

No. 1-14-0470

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IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

CITY OF CHICAGO,)	Appeal from the
)	Circuit Court of Cook County
Plaintiff-Appellee,)	
)	
v.)	
)	
PABLO ENRIQUEZ and AGUSTINA)	
ENRIQUEZ,)	
)	No. 08 CH 33242
Defendants-Appellants.)	
)	
(Juan Torres, Luisa Torres, Citicorp Savings of)	
Illinois, Doc. #85122365, State of Illinois,)	
Department of Revenue Doc. 95211489, Fruteria)	
Torres, Unknown Owners and Nonrecord)	
Claimants,)	Honorable Michael T. Mullen,
)	Judge Presiding.
Defendants.))	

PRESIDING JUSTICE SIMON delivered the judgment of the court.
Justices Pierce and Liu concurred in the judgment.

ORDER

¶ 1 *Held:* Summary judgment for plaintiff municipality on action for foreclosure of lien under fast-track demolition provision of the Unsafe Property Division of the Illinois Municipal Code was proper where record indicates compliance with requirements of the statute for enforcement of a lien. Statute is not unconstitutional as-applied to defendants because notice and an opportunity to

challenge the demolition was provided to all defendants pursuant to the statute and defendants failed to exercise that right. Circuit court correctly determined that the doctrine of *laches* did not apply.

¶ 2 On September 9, 2008, plaintiff City of Chicago filed the underlying one-count complaint for foreclosure of a demolition lien related to the August 30, 1995, demolition of a structure on the property known as 5357 South Wood Street, Chicago, Illinois, and subsequent lien filed on January 23, 1996. Plaintiff and two of the named defendants, Pablo Enriquez and Agustina Enriquez (collectively "Enriquez"), filed cross-motions for summary judgment.

¶ 3 Without explanation, the circuit court granted plaintiff summary judgment and denied Enriquez's motion for summary judgment. Enriquez appeals, arguing that the court erred in granting summary judgment to plaintiff based on plaintiff's failure to produce evidence that it complied with statutory and constitutional requirements to entitle it to a valid lien. Enriquez also argues that the trial court erred in rejecting the argument that plaintiff's loss or destruction of evidence to prove the validity of its lien required denial of summary judgment to plaintiff. For the following reasons, we affirm the judgment of the circuit court.

¶ 4 I. BACKGROUND

¶ 5 On or about August 30, 1995, plaintiff City of Chicago demolished a building on the property located at 5357 South Wood Street, Chicago, Illinois, (subject property) pursuant to the "fast-track" demolition provision of the Unsafe Property Division of the Illinois Municipal Code (65 ILCS 5/11-31-1(e) (West 1994)). On January 23, 1996, plaintiff filed a notice of claim for lien with the Cook County Recorder of Deeds. In the lien, plaintiff stated that by virtue and authority granted by section 11-31-1(e) of the Unsafe Property Division, it sought a lien for costs and expenses of \$7,917.14 incurred in the demolition of the structure on the subject property because it was open, vacant and constituted an immediate and continuing hazard to the community. The lien noted that title to the property appears in the name of defendants Juan

Torres and Luisa Torres (collectively "Torres"), but that the lien was absolute as to all parties of interest.

¶ 6 The second page of the demolition lien included a paragraph stating that the notice requirements of section 5/11-31-1(e) of the Unsafe Property Act were strictly complied with by posting the required signage at the subject property, sending notice by certified mail to owners of record and other parties in interest, and publishing notice in the Chicago Sun-Times from April 13, 1995, through April 15, 1995. The statements in the lien were attested to under oath and signed by Christopher J. Kozicki as Assistant Commissioner of the City of Chicago Department of Buildings. Plaintiff filed the underlying complaint to foreclose the demolition lien on September 9, 2008.

¶ 7 Enriquez originally owned the property in 1985 with joint tenants and current owners Torres. Enriquez and Torres secured a mortgage on the subject property in 1985, but in 1989 Enriquez executed a quit claim deed on the property to Torres. Enriquez remain interested parties to this case as they were never removed from the mortgage. Enriquez filed their appearance on October 7, 2008.

