2017 IL App (4th) 160497-U

NO. 4-16-0497

FILED
May 9, 2017
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE CITY OF URBANA, ILLINOIS, a Municipal Corporation,	)	Appeal from
	)	Circuit Court of
Plaintiff-Appellee,	)	Champaign County
v.	)	No. 14OV526
PLATINUM GROUP PROPERTIES, LLC,	)	
Defendant-Appellant.	)	Honorable
	)	John R. Kennedy,
	)	Judge Presiding.

PRESIDING JUSTICE TURNER delivered the judgment of the court.
Justices Harris and Pope concurred in the judgment.

ORDER

¶ 1 *Held*: The circuit court did not err by finding defendant's three buildings violated the city's property maintenance code, the court did err in imposing fines, and the circuit clerk's imposition of an $118,425 surcharge was void.

¶ 2 In June 2014, plaintiff, the City of Urbana, a municipal corporation (City), filed a complaint for property maintenance code violations against defendant, Platinum Group Properties, LLC, for three of its buildings located on adjacent properties in the City. The City amended its complaint twice thereafter, and the bench trial on the second amended complaint commenced in November 2014. The last witness's testimony was heard in August 2015, and the parties filed written memoranda in support of their respective positions. In May 2016, the Champaign County circuit court announced its decision in open court, finding defendant's three buildings violated numerous ordinances. The court fined defendant a total of $473,700 and ordered it to pay court costs as well.

¶ 3 Defendant appeals, contending the circuit court erred by (1) permitting the City to disregard the ordinances related to (a) the issuance of failure to comply tickets and (b) the granting of deadline extensions, (2) finding the City proved the structural violations by a preponderance of the evidence, and (3) imposing fines. Defendant also challenges the circuit court clerk's imposition of an $118,425 surcharge. We affirm in part, reverse in part, vacate in part, and remand the cause with directions.

¶ 4 I. BACKGROUND

¶ 5 A. Properties at Issue

¶ 6 This case involves three separate properties located in Urbana, Illinois, and owned by defendant. Paul Zerrouki and his wife, Nicolette Negrau, are the principal owners of defendant. The properties at issue are commonly known as 1302 East Silver Street (1302 Silver), 1304 East Silver Street (1304 Silver), and 1401 East Silver Street (1401 Silver). Each of the three properties contains a two-story, multifamily building with brick exterior, which were built around the late fifties. The three building are almost identical and contain 11 or 12 apartments each. The second-floor apartments were accessible by concrete steps leading to concrete walkways along the exterior of the building.

¶ 7 B. Ordinances at Issue

¶ 8 In July 2011, the city council adopted a new chapter 5 of the Urbana Code of Ordinances. Article IX of chapter 5 is known as the Property Maintenance Code (City Property Maintenance Code). In section 5-81 of the City Property Maintenance Code (eff. July 18, 2011), the City adopted the 2009 International Property Maintenance Code "with the additions, insertions, deletions, and changes prescribed in Section 5-83." On October 7, 2013, the city council amended provisions of section 5-83 of the City Property Maintenance Code. Except for

provision PM-304-10, all of the alleged code violations are contained in the 2009 International Property Maintenance Code. PM-304.10 of section 5-83 of the City Property Maintenance Code was not part of the city council's October 2013 amendments. The procedural provisions for addressing code violations are contained in section 5-83 of the City Property Maintenance Code. The city council's October 2013 amendment made changes to PM-106.4, PM-106.4.1, and PM-106.4.3, which are part of section 5-83 of the City Property Maintenance Code.

¶ 9 C. Notices of Violations

¶ 10 In a June 1, 2012, letter, Clay Baier, the City's housing inspector, notified defendant of a May 29, 2012, inspection of the three buildings and the code compliance matters discovered during the inspection. The defects listed were as follows: (1) areas of deteriorated and rusted structural steel were present in the exterior stairs, landings, and walkways; (2) displacement and cracking of brick veneer existed where the stairs intersected with the second-level walkways, indicating the walkways were moving away from the buildings; (3) columns were bowed out, which further indicated the second-level walkways were moving away from the buildings; and (4) the first-floor walkways were cracked, displaced, and sloped toward the building, which allowed water to flow back to the buildings and jeopardized the structural integrity of the buildings' foundations. The letter ordered defendant to have the defects evaluated by a licensed structural engineer and a copy of the engineer's report submitted to Baier's office by June 15, 2012. It also ordered any necessary repairs listed in the report to be completed no later than July 16, 2012. The letter further stated the work would require a building permit and referred defendant to Steve Cochran to obtain it. Moreover, it informed defendant to contact Baier's office once the repairs were completed for a reinspection. The letter also advised defendant of how to seek an extension and its right to an appeal. As to an

extension, the letter stated the request must be made in writing within 10 days of receipt of the letter. Additionally, it stated, "[t]he Housing Inspector may issue a 'Failure to Comply Ticket' for failure to comply with any of the above set deadlines." Last, the letter indicated the possibility of a lawsuit and fines.

