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IN THE SUPREME COURT OF APPEALS, WEST VIRGINIA

Docket No. 22-0503

**T&C CONSTRUCTION SERVICES, LLC, a
West Virginia Corporation, and
THEODORE MILLER,**

Respondent Below/Petitioner,

v.

CITY OF ST. ALBANS,

Petitioner Below/Respondent,



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RESPONDENT'S REPLY BRIEF

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RESPONDENT'S REPLY BRIEF

**I. THE KIND OF PROCEEDING AND NATURE OF
THE RULING IN THE LOWER COURT**

This case has a long history. The Petitioner is the owner of a rental building located at 2843 MacCorkle Avenue, St. Albans, West Virginia that has been in violation of City of St. Albans Municipal Fire Code and Building Codes for years. The result was that the Petitioner T&C Construction Services, LLC and Theodore Miller were issued two (2) citations, one of which was applicable to the City of St. Albans Fire Code (*See Supplemental Appendix Exhibit No. 1*) and one which was applicable to a violation of the City of St. Albans Building Code (*See Supplemental Appendix Exhibit No. 2.*) After several continuances, this matter came on for trial before the City of St. Albans Municipal Court Judge on August 24, 2021. The result thereof, was the citation applicable to the Fire Code Violation CS-21-06, a monetary fine in the amount of \$81,250.00 was levied (*See Supplemental Appendix Exhibit No. 3 Sentencing Order of August 24, 2021*) and as

to the Building Code property violations a fine of \$116,900.00 was levied in Case No. CS-21-01 (See Supplemental Appendix Exhibit No. 4).

The appeal period applicable to the Sentencing Orders expired. (See West Virginia Code § 8-34-1). T&C Construction and Theodore Miller failed to appeal said monetary fines and this matter became final. The essence of the Municipal Violations as can be read from the summons' at the City of St. Albans Municipal Court level (See Supplemental Appendix Exhibits 1 and 2.) was that T&C Construction and Theodore Miller were in violation of City Fire Codes and Building Codes that created dangerous hazards for the tenants of the building owned by the Petitioner.

The City of St. Albans pursuant to St. Albans Municipal Code § 1711.05 filed a complaint for injunctive relief seeking a Cease-and-Desist Order for the occupancy of the building in question and sought enforcement for violations of its Building and Fire Codes. In addition, the City of St. Albans sought for the appointment of a Special Commissioner to take the necessary steps to advise the tenants of said building that they should vacate the premises given the dangerous nature of the violations that went uncorrected and to take steps to sell the building.

The Circuit Court of Kanawha County, West Virginia granted the City of St. Albans' relief and ordered a cease-and-desist/injunction advising T&C Construction and Theodore Miller to cease-and-desist operating its rental business on the premises and granted the City of St. Albans a decretal judgment and appointed a Special Commissioner to take all steps necessary to liquidate the real estate and to advise tenants that they should cease inhabiting this dangerous property.

II. RESPONSE TO ASSIGNMENTS OF ERROR

The Kanawha County Circuit Court had proper jurisdiction over this matter pursuant to West Virginia Code § 8-11-1 *et seq.* and the City of St. Albans Municipal Code § 1711.05.

III. STATEMENT OF THE CASE

The Respondent City of St. Albans will agree with Petitioner's Statement of the Case except for the Respondent City of St. Albans does not believe West Virginia Code § 38-3-9 has any applicability in this matter. The Code Sections that are appropriate are West Virginia Code § 8-11-1 Ordinances to Make Municipal Powers Effective; . . . , West Virginia Code § 55-12-1 applicable to Judicial Sales and City of St. Albans Municipal Code § 1711.05 allowing Mayors and West Virginia Municipalities to seek injunctive relief to enforce its Building Codes.

IV. SUMMARY OF ARGUMENT

The Circuit Court did not err in granting the City of St. Albans' Motion for a Cease-and-Desist Order/Injunction. In addition, the Circuit Court did not err in appointing a Special Commissioner to do all matters necessary to ultimately sell the property at issue in this case.

West Virginia Code § 8-11-1 reads as follows:

A municipality may also maintain a civil action in the name of the municipality in the Circuit Court of the County in which the municipality or major portion of the territory of the municipality is located to obtain an injunction to compel compliance with or to enjoin a violation or threatened violation of any ordinance of the municipality and the Circuit Court has the jurisdiction to grant the relief that is sought. . .

In addition, West Virginia Code § 55-12-1 states as follows:

A Court in a suit properly pending therein may make a decree or order for the sale of property in any part of the state and may direct the sale for cash or for such credit and terms it may be deemed best and it may appoint a Special Commissioner or Special Receiver to make such sale.

In addition, the St. Albans Municipal Code § 1711.05 gives any municipality authority to seek an injunction to enforce its Building Codes.

St. Albans Municipal Code 1711.05(c) Injunctive Relief. In this case of any unlawful acts, the Mayor or such person as the Mayor

may designate, is hereby authorized and empowered to institute and maintain a suit to restrain by injunctions the violation of the Building Code notwithstanding the penalty for the violation thereof.

Therefore, clearly the Circuit Court had proper jurisdiction in this matter, and it is premature to argue that the Special Commissioner did not go through the appropriate statutory requirements for selling the property as a Stay was granted at the Circuit Court level to allow this appeal before any action could be taken as to the sale of the property.

V. STATEMENT REGARDING ORAL ARGUMENT AND DECISION

Petitioner requests that the Court permit them to present oral argument as this case presents unique issues with contrasting positions as to statutory interpretation. In addition, this is appropriate for Rule 19 argument in that the Petitioner claims an unsustainable exercise of discretion where the law governing the discretion is settled and further that this case is a narrow issue of law.