¶ 8 The remaining defendants failed to appear and Enriquez failed to answer the complaint or otherwise plead and plaintiff sought an order of default. Enriquez moved for an extension of time and on June 3, 2011, plaintiff withdrew its motion to default and the circuit court granted Enriquez's motion. Enriquez propounded discovery requests for production and interrogatories on plaintiff on June 23, 2011, seeking any notices, documentation, or other evidence that the subject property was open, vacant, and an immediate and continuing hazard to the community.

¶ 9 Enriquez filed motions to compel plaintiff to comply with the discovery request and following resolution of plaintiff's objections to the requests, plaintiff answered the interrogatories

and responded to the document requests. In the response to Enriquez's requests for documents, plaintiff provided a photograph of the subject property dated February 11, 2008, and a status sheet printout for the subject property that indicated the dates the subject property was originally inspected, dates of posting and publication of notice, permit date, dates of work, costs of demolition, and the total lien amount. The parties filed cross-motions for summary judgment.

¶ 10 In their motion for summary judgment, Enriquez argued that plaintiff was not entitled to foreclose on the demolition lien because it failed to prove that the lien was valid. Enriquez pointed to plaintiff's lack of any evidence that it had complied with the statutory or constitutional requirements. Additionally, Enriquez noted that counsel for plaintiff had admitted that any such evidence had been previously destroyed. Enriquez also asserted that the "fast track" demolition provision was unconstitutional as-applied because of plaintiff's failure to provide proof of compliance with the requirements of the statute.

¶ 11 Plaintiff asserted that it was entitled to summary judgment on its complaint for foreclosure of the demolition lien because it had complied with all statutory and constitutional requirements. Plaintiff claimed that its verified complaint with attached sworn claim for a demolition lien provided the necessary evidence in support of its claim as required by statute. Plaintiff attached a copy of its complaint, a copy of the lien, and an affidavit averring that the subject property was vacant.

¶ 12 Plaintiff argued that Enriquez's affirmative defenses must fail. Plaintiff argued that the plain language of the statute allowed for commencement of an action to foreclose a lien at any time after the filing of the notice of the lien and that other statutes providing for statute of limitations periods on foreclosing liens, such as the mechanics lien statute and the Code of Civil Procedure, did not apply. Additionally, plaintiff maintained that the doctrine of *laches* did not

apply in this case without any evidence of unusual, extraordinary, or compelling circumstances as plaintiff was simply requesting satisfaction of the lien and nothing prevented defendants from satisfying the lien since it was filed.

¶ 13 The parties argued the cross-motions for summary judgment before the circuit court and the court denied Enriquez's motion and granted plaintiff's. In the January 8, 2014, order the circuit court indicated that the order was based on "the reasons as will be set forth in a supplemental agreed order by the parties." However, there is no agreed order of record presenting this reasoning, nor is there a transcript of the hearing on the cross-motions. This appeal followed.

¶ 14

II. ANALYSIS

¶ 15 Enriquez argues on appeal that the trial court erred in granting plaintiff summary judgment. Summary judgment may be granted when the pleadings, depositions, admissions, and affidavits on file demonstrate no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. 735 ILCS 5/2-1005(c) (West 2012). Where parties file cross-motions for summary judgment, they concede the absence of a genuine issue of material fact and invite the resolution of the matter by the court as a matter of law. *Chicago Hospital Risk Pooling Program v. Illinois State Medical Inter-Insurance Exchange*, 397 Ill. App. 3d 512, 523 (2010). We review an order granting summary judgment *de novo*. *Id.* While we also review the evidence in a light most favorable to the nonmovant, we cannot ignore evidence unfavorable to the nonmovant and may sustain the trial court on any basis called for in the record. *Ruane v. Amore*, 287 Ill. App. 3d 465, 474 (1997).

¶ 16 Enriquez argues that the circuit court erred in granting summary judgment because plaintiff failed to provide a proper affidavit or any proof of compliance with the requirements of

the fast-track demolition statute. Enriquez also asserts that the statute is unconstitutional as-applied to Enriquez and that the complaint to foreclose the demolition lien is barred by the doctrine of *laches*. Each of these arguments is considered in turn.