¶ 11 On June 15, 2012, Negrau requested a 90-day extension to obtain the engineer's evaluation. Baier denied the request but gave defendant until June 25, 2012, to provide the engineer's report. Defendant hired Charles Lozar to perform the evaluation, and the City hired Engineering Resources Associates, Inc. In an August 10, 2012, letter, Baier ordered defendant to make the necessary repairs stated in the Engineering Resource Associates, Inc., report and Lozar's June 24, 2012, written notes, as well as provide additional structural members to support the walkways, no later than September 15, 2012. In a later letter, Baier gave defendant until November 30, 2012, to complete the repairs.

¶ 12 In a January 25, 2013, letter, Baier notified defendant of interior code compliance matters at 1302 Silver and noted the repairs related to the June 2012 violations had not been completed. Defendant was given until February 26, 2013, to make the repairs. In separate letters that were both dated January 29, 2013, Baier notified defendant of interior code compliance matters at 1304 and 1401 Silver and pointed out the repairs related to the June 2012 violations had not been completed. With 1304 and 1401 Silver, defendant was given until March 1, 2013, to make the repairs.

¶ 13 In three separate letters dated February 27, 2013, John Schneider, the City's building safety division manager, gave defendant notice of the condemnation of all three buildings. The buildings had been inspected on February 22, 2013, pursuant to a complaint. The notice indicated the walkways were susceptible to failure and collapse due to the instability of

the upper-level walkways, the stairs leading to those walkways, and the bricks underneath those walkways. The City ordered the buildings to be vacated by 5 p.m. on February 27, 2013, and the property secured by 4 p.m. on March 1, 2013. Defendant did not appeal the condemnation notices and promptly evacuated the buildings.

¶ 14 D. Building Permits

¶ 15 On May 7, 2013, Zerrouki applied for building permits for the three buildings. The application stated the total cost of improvements for each building was $13,000. On May 30, 2013, the City issued Zerrouki the three building permits. The permits noted to call Cochran prior to the commencement of work to discuss the needed inspections. The permits did not have an expiration date. In November 2013, Negrau sent Schneider an e-mail asking if she needed to file an extension for the building permits. Schneider replied, "Per section 105.5 of the 2009 International Building Code, no extension of a building permit is necessary." On May 21, 2014, the City revoked the building permits under section 105.5 of the City Building Code due to inactivity. The notice of permit revocation noted work on the three buildings had not taken place since on or before November 21, 2013.

¶ 16 On June 5, 2014, defendant again applied for building permits to perform the work required by the June 2012 notice of violations. Those permits were approved.

¶ 17 E. Lawsuit

¶ 18 On June 11, 2014, the City filed its complaint for property maintenance code violations against defendant, alleging the violation of "PM-304.1.1." In October 2014, the City filed a first amended complaint, again generally referring to "PM-304.1.1." On November 3, 2014, the City filed its second amended complaint, which alleged violations of "PM 304.1.1," "PM 304.6," and "PM 304.10." In its prayer for relief for all three buildings, the City requested

the circuit court to order defendant to remediate all violations within 60 days of the court's order. For 1302 and 1304 Silver, the City asked for a $15 per day fine for the period of June 1, 2012, to May 21, 2014, which the City calculated as a total fine of $10,785. The City also asked for a daily fine of "not less than $200 but not more than $750" for each day the properties were in violation from June 12, 2014, until the time the court finds defendant has remediated the code violations. For 1401 Silver, the City requested a $15 per day fine for the period of June 1, 2012, to June 12, 2014 which the City also calculated as a total fine of $10,785. It then prayed for a daily fine of "not less than $200 but not more than $750" for each day the property was in violation from May 22, 2014, until the time the court finds defendant has remediated the code violations.

¶ 19 F. Trial

¶ 20 On November 3, 2014, the circuit court commenced the bench trial in this case. The court heard evidence over many days, with the last day being August 18, 2015. On appeal, the transcript of the bench trial consists of individual excerpts of each witness's testimony.

¶ 21 1. *City's Evidence*

¶ 22 The City presented the testimony of Jacob Wolf, Stephen Chrisman, and Schneider. It also presented numerous documents, including Wolf's reports and some photographs of the buildings at issues taken in November 2014.

