BOROUGH OF PARKESBURG	:	IN THE COURT OF COMM
	:	
	:	CHESTER COUNTY, PENN
VS.	:	
	:	NO. 2016-03487-CV
	:	
JOSEPH M. RZONCA	:	CIVIL ACTION

DECISION PURSUANT TO Pa.R.C.P. 1038

To properly set the stage, we begin with the premise that Defendant's one-half of a twin home, which he purchased in 2006 for $130,000.00, was alleged by Plaintiff to have exterior surfaces which were "not in good condition." As a result, the Borough of Parkesburg seeks to have this court to impose as a judgment against Defendant the amount of $572,000.00 plus attorney's fees of $18,105.56 and court costs. While this demand seems absurd, it is no joke. In effect, the Borough seeks a judgment of nearly $600,000.00 for exposed Tyvek wrap as a fine for a dwelling worth only $130,000.00. Indeed, the Borough's Solicitor stated as much to the court at trial and included it as Paragraph 15 in his submitted conclusions of law. Thus, we are forced to address the issue herein.

I. PROCEDURAL SETTING

This matter comes before us as a result of a remand Order by the Commonwealth Court of Pennsylvania from a decision of the Honorable James P. MacElree, II. See, *Borough of Parkesburg v. Joseph Rzonca*, 1393 C.D. 2017, Memorandum Opinion (12/17/2018). For purposes of providing the necessary background, the facts are as follows:

The matter commenced with the filing of a Notice of Violation by the Borough of Parkesburg (hereinafter "Borough"), dated January 13, 2016, against Joseph M. Rzonca (hereinafter "Rzonca") related to the property located at 8 Chestnut Street in

Parkesburg, Pennsylvania (hereinafter "Chestnut Street Property" or "the Property"). The substance of the Notice of Violation was that the Property owned by Rzonca, as observed from the street, was not "sufficiently weatherproofed" as required by Ordinance No. 486 which adopted the International Property Maintenance Code of 2009 with certain amendments. The Notice of Violation informed Rzonca that he had twenty (20) days to remediate the issues, i.e., weatherproof the structure, file an appeal, or face further action. There was no evidence presented that Rzonca ever received this Enforcement Notice. However, the Commonwealth Court inexplicably held in their decision, to be discussed in greater detail herein, that both a sufficient factual record was not made and that the factual record allowed them to conclude that Rzonca received said notice. See, *Borough of Parkesburg v. Joseph Rzonca*, 1393 C.D. 2017, Memorandum Opinion (12/17/2018).

In either event, the Borough initiated an action in the District Court against Rzonca pursuant to the authority of Section 106.4(b), which permits such a civil action in situations involving abatement of violations such as this. The matter proceeded to a hearing before the Magisterial District Justice Nancy Gill on March 30, 2016. This action sought relief, pursuant to Borough Ordinance No. 486, by way of a fine/judgment of "not less than One Thousand Dollars ($1,000.00)" per day of non-compliance. MDJ Gill entered a decision and judgment in favor of the Borough and against Rzonca in the amount of $1,000.00 plus costs and attorney's fees at the rate of $135 per hour for one hour of legal work. The total judgment was $1,284.18. While there is no opinion accompanying this judgment, based upon the language of the Ordinance, one is required to conclude that Rzonca was non-complaint with the notice for a total of one day because the fine was limited to $1,000.00.

Rzonca filed a Notice of Appeal from the MDJ decision on April 13, 2016 and the Borough filed a complaint asserting that Rzonca was non-complaint with the Enforcement Notice since January 13, 2016. In the complaint, the Borough, for the first time, sought imposition of a judgment for TWO violations per day ($2,000.00/day) plus court costs and attorney's fees. Rzonca, acting *pro se,* filed an answer and new matter which asserted constitutional claims.

