

IN THE COURT OF APPEALS OF OHIO  
SIXTH APPELLATE DISTRICT  
LUCAS COUNTY

City of Toledo

Court of Appeals No. L-12-1250

Appellee

Trial Court No. CRB-12-05334

v.

Home Solutions of Maumee Valley, Inc.

**DECISION AND JUDGMENT**

Appellant

Decided: June 7, 2013

\* \* \* \* \*

Robert S. Salem, for appellant.

\* \* \* \* \*

**OSOWIK, J.**

{¶ 1} This is an appeal from a judgment of the Toledo Municipal Court that imposed criminal sanctions on appellant after a no contest plea to a violation of Toledo Municipal Code (“T.M.C.”) 1305.01(a)(1). For the following reasons, the judgment of the trial court is reversed and remanded.

{¶ 2} On March 27, 2012, the city of Toledo filed a complaint against Home Solutions of Maumee Valley, Inc. (“Home Solutions”), charging the business with commencing construction work on a home without first obtaining a permit, in violation of T.M.C. 1305.01(A)(1). After “Home Solutions of Maumee Valley, Inc.” in the caption of the complaint, “c/o Michael Phillips” was added. Phillips, president and sole shareholder of Home Solutions, appeared at the arraignment and entered a plea of not guilty on behalf of the corporation.

{¶ 3} The case was set for trial on July 20, 2012, and on that date Phillips withdrew Home Solutions’ prior plea and entered a plea of no contest. The trial court found Home Solutions guilty of the charge. At the sentencing hearing, Phillips was ordered to pay \$100 in restitution and court costs. The trial court also imposed a suspended jail sentence of 180 days and placed Phillips on probation for six months.

{¶ 4} Appellant sets forth the following as his sole assignment of error:

The trial court abused its discretion by imposing criminal sanctions on Michael Phillips, the principal of a closely-held corporation, when only the corporation was found to be in violation of a municipal ordinance.

{¶ 5} Phillips asserts that the language on the complaint identifying “Home Solutions of Maumee Valley, Inc.” with “c/o Michael Phillips” handwritten on the same line is insufficient to name Phillips as a defendant. He further notes that the address line on the complaint lists the former address of the offices of Home Solutions and, on the line for “SSN,” the complaint lists the corporate charter number of Home Solutions, not

Phillips' social security number. Phillips asserts that he did not realize that he could be subject to jail time or community control because there was nothing in the complaint to indicate that he was being charged personally with violating T.M.C. 1305.01(a)(1).

{¶ 6} Upon review of the trial court's record, it is clear that the complaint and summons designated Home Solutions of Maumee Valley, Inc. as the accused. Appellant Michael Phillips was not charged in the complaint and was never formally charged with any violation of the Toledo Municipal Code. His name appeared on the complaint only as the proper person upon whom service on the corporation could be made. The city of Toledo, of course, could have prosecuted both Home Solutions and Michael Phillips. However, the law prohibits the city from prosecuting Phillips without first formally charging him. The trial court was without power to convict and sentence Phillips because he had never been accused. "A person may not be punished for a crime without a formal and sufficient accusation even if he voluntarily submits to the jurisdiction of the court." *Albrecht v. United States*, 273 U.S. 1, 8, 47 S.Ct. 250, 71 L.Ed. 505 (1927).

{¶ 7} Therefore, because appellant Michael Phillips was not named as a defendant, he was not formally accused, and any subsequent conviction or sentence entered against him is void. We note further that the fact Phillips entered a plea of no contest is not dispositive of this issue, for a trial court is not required to accept a no contest plea. *See* Crim.R. 12(G); *Cleveland v. Technisort, Inc.*, 20 Ohio App.3d 139, 485 N.E.2d 294 (8th Dist.1985). Based on the foregoing, we find that the conviction and the sentence entered

against Michael Phillips in this matter are void. Appellant's sole assignment of error is well-taken.

{¶ 8} On consideration whereof, the judgment of the Toledo Municipal Court is reversed and remanded for further proceedings consistent with this decision. Costs of this appeal are assessed to appellee city of Toledo pursuant to App.R. 24.

Judgment reversed.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. *See also* 6th Dist.Loc.App.R. 4.

Mark L. Pietrykowski, J.

Thomas J. Osowik, J.

James D. Jensen, J.

CONCUR.

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JUDGE

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JUDGE

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JUDGE

<p>This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at: <a href="http://www.sconet.state.oh.us/rod/newpdf/?source=6">http://www.sconet.state.oh.us/rod/newpdf/?source=6</a>.</p>
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