¶ 23 Wolf, a project manager and design engineer with Engineering Resource Associates, Inc., testified as an expert in the fields of structural engineering, civil engineering, project engineering, and building project management. Defendant had no objection to Wolf being an expert in all of those fields, and the court recognized him as an expert in the aforementioned areas of expertise. Wolf testified that, in June 2012, he was contacted by Baier

to inspect the three buildings at issue. He noted the three buildings were similarly constructed and had similar defects. Upon inspection, he was concerned about brick or portions of concrete at the upper-level balconies falling and possibly hitting someone. Wolf also found a location on the walkways where the steel beams were bearing on brick and were beginning to lose the bearing locations, which could result in a possible failure. The buildings' "structural members" had evidence of deterioration. Moreover, one of the brick walls was bowed outward. In his report, Wolf proposed two options. One option was to rehabilitate each building and identify the items that needed repair, and the second option was to remove and replace the existing walkways. Both options required a selective demolition by removing brick to determine how the walkways were connected to each building. In June 2012, the walkways were not in an imminent danger of collapse. Wolf's June 25, 2012, report on the buildings was admitted into evidence. It contained pictures showing the deterioration and bowed areas. Wolf did not calculate a load bearing for the walkways.

¶ 24 In February 2013, Baier contacted Wolf and asked him to look at the three buildings again. Wolf again inspected the buildings and did not observe the completion of any of his recommendations. Moreover, the conditions had gotten worse over the winter. In his February 25, 2013, report, Wolf recommended the second-floor walkways be shored or the building evacuated and barricaded to prevent injury or death from a collapsing upper-level walkway. If the walkways were shored, the cracked and bulged brick would need to be removed and replaced. In February 2013, he believed the walkways were in an imminent danger of collapse.

¶ 25 Chrisman, the City's housing inspector, testified the project at the three buildings had been ongoing for more than two years and, during that time, he had monitored the project's

progress. He or one of the two other inspectors went by the project on a daily basis, observed what was or was not being done, and entered the observations into a log. On November 3, 2014, Chrisman went by the three buildings and took pictures of them. Chrisman observed the repairs had not been completed. He explained the stairs were missing on one of the buildings, and the stair railings were missing on the stairs that were in place. At that point, the buildings were still considered unsafe and noncompliant with code.

¶ 26 Schneider, the City's building safety division manager, testified his division was responsible for enforcing the City's housing and building codes. The circuit court accepted, without objection, Schneider as an expert in the fields of building safety, building code enforcement, and construction supervision. As a result of a citizen's complaint, Schneider visited the three buildings at issue in May 2012. He and Baier inspected the exterior of the three buildings. Schneider observed a wrought iron column that was holding the roof structure and part of the second-level walkway was "seriously bowing outwardly." He also saw the bricks were cracking at the walkways, and some of the bricks had fallen out at the connection between the building and the walkways. Moreover, the walkways were cracked at the building and pulling away. His observations were similar in all the properties. According to Schneider, some of them were seriously cracked. In his opinion, the buildings appeared to be structurally unsafe. Schneider testified the buildings were in violation of section "304.1.1, number 2, number 5, number 6, and number 10" of the City Property Maintenance Code. Schneider told Baier to send the owner a notice to correct the code violations. When the owner did not repair or provide a structural engineer, Schneider directed Baier to hire someone to do an assessment of the structural condition of the three buildings. He also directed Baier to try to communicate with defendant to have the situation addressed.

¶ 27 Schneider continued to be involved with the attempts to address and remediate the issues with the buildings at issue and had not received any evidence the violations had been addressed. He had last observed the buildings from his car on October 31, 2014. The brick veneer had been repaired on all of the buildings and the steel structure for the balconies was in place on all of the buildings. At 1302 Silver, the wood on the balcony and stairs had been installed, but the stairs lacked a railing. The other two buildings still needed wood decking.

¶ 28 2. *Defendant's Motion for a Directed Verdict*

¶ 29 At the close of the State's evidence, defendant filed a written motion for a directed verdict and a supporting memorandum. Defendant argued the City failed to present evidence (1) it first issued failure to comply tickets to defendant as required by local ordinance, (2) it considered defendant's good-faith efforts and the existence of circumstances beyond defendant's control in denying further extensions to complete the work, and (3) sufficient to prove code violations occurred under the code provisions set forth in plaintiff's second amended complaint. The City filed a written response, and defendant filed a reply. On January 13, 2015, the circuit court heard oral arguments on the motion and denied it. The court found the issuance of a failure to comply ticket was not a condition precedent to initiating a lawsuit and, at that point, the evidence was sufficient to sustain the City's burden of proof.

