

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION ONE

CITY OF SANTA MONICA,

Plaintiff and Respondent,

v.

GUILLERMO GONZALEZ,

Defendant and Appellant.

B182104 c/w B184549

(Los Angeles County
Super. Ct. No. SS013071)

GUILLERMO GONZALEZ,

Petitioner,

v.

LOS ANGELES COUNTY SUPERIOR
COURT,

Respondent;

CITY OF SANTA MONICA,

Real Party in Interest.

B184127

APPEALS from orders of the Superior Court of Los Angeles County, Lisa Hart Cole, Judge; petition for writ of mandate/prohibition. Orders affirmed; petition denied.

The Law Office of Stan Stern and Stan Stern for Defendant and Appellant, and Petitioner.

Marsha Jones Moutrie, City Attorney, and Adam Radinsky, Deputy City Attorney, for Plaintiff and Respondent, and Real Party in Interest.

No appearance for Respondent.

INTRODUCTION

Guillermo Gonzalez (Gonzalez) appeals from an order granting a motion by the City of Santa Monica (City) to appoint a receiver and an order denying his motion for reconsideration (B182104). His second appeal is from an order granting the receiver's application to take specified actions and from an order declining to stay the previous order appointing a receiver (B184549). Gonzalez also petitions this court for a writ of mandate/prohibition invalidating the order appointing a receiver and all subsequent orders. Concurrently with his petition for writ of mandate/prohibition, Gonzalez requested a stay of the proceedings below. We granted Gonzalez's request for a stay and agreed to consider his writ petition concurrently with the appeal. We now affirm the orders, deny the writ petition and vacate the stay.

FACTUAL AND PROCEDURAL BACKGROUND

Gonzalez is the owner of a three-unit residential property at 2438 Ocean Park Boulevard in Santa Monica. Gonzalez lives with his family on the first floor of the main building and rents out the unit on the second floor of the main building as well as a unit in the garage.

In August 1989, in response to unsafe and unsanitary conditions at the property, the City filed a civil nuisance lawsuit against Gonzalez, alleging violations of the uniform building, fire, mechanical, plumbing and electrical codes. Gonzalez failed to answer the complaint or appear in court. On August 24, 1990, the court issued a default judgment and permanent injunction that ordered Gonzalez to demolish certain structures on the

property that had been built without permits. The judgment gave the City the power to do the demolition work itself if Gonzalez did not do it within 30 days. He did not. In January 1991, the City did the demolition work at a cost of \$21,939.93. In May 1991, the City recorded a lien in that amount against the property, which it collected when Gonzalez refinanced his mortgage.

On May 14, 1997, the City filed an 85-count misdemeanor criminal complaint against Gonzalez alleging violations of the building, fire, housing, plumbing, and electrical codes. Gonzalez pled guilty to fifteen of the counts. As part of his probation, the City ordered Gonzalez to correct all code violations within 30 days.

On October 30, 1997, the court found Gonzalez in violation of his probation for failing to correct the code violations. It sentenced him to serve 60 days in jail. On February 3, 1998, the court again found Gonzalez in violation of probation for failing to correct the violations and sentenced him to 90 days in jail. On March 3, 1998, the court again found Gonzalez in violation of probation for failing to correct the violations and sentenced him to 450 days in jail. Gonzalez was taken into custody on March 17, 1998, and spent 280 days in jail for refusing to correct the code violations on his property.

City inspectors returned to the property on January 18, 2001 after receiving information from the Santa Monica Fire Department. Their inspection revealed numerous continuing code violations. On May 31, 2001, the City filed a second criminal complaint against Gonzalez, containing 32 misdemeanor counts for the code violations, many of which were identical to those in the first criminal case. On April 2, 2002, Gonzalez pled guilty to six of the counts. The court ordered him to correct all code violations on the property by May 15, 2002. The court gave the City authority to enter the property and abate the violations if Gonzalez failed to do so. As part of its order, the court also ruled that any violations on the property that remained uncorrected after 30 days would be deemed to be a public nuisance without the necessity of further hearing, order or action by the City. The court placed Gonzalez on probation until April 2005.

