

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

City of York, :  
Appellant :  
v. : No. 106 C.D. 2008  
Norma J. Stough : Argued: September 8, 2008

BEFORE: HONORABLE BONNIE BRIGANCE LEADBETTER, President Judge  
HONORABLE RENÉE COHN JUBELIRER, Judge  
HONORABLE JOSEPH F. McCLOSKEY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION  
BY SENIOR JUDGE McCLOSKEY

FILED: October 23, 2008

The City of York (the City) appeals from an order of the Court of Common Pleas of York County (trial court), granting the motion to strike filed by Norma J. Stough (Property Owner). We affirm.

On July 13, 2007, the City filed a municipal claim and lien for \$26,500.00, plus costs, against property located in York, Pennsylvania and owned by Property Owner. The municipal claim alleged that the property had collapsed due to an explosion that occurred on March 10, 2007.

The City determined that the collapse of the property caused an unsafe condition and endangered the health, safety and welfare of the public. The City alleged that the owner of the property or her representative was given the option of hiring her own contractor to demolish the property or having the City acquire a contractor on her behalf. The City claimed that the owner requested that the City obtain a contractor on her behalf with the understanding that she was responsible for all costs associated with the demolition. The City acquired a contractor and the

property was demolished. However, Property Owner did not pay the contractor. As such, the City filed a claim and lien against the property.

In response to the municipal claim, Property Owner filed preliminary objections in the nature of a motion to strike. Property Owner alleged that the City was not authorized to file a municipal claim or lien to recover the cost of work done pursuant to a contract with a property owner. Property Owner alleged that the City was only permitted to seek a municipal claim in cases where it had provided a property owner with prior written notice that such action would be taken. The City did not allege that notice was provided here; thus, Property Owner requested that the trial court grant her motion to strike the municipal claim.

The trial court granted Property Owner's motion noting that a property owner may file a petition to strike a municipal lien where the lien is invalid on its face. Penn Township v. Hanover Foods Corporation, 847 A.2d 219 (Pa. Cmwlth. 2004). The trial court found that the municipal lien was defective on its face as it did not allege that the statutory requirements relating to notice were met.

The City now appeals to this Court.<sup>1</sup> The City alleges that the trial court erred in dismissing the municipal claim as it was not required to provide notice where it was responding to an emergency situation. The City also alleges that it was error for the trial court to dismiss the municipal claim where Property Owner had received actual notice of the City's intention to demolish the property. We disagree with each of these arguments.

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<sup>1</sup> Our scope of review of an order disposing of a petition to strike a municipal claim is limited to determining whether constitutional rights were violated or whether the trial court abused its discretion or committed an error of law. Penn Township.

The City alleged that it brought this claim pursuant to Section 109 of the Property Maintenance Code of the City of York (the Code). This Section is titled “Emergency Measures” and provides as follows:

109.1 Imminent danger. When, in the opinion of the code official, there is imminent danger of failure or collapse of a building or structure or part of a structure has fallen and life is endangered by the occupation of the structure, or when there is actual or potential danger to the building occupants or those in the proximity of any structure because of explosives, explosive fumes or vapors or the presence of toxic fumes, gases or materials, or operation of defective or dangerous equipment, the code official is hereby authorized and empowered to order and require the occupants to vacate the premises forthwith. The code official shall cause to be posted at each entrance to such structure a notice reading as follows: “This Structure Is Unsafe and Its Occupancy Has Been Prohibited by the Code Official.” It shall be unlawful for any person to enter such structure except for the purpose of securing the structure, making the required repairs, removing the hazardous condition or of demolishing the same.

109.2 Temporary safeguards. Notwithstanding other provisions of this code, whenever, in the opinion of the code official, there is imminent danger due to an unsafe condition, the code official shall order the necessary work to be done, including the boarding-up of openings, to render such structure temporarily safe whether or not the legal procedure herein described has been instituted; and shall cause such other action to be taken as the code official deems necessary to meet such emergency.

109.3 Closing streets. When necessary for the public safety, the code official shall temporarily close structures and close, or order the authority having jurisdiction to close, sidewalks, streets, public ways and places adjacent to unsafe structures, and prohibit the same from being utilized.

109.4 Emergency repairs. For purposes of this section, the code official shall employ the necessary labor and materials to perform the required work as expeditiously as possible.

109.5 Costs of emergency repairs. Costs incurred in the performance of emergency work shall be paid by the jurisdiction. The legal counsel of the jurisdiction shall institute appropriate action against the owner of the premises where the unsafe structure is or was located for the recovery of such costs.

109.6 Hearing. Any person ordered to take emergency measures shall comply with such order forthwith. Any affected person shall thereafter, upon petition directed to the appeals board, be afforded a hearing as described in this code.

(R.R. at 76a).

As noted by the Property Owner, Section 110 of the Code refers specifically to demolitions. Section 110 provides as follows:

110.1 General. The code official shall order the owner of any premises upon which is located any structure, which in the code official's judgment is so old, dilapidated or has become so out of repair as to be dangerous, unsafe, insanitary or otherwise unfit for human habitation or occupancy, and such that it is unreasonable to repair the structure, to demolish and remove such structure; or if such structure is capable of being made safe by repairs, to repair and make safe and sanitary or to demolish and remove at the owner's option; or where there has been a cessation of normal construction of any structure for a period of more than two years, to demolish and remove such structure.

