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Fighting Blight: City Is Allowed to Demolish Unsafe Property

Alan Nochumson

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In less than a generation, many properties located within Philadelphia's city limits that had been an eyesore for generations have either been renovated or demolished in place of new construction. However, not all of these property improvements have been performed willingly.

In order to facilitate the transformation of our neighborhoods, the City of Philadelphia has become even more vigilant in dealing with absentee property owners. In doing so, the city has used its full array of powers to entice these property owners to keep their properties in good repair. One of the harshest of penalties is the to unilateral demolition of substandard building structures.

In *Gariffo Real Estate Holdings Company Inc. v. City of Philadelphia*, the U.S. District Court for the Eastern District of Pennsylvania recently dealt with a situation in which a property owner claimed it had no notice prior to the city demolishing its property.

In 2003, Gariffo purchased a residential property in the city. At the time of purchase, the property was being occupied by a tenant, who eventually vacated due to a "problem" with the property.

When Gariffo did not address the "problem," the city's Department of Licenses and Inspections was apparently informed of the imminently dangerous building structure located on the property. A subsequent inspection by the city revealed a partially collapsed outer wall in the back of the building structure, which the inspectors concluded posed an imminently dangerous risk of causing the structure to collapse.

As is its practice, the city obtained Gariffo's address from the records kept by its Board of Revision and Taxes. The city then sent, via regular first-class mail and certified mail, return receipt requested, a violation notice to Gariffo at that address informing Gariffo that the building structure located on the property was in an imminently dangerous condition and that immediate action had to be taken to demolish the structure or repair the condition. Gariffo was warned in the violation notice that if it failed

to comply with the notice, the city could itself, without further notice, demolish the structure and stucco the party walls exposed by demolition.

The city also stated that Gariffo, as the property owner, would be responsible for all costs associated with the demolition and that failure to pay for the demolition costs would result in the city filing a lien against the property for the delinquent amount. In the violation notice, Gariffo was given the opportunity to appeal the violation within five days from the date of the notice.

In addition to the mailing, the city posted both an orange "danger notice" on the front door of the building structure warning of the structure's imminently dangerous condition as well as a copy of the same violation notice mailed to Gariffo.

Approximately a month later, when Gariffo failed to address the structural issues with the building as contained in the violation notice or appeal the violation within the prescribed period of time, the city elected to demolish the building structure located on the property. Gariffo claimed to be unaware of the demolition until its president received, at the same address where the violation notices had been sent, three invoices charging Gariffo with the cost of the demolition.

Gariffo soon thereafter filed suit in federal court against the city for improperly demolishing the building structure. The complaint contained the following causes of action:

- Violation of the 14th Amendment of the U.S. Constitution as a result of the city depriving Gariffo of its use and enjoyment of the property without due process of law;
- Violation of the 14th Amendment due to the city unreasonably seizing the property;
- Negligence; and
- Conversion.

During discovery, Gariffo did not dispute that the city mailed the violation notice or posted the orange danger notice along with the violation notice on the building structure. Instead, Gariffo simply pointed out that it did not have actual notice of the pending demolition.

Afterwards, the city moved for summary judgment on all of Gariffo's claims. Although that motion was uncontested, the federal court provided a detailed and informative explanation as to why the claims were being dismissed as a matter of law.

Both of Gariffo's claims under the 14th Amendment were derived under Section 1983, which provides for "a cause of action against any person who, acting under color of state law, deprives another of his or her federal rights. The threshold inquiry in a Section 1983 suit is whether the plaintiff has been deprived of a right secured by the Constitution and the laws. Absent a violation of a right secured by the Constitution or the laws of the United States, there can be no cause of action under Section 1983."

The federal court ultimately found that the city did not violate Gariffo's constitutional rights under the

14th Amendment.

The federal court first addressed why notice was constitutionally adequate under the 14th Amendment. The federal court pointed out that although “[d]ue process requires the government to provide notice reasonably calculated, under all the circumstances to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections[,] [d]ue process does not require that the property owner receive actual notice before the government may take action that will adversely affect the owner’s interest in the property.”

As such, the federal court concluded that the notice provided by the city was “clearly constitutionally adequate,” since the city sent the violation notice to Gariffo’s address of record “and mailed not one, but two copies of the notice, one by certified, return receipt requested mail and the other by first class mail.”

The federal court was equally swayed that there was no indication that Gariffo failed to receive the notice. The federal court noted that the notices were not returned to the City as undeliverable by the U.S. Post Office and, after the demolition occurred, Gariffo did receive the invoices of the cost of the demolition at the very same address.

Additionally, the federal court was impressed with the City taking the additional step of posting a bright orange warning notice, along with a copy of the violation notice previously sent to Gariffo, conspicuously on the front door of the building structure. In doing so, the federal court believed that “[t]his notice appears to have been obvious to someone that visited the property, or even to the casual passer-by.”

The federal court next explained why the city did not seize the property in violation of the 14th Amendment. “The Fourth Amendment, applicable to the states through the Fourteenth Amendment, protects against unreasonable searches and seizures ... provides: [t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.”

Although the city’s demolition of the partially collapsed structure located on property clearly constituted a seizure within the meaning of the Fourth Amendment, the federal court cautioned that merely because the structure was seized, it does not mean that the city’s action violated the Fourth Amendment. Instead, the federal court had to “look to the fundamental Fourth Amendment question of reasonableness and balance the public and private interests at stake.”

The federal court decided that this balance clearly struck in favor of the city because Gariffo “retained little or no reasonable expectation of privacy in a dilapidated, uninhabited rental property after L&I provided notice by mail, as well as posted on the structure itself, of its imminently dangerous condition. Moreover, the City has a strong interest in ensuring that structures located within City bounds do not pose a threat to the safety of the general public.”

Due to this emergent situation, and because the city abided by its own published rules and procedures,

the federal court believed that the city acted reasonably under the circumstances, and thus the seizure of the structure did not run afoul of the Fourth Amendment.

The federal court also summarily dismissed the state claims of negligence and conversion because the city was immune from these claims by virtue of Pennsylvania's Political Subdivision Tort Claims Act.

The federal court's ruling in *Gariffo* clearly illustrates the city's inherent power in protecting its residents from unsafe property conditions. As implied by the federal court, however, this power is not absolute. Any time the city elects to demolish a building structure on a property located within city limits, the city must walk a fine line. In *Gariffo*, there was no dispute that the violation notice was mailed to the property owner's address of record, that the mailing address was still correct, that the property was in danger of imminent collapse, and that the city waited a reasonable period of time prior to demolishing the property. Under different circumstances, the city could no doubt find itself at the wrong end of a lawsuit.

ALAN NOCHUMSON is the sole shareholder of *Nochumson P.C.*, where he specializes in real estate, litigation, employment and labor, and land use and zoning. *Nochumson* regularly speaks at and writes for trade and professional associations, local universities, and adult education programs on issues commonly confronted by businesses, individuals, and professionals. *Nochumson* is also president of *Bear Abstract Services*, where he offers comprehensive title insurance, title examination and closing services for transactions ranging from simple residential agreements of sale to complex commercial projects. He may be reached by telephone at 215-399-1346 or by e-mail at anochumson@nochumson.com.