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DISTRICT IV

March 4, 2020

To:

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Ty A. Bollerud
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You are hereby notified that the Court has entered the following opinion and order:

2018AP1429 City of Janesville v. Ty A. Bollerud (L.C. # 2018CV207)

Before Fitzpatrick, P.J., Graham and Nashold, JJ.

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

Ty A. Bollerud appeals an order granting summary judgment in favor of the City of Janesville, authorizing the City to raze a building owned by Bollerud. Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2017-18).[1] For the reasons that follow, we affirm.

[1] All references to the Wisconsin Statutes are to the 2017-18 version unless otherwise noted.

The following facts are undisputed. Bollerud owns a residential building on property in Janesville. In July 2017, the City personally served on Bollerud an order, pursuant to WIS. STAT. § 66.0413(1)(b)1.,[2] requiring him to repair or raze the building. The raze order described the necessary repairs and gave Bollerud through July 31, 2017, to submit a repair plan and proof of financial means in order to obtain a compliance agreement with the City. The order notified Bollerud that, if he chose not to make the repairs, he was required to raze the building within thirty days.

In an August 4, 2017 letter, the City confirmed that Bollerud's option to repair the building had expired due to his failure to submit the information required to enter into a compliance agreement. The letter also extended Bollerud's time to raze the building through September 5, 2017, and advised that the failure to raze the building would result in the City proceeding to demolition.

On February 5, 2018, the City posted a placard on Bollerud's building containing notice of unfitness for occupancy pursuant to WIS. STAT. § 66.0413(1). The City also posted an order requiring Bollerud and other occupant(s) to vacate the premises by February 19, 2018, and to remove all fixtures and personal property within thirty days. Bollerud refused to vacate the

[2] In pertinent part, WIS. STAT. § 66.0413(1)(b)1., provides:

> (b) *Raze order*. The governing body, building inspector or other designated officer of a municipality may:
>
> 1. If a building is old, dilapidated or out of repair and consequently dangerous, unsafe, unsanitary or otherwise unfit for human habitation and unreasonable to repair, order the owner of the building to raze the building or, if the building can be made safe by reasonable repairs, order the owner to either make the building safe and sanitary or to raze the building, at the owner's option.

premises. The City filed an action in the circuit court pursuant to WIS. STAT. § 66.0413(1)(g), seeking orders to facilitate the orderly removal of all occupants along with demolition of the building. Bollerud filed an answer asserting the following as affirmative defenses:

> 1. The Plaintiffs Complaint is barred, in whole or in part, by the doctrines of laches, estoppel, waiver, duress, and unclean hands.
>
> ….
>
> 3. Failure to perform (Defendant is excused from performing the terms of the Order to Correct and Raze order due to Plaintiffs failure to issue a permit.)
>
> 4. Prevention and Frustration (Defendant was ready, willing and able to perform the terms of the Order to Correct and Raze Order but Plaintiff prevented and frustrated such performance.)

The City moved for summary judgment alleging that Bollerud could not challenge the reasonableness of the raze order because he did not apply to the circuit court for a restraining order pursuant to WIS. STAT. § 66.0413(1)(h), and that his waiver, estoppel and laches defenses were without merit as a matter of law. Bollerud submitted a series of papers in response to the City's motion, and the City filed a reply brief. The circuit court granted summary judgment in the City's favor.[3] Bollerud appeals.

This court reviews summary judgment decisions de novo, applying the same methodology and legal standard employed by the circuit court. ***Frost v. Whitbeck***, 2001 WI App 289, ¶6, 249 Wis. 2d 206, 638 N.W.2d 325. We examine the parties' submissions to determine whether the movant has made a prima facie case for judgment and, if so, whether there are any

[3] The City also filed a motion to strike papers submitted by Bollerud after the deadline set by the circuit court. The court granted the motion and struck papers submitted after May 31, 2018.

material facts in dispute that would entitle the opposing party to trial. ***Id.***; *see also* WIS. STAT. § 802.08(2).

Here, the City made a prima facie showing that (1) it issued and properly served a raze order for the building on Bollerud's property; (2) Bollerud failed to repair the property or enter into a compliance agreement with the City as set forth in the raze order; (3) Bollerud failed to raze the building; (4) Bollerud failed to apply for a restraining order challenging the raze order within the time required by statute; (5) the City posted an order to vacate; and (6) Bollerud and other persons continue to occupy the building in violation of the orders. Bollerud does not dispute these material facts, which together set forth a prima facie case for the relief requested under WIS. STAT. § 66.0413(1)(g).