¶ 17 A. Compliance With the Statute

¶ 18 Section 5/11-31-1(e) provides for expedited removal of hazardous buildings two stories or less that are open and vacant and deemed a hazard to the community. If that determination is made, the municipality may post a notice not less than two feet by two feet in front of the building. Not later than 30 days after posting notice, the municipality must send notice by certified mail of the intent to demolish, repair or enclose the building, as well as publish notice for three consecutive days in a newspaper published or circulated in the municipality. 65 ILCS 5/11-31-1(e) (West 1995 Supp.) The statute allows any person objecting to the proposed action to file an objection in a court of competent jurisdiction. After 30 days after the mailing notice to the owners of record, if no person has sought a hearing on the matter, the municipality may proceed to demolish the building with a 120-day period. The portion of this subsection concerning obtaining and enforcing a demolition lien and states, in pertinent part:

“Following the demolition, repair, or enclosure of a building or the removal of garbage, debris, or other hazardous, noxious, or unhealthy substances or materials under this subsection, the municipality may file a notice of lien against the real estate for the cost of the demolition, repair, enclosure, or removal within 180 days after the repair, demolition, enclosure, or removal occurred, for the cost and expense incurred, in the office of the recorder in the county in which the real estate is located or in the office of the registrar of titles of the county if the real estate affected is registered under the Registered Titles (Torrens) Act. The notice

of lien shall consist of a sworn statement setting forth (i) a description of the real estate, such as the address or other description of the property, sufficient for its identification; (ii) the expenses incurred by the municipality in undertaking the remedial actions authorized under this subsection; (iii) the date or dates the expenses were incurred by the municipality; (iv) a statement by the corporate official responsible for enforcing the building code that the building was open and vacant and constituted an immediate and continuing hazard to the community; (v) a statement by the corporate official that the required sign was posted on the building, that notice was sent by certified mail to the owners of record, and that notice was published in accordance with this subsection; and (vi) a statement as to when and where the notice was published. The lien authorized by this subsection may thereafter be released or enforced by the municipality as provided in subsection (a)." 65 ILCS 5/11-31-1(e) (West 1995 Supp.)

¶ 19 Under subsection (b), "[u]nless the lien is enforced under subsection (c), the lien may be enforced by foreclosure proceedings as in the case of mortgage foreclosures under Article XV of the Code of Civil Procedure or mechanics' lien foreclosures. An action to foreclose this lien may be commenced at any time after the date of the filing of the notice of the lien." 65 ILCS 5/11-31-1(b) (West 1995 Supp.). Subsection (c) applies to liens obtained under subsections (a) or (b) and the municipality petitions the court to retain jurisdiction for foreclosure proceedings. 65 ILCS 5/11-31-1(c) (West 1995 Supp.)

¶ 20 Enriquez argues that all statutory liens must be strictly construed, and a lien claimant must prove every element necessary to establish that lien. *Delaney Electric Co. v. Shiessle*, 235 Ill. App. 3d 258, 265 (1992). They argue that construing the record in favor of the nonmovant, it

is clear a material issue of fact exists as to whether or not plaintiff complied with the statute.

Enriquez maintains that plaintiff presented no evidence to support its statutory compliance and the circuit court erred in finding that the lien itself was an affidavit.

¶ 21 The record is devoid of any of the circuit court's reasoning; however, we need only consider the plain language of the statute to affirm the order of the trial court. The statute requires a "sworn statement" describing the property, expenses, dates of demolition, condition of the property, and that proper notice was provided. An official with the Department of Buildings signed a sworn statement that he read the lien and knew the facts to be true and averred that all of the necessary elements were met in this case to establish the demolition lien. No party contested the demolition of the property at any time and no evidence was presented to counter this sworn statement.

¶ 22 Under the statute, plaintiff was authorized to enforce the lien by foreclosure proceedings at any time after the filing of the lien. While plaintiff allegedly destroyed documents that would have supported the demolition lien, it provided a sworn statement from a proper official of the municipality averring to the elements required to secure, and foreclose, on a demolition lien. No facts are of record to counter this, therefore, even considering the record in favor of the nonmovant, we affirm the order of the circuit court granting plaintiff summary judgment.

