

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

CITY OF WILLIAMSPORT : No. SA-64-2015
BUREAU OF CODES :
vs. :
JOHN DeRAFFELE :
:

OPINION, VERDICT AND ORDER

Defendant was charged by a non-traffic citation filed on September 18, 2015 with violating Williamsport City Ordinance 1741.01. More specifically, Defendant was charged with violating § 108.5 of the International Property Maintenance Code of 2015 (IPMC) as adopted by the City in Ordinance 1741.01.

Factually, Defendant was alleged to have permitted occupancy of premises owned by him which premises had been previously “condemned and placarded.”

A summary hearing was held before MDJ Page on November 30, 2015. Defendant was found guilty and subsequently took an appeal. A conference was held before this Court on February 2, 2016 and a hearing was held on March 28, 2016. Defendant has asserted a handful of defenses.

First, Defendant argues that the City cannot enforce the International Property Maintenance Code of 2015. The City concedes that Defendant is being prosecuted pursuant to the 2015 IPMC. With respect to this argument, Defendant contends that he cannot be found guilty because the city ordinance adopting the IPMC is unenforceable. Secondly, he argues that the City did not have consent of the International Code Council (ICC) to adopt the IPMC. Lastly, he argues that if the 2015 IPMC is enforceable, he did not violate it.

With respect to his first argument, Defendant claims that Ordinance 1741.01 only adopted the 2003 version of the code and not the 2015 version. Defendant argues that because it was not adopted, approved or published by the city it “cannot be enforced.”

The 2015 IPMC, admitted as an exhibit during the trial in this matter prohibits an owner of a property that has been condemned and placarded by a code official to permit an occupancy of those premises. Article 1741.01 of the Williamsport’s City Code, also admitted as an exhibit during trial, specifically adopts the IPMC of 2003.

Clearly the language of Article 1741.01 does not specifically adopt the 2015 IPMC. The City argues, however, that the 2015 version is enforceable.

First, the City argues that it was authorized to adopt the IPMC under the Pennsylvania Third Class City Code and did not need to pass an ordinance specifically adopting each revision of the IPMC. 53 P.S. § 36018.4 and 53 P.S. § 39104.A. the City’s position is correct. These code provisions permitted the city to incorporate a standard or nationally recognized property maintenance code or a variation or change by reference without setting forth the text of the code in the ordinance.

The ordinance upon which the City relies was approved on April 29, 2004. City ordinance § 1741.01 specifically adopts the IPMC of 2003 as published by the International Code Council, Inc. The Third Class City Code specifically authorized the adoption and enforcement of any variations of the IPMC of 2003.

The City argues as well that Defendant has waived his right to challenge the enforceability of the IMPC.

Rule 109 of the Pennsylvania Rules of Criminal Procedure notes that a defendant shall not be discharged, nor shall a case be dismissed, because of a defect in the form or content of a complaint, citation, summons, or warrant, or a defect in the procedure or the rules, unless the defendant raises the defect before the conclusion of a trial in a summary case and the defect is prejudicial to the rights of the defendant.

This rule has been interpreted in a summary trial proceeding to require that the defect be raised before the issuing authority, in this case MDJ Page, and not the hearing before the trial judge. *Commonwealth v. Snyder*, 385 Pa. Super. 58, 560 A.2d 165 (1989).

However, and as the comment to the Rule states, “in a summary case, however, the provisions of this rule do not preclude a defendant from raising a defect for the first time after the summary trial when the interest of justice require it, as for example, when the defendant was not represented by counsel during the proceedings before the district justice.”

In this particular case, the Court will not hold that the Defendant waived the enforceability of the IPMC of 2015. The interest of justice require that it be considered at this point. Not only was the Defendant not represented by counsel during the proceedings before the District Justice but the time between the filing of the citation and the initial hearing was very short, approximately 75 days, and Defendant’s claim had facially arguable merit.

With respect to Defendant’s argument that the IPMC of 2015 was not approved with the consent of the ICC, there was no legal authority submitted to the Court to support such a defense.

Thomas Evansky, employed by the City as a Codes Enforcement Officer, in July of 2015, received complaints about Defendant's property located at 814 Hepburn Street in the city of Williamsport.

Mr. Evansky visited the property and noticed that the electricity was shut off. Accordingly, he posted the property with a No Trespass sign and a Notice of Condemnation. He also forwarded a copy of the Notice to the Defendant. The Notice stated that the Defendant was in violation of the International Property Code § 108.1.3. It did not state the effective date of the Code on the Notice of Condemnation itself but on the Bureau of Codes Notice document accompanying the condemnation notice, it referenced the 2015 International Property Maintenance Code.

On September 18, 2015, Mr. Evansky visited the property and observed that it was occupied. The Notice required that it remain unoccupied until all violations had been eliminated and an inspection was completed by codes. Mr. Evansky was not asked to inspect the property until September 18, 2015.

Defendant argued that the reason for which the condemnation had been issued, non-working electricity, was quickly abated. He also argued that conversations between he and code officials lead him to believe that he did not need to have a further inspection or a reinspection in such a case. He noted that he had been dealing with the city for many years and in the past under similar circumstances, occupants were allowed to reenter the premises once the issue was addressed. He relied upon the representations of the code officials in allowing reoccupancy.

Defendant's claims do not constitute legal defenses to the charge. The 2015 version of the IPMC was enforceable and Defendant clearly and beyond a reasonable doubt, violated it. He unlawfully permitted occupancy of the premises.

ORDER

AND NOW, this ____ day of April 2016, following a Summary Appeal Trial in this matter, Defendant is adjudicated **GUILTY**. The sentence of the Court is that Defendant pay the costs of prosecution and the fine imposed by MDJ Page within 90 days of today's date.

By The Court,

Marc F. Lovecchio, Judge

cc: J. David Smith, Esquire
Beau Hoffman, Esquire
MDJ Page
Mr. John DeRaffele
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New Rochelle, NY 10801
Gary Weber, Lycoming Reporter
Work File