¶ 30 3. *Defendant's Evidence*

¶ 31 In addition to the following testimony, defendant presented numerous documents, including all of the notices of violations and the condemnation notices.

¶ 32 Steven Pankau testified that, on August 8, 2012, he prepared an estimate for Zerrouki for the needed masonry work on the three buildings. His estimate totaled $12,000. Pankau characterized the project as fairly substantial in nature. The repairs needed to be done to

prevent a significant safety hazard in the future. Pankau did not make the repairs.

¶ 33 Arnold Cleaver testified Zerrouki contacted him in spring 2013 to do masonry work on the buildings. He could not do the brick work until the demolition work was done. Cleaver did the brick work from around June 2013 to September or October 2013. The project took an extra 2,000 bricks due to the lack of "wall ties." Cleaver testified Zerrouki did nothing to delay the project.

¶ 34 Willie Docher testified Zerrouki hired him in late spring or early summer 2013 to perform demolition work on the three buildings. Docher began the demolition work as soon as he signed the contract with Zerrouki. The job was removing a steel structure that was attached to an existing building. It was a dangerous job, and Docher's team had to take its time. Docher was called away from the project to address a pool at one of Zerrouki's other buildings, but his project on the three buildings "wasn't no long time." Docher testified Zerrouki did not attempt to delay his work.

¶ 35 Arthur Carter, a welder, was hired by Zerrouki to construct the steel balconies. Carter testified he was contacted by Zerrouki in spring and summer 2013. He could not complete his work until the demolition, masonry, and concrete work was complete. The demolition and masonry work was not completed until November 2013. Over the winter, Carter worked on the rails for the project in his warehouse. He was not able to start on the work for the three buildings at issue until summer 2014. When he testified, Carter had three more weeks of work to do on the project. Zerrouki pushed Carter to complete the project and did nothing to delay it.

¶ 36 Elizabeth Tyler, the City's community development director and Schneider's supervisor, testified she was working with the Center for Women in Transition (Center) to

purchase the three properties at issue. During summer 2012, the Center decided not to pursue the grant to purchase the three properties. She never told Zerrouki not to correct the conditions with the properties due to the possible purchase of the properties.

¶ 37 Lozar, an architect, testified he was contacted by Zerrouki in June 2012 to examine some balconies at the three buildings at issue. Lozar examined the buildings on June 24, 2012, and prepared a short summary of his examination. Lozar testified the balconies were "of concern because they had been somewhat pushed out against the vertical columns by water intrusion into the building." One or two of the vertical columns for each building were visibly bent. While a degree of concern for the bearing of the balconies did exist, the balconies were not in a state of imminent collapse at that point. Lozar testified the mortar needed to get fixed and tuck-pointed before the fall rains. Lozar also noted corrosion of the steel at the stairways that exited the balconies.

¶ 38 In fall 2012, Zerrouki asked Lozar to create some specific plans for the repair of the walkways. Lozar created a set of plans and submitted them to Schneider. In a December 19, 2012, e-mail, Schneider thanked Lozar for his plans for the three buildings and asked Lozar for some more detailed plans for the repair. Lozar never reached the point of submitting the more detailed plans. He spent time away in the winter, and when he returned in late February, he visited the three properties. Lozar observed more water intrusion had occurred and the balconies had been pushed further out, which resulted in more columns being bent. Lozar had a heightened level of concern. In a February 26, 2013, e-mail, Lozar stated the structural analysis was now at a point that was beyond his scope of expertise. Additionally, in a March 1, 2013, e-mail, Lozar told Baier he was right to request removal of the occupants as a safety measure. Degeneration had occurred since Lozar had submitted his drawings, and the issues with the steel

had become worse. Last, Lozar testified Zerrouki did not interfere with him working with the City on this project.

¶ 39 In February or March 2013, Zerrouki hired Robert Kapolnek, another architect, to draw up plans to repair the three buildings. Kapolnek testified he visited the three properties. He observed a "fairly obvious" problem, which was the concrete walkways were pulling away from the buildings. He also found issues with the masonry. At the time, it was clear to him the best thing to do was remove the second-floor walkways and replace them. It was a fairly substantial project as issues could arise as the project progressed. The walkways were removed, and Kapolnek testified they were, in fact, pulling away from the building. Selective demolition was done, and a steel channel supporting the walkway was found. Zerrouki asked him to again analyze the best way to attach the walkways to the building. Moreover, Kapolnek found more extensive masonry work needed to be done, and Zerrouki agreed to pay for more masonry work. According to Kapolnek the project proceeded at a reasonable pace. Zerrouki later brought Rex Bradfield, a civil engineer, onto the project. Bradfield began to second-guess how the work should be done, which frustrated Kapolnek. They eventually all agreed on a manner to attach the walkways to the buildings.