110.2 Notice and orders. All notices and orders shall comply with Section 107.

110.3 Failure to comply. If the owner of a premises fails to comply with a demolition order within the time prescribed, the code official shall cause the structure to

be demolished and removed, either through an available public agency or by contract or arrangement with private persons, and the cost of such demolition and removal shall be charged against the real estate upon which the structure is located and shall be a lien upon such real estate.

(R.R. at 76a-77a).

The notice requirements of Section 107 of the Code are as follows:

107.1 Notice to owner or to person or persons responsible. Whenever a code official determines that there has been a violation of this code or has grounds to believe that a violation has occurred, notice shall be given to the owner or the person or persons responsible therefore in the manner prescribed in Sections 107.2 and 107.3. Notices for condemnation procedures shall also comply with Section 108.3.

107.2 Form. Such notice prescribed in Section 107.1 shall:

1. Be in writing.
2. Include a description of the real estate sufficient for identification;
3. Include a statement of violation or violations and why the notice is being issued;
4. Include a correction order allowing a reasonable time to make the repairs and improvements required to bring the dwelling unit or structure into compliance with the provisions of this code; and
5. Inform the property owner of the right to appeal.

107.3 Method of service. Such notice shall be deemed to be properly served if a copy thereof is:

1. Delivered personally; or
2. Sent by certified or first-class mail addressed to the last known address; or
3. If the notice is returned showing that the letter was not delivered, a copy thereof shall be posted in a conspicuous place in or about the structure affected by such notice.

(R.R. at 74a-75a).

Pursuant to Section 110, notice must be given prior to demolishing property. Further, once the property is demolished, the Code provides that the cost of the demolition is to be charged against the real estate. However, the City argues that it did not proceed under Section 110. Therefore, it did not need to provide notice. Instead, the City alleges that the demolition of the property constituted an emergency situation and, therefore, it proceeded under Section 109 of the Code. The City notes that under Section 109, it may proceed without prior notice to the property owner to abate the emergency.

We agree that Section 109 does not provide a notice requirement for the City. However, Section 109.5 states that to recover the cost of the emergency repair “[t]he legal counsel of the jurisdiction shall institute appropriate action against the owner of the premises where the unsafe structure is or was located for the recovery of such costs.” (R.R. at 76a). This remedy is distinguishable from Section 110, which allows a lien to be placed upon the property. Therefore, even if the City is correct that its actions were proper due to an emergency situation, the filing of a municipal claim and lien was not the appropriate remedy under Section 109.

The City also argues that even if its actions come under Section 110 of the Code, the notice requirement may be waived. In support of this claim, the City cites to Balent v. City of Wilkes-Barre, 542 Pa. 555, 669 A.2d 309 (1995) and Estate of Blose ex. rel. Blose v. Borough of Punxsutawney, 889 A.2d 653 (Pa. Cmwlth. 2005). However, these cases are not comparable.

Balent and Estate of Blose both involve property owners that sought damages from a municipality due to the demolition of their properties. In both cases, it was determined that the municipalities did not have to compensate the

property owners for taking their property without notice due to the dangerous condition of their properties. Balent and Estate of Blose establish that a municipality can demolish a property without notice where it establishes a relationship between the demolition of the building and the safety and welfare of the community and not compensate the owners of the property for the value of the property. However, this does not in any way establish the validity of the claim by the City at issue here, which is whether a municipality can encumber a property with the cost of demolition where it has not followed the notice provisions contained in its Code.

The Code provides that the City may make emergency repairs and seek to recover the costs from the owner, or it may seek to demolish a property by first giving notice and an opportunity to be heard to the owner and then recover its costs by placing a lien on the property. The City cannot combine two separate sections of the Code to reach the remedy it desires.<sup>2</sup> As such, we conclude that the trial court did not err in granting Property Owner's motion to strike.

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<sup>2</sup> The trial court noted that the City has a civil action pending against Property Owner and other similarly situated property owners seeking recovery of the demolition costs and explained that the City is entitled to proceed with that claim, as "[o]nly implicated in this appeal is the City's ability to obtain a lien against the property owners for an amount specific upon the mere filing of a claim." (Opinion of Trial Court at 2).

Accordingly, the order of the trial court is affirmed.

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JOSEPH F. McCLOSKEY, Senior Judge



IN THE COMMONWEALTH COURT OF PENNSYLVANIA

City of York,	:	
Appellant	:	
	:	
v.	:	No. 106 C.D. 2008
	:	
Norma J. Stough	:	

**ORDER**

AND NOW, this 23rd day of October 2008, the order of the Court of Common Pleas of York County is affirmed.

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JOSEPH F. McCLOSKEY, Senior Judge

**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**

City of York,	:	
Appellant	:	
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v.	:	No. 106 C.D. 2008
	:	Argued: September 8, 2008
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HONORABLE JOSEPH F. McCLOSKEY, Senior Judge**

**OPINION NOT REPORTED**

**CONCURRING OPINION BY  
PRESIDENT JUDGE LEADBETTER**

**FILED: October 23, 2008**

I agree in large part with the well-stated analysis of the majority. I write separately simply to emphasize the trial court’s holding that the City may still recover its demolition costs by instituting a civil action, as it has done; it simply may not, since it failed to give prior notice of the demolition, proceed directly by filing a lien. I do not believe the majority holds otherwise, but to the extent the penultimate paragraph of the majority opinion contains such a suggestion, I disagree.

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**BONNIE BRIGANCE LEADBETTER,**  
President Judge