On May 15, 2002, City inspectors re-inspected the property and found numerous continuing violations. On May 23, 2002, Gonzalez was personally served with a Notice and Order to Comply (Notice). The Notice listed the code violations still present on Gonzalez's property. It stated that Gonzalez was "hereby directed to obtain the required permits from the Building and Safety Division, and make the necessary repairs. A re-inspection will be conducted on **June 20, 2002**, to ensure compliance with this notice. [¶] Pursuant to [] Court Order, if you fail[] to comply with this notice the City of Santa Monica will take actions to make the necessary corrections to eliminate the described deficiencies, and any other that may exist at the property." Gonzalez failed to appeal from the Notice. He also failed to make any effort to correct the conditions cited in the Notice.

City inspectors conducted a follow-up inspection of the property on June 21, 2004. None of the violations listed in the Notice had been corrected. On June 30, 2004, the City Attorney filed a Declaration of Probation Violation, alleging that Gonzalez had violated his conditions of probation by failing to correct the code violations. On October 22, 2004, the court ordered Gonzalez taken into custody pending a probation violation hearing. On November 17, 2004, the court found Gonzalez in violation of his probation.

Thereafter, on December 6, 2004, the City filed a petition for appointment of a receiver pursuant to Health and Safety Code section 17980.7, subdivision (c).¹ According to the City, there is no heating in any of the units on the property. In a single bedroom in the second floor unit, there are 14 bunk beds where paying tenants sleep. The kitchen and dining area are so filthy and littered, that the front yard has been converted to a makeshift kitchen. A flatbed truck and a large recreational vehicle, both nonoperational,

¹ Health and Safety Code section 17980.7, subdivision (c) provides in relevant part: "The enforcement agency, tenant, or tenant association or organization may seek and the court may order, the appointment of a receiver for the substandard building pursuant to this subdivision."

are parked permanently in the back yard; both are filled with litter, waste and debris. The property has been the site of chronic criminal activity; from October 2003 through September 2004, there were 32 calls to the police department regarding criminal activity on the property.

The City alleged that numerous code violations on the property jeopardized the health and safety not only of the residents but of the neighbors and the public at large. These included the accumulation of combustible debris and rubbish on the property (U. Fire Code, § 1103.2.1); the use of extension cords in place of permanent electrical wiring (U. Fire Code, § 8506.1; Nat. Elec. Code, § 400-8); no heating in the units (Cal. Bldg. Code, § 310.11); renting out multiple beds in the second floor units in violation of permissible occupancy rules and prior court orders (Cal. Bldg. Code, § 310.1; Santa Monica Mun. Code, § 8.08.030); the accumulation of litter and debris and the failure to maintain the property in a safe and sanitary condition (Health & Saf. Code, § 17920.3, subd. (j); Santa Monica Mun. Code, § 7.48.070); failure to have operable windows in all sleeping rooms (Cal. Bldg. Code, § 310.4); inoperable and unregistered vehicles parked in the back yard (Santa Monica Mun. Code, § 8.96.220); and maintaining an attractive nuisance (Health & Saf. Code, § 17920.3, subd. (c); Santa Monica Mun. Code, § 8.96.050).

The City claimed that a receiver was necessary to abate the code violations on the property. It filed the petition “as a last resort,” in that all previous attempts to compel Gonzalez to correct the code violations had failed. Gonzalez did not file any opposition.²

² Downey Savings and Loan Association, the lender, filed an opposition to the City’s motion. The lender contended that (1) receiver certificates should not be senior in priority to Downey Savings’ existing secured loan, (2) Downey Savings had just become aware of the situation with the property and had not had an opportunity for input, and (3) because of the extreme unsafe conditions and the cost of repair, the structure on the property should be demolished rather than repaired.

The City also filed an ex parte application for a temporary restraining order to prevent Gonzalez from encumbering or transferring the property pending the hearing on the City's petition. The trial court granted the temporary restraining order.

Gonzalez appeared at the January 6, 2005 hearing on the petition. The court noted that he had not filed any opposition to the petition, and he was not represented by counsel. Gonzalez responded, "My attorney was supposed to be here. But, apparently, he had some other things to do." The court stated that since it had not heard from the attorney, it would proceed in his absence. It explained to Gonzalez what would happen to the property: the receiver would take and sell the property, the encumbrances would be paid off, and he would get what was left. Gonzalez asked, "So I have no right to fight back with an attorney?" The court replied, "You had a right to fight back with an attorney. But it's a little late for that now." It added that if he felt that the court had done something wrong, he and his attorney would have 10 days in which to file a petition for reconsideration. The court then granted the petition and appointed a receiver.