¶ 40 Bradfield testified that, in addition to being a civil engineer, he was also a land surveyor. He was contacted by Zerrouki to give him a professional opinion about what was going on because the City had cancelled the building permits. Bradfield also approached the City and offered his services to get the project done. Bradfield found some significant oversights with the plans. He explained his position in a proposal to the City, which included having the project completed in 60 working days, 80 days total.

¶ 41 Moreover, Bradfield testified each building had a "C-channel" that supported the

original walkways. On his first day of his testimony, he indicated the walkways were not in danger of imminent collapse. On the second day of his testimony, Bradfield declined to give an opinion on the balconies' imminent danger of collapse because it was outside the scope of his license. Bradfield was not a structural engineer. The "C-channels" were so strong that the bolts for the new walkways had to be placed above and below them. The vertical posts supporting the walkways needed to have their footings repaired, but the issues with the footings did not result in the walkways being in imminent danger of collapse. In May 2015, the balconies were competed, inspected, and approved. Bradfield did not believe Zerrouki did anything to delay the project.

¶ 42 Zerrouki testified he has lost $500,000 in rents and paid $200,000 for repairs related to this repair project. He also testified any delays in the project were out of his control.

¶ 43 4. *Circuit Court's Ruling*

¶ 44 After the conclusion of the evidence in August 2015, the parties filed written memoranda supporting their respective positions. On May 18, 2016, the circuit court announced its decision in this case. The court found each of the three properties violated sections 304.1, 304.1.1(2), 304.1.1(6), 304.1.1(12), and 304.6 of International Property Maintenance Code of 2009 and PM-304.10 of the City Property Maintenance Code. The court found the violations began June 5, 2012, and lasted until June 25, 2014. It ordered defendant to pay the "minimum fine of 200 dollars per day" for each building for the period of June 15, 2012, to November 19, 2012, which the court calculated as a fine of $94,200 for 156 days. For the period of November 19, 2012, to March 1, 2013, the court imposed a fine of $300 per day for each building, which the court calculated a fine of $90,900 for 101 days. For the remaining period, the court ordered defendant to pay a fine of $200 per day for each building, which the court calculated as a fine of $288,600 for 481 days. Thus, the court found the total fine it imposed on defendant was

$473,700. It also ordered defendant to pay court costs.

¶ 45 On June 26, 2016, defendant filed a timely notice of appeal in sufficient compliance with Illinois Supreme Court Rule 303 (eff. Jan. 1, 2015). Accordingly, we have jurisdiction of this appeal under Illinois Supreme Court Rule 301 (eff. Feb. 1, 1994).

¶ 46 II. ANALYSIS

¶ 47 A. City Property Maintenance Code

¶ 48 Defendant first argues the circuit court erred by permitting the City to disregard the City Property Maintenance Code by failing to (1) issue a failure to comply ticket and (2) consider defendant's good-faith efforts to make the repairs and repair delays caused by circumstances outside defendant's reasonable control in causing any delay. Those errors resulted in the court erroneously denying defendant's motion for a directed verdict and finding in favor of the City after trial. The City asserts (1) the violations of the City Property Maintenance Code may be enforced through two entirely separate procedures and thus is not limited to failure to comply tickets and (2) the trial evidence failed to show defendant acted in good faith to remediate the violations. We note that, to the extent defendant is challenging the circuit court's denial of its motion for a directed verdict, section 2-1110 of the Code of Civil Procedure (735 ILCS 5/2-1110 (West 2014)) provides a defendant who presents evidence on its behalf after the circuit court denies its motion for a directed verdict waives any complaint the denial of the motion for a directed verdict was error. Since defendant did present evidence after the denial of his directed verdict motion, it has forfeited any claim the circuit court erred by denying the motion for a directed verdict. See *Evans & Associates, Inc. v. Dyer*, 246 Ill. App. 3d 231, 239, 615 N.E.2d 770, 775 (1993).

¶ 49 With its first argument, defendant asks us to interpret and apply the version of the

City Property Maintenance Code that became effective on October 7, 2013. The amended PM-106.4.1(a) of the City Property Maintenance Code provides: "The Code Official, or his or her designee, *shall* issue a Failure to Comply Ticket to any owner, operator or person that the Code Official determines has violated any of the deadlines for compliance set out in PM-104.6.1." (Emphasis added.) Instead of "shall," the prior version stated "is authorized to." In October 2013, related provisions were also amended to include mandatory language. However, the initial notice of the violations took place on June 1, 2012, and the initial deadline expired on July 16, 2012. In fact, the June 1, 2012, notice of violation informed defendant the housing inspector "may issue" a failure to comply ticket. In its brief, the latest date defendant discusses in analyzing its argument based on PM-104.6.1 is February 28, 2013, more than seven months before the amended ordinance was enacted. Defendant does not point out any deadline violations that occurred after the amended date and fails to explain how the amended violation would apply to deadlines prior to the amendment. Since the amended version of the ordinance cited by defendant does not apply to this case, no error occurred that affected the circuit court's judgment.