VI. ARGUMENT

The Kanawha County Circuit Court did not err in that it has proper jurisdiction over the enforcement of municipal ordinances and judgments obtained at a municipal court criminal proceeding. This matter arose as a result of the Petitioner's multiple and numerous dangerous violations of the City of St. Albans Municipal Fire Code and Building Code. After multiple violations and the Petitioner's failure to remedy the same, the Petitioner was cited at the City of St. Albans and a trial was conducted in which certain fines were levied against the Petitioner. These fines amounted to a total \$198,150.00. The appeal period applicable to this municipal court criminal judgment expired and as a result of the Petitioner's failure to remedy such problems and continued violations the lawsuit before the Kanawha County Circuit Court ensued. The relief sought in said Complaint sought a cease-and-desist/injunction order from the Circuit Court

bringing the business operations of the Petitioner at the rental facility which was the subject of the fines to a halt because of the danger imposed to the Lessees of said property.

In addition, as a result of the Petitioner's failure to satisfy the fines imposed by the City of St. Albans, the City of St. Albans through its lawsuit sought the ability to enforce said fines and to enforce its Fire and Building Codes.

The Petitioner now challenges jurisdiction of the Circuit Court and claims that the Circuit Court had no jurisdiction applicable to this matter and cites West Virginia Code § 38-3-9. There is no proceeding that occurred in this matter in which any jurisdiction under West Virginia Code § 38-3-9 was imposed or sought. Therefore, the entire argument that the Circuit Court had no jurisdiction in this matter proffered by the Petitioner is inappropriate.

The City of St. Albans Municipal Code 1711.05 gives the City of St. Albans the absolute authority to seek injunctive relief from the Circuit Court of Kanawha County, West Virginia to enforce its Building Codes and to restrain violations of the same. West Virginia Code § 8-11-1(c) states that any municipality may also maintain a civil action in the municipality in the Circuit Court of the county in which the municipality or major portion of the territory of the municipality is located to obtain an injunction to compel compliance with or to enjoin a violation or threatened violation of any ordinance of the municipality and the Circuit Court has jurisdiction to grant the relief sought.

Therefore, the entire argument of the Petitioner that the Circuit Court does not have jurisdiction over this matter is simply wrong. The City of St. Albans litigated the violation of the municipal Fire Code and Building Code at the Municipal Court level. The Petitioner failed to appeal said decision. Any substantive argument as to whether the Petitioner is in violation of the City Ordinances has been waived and is *res judicata*. Evidence was proffered at the hearing of

this matter before the Circuit Court that the Petitioners failed to remedy these Municipal Code Violations and these violations were ongoing. The Respondent, City of St. Albans sought an injunction from the Circuit Court and appointed a Special Commissioner to, among other things, issue letters to the tenants of said building that they must vacate the premises as a result of the danger of the building in question. The above statutes give the Circuit Court the appropriate jurisdiction to grant said relief.

In addition, the Petitioners T&C Construction and Theodore Miller argue that the Circuit Court has no jurisdiction to appoint a Special Commissioner. West Virginia Code § 55-12-1 grants the Court the specific ability to liquidate any real estate in a case that is properly pending before it. The Petitioner argues that the sale of the real estate is not appropriate prior to a *writ of a fieri facias* being filed and answered. Of course, this argument is dramatically premature because the appointed Special Commissioner was not given any opportunity to fulfill any statutory requirements or properly proceed with the sale of the property before the Stay to allow this appeal was entered. The only action that had been taken by the Special Commissioner was efforts to have the premises vacated in order that the safety of its residents could be protected.

The Petitioners' reliance upon West Virginia Code § 1711.05 is simply misplaced when a municipality is seeking to enforce its Fire and Building Codes and enforce a payment of a fine properly that has not been appealed and to attempt to stop further violations of the same and see to the safety of its citizens.

Therefore, it is clear that the Kanawha County Circuit Court had appropriate jurisdiction in the matter.

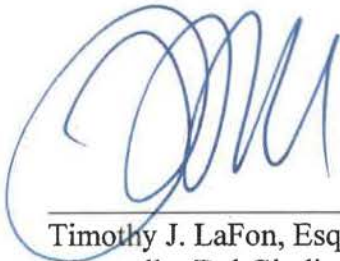
VII. CONCLUSION

Given the fact that the Petitioner T&C Construction Services LLC and Theodore Miller only argument presented to this Court is that the Circuit Court did not have jurisdiction this Appeal should be denied, and the Circuit Court's Order upheld. Clearly pursuant to West Virginia Code § 8-11-1 the Circuit Court has appropriate jurisdiction in this matter and therefore the Respondent seeks this Honorable Court to deny the relief sought and for such and further relief this Court deems appropriate.

Respectfully submitted,

CITY OF ST. ALBANS

By Counsel.

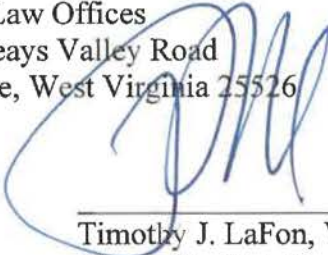


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CERTIFICATE OF SERVICE

I, Timothy J. LaFon, attorney for the Petitioner, do hereby certify that the foregoing **“Respondent’s Reply Brief”** was duly served upon counsel for the Respondent by mailing a true and exact copy thereof, United States postage prepaid, by the United States Mail, First Class, this the 31st day of October, 2022, addressed to the following:

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