

[Cite as *Sunpace Property, L.L.C. v. Cleveland*, 2015-Ohio-770.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 101821

SUNPACE PROPERTY L.L.C., ET AL.

PLAINTIFFS-APPELLANTS

vs.

CITY OF CLEVELAND, ET. AL.

DEFENDANTS-APPELLEES

JUDGMENT:
REVERSED AND REMANDED

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CV-14-827375

BEFORE: Jones, J., Celebrezze, A.J., and Boyle, J.

RELEASED AND JOURNALIZED: March 5, 2015

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LARRY A. JONES, SR., J.:

{¶1} Plaintiff-appellant, Sunpace Property, L.L.C., appeals the judgment of the trial court granting defendant-appellee, the city of Cleveland's, motion to dismiss. We reverse and remand.

I. Procedural History and Facts

{¶2} On May 27, 2014, Sunpace filed this administrative appeal in the trial court. The city filed a motion to dismiss on the ground that the appeal was untimely. Sunpace filed a response in opposition and requested an oral hearing. The trial court granted the city's motion to dismiss and denied Sunpace's request for an oral hearing.

{¶3} The record demonstrates the following facts and sequence of events. Sunpace owns the property located at 17877 St. Clair Avenue in Cleveland. On January 16, 2014, the city issued a notice of violation relating to the property's fire detection and protection systems. On February 10, 2014, Sunpace filed an appeal with the city's Board of Building Standards and Building Appeals.

{¶4} On April 9, 2014, a hearing was held before the Board. At the conclusion of the hearing, the Board, through a resolution by motion, upheld the violation. The April 9 meeting was published in the city's record on April 16, 2014.

{¶5} On April 23, 2014, the Board adopted its resolution, and on April 30, 2014, the Board's adoption of the resolution was published in the city's record. Sunpace filed its appeal in common pleas court on May 27, 2014.

II. Assignments of Error

I. The Trial Court erred as a matter of law when it granted Appellees' Motion to Dismiss based on the failure of Appellants to timely file their Notice of Appeal with the Cuyahoga County Common Pleas Court within the time constraints of R.C. 2505.07 and/or Ohio law.

II. The Trial Court erred when it granted Appellees' Motion to Dismiss as the

Motion to Dismiss was not supported by the manifest weight of the evidence and/or sufficiency of the evidence proffered.

III. The Trial Court by granting Appellees' Motion to Dismiss denied Appellants their right to due process as guaranteed by the Fourteenth Amendment to the United States Constitution and the law of the State of Ohio.

III. Law and Analysis

{¶6} Sunpace's three assignments of error all relate to whether the trial court erred by dismissing its appeal as untimely. Sunpace contends that its 30- day time to appeal began running on April 30, 2014, when the adopted resolution was published in the city record. The city, on the other hand, contends that the appeal time began running on either April 16, 2014, when the report of the meeting was published in the city record, or April 23, 2014, when the resolution was formally approved and adopted.

{¶7} R.C. 2505.07 governs the time for perfecting an appeal and states:

After the entry of a final order of an administrative officer, agency, board, department, tribunal, commission, or other instrumentality, the period of time within which the appeal shall be perfected, unless otherwise provided by law, is thirty days.

{¶8} Both Sunpace and the city cite *Charles Pollack & Sons, Inc. v. Cleveland*, 60 Ohio St.2d 97, 397 N.E.2d 1193 (1979), in support of their positions. In *Charles Pollack*, the city ordered Charles Pollack to install a standpipe and automatic sprinkler equipment under the city's codified ordinances. Charles Pollack appealed the order to the Board of Building Standards and Building Appeals.

{¶9} On March 30, 1970, the Board held a hearing, at which the parties were present. At the conclusion of the hearing, the Board sustained the city's order and adopted a resolution relative to its decision. On August 20, 1970, the Board published the March 30 resolution. The Board sent a letter, dated August 31, 1970, with a copy of the resolution to Charles Pollack's

lessor. The letter was returned to the Board with the notation “addressee unknown.” The Board did not send a letter to Charles Pollack.

{¶10} On July 21, 1971, Charles Pollack received a notice of violation from the city. The notice ordered Charles Pollack to comply with the March 30, 1970 resolution. Charles Pollack appealed, and on September 21, 1971 a hearing was had. At the hearing, Charles Pollack attempted to introduce evidence that the ordinance upon which the March 30, 1970 resolution was based was unreasonable. The Board adopted a supplemental resolution and denied Charles Pollack’s appeal, finding that the determination of the issue was embodied in the March 30, 1970 resolution.

{¶11} On appeal to the Ohio Supreme Court, the issue was whether the March 30, 1970 resolution was valid under the city’s codified ordinances. Charles Pollack contended that it was not because the Board did not send him a certified copy of the resolution, as the company contended it was required to do under the city’s ordinances.

{¶12} The Ohio Supreme Court disagreed with Charles Pollack and held that the city’s ordinances relating to this issue provided that sending a certified copy of the resolution was discretionary, rather than mandatory. On point with this case, the court went on to state that the Board “constructively notifies parties of its decisions by publishing its resolutions in the City Record, not through mailing certified copies of these resolutions to parties.” *Charles Pollack* at 99. The court further stated that the “periods within which a party must either comply or seek judicial review are keyed to this date of publication.” *Id.*

{¶13} *Charles Pollack*, therefore, supports Sunpace’s position that the relevant date for the purpose of appeal was the date the city published its decision in the city record. Then the issue becomes, which decision controls: the April 16, 2014 publishing of the report of the hearing, or

the April 30, 2014 publishing of the adopted resolution? We agree with Sunpace that the controlling date here is April 30, 2014, when the adopted resolution was published in the city record. To hold that the time for appeal started to run as of April 16, 2014, when the report of the hearing was published, would not make sense as it predated the formal adoption of the resolution. Further, because *Charles Pollack* instructs that the “periods within which a party must either comply or seek judicial review are keyed to this date of publication,” we are also not persuaded by the city’s contention that the April 23, 2014 date, when the resolution was adopted, could have also been a trigger date for appeal purposes.

{¶14} In light of the above, Sunpace’s assignments of error are sustained. The judgment of the trial court is, therefore, reversed, and the case is remanded. It is ordered that appellants recover of appellees costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the Cuyahoga County Court of Common Pleas to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

LARRY A. JONES, SR., JUDGE

FRANK D. CELEBREZZE, JR., A.J., and
MARY J. BOYLE, J., CONCUR