¶ 50 As to the good-faith effort argument, defendant cites PM-104.6.1(5) of the City Property Maintenance Code (eff. July 18, 2011), which provides the following:

> "The Code Official may extend the above time lines for good cause shown. However, there is no legal entitlement to an extension of time for repairs; 'time is of the essence' in the resolution of all Code violations. Extensions of time for repairs shall be based in the good faith efforts of the owner or operator and/or the existence of circumstances beyond the owner's or operator's reasonable control."

However, it is not clear what defendant's argument is. If defendant is arguing the City failed to

comply with PM-104.6.1(5), it fails to point to a specific instance when a City official denied defendant's request for an extension of time and, in doing so, failed to consider defendant's good-faith effort. For the first time, in its reply brief, defendant suggests the filing of the lawsuit was a denial of further extensions. However, defendant does not point to any facts showing the City filed suit when defendant still had time to make the repairs before a deadline expired. If defendant is arguing it should not have been penalized for dates an extension based on good-faith effort was in place, defendant fails to set forth those specific dates. PM-104.6.1(5) addresses deadline extensions and not the finding of code violations.

¶ 51 Moreover, the First District's decision in *City of Chicago v. Old Colony Partners, L.P.*, 364 Ill. App. 3d 806, 822, 847 N.E.2d 565, 578 (2006), does not address an owner's good-faith effort in analyzing whether a violation has occurred. In that case, the two code provisions at issue required the conditions might admit water into the building or create dangerous and hazardous conditions, and the city presented no evidence as to either. *City of Chicago*, 364 Ill. App. 3d at 821, 847 N.E.2d at 577. Both parties presented evidence the building was in need of maintenance but was undergoing inspection and maintenance during the period at issue. *City of Chicago*, 364 Ill. App. 3d at 821, 847 N.E.2d at 577. The appellate court voiced concerns over the city's argument its evidence was sufficient for a finding of various building code violations and a fine for each day of the violations, as it would make it possible for the city to fine owners for attempting to repair exterior walls. *City of Chicago*, 364 Ill. App. 3d at 822, 847 N.E.2d at 578. It was especially troubling in a situation like the one before them, where the city sought a large fine "with only proof that maintenance activities have occurred, albeit slowly, on a building." *City of Chicago*, 364 Ill. App. 3d at 822, 847 N.E.2d at 578. The court's concerns were over the city seeking large fines when the building was undergoing a long maintenance

project and no evidence of a dangerous condition existed. Accordingly, we find defendant has failed to show any error based on PM-104.6.1(5).

¶ 52 B. Structural Violations

¶ 53 Defendant next argues the circuit court erred by finding the City proved by a preponderance of the evidence violations of the City Property Maintenance Code. See Ill. S. Ct. R. 578 (eff. Dec. 7, 2011) (stating "[t]he prosecuting entity must prove the ordinance violation by a preponderance of the evidence; meaning it is more likely true than not that the violation occurred"). The City disagrees. This court will not disturb a circuit court's finding a building is in violation of a city code unless the finding is contrary to the manifest weight of the evidence. *City of McHenry v. Suvada*, 396 Ill. App. 3d 971, 980, 920 N.E.2d 1173, 1182 (2009). "A finding is against the manifest weight of the evidence if the opposite conclusion is clearly apparent." *City of McHenry*, 396 Ill. App. 3d at 980, 920 N.E.2d at 1182.

¶ 54 As part of its argument, defendant first contends the circuit court erred by giving weight to Wolf's opinions regarding the risk of the balconies' collapse because Wolf was not a licensed structural engineer. However, as the City notes, defendant did not object to the circuit court qualifying Wolf as an expert in, *inter alia*, structural engineering. A party's failure to object to an expert's qualifications results in the forfeiture of the issue on appeal. *In re Marriage of Blinderman*, 283 Ill. App. 3d 26, 31, 669 N.E.2d 687, 691 (1996). Without citation to authority, defendant argues the circuit court had a duty to give no weight to Wolf's testimony once it became aware he testified in violation of multiple Illinois statutes and beyond the scope of his license. A failure to cite relevant authority violates Illinois Supreme Court Rule 341(h)(7) (eff. Jan. 1, 2016), and the argument can be rejected solely for that reason. *Kic v. Bianucci*, 2011 IL App (1st) 100622, ¶ 23, 962 N.E.2d 1071. Additionally, in violation of Rule 341(h)(7),

defendant fails to cite the page in the common law record showing where the circuit court gave weight to Wolf's opinions on the risk of the balconies collapsing. Accordingly, we find defendant has forfeited this argument.