On December 21, 2016, the matter went to arbitration. The Arbitration Panel entered a decision in favor of the Borough and against Rzonca in the amount of $2,284.18 which the panel described as $1,284.18 in legal fees and $1,000.00 for code violation fees. While there is no opinion accompanying the Arbitration Panel's decision, one must again conclude that Rzonca was non-complaint with the notice for a total of one day, for the language of the Ordinance is directive and mandatory that a violator "shall pay a judgment of not less than One Thousand Dollars ($1,000.00)" per day.

Rzonca filed a timely appeal from the Arbitration Panel's decision and the matter was assigned to Judge MacElree in the Court of Common Pleas.[1] On June 7, 2017, Jeffrey P. Hoyle, Esquire entered his appearance for Rzonca. Trial was held July 28, 2017. Prior to taking testimony, Judge MacElree dismissed the case by finding that the Enforcement Notice was defective. The Borough appealed the decision of Judge MacElree to the Commonwealth Court which, in an unreported decision, noted the lack of an evidentiary record but nevertheless concluded there was sufficient proof of notice and remanded the case for a trial on the merits.

[1] Judge MacElree, II, retired on December 31, 2017.

Following the retirement of Judge MacElree, the case the matter was placed on the undersigned's trial list. A bench trial was held on March 11, 2019.

II. FACTS

The wood frame twin home located at 8 Chestnut Street in the Borough of Parkesburg was constructed around 1900. Rzonca purchased the one-half of the twin for $130,000.00 in 2006 immediately preceding the financial crisis and meltdown of the housing market. Rzonca made various attempts to improve and remodel the home as his extra cash would allow. In late 2011 and into early 2012, Rzonca began to install polyvinyl siding over the existing wood siding.

Unfortunately, the costs of improvement coupled with the monthly mortgage payments proved too much for Mr. Rzonca to handle. Rzonca, unable to make his mortgage payments, was eventually served with an Act 91 Notice of Intention to Foreclose dated May 3, 2013 from Wells Fargo Bank, N.A. On October 6, 2014, Wells Fargo filed a complaint in mortgage foreclosure against Rzonca in Chester County. This action gave Wells Fargo the right to possession of the Property and sought an *in rem* judgment. Rzonca left the Property and moved in with his girlfriend in a neighboring township.

In compliance with Borough Ordinances, on **October 24, 2014**, Wells Fargo filed in the Office of the Borough of Parkesburg a form drafted and supplied by the Borough of Parkesburg entitled Notice of Vacant Property. See, *Defendant's Exhibit 2*. This form, which sought to determine the party responsible for adequate maintenance of property in foreclosure, required a $200.00 filing fee. Wells Fargo filed the form and paid the filing fee, thereby notifying the Borough the Chestnut Street Property was vacant and that Wells Fargo was thereafter the responsible party. The form additionally requested

that any needs be addressed to Nancy Nowkowski through the email codeviolations@wellsfargo.com. See, *Defendant's Exhibit 2.*

In late 2015 or early 2016, Rzonca had attempted to contact the Borough regarding local news items surrounding an accident investigation. Following a series of emails, the Borough instructed its Solicitor John Carnes to file a municipal lien against Rzonca. The Borough gave the Solicitor Rzonca's new address of 4117 Upper Valley Road, which is not located in the Borough of Parkesburg. The Borough Solicitor sent the requested letter regarding the municipal lien on **January 11, 2016** to Rzonca at the Upper Valley Road address. *See, Defendant's Exhibit 3.*

On **January 13, 2016**, two days after the Borough informed its Solicitor that Rzonca did not live in the Borough and fifteen (15) months after Wells Fargo filed with the Borough a Notice that the Chestnut Street Property was vacant, the Borough mailed a Notice of Violation letter to Rzonca at the Chestnut Street Property via certified mail, return receipt requested. The mail was returned as unclaimed.