Gonzalez substituted in private counsel on January 20, 2005. Counsel filed a motion for reconsideration of the court's order appointing a receiver on January 21, 2005. He claimed that the amount of expense to bring the property up to code was only \$27,400; the nonoperational vehicles and kitchen appliances in the yard had been removed from the property, and the City had not sought such a drastic remedy for code violations in 15 years. Further, the substantial costs of a receivership were unwarranted since Gonzalez now had the guidance of an attorney.

The City opposed the motion, contending Gonzalez had not met the requirements of Code of Civil Procedure section 1008, in that the only new fact presented was that some debris had been removed from the property after the hearing on the petition. In reply, Gonzalez argued that he had been denied his procedural due process rights by the City's failure to issue an order or notice to repair or abate and to provide a reasonable opportunity to respond before a receiver was appointed (Health & Saf. Code, §§ 17980.6, 17980.7).

On February 24, 2005, the court denied the motion for reconsideration. It explained that Gonzalez had failed to show any new or different facts, circumstances or law, and certainly none that could not have been presented at the original hearing. Additionally, while the City had failed to comply fully with the requirement that it issue an order or notice to repair or abate, “it is very clear that [Gonzalez] was on notice under these circumstances. This is an egregious case where [Gonzalez] has been involved in criminal matters and numerous civil matters regarding the conduct and condition of this property. He certainly had more than ample notice of the building code violations and the other safety code violations that are existent on his property. [¶] So, under the circumstances, the court does not find that there is any lack of notice on behalf of [Gonzalez]. I think he clearly knew what was going on. This is an ongoing process.”

On April 1, 2005, the receiver filed an application for issuance of an order authorizing him: (1) to enter into a loan commitment agreement and to borrow funds; (2) to enter into a contract to demolish the structure on the property; (3) to pay relocation benefits to the tenants on the property; (4) to pay Gonzalez \$2,000 living expenses as long as he does not interfere with the receivership; and (5) to use credit line funds for other specified purposes. He stated that it was not economically feasible to rehabilitate the property, and demolition of the structure was therefore necessary. He had obtained a \$54,000 bid for the demolition of the structure on the property, and an alternate bid of \$144,696 to rehabilitate structure. He also received a valuation report stating that the property, with all code violations corrected, would be valued at \$450,000, while the value of an empty lot would be \$509,000. To rehabilitate the current structure, it would cost \$145,000, and yield a real property worth \$450,000, resulting in equity of about \$305,000. Alternatively, demolishing the current structure would cost \$54,000 and yield a lot worth \$509,000, resulting in equity of \$455,000.

Gonzalez opposed the application. He argued that it was his “fervent wish . . . that he be permitted to continue inhabiting the property with his family, and that the residence not be subjected to demolition.” He claimed he should be permitted to make that choice even though it was not the most economical.

On April 26, 2005, Gonzalez filed an application for an ex parte order to fix the amount of the appeal bond and for a temporary stay to permit issuance of the bond. He also filed an application for a waiver of an appeal bond based on insufficient funds. On May 2, 2005, the court granted Gonzalez's ex parte order waiving an appeal bond but did not stay the order of January 6, 2005 appointing the receiver. The court also granted the receiver's request to demolish the structure on the property but temporarily stayed the order until August 11, 2005, the date of the status conference. On July 6, 2005, we ordered all proceedings in the trial court stayed pending further order of this court.

CONTENTIONS

Gonzalez contends the trial court should have continued the January 6, 2005 hearing on the City's petition to enable him to obtain the assistance of counsel and file opposition to the petition. We conclude the trial court did not abuse its discretion in refusing to continue the hearing.

Gonzalez further contends the appointment of the receiver must be set aside, in that the City failed to issue an order or notice to repair or abate as required by Health and Safety Code sections 17980.6 and 17980.7. We hold the City's compliance with the statutes was sufficient to protect Gonzalez's due process rights.

Gonzalez asserts that, because the order appointing the receiver is void, the subsequent order authorizing the receiver to have the structure on the property demolished and the property sold also is void. Additionally, he contends, even if the order authorizing the demolition of his home and sale of his property is not void, it is not supported in law. The order is not void; neither is it an abuse of discretion.

DISCUSSION

Continuance

Gonzalez relies on rule 1901(d) of the California Rules of Court in support of his contention that he was entitled to a continuance of the January 6, 2005 hearing on the City's petition to enable him to obtain counsel and file opposition to the City's petition for appointment of a receiver. Rule 1901(d) applies when a receiver has been appointed without notice and an order to show cause why the appointment should not be confirmed has issued. The rule entitles the parties to a continuance "to enable them to oppose the confirmation." The rule is inapplicable to a noticed hearing on a petition to appoint a receiver.