¶ 55 Defendant next addresses the specific code violations. Here, the circuit court found each of the three buildings violated sections 304.1, 304.1.1(2), 304.1.1(6), 304.1.1(12), and 304.6 of International Property Maintenance Code of 2009 and PM-304.10 of the City Property Maintenance Code. The court only imposed one fine per day per building. Thus, this court only needs to find the City's evidence was sufficient as to one of the code violations.

¶ 56 PM-304.10 of the City Property Maintenance Code provides, in pertinent part, the following: "every stair, porch, fire escape, balcony, and all appurtenances attached thereto shall be so constructed as to be safe to use and capable of supporting the anticipated loads and shall be maintained in sound condition and good repair." In this case, Wolf's June 2012 report found the second-floor walkway's exterior steel channel had "experienced significant corrosion with some section loss." The walkways also had some deteriorated concrete. Pictures depicted the aforementioned observations. Wolf was concerned about portions or sections of concrete on the upper-level balconies falling and possibly hitting a person. Schneider testified he observed the bricks were cracking at the walkway and some of the bricks had fallen out at the connection between the building and the walkways. He further testified the walkways were cracked at the building and pulling away. Defendant's own witness, Lozar, testified the balconies were of concern because they had been pushed out against the vertical columns by water intrusion into the building. One or two of the vertical columns for each building were visibly bent. Lozar testified the balcony had sloped a bit. He explained, "you could see that something needed to be done." The witnesses for both parties then testified the issues with the balconies had become

more severe in February 2013. Wolf opined the balconies needed to be shored or the buildings evacuated to prevent death or injury from a collapsing upper-level walkway. When Kapolnek visited the site in February or March 2013, the buildings had a "fairly obvious" problem with the second-floor concrete walkways as they were pulling away from the building. It was clear to him the walkways needed to be removed and replaced. Kapolnek further testified that, once the walkways were removed, he observed "what I thought was happening was happening," the walkways had been pulling away from the buildings. He believed it was due to some deteriorating connections in the wall system. On June 25, 2014, Kapolnek sent an e-mail to Negrau, Carter, and Bradfield about issues with the design of the walkways, which showed the walkways had yet to be reinstalled. Accordingly, we find the circuit court's conclusion the City proved by a preponderance of the evidence the buildings' balconies were not in sound condition and good repair from June 15, 2012, until June 25, 2014, was not against the manifest weight of the evidence.

¶ 57 C. Fines

¶ 58 Defendant argues the circuit court (1) should not have ordered any fines because defendant was taking significant steps to repair the properties, (2) erroneously found it had to impose a fine for each day the buildings were in violation of the code, and (3) had no authority to impose a fine greater than what was requested by the City. Generally, we review the circuit court's imposition of a fine for an abuse of discretion. *Village of Barrington Hills v. Life Changers International Church*, 354 Ill. App. 3d 415, 420, 820 N.E.2d 1068, 1072 (2004). "Imposition of a fine constitutes an abuse of discretion '[w]here cooperation is shown, compliance has come about, and imposition of a fine would not aid enforcement.' " *Village of Barrington Hills*, 354 Ill. App. 3d at 420, 820 N.E.2d at 1072 (quoting *Village of Glenview v.*

Ramaker, 282 Ill. App. 3d 368, 372, 668 N.E.2d 106, 109 (1996)). Moreover, to the extent the resolution of this issue involves the interpretation of a city ordinance, our review is *de novo*. *Hawthorne v. Village of Olympia Fields*, 204 Ill. 2d 243, 255, 790 N.E.2d 832, 840 (2003).

¶ 59 "Municipal ordinances are interpreted under the rules governing statutory interpretation." *DTCT, Inc. v. City of Chicago Department of Revenue*, 407 Ill. App. 3d 945, 949, 944 N.E.2d 449, 453 (2011). In interpreting ordinances, the court's primary objective is to ascertain and give effect to the municipality's intent. See *Murphy-Hylton v. Lieberman Management Services, Inc.*, 2016 IL 120394, ¶ 25 (discussing statutory interpretation). The plain language of the ordinance best indicates the municipality's intent. *Pikovsky v. 8440-8460 North Skokie Boulevard Condominium Ass'n, Inc*., 2011 IL App (1st) 103742, ¶ 17, 964 N.E.2d 124. If the language is clear and unambiguous, the court does not resort to extrinsic aids of statutory construction. *Pikovsky*, 2011 IL App (1st) 103742, ¶ 17, 964 N.E.2d 124.