Additionally, Bollerud's affirmative defenses are insufficient to defeat summary judgment. Bollerud is barred from challenging the reasonableness of the raze order (including its repair provisions) because he failed to apply for a restraining order within thirty days after service of the raze order as required by WIS. STAT. § 66.0413(1)(h) (a person affected by a raze order may, within thirty days, seek a restraining order in the circuit court). This is the exclusive means by which an owner may contest the reasonableness of a raze order. *See* ***Matlin v. City of Sheboygan***, 2001 WI App 179, ¶7, 247 Wis. 2d 270, 634 N.W.2d 115. The failure to commence a timely action in the circuit court bars the owner's right to a judicial hearing challenging the reasonableness of the raze order. *See* ***Gehr v. City of Sheboygan***, 81 Wis. 2d 117, 122-25, 260 N.W.2d 30 (1977) (interpreting the predecessor statute).

We agree with the City that Bollerud's affirmative defenses of "duress," "unclean hands," "frustration," "prevention," and "excuse" are collateral attacks on the reasonableness of the

City's raze or repair order, including the reasonableness of requiring a repair plan, proof of financial responsibility, a compliance agreement, and proper permits. These claims were required to be, but were not, made by application for a restraining order. Therefore, there is no issue for trial regarding these defenses, and the City is entitled to summary judgment dismissing them.

The City separately addresses Bollerud's affirmative defenses alleging doctrines of laches, estoppel, and waiver, presumably because some of these claims might relate to conduct by the City that occurred after the thirty-day deadline for Bollerud to apply for a WIS. STAT. § 66.0413(1)(h) restraining order. Bollerud's arguments are wholly undeveloped,[4] and while the City's brief attempts to make some sense of them, we decline to do so. *See* ***State v. Gulrud***, 140 Wis. 2d 721, 730, 412 N.W.2d 139 (Ct. App. 1987) (an appellate court will not abandon its neutrality by making an appellant's arguments for him or her).

Additionally, Bollerud seems to suggest that the underlying proceedings resulted in unspecified violations of his constitutional rights and constituted "eviction without just compensation."[5] To the extent that any of these claims might not be barred by Bollerud's failure

[4] Bollerud's brief contains no record citations and primarily consists of articles and other documents that have no apparent relevance to the issues on appeal. Any arguments that we do not address are either patently meritless or so inadequately developed that they do not warrant our attention. *See* ***Libertarian Party of Wisconsin v. State***, 199 Wis. 2d 790, 801, 546 N.W.2d 424 (1996) (an appellate court need not discuss arguments that lack "sufficient merit to warrant individual attention").

[5] To the extent Bollerud is attempting to assert that the City is unconstitutionally taking his property without just compensation, he is wrong. *See* ***Devines v. Maier,*** 728 F.2d 876, 886 (7th Cir. 1984) (because the uninhabitability of the property occurred through no fault of the state, but "rather through the inattention of the landlord and/or tenant[,]" the City's order to vacate was in furtherance of its duty to the public and "cannot legally or logically be construed to constitute a taking within the meaning of the Fifth Amendment.").

to apply for a restraining order, we will not consider them because they are conclusory and unsupported by adequate factual and legal citations. *See* ***Dieck v. Unified Sch. Dist. Of Antigo***, 157 Wis. 2d 134, 148 n.9, 458 N.W.2d 565 (Ct.App.1990) (unsupported factual assertions); ***State v. Pettit***, 171 Wis. 2d 627, 646-47, 492 N.W.2d 633 (Ct. App. 1992) (undeveloped legal arguments).

Finally, Bollerud's submissions in opposition to the City's motion for summary judgment are irrelevant to the propriety of the orders to vacate and raze the building. We agree with the circuit court that any disputed issues of fact "are not material as to whether or not the City is entitled to judgment."

Bollerud also moves for reconsideration of our February 12, 2020 order. The motion does not cause us to change that order.

Upon the foregoing reasons,

IT IS ORDERED that the motion to reconsider our February 12, 2020 order is denied.

IT IS FURTHER ORDERED that the order of the circuit court is summarily affirmed pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Sheila T. Reiff
Clerk of Court of Appeals