So, it is crystal clear that the Borough had active knowledge that Rzonca did not live at the Chestnut Street Property, that the Property was vacant, and that Rzonca now lived at 4117 Upper Valley; despite this active knowledge, the Borough mailed a legally significant document, service of which is necessary to institute legal action, to an address at which they knew Rzonca did not live. Furthermore, the Borough actively chose not to notify Wells Fargo, the entity which acknowledged responsibility for the Property and provided contact information expressly for this purpose, of the Enforcement Notice or Notice of Violation. During closing argument, the Borough's Solicitor was asked by the court why he did not contact Wells Fargo. He responded by saying that dealing with the banks was "too hard." Instead, he sought to ignore

common sense and legal requirements in order to go after Rzonca. It should have come as no surprise the Enforcement Notice came back unclaimed. How anyone, particularly a county solicitor, could conclude this returned mailing constituted "good service" is beyond comprehension. However, we are required by an unreported remand order from the Commonwealth Court to so find. See, *Borough of Parkesburg v. Joseph Rzonca*, 1393 C.D. 2017, Memorandum Opinion (12/17/2018).

At the trial on March 11, 2019, the Borough produced John Coldiron, the former Borough Building Inspector and Property Maintenance Code Inspector, as a witness. To support his testimony, the Solicitor for the Borough introduced Mr. Coldiron's *curriculum vitae* marked as Plaintiff's Exhibit 1. Mr. Coldiron's work history is listed from 1998 through current day. It reports that he was a building or code official in New London Township, Ambler Borough, Municipal Solutions Inc., and Maryland Department of General Services. See, *Plaintiff's Exhibit 1*. He testified that he sent the Enforcement Notice to Rzonca via certified mail but it was returned. He testified that he never went on the Chestnut Street Property. He further testified that, after noting the certified mail was returned, he sent another letter. Neither Mr. Coldiron nor anyone in the Borough could find a copy of the second letter or had any idea when or where it was sent.

Mr. Coldiron produced three photos taken in or around March of 2016, showing that the siding replacement project had not been completed. The photos showed some exposed Tyvek wrap which was placed over the pre-existing wood siding. The Enforcement Notice cites this condition to be a violation for failing to maintain exterior surfaces in "good condition." See, *Plaintiff's Exhibit 5*.

On cross-examination, Mr. Coldiron acknowledged that he had never inspected the Property and only took pictures from the street. There were no inspection reports or notes. There was neither a checklist nor other records describing Mr. Coldiron's findings or evidence that an inspection of the Chestnut Street Property actually took place. The file which Plaintiff brought to the trial did contain the Notice of Vacant Property filed by Wells Fargo in 2014. Notably, this notice was provided to the Borough some 15 months prior to the "inspection" of the Property. Mr. Coldiron was not aware that this filing was in the Borough's Chestnut Street Property file and acknowledged that he never reached out to Wells Fargo regarding the alleged inspection, alleged violation, or for any other purpose relating to the Property.

Rzonca testified that when he was served with the Act 91 Notice, he left the Property to move in with his girlfriend. The Act 91 Notice was sent in May of 2013. Rzonca stated that he had completely vacated the property for Wells Fargo around December of 2013. Rzonca testified that he did not know if Chestnut Street Property had any operating utilities after that time in 2013.

Rzonca also testified that he had interactions with Borough officials and the Borough's Solicitor in which he provided his new address of 4117 Upper Valley Road. He testified that he never received the Enforcement Notice; however, he did receive the January 11, 2016 letter regarding the municipal lien sent by the Solicitor to the Upper Valley Road address.

At the conclusion of the testimony, the Borough's Solicitor argued that he had proven Rzonca was in violation of two sections of Borough Ordinance 486. Those Sections, 304.2 Protective Treatment and 304.6 Exterior Walls, carry fines of $1,000.00 per day for each violation. The Solicitor proffered that Wells Fargo obtained

a deed at Sheriff's Sale on November 9, 2016. Between the issuance of the Enforcement Notice and the transfer of the deed to Wells Fargo, the Borough argued that it established violations for 286 days and that it is entitled to a fine in the amount of $2,000.00 per day for everyday that Rzonca owned the property, plus legal fees and court costs. The total is approximately $590,000.00.

In his closing, the Borough Solicitor, when pressured, acknowledged the absurdity of this request. He argued that the court should ignore parts of the Ordinance that require fines in certain amounts. When asked if the court could ignore any other parts or how it should decide which parts of the Ordinance the court could or could not ignored, he provided no answer.