¶ 60 In this case, after finding defendant was responsible for the code violations, the circuit court found the City Property Maintenance Code required the imposition of fines. The court stated, "[T]he Code provision is clear that each day the building is in violation of these various aspects of the Property Maintenance Codes is a separate violation, and a fine exists as to a separate violation. That relates to the fine structure that the court is going to impose, because there will be fines." However, PM-106.4.3(b) of the City Property Maintenance Code provides the following:

> "Penalties. Upon conviction, the defendant shall be subject to a fine between Two Hundred Dollars ($200) and Seven Hundred Fifty Dollars ($750). Each day of noncompliance *may* constitute a separate and continuing violation. The City Attorney shall consider such factors as the defendant's record of Code violations,

> the number of repeat offenses, the severity of the violations, and the defendant's level of cooperation with the City in determining what fine is appropriate to seek." (Emphasis added.)

"May" is a permissive term and not a mandatory one. *Turczak v. First American Bank*, 2013 IL App (1st) 121964, ¶ 35, 997 N.E.2d 996. Thus, the circuit court had the discretion to find or not find each day of noncompliance constituted a separate violation. While the fine per violation must be between $200 and $750 dollars (see Ill. S. Ct. R. 579 (eff. Dec. 7, 2011) (providing "any fine imposed shall not be less than the 'minimum fine' authorized by ordinance"), every day does not have to constitute a violation of the code. Since the circuit court was unaware of its ability to exercise discretion in determining what days constituted a violation for the purposes of imposing fines, it failed to exercise discretion.

¶ 61 Additionally, we emphasize the last sentence of PM-106.4.3(b), which lists factors the City shall consider in determining what amount of fine is appropriate to request. Its language, as well as the language in PM-106.4.3(a), indicates the importance of the City's recommendation in forming a fine. The second amended complaint demonstrates the City clearly considered defendant's actions before May 21, 2014, warranted significantly less of a fine than its actions afterward. Defendant presented evidence of cooperation and progress in making the repairs. While the City requested a daily fine amount inconsistent with the ordinance, its total amount of fines requested for each building from June 1, 2012, to May 21, 2014, was significantly less, than the fine imposed by the circuit court. On remand, the court can comply with the ordinance's fine range and impose a fine consistent with the City's prayer for relief by imposing a fine on a limited number of days. For example, a fine of $200 per day for 54 days would result in a total fine of $10,800.

¶ 62 Accordingly, we reverse the circuit court's fine and remand for the court to reconsider its imposition of the fine in light of our order.

¶ 63 D. Surcharge

¶ 64 Last, defendant challenges the circuit court clerk's imposition of $118,425 criminal surcharge assessment under section 5-9-1(c) of the Unified Code of Corrections (730 ILCS 5/5-9-1(c) (West 2012)). This court has held the criminal surcharge assessment is a fine. *People v. Smith*, 2014 IL App (4th) 121118, ¶ 73, 18 N.E.3d 912. "Although circuit clerks can have statutory authority to impose a fee, they lack authority to impose a fine, because the imposition of a fine is exclusively a judicial act." (Emphases omitted.) *Smith*, 2014 IL App (4th) 121118, ¶ 18, 18 N.E.3d 912. Thus, "any fines imposed by the circuit clerk are void from their inception." *People v. Larue*, 2014 IL App (4th) 120595, ¶ 56, 10 N.E.3d 959. Accordingly, we vacate the void $118,425 criminal surcharge assessment.

¶ 65 Additionally, for the purposes of remand, we note section 5-9-1(c) is inapplicable to an ordinance violation relating to the condition of a building. The first sentence of the section imposes a surcharge to every fine imposed in a criminal or traffic offense. 730 ILCS 5/5-9-1(c) (West 2012). The second sentence further imposes a surcharge to every fine imposed upon a guilty plea, stipulation of facts, or findings of guilt, resulting in a judgment of conviction or order of supervision "in criminal, traffic, local ordinance, county ordinance, and conservation cases." 730 ILCS 5/5-9-1(c) (West 2012). While the statute does discuss local ordinances, we find, based on the context in which it is used, it must be a criminal, traffic, or similar ordinance for the surcharge to apply.

¶ 66 III. CONCLUSION

¶ 67 For the reasons stated, we affirm in part, reverse in part, and vacate in part the

Champaign County circuit court's judgment and remand the cause with directions.

¶ 68 Affirmed in part, reversed in part, and vacated in part; cause remanded with directions.