ongoing practice of ignoring the CPL.” 148 Misc.2d 1009, 1011 [Kings Co. Crim. Ct. 1990]. This Court finds that City Court’s reliance on *Baxter* is misplaced, however, because in that case and in the other cases City Court cited, the defendants and/or counsel appeared in court. *Baxter* is distinguishable in a few other respects. One, it involved 26 cases with 12 defendants that had been consolidated prior to the dismissal. The defendants, all employees or administrators of parochial schools where the building violations were alleged to have taken place, did not appear personally, but counsel appeared on their behalf and argued for corporate substitution. Moreover, the main reason the *Baxter* Court dismissed the cases was due to insufficient accusatory instruments. The Court found it lacked authority to compel attendance though the issuance of a summons or a warrant when the accusatory instruments were facially insufficient.

The other cases City Court cited, *People v. Byfield*, 131 Misc.2d 884, *People v. DiLorenzo*, 149 Misc.2d 791 [Bronx Co. Crim Ct. 1990], *People v. Gross*, 148 Misc.2d 232 [Kings Co. Crim Ct. 1990], *People v. Neuberger* 149 Misc.2d 1 [Kings Co. Crim. Ct. 1991], and *People v. Zappulo*, 42 Misc.3d 254 [Muttontown Justice Ct. 2013] are also distinguishable in that the defendants appeared in court and thus subjected themselves to the courts’ jurisdiction. Here, as City Court lacked personal jurisdiction over the defendants, it had no authority to dismiss all 1,642 tickets. Accordingly, the matter must be reversed and remanded for further proceedings.

⁵ The record is not clear as to whether the Court reviewed each ticket individually, or what, if any, evidence it relied on to conclude that service was defective in each case.

II. The Manner of Dismissing the Tickets Violates Due Process

The manner in which City Court dismissed the tickets also violates the parties' basic right to due process. In all of the cases City Court cited, it was the defendant, not the court, that moved for dismissal. Unlike any of the cases cited, City Court included over a thousand tickets that were not even listed on the docket. This Court was unable to locate any other decision in which a court raised this issue *sua sponte* or in a case when a defendant failed to appear, let alone in a case that was not noticed to be heard. The manner in which the tickets were summarily dismissed creates a serious due process issue that must be corrected on remand.

III. The Record on Appeal is Insufficient to Enable Review

Moreover, the record of the proceedings below is insufficient to enable meaningful review. For example, City Court noted that the appearance tickets were defective in that they contained a plea form, but no proper advisements. This would certainly create a due process problem, but it is impossible for the Court to review this point, as the record on appeal does not contain copies of the accusatory instruments, summonses or the appearance tickets themselves. Another issue is that not all the tickets appear to have been EMPO tickets; several appear to be zoning law violations and dog tickets. Most of the dockets listed in the attachment to the decision do not specify the nature of the ticket at all, making review impossible. On remand, Ithaca City Court must undertake an individualized consideration of each ticket and establish a record that enables review on appeal.

Finally, the City asserts, and the record shows, that several of the tickets involve entity defendants such as corporations and limited liability companies. The service requirements in a criminal proceeding on an entity differ from those on a natural person.

Jurisdiction over an entity is established through service of an appearance ticket or a summons "by delivery thereof to an officer, director, managing or general agent, or cashier or assistant cashier of such [entity] authorized by appointment or by law to receive service of process." CPL § 600.10[1]. The Ithaca City Code requires most rental property owners to file an agency agreement with the City designating an agent for service of process by first class mail. Ithaca City Code § 210-81[C]. The City Clerk becomes the agent if the owner fails to file an agency agreement. *Id.* Though the record does not reveal which defendants complied with these sections of the Ithaca City Code, it would appear that jurisdiction over many of the entity defendants would have been accomplished via service by first class mail to their designated agent or to the City Clerk. Since the Court did not create a record demonstrating that it reviewed each matter individually or the evidence upon which it relied, the propriety of service on the entity defendants is impossible to review.

Conclusion

The Court is cognizant that many of the tickets are quite old, some dating back to 2018. On remand, the City should indicate whether it intends to attempt personal service or seeks a summons or an arrest warrant in cases in which the defendant did not appear on the noticed date. The court has discretion whether or not to grant this request. The City should indicate whether it intends to prosecute some of the more remote tickets.

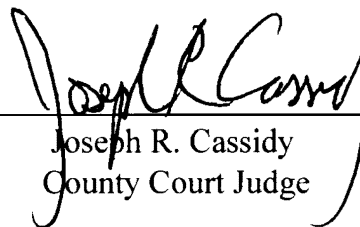
For the reasons set forth herein, the decision dismissing the tickets is reversed and remanded for an individualized determination of each ticket upon notice and an opportunity to be heard for all parties. Moreover, City Court is directed to ensure that an adequate record is created for review in the event of an appeal.

This is the decision and order of this court made on notice to the named parties.

An appeal, if any, must be taken within thirty days of entry.

So Ordered

Enter: JUNE 15, 2023
Ithaca, New York


Joseph R. Cassidy
County Court Judge

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