III. DISCUSSION

It must be stated that the fines sought by the Borough, even if Rzonca is responsible for same, would be grossly disproportionate to the gravity of the alleged violation. Clearly, this runs afoul of the Eighth Amendment's Excessive Fines Clause.

As with the Eighth Amendment's proscriptions of "cruel and unusual punishment" and "[e]xcessive bail," the protection against excessive fines guards against abuses of government's punitive or criminal-law-enforcement authority. This safeguard has been held by the Supreme Court to be "fundamental to our scheme of ordered liberty," with "dee[p] root[s] in [our] history and tradition." *McDonald* v. *Chicago*, 561 U.S. 742, 767, 130 S.Ct. 3020, 177 L.Ed.2d 894 (2010) (internal quotation marks and emphasis omitted). The Excessive Fines Clause is therefore incorporated by the Due Process Clause of the Fourteenth Amendment and applicable to the Borough of Parkesburg.

Under the Eighth Amendment, "[e]xcessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." Taken together, these

Clauses place "parallel limitations" on "the power of those entrusted with the criminal-law function of government." *Browning-Ferris Industries of Vt., Inc.* v. *Kelco Disposal, Inc.*, 492 U.S. 257, 263, 109 S.Ct. 2909, 106 L.Ed.2d 219 (1989) (quoting *Ingraham* v. *Wright*, 430 U.S. 651, 664, 97 S.Ct. 1401, 51 L.Ed.2d 711 (1977)). Directly at issue here is the phrase "nor excessive fines imposed," which "limits the government's power to extract payments, whether in cash or in kind, 'as punishment for some offense.'" *Timbs v. Indiana*, 139 S.Ct. 682; see also, *United States* v. *Bajakajian*, 524 U.S. 321, 327–328, 118 S.Ct. 2028, 141 L.Ed.2d 314 (1998) (quoting *Austin* v. *United States*, 509 U.S. 602, 609–610, 113 S.Ct. 2801, 125 L.Ed.2d 488 (1993)).

As Justice Ginsburg wrote in the Supreme Court's recent decision in *Timbs v. Indiana*, 139 S.Ct. 682, tracing the history of this amendment,

> The Excessive Fines Clause traces its venerable lineage back to at least 1215, when Magna Carta guaranteed that "[a] Free-man shall not be amerced for a small fault, but after the manner of the fault; and for a great fault after the greatness thereof, saving to him his contenement ...." § 20, 9 Hen. III, ch. 14, in 1 Eng. Stat. at Large 5 (1225).[2] As relevant here, Magna Carta required that economic sanctions "be proportioned to the wrong" and "not be so large as to deprive [an offender] of his livelihood." *Browning-Ferris*, 492 U.S., at 271, 109 S.Ct. 2909. See also 4 W. Blackstone, Commentaries on the Laws of England 372 (1769) ("[N]o man shall have a larger amercement imposed upon him, than his circumstances or personal estate will bear ...."). But cf. *Bajakajian*, 524 U.S., at 340, n. 15, 118 S.Ct. 2028 (taking no position on the question whether a person's income and wealth are relevant considerations in judging the excessiveness of a fine). *Timbs v. Indiana, supra*. at 67.

History informs us that the imposition of large and/or excessive fines continued whether, as Justice Ginsburg opines, the fines were used to raise revenue, harass

political foes, and indefinitely detain those unable to pay.[2] These abuses of fines by the English government continued here during colonial times.[3] Unfortunately, history teaches that governmental abuses with excessive fines persisted despite such clauses in 37 state constitutions at the time of the Fourteenth Amendment.