¶ 23 B. Constitutionality of the Fast-Track Statute As-Applied

¶ 24 Enriquez agrees that the fast-track statute has been found facially constitutional. *Village of Lake Villa v. Stokovich*, 211 Ill. 2d 106, 133 (2004). However, Enriquez claims that the fast-track statute is unconstitutional as-applied because plaintiff cannot prove that notice of the demolition as required by statute was actually sent. Therefore, Enriquez argues that plaintiff's argument that there was the opportunity to contest the demolition, the key consideration in

establishing the constitutionality of the fast-track statute, fails and the statute is unconstitutional as-applied in this case.

¶ 25 Enriquez relies on the federal decisions in *McKenzie v. City of Chicago* in support of its argument that plaintiff's long delay and destruction of evidence demonstrate a failure to comply with the statutory and constitutional requirements in demolishing the building on the subject property. In the initial proceeding in *McKenzie*, the Federal District Court entered a preliminary injunction, enjoining the City of Chicago from completing any fast-track demolitions based on the possibility that numerous buildings are demolished every year without notice to the owners. *McKenzie v. City of Chicago*, 964 F.Supp. 1183, 1202 (N.D. Ill. 1997). The court noted various problems with the city's procedures including improper notice, inconsistencies in evidence, and instances where incorrect buildings were demolished. *Id.* at 118-95.

¶ 26 The Seventh Circuit reversed the district court, finding that the decision was not supported by the record and remanded the matter for further proceedings. *McKenzie v. City of Chicago*, 118 F.3d 552 (7th Cir. 1997). On remand, the district court found the fast-track statute facially constitutional. *McKenzie v. City of Chicago*, 973 F. Supp. 815, 817-19 (N.D. Ill. 1997). However, the court denied the city's motion to dismiss the as-applied challenge to the statute because, accepting the allegations of the complaint as true, the allegations that the city's procedures implementing the statute were constitutionally insufficient were plausible. *Id.* at 820. Enriquez concludes that plaintiff's destruction of all evidence in this case compounds the constitutional violation and is evidence in itself that plaintiff created the situation and allowing this to continue paves the way for municipalities to demolish properties without any procedural safeguards.

¶ 27 Unlike the issue considered in *McKenzie*, this case considers the foreclosure of the

demolition lien and not a challenge or contest of the fast-track demolition. This collateral proceeding is authorized by statute for the municipality to foreclose on the lien obtained for the uncontested demolition of the subject property. We have already found that plaintiff complied with the statute in meeting the requirements for the demolition lien, therefore the foreclosure of that lien is not unconstitutional as-applied in this case.

¶ 28

C. *Laches*

¶ 29 Enriquez also contends that plaintiff's foreclosure complaint is barred by the doctrine of *laches*. Enriquez concedes that the doctrine of *laches* does not apply to governmental authorities absent extraordinary circumstances, but maintains that a 14-year delay in filing the foreclosure action is extraordinary. Enriquez contends that plaintiff's destruction of evidence in the matter further supports the argument that the underlying lien is defective and Enriquez is severely prejudiced by plaintiff's delay and actions in this case.

¶ 30 We agree with plaintiff that *laches* does not apply in the instant matter and Enriquez's failure to respond to plaintiff's response argument further supports this conclusion. As Enriquez concedes, *laches* is an equitable doctrine that does not apply to governmental entities absent extraordinary circumstances. A mere lapse in time from the accrual of a cause of action to the actual filing of the complaint by any party and inaction by governmental officials further requires an affirmative act that induced the action of the respondent. *Madigan v. Yballe*, 397 Ill. App. 3d 481, 493-94 (2009). There is no evidence to support a finding that plaintiff made such an affirmative act. Furthermore, as addressed above, the Unsafe Property provisions of the Illinois Municipal Code do not provide any limitations period for a lien foreclosure. Accordingly, the circuit court properly denied Enriquez's *laches* defense.

¶ 31

III. CONCLUSION

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¶ 32 For the reasons stated, we affirm the judgment of the circuit court.

¶ 33 Affirmed.