Moreover, Gonzalez never filed a noticed motion or an ex parte application for a continuance as required by the California Rules of Court. (Cal. Rules of Court, rules 375(b), 379.) He never provided the trial court with good cause for a continuance, again as required by the California Rules of Court. (*Id.*, rule 375(c).) He did not explain why he never filed opposition to the petition or demonstrate that his attorney's absence was "because of death, illness, or other excusable circumstances" (*id.*, rule 375(c)(3)). The trial court accordingly did not abuse its discretion in refusing to continue the hearing on the petition. (*Rankin v. Curtis* (1986) 183 Cal.App.3d 939, 947; *Ohmer v. Superior Court* (1983) 148 Cal.App.3d 661, 666.)

Compliance with Health and Safety Code sections 17980.6 and 17980.7

Health and Safety Code section 17980.6 provides that if a building is maintained in a manner that substantially endangers the public, "the enforcement agency may issue an order or notice to repair or abate pursuant to this part." The order or notice must be mailed to or posted at each residential unit on the property and must include the name, address and telephone number of the issuing agency; the "date, time and location of any public hearing or proceeding concerning the order or notice"; and information that a lessor cannot retaliate against a lessee pursuant to Civil Code section 1942.5.

Health and Safety Code section 17980.7 contains provisions that apply “[i]f the owner fails to comply within a reasonable time with the terms of the order or notice issued pursuant to Section 17980.6.” These include appointment of a receiver. (*Id.*, § 17980.7, subd. (c).)

Health and Safety Code section 17980.7 also provides that “[n]othing in this section shall be construed to deprive an owner of a substandard building of all procedural due process rights guaranteed by the California Constitution and the United States Constitution, including, but not limited to, receipt of notice of the violation claimed and an adequate and reasonable period of time to comply with any orders which are issued by the enforcement agency or the court.” (Subd. (c)(14).) Gonzalez claims that the May 23, 2002 Notice and Order to Comply (Notice), with which he personally was served, did not comply with Health and Safety Code section 17980.6 and thus was insufficient to protect his constitutional right not to have his property rights taken from him without due process of law.

It is clear that the Notice did not comply with the requirements of Health and Safety Code section 17980.6, in that it was not posted on each residential unit on the property, it did not include information concerning any public hearing or proceeding on the Notice, and it did not include information regarding the prohibition on a lessor retaliating against a lessee. It is equally clear that Gonzalez was not prejudiced in any way by these shortcomings. He had ample notice of the claimed violations and more than an adequate and reasonable period of time—two years—in which to correct the violations. When a hearing was held on the matter—on the petition to appoint a receiver—Gonzalez was given notice of the hearing. He was not prejudiced by the failure to post the Notice on all residential units and the failure to provide information on lessor retaliation, in that he was the owner and lessor of the property.

Inasmuch as the City’s compliance with Health and Safety Code section 17980.6 was sufficient to provide Gonzalez with notice of the conditions requiring correction, ample time in which to make the corrections and notice of the hearing on the matter, and he was not prejudiced in any way by the City’s failure to comply with the procedural

technicalities of the statute, there was no due process violation. (Cf. *In re Albert B.* (1989) 215 Cal.App.3d 361, 380-381; *Beck v. Ransome-Crummey Co.* (1919) 42 Cal.App. 674, 681-682.)

Gonzalez cites *Rondos v. Superior Court* (1957) 151 Cal.App.2d 190 for the proposition that noncompliance with the statute deprived the court of jurisdiction to appoint a receiver, rendering the order appointing the receiver void. In *Rondos*, the substantive requirements for appointment of a receiver were not met: the required property interest and evidence of danger to that property interest were lacking. For that reason, the court found no jurisdiction to appoint a receiver. (*Id.* at pp. 194-195.) Here, the noncompliance was merely procedural. The trial court had jurisdiction over the subject property.

Demolition Order

Inasmuch as the order appointing a receiver is not void for lack of jurisdiction, the trial court's subsequent order authorizing the receiver to have the structure on the property demolished and the property sold is not void for lack of jurisdiction. Gonzalez claims that even if not void, the order constituted an abuse of discretion, in that demolition of the structure was contrary to the purpose of Health and Safety Code section 17980.7, unnecessary and unfair.