In *Timbs*, Justice Ginsburg continues,

> For good reason, the protection against excessive fines has been a constant shield throughout Anglo-American history: Exorbitant tolls undermine other constitutional liberties. Excessive fines can be used, for example, to retaliate against or chill the speech of political enemies, as the Stuarts' critics learned several centuries ago. See, *Browning-Ferris*, 492 U.S., at 267, 109 S.Ct. 2909. Even absent a political motive, fines may be employed "in a measure out of accord with the penal goals of retribution and deterrence," for "fines are a source of revenue," while other forms of punishment "cost a State money." *Harmelin* v. *Michigan*, 501 U.S. 957, 979, n. 9, 111 S.Ct. 2680, 115 L.Ed.2d 836 (1991) (opinion of Scalia, J.).
>
> In short, the historical and logical case for concluding that the Fourteenth Amendment incorporates the Excessive Fines Clause is overwhelming. Protection against excessive punitive economic sanctions secured by the Clause is, to repeat, both "fundamental to our scheme of ordered liberty" and "deeply rooted in this Nation's history and tradition." *Timbs v. Indiana, supra.* at 689 (internal quotation marks and emphasis omitted).

The question presented here is slightly different. As the Borough brought this action as a civil action, we must resolve whether the 8th Amendment's protections apply to civil actions. The Supreme Court has held that civil *in rem* forfeitures fall within the Clause's protection when they are at least partially punitive. *Austin* v. *United States*, 509 U.S. 602, 113 S.Ct. 2801, 125 L.Ed.2d 488 (1993). This is because the

---

[2] E.g., The Grand Remonstrance ¶¶17, 34 (1641), in The Constitutional Documents of the Puritan Revolution 1625–1660, pp. 210, 212 (S. Gardiner ed., 3d ed. rev. 1906)

[3] "That excessive bail ought not to be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." Virginia Declaration of Rights Section 9, June 12, 1776 (Geo. Mason); See also, Pa. Frame of Govt., Laws Agreed Upon in England, Art. XVIII (1682).

examination of the guaranteed right is fundamental and deeply rooted in our history, tradition and laws as noted above. Justice Gorsuch, in his concurrence to the majority opinion in *Timbs*, writes,

> The right against excessive fines traces its lineage back in English law nearly a millennium, and from the founding of our country, it has been consistently recognized as a core right worthy of constitutional protection. As a constitutionally enumerated right understood to be a privilege of American citizenship, the Eighth Amendment's prohibition on excessive fines applies in full to the States. *Timbs v. Indiana, supra.* at 698.

It is clear that the time expended by the Borough in this case is very minimal. The Code Official drove to the Chestnut Street Property, exited his vehicle, and took three pictures on his cell phone. Even if the pictures were driven to the Walmart at the intersection of Routes 10 and 30, then printed in color, the time and cost to Borough was less than one hour and likely cost less than twenty ($20) dollars. The Property, which Rzonca lost in a mortgage foreclosure action, was purchased for $130,000.00. Despite the fact that the Borough knew Rzonca had lost his home, they have continued to pursue him for three years seeking nearly $600,000.00 in fines, attorney's fees and costs. This is outrageous, excessive and unconstitutional.

From the evidence that was presented in court, it was also unclear the exact nature violation that the Borough sought to enforce. The testimony focused on chipped, peeling paint and the exposed Tyvek. The Code Official never went up to or into the Property. He had no idea whether the Property was or was not "weather resistant and water tight." There was no testimony about whether or not the Property had exterior walls with "holes . . . or rotting materials." See, Sections 304.2 and 304.6, Ordinance 486.

For these reasons, we must conclude that the Borough's fine levied against Rzonca of approximately $590,000.00 related to property that was purchased in 2006 for $130,000.00 and subsequently was lost in a mortgage foreclosure is excessive and is, therefore, unconstitutional under the Eighth Amendment's Excessive Fines Clause. Further, it is clear that the Borough failed to prove a violation of the ordinance by a preponderance of the evidence. This is particularly true given the minimal effort by the Borough to assess the alleged violations and enforce the ordinance; coupled with a lack of any evidence as to the true condition of the building. Therefore, judgment is hereby entered in favor of Defendant Joseph M. Rzonca and against the Borough of Parkesburg.

BY THE COURT:

Date: April 16, 2019

Jeffrey R. Sommer J.