

CVH-20-13828



FILED

2021 SEP 14 A 10 04

IN THE MUNICIPAL COURT OF TOLEDO, LUCAS COUNTY, OHIO
HOUSING DIVISION

City of Toledo,

*

Plaintiff,

*

Case No. CVH-20-13828

v.

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JUDGMENT ENTRY

Toledo Nights, Inc.,

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Defendant.

*

Judge Joseph J. Howe

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This matter first came before this court in Plaintiff's movements in seeking an injunction against Defendant for not abating public nuisance conditions at the property in question: a Day's Inn Motel located at 1800 Miami St., Toledo, Ohio (hereinafter referred to as 'the property'). After a series of pretrials, continuances, and resets, this matter now comes before this court in Defendant's Motion for Partial Summary Judgment, in Plaintiff's combined Memorandum in Opposition to Defendant's Motion and Plaintiff's own Motion for Summary Judgment, in Defendant's Reply to Plaintiff's Opposition to Defendant's Motion for Partial Summary Judgment and Memorandum in Opposition to Plaintiff's Motion for Summary Judgment, and in Plaintiff's Reply to Defendant's Memorandum in Opposition to Plaintiff's Motion for Summary Judgment.

A motion for summary judgment shall be granted when (1) a party has demonstrated that there are no genuine issues of material fact; (2) that the movant is entitled to judgment as a matter of law; (3) that the only reasonable conclusion that can be reached is one which is adverse to the party against whom the motion for summary judgment is made. *Harless v. Willis Day Warehousing Co.*, (1978), 54 Ohio St.2d 64, 67, 375 N.E.2d 46. Additionally, a party opposing a properly supported

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motion for summary judgment must set forth specific facts showing that there is a genuine issue of material fact, and may not rely solely on allegations within pleadings to demonstrate this issue of material fact. Rule 56(E); *Mathis v. Cleveland Public Library*, 9 Ohio St.3d 199, 201-02 (1989).

Defendant's motion cites the necessity for a criminal conviction in order to obtain an Order of Abatement (Toledo Municipal Code (T.M.C) 533.21(f)). Defendant also cites Plaintiff's apparent failure to produce evidence of necessary criminal conviction(s) upon request for discovery and response to interrogatories, citing specifically Defendant's interrogatories 6, 7, and 8, as well as Defendant's requests for production of documents 3, 4, and 5. Because of Plaintiff's apparent failure to supply details of a criminal conviction relating to the offenses mentioned in the aforementioned interrogatories, Defendant has moved for partial summary judgment.

However, Plaintiff, in their response, has produced evidence of some six arrests and convictions of various persons using the property which has been alleged as a nuisance, as well as evidence of some ten overdoses of persons using the property (*see generally*, Plaintiff's Memorandum in Opposition and Plaintiff's Motion for Summary Judgment). Because this demonstrates that there are indeed criminal convictions obtained against persons using the property alleged to be a nuisance in connection with the criminal offense charged, and because Defendant's Motion is based on Plaintiff's alleged failure to provide evidence of said convictions, Defendant's Motion for Partial Summary Judgment is NOT WELL-TAKEN.

Additionally, Defendant's argument that a conviction for attempted possession of drugs as a part of a plea deal constitutes a separate and distinct crime from possession of drugs is NOT WELL-TAKEN by this court. The presence of a plea deal, a common occurrence for possession offenses, does not change the inherent nature of the charge or crime committed. In other words, the conviction is not, in this case, severable from the charge. *State v. Taylor*, 113 Ohio St.3d 297, 2007-Ohio-1950, 865 N.E.2d 37.

With Defendant's Motion addressed, now comes the matter of Plaintiff's own Motion for Full Summary Judgment. Plaintiff's argument is simple: they have met all the requirements for abatement of a public nuisance under T.M.C. 533.19, and are entitled to summary judgment under the criteria set forth in precedent and law. Plaintiff has provided evidence that the building is consistently used for "the unlawful transporting, sale [or] keeping for sale any controlled substance..." (T.M.C. 533.19.a). *See generally* Plaintiff's Attached Exhibits to Motion for Summary Judgment. Plaintiff's Motion for Summary Judgment is therefore WELL-TAKEN and thereby GRANTED.

There does appear to be an extraneous issue which is attached to this issue, yet is not pertinent to the issue of an Order of Abatement under T.M.C. 533.19-21. It appears that there are alleged to be numerous building code violations as highlighted in Plaintiff's Special Inspection Report dated May 27, 2020 and attached to Plaintiff's Reply to Defendant's Memorandum in Opposition to Plaintiff's Motion for Summary Judgment. Defendant, by and through a sworn affidavit, alleges such issues as resolved. No evidence to Defendant's statement is offered in support, even as Plaintiff's own allegations to the matter of building code violations are supported by a lack of evidence of action on behalf of Defendant. As this matter does not directly pertain to the requirements of T.M.C. 533.19-21, and satisfaction of this matter is not necessary for the abatement of a nuisance, the matter of outstanding building code violations does not constitute a genuine issue of material fact which may impede either party's Motion(s) for Summary Judgment.

Under T.M.C. 533.21, an order of abatement is to be entered, which shall direct the removal from the building all furniture, fixtures, and contents therein and directing the sale thereof in the manner dictated by T.M.C. 533.21 and the Toledo Municipal Code's relevant statute(s).

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Defendant's Motion for Partial Summary Judgment is found NOT WELL-TAKEN and DENIED. Plaintiff's Motion for Summary Judgment is found WELL-TAKEN and GRANTED.

An order of abatement is to be entered as part of this judgment, as dictated by the language contained in this Entry and in T.M.C. 533.21. Defendant is hereby permanently enjoined from maintaining a nuisance at the property. The property is to be padlocked and not permitted to be reopened for a period of one year beginning on the date of the filing of this order. The property is to be immediately closed to the public under T.M.C. 533.21.d.

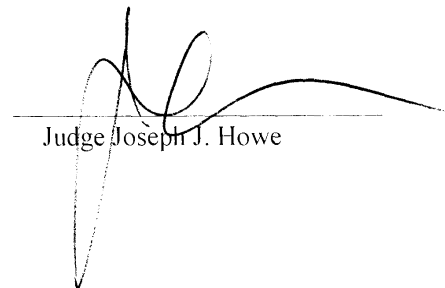
Additionally, Defendant is hereby required to post a bond in the amount of \$100,000.00 as consistent with T.M.C. 1726.99. Any necessitated response by the Toledo Police Department or Toledo Department of Fire and Rescue for drug-related injuries or offenses shall result in a fine based upon the actual cost incurred by the City of Toledo as a result of responding to the emergency. Said fine shall be deducted from the posted bond.

Finally, Defendant is hereby ordered to pay all reasonable attorney fees and court costs which Plaintiff has incurred due to the filing of these and other directly related proceedings.

CLERK TO NOTIFY ALL PARTIES.

THIS IS A FINAL AND APPEALABLE ORDER.

9/14/21
Date


Judge Joseph J. Howe