Health and Safety Code section 17980.7, subdivision (c), provides for the receiver to take steps necessary to rehabilitate the property in receivership. It does not limit the receiver to rehabilitation of the property, however. First and foremost, it provides for the receiver "[t]o take full and complete control of the substandard property." (*Id.*, subd. (c)(4)(A).) It also authorizes the receiver to sell the property. (*Id.*, subd. (c)(4)(H); Code Civ. Proc., § 568.) The trial court must exercise its discretion in determining whether the receiver's proposed disposition of the property is proper, "in view of all the surrounding facts and circumstances and in the interest of fairness, justice and the rights of the respective parties." (*Cal-American Income Property Fund VII v. Brown*

Development Corp. (1982) 138 Cal.App.3d 268, 274.) We review the trial court’s determination for abuse of discretion. (*Ibid.*)

The receiver concluded that it was not economically feasible to rehabilitate the property, and demolition of the structure was therefore necessary. Rehabilitation of the current structure would cost \$145,000 and yield a real property worth \$450,000, resulting in equity of about \$305,000. Demolishing the current structure would cost \$54,000 and yield a lot worth \$509,000, resulting in equity of \$455,000. In other words, rehabilitation of the structure would cost significantly more than demolition but yield significantly less in terms of property value. Demolition of the structure and sale of the property thus was a more reasonable course of action under the circumstances.

Gonzalez argues that “he wished to continue inhabiting the property with his family although this might not be the best financial strategy,” and the court should not “turn[] a deaf ear to [his] legitimate wishes.” The short response is that if he wished to remain on the property, he should have made some attempt to correct the code violations and other unsafe conditions on his property during the 15 years since the City first proceeded against him. He chose not to do so. In fact, he chose jail over correcting the conditions on his property. If he placed so little value on correcting the conditions on the property in order to continue living there, the trial court cannot be faulted for doing the same. Under the circumstances, the court did not abuse its discretion in approving the less expensive and more profitable demolition and sale of the property over the more expensive and less profitable rehabilitation of the property. (*Cal-American Income Property Fund VII v. Brown Development Corp.*, *supra*, 138 Cal.App.3d at p. 274.)

The orders are affirmed. The petition for writ of mandate/prohibition is denied.
The stay of the proceedings in the trial court is vacated.

SPENCER, P.J.

I concur:

VOGEL, J.

MALLANO, J., Concurring and Dissenting.

Both the courts and the City of Santa Monica have ample grounds for being fed up with Gonzalez's unwillingness to maintain his property in a safe and sanitary condition as required by law. For over 15 years they have been trying to resolve the situation but due to Gonzalez's fault, have not been able to do so.

I agree with the majority that the draconian step of appointing a receiver to remedy the situation was both procedurally and substantively proper.

The receiver determined that it could either rehabilitate the premises, leaving equity of \$305,000, or demolish the premises and sell the lot, leaving equity of \$455,000, and recommended the demolition as it was in Gonzalez's financial interests to do so.

In his reply to opposition to petition for writ of mandate, Gonzalez refers to the receiver's recommendation as an "economic model" and states, "[T]here is no reason whatsoever why an economic model must be foisted on [Gonzalez]," and closes with a claim that the demolition of his property is "punitive."

I agree with Gonzalez that it is his decision to forgo the \$150,000 and keep his property. Only his financial interests are involved, not the city's nor the courts'. If he wants \$150,000 less, it is his decision to do so. The receiver would rehabilitate the property to make it safe and sanitary as required by law; the city should be happy as well. It is arbitrary and unreasonable to do otherwise in light of the inalienable right protecting property. (Cal. Const., art. I, § 1.)

I would remand to the trial court to hold a hearing to determine whether Gonzalez is still willing to have the property rehabilitated and whether that option is still available.

MALLANO, J.

Filed 6/27/06

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

CITY OF SANTA MONICA,

Plaintiff and Respondent,

v.

GUILLERMO GONZALEZ,

Defendant and Appellant.

B182104 c/w B184549

(Los Angeles County
Super. Ct. No. SS013071)

ORDER CERTIFYING FOR
PUBLICATION

GUILLERMO GONZALEZ,

Petitioner,

v.

LOS ANGELES COUNTY SUPERIOR
COURT,

Respondent;

CITY OF SANTA MONICA,

Real Party in Interest.

B184127

THE COURT:

The opinion in the above entitled matter filed on May 31, 2006, was not certified for publication in the Official Reports. For good cause it now appears that the opinion should be published in the Official Reports and it is so ordered.

SPENCER, P. J.

VOGEL, J.

MALLANO, J.