

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

MAGDALEN BRADEN, et al. : CIVIL ACTION
:
v. :
:
:
CITY OF PHILADELPHIA, et al. : NO. 98-CV-2718

MEMORANDUM AND ORDER

J. M. KELLY, J.

MARCH 9, 1999

Presently before the Court is Plaintiffs' Motion for a Protective Order and Defendants' response thereto. In their motion, Plaintiffs seek to restrict the scope of discovery Defendants presently pursue, but the areas Plaintiffs would like to protect are too large and proposed restrictions too dramatic for the Court to grant the motion. Nevertheless, the Court does agree with Plaintiffs that Defendants' discovery requests are so broad as to often inquire into the irrelevant, and the Court therefore will require Plaintiffs to respond only to more focused interrogatories and requests for production of documents.

In June 1996 Plaintiffs received several violation citations from the City of Philadelphia's Department of Licenses and Inspections ("L & I"). A few months earlier, Plaintiffs declined to allow an L & I inspector to inspect their homes because they did not believe the work they were doing on their homes required permits. L & I apparently disagreed, because it issued "Stop-Work" orders and then sued Plaintiffs to obtain a civil search order. The Court of Common Pleas of Philadelphia County granted L & I's request for a search order, which Pennsylvania's Commonwealth Court refused to stay. L & I inspectors, accompanied by three sheriff deputies and a police officer, then searched Plaintiffs' homes and found numerous violations. Plaintiffs appealed these violations to the L & I Board of Review, which sustained their appeal, provided a

licensed engineer submitted a report stating the homes were structurally sound and needed no repairs. If Plaintiffs did not file such a report, the Board of Review would affirm the violations. Additionally, the Board of Review affirmed other violations, and recognized that another violation was withdrawn. The City's records, however, reflect none of this; all violations presently are listed as outstanding.

Plaintiffs allege that the City's search violated their rights under the U.S. and Pennsylvania Constitutions, abused the civil process, and intentionally inflicted emotional distress as retribution for Plaintiffs' assertion of their constitutional rights. Defendants counter these allegations by claiming they issued the violations in good faith. Among the issues presented in this case, therefore, are the condition of Plaintiffs' homes at the time of the inspections and Defendants' motivations for conducting the searches and issuing the violations.

Plaintiffs believe the condition of their homes is not at issue because, they argue, the Board of Review dismissed all but one violation and this Court should preclude relitigation of those issues. A court may bar relitigation of an issue only when: (1) there is an identity of issues presented in the present and earlier proceedings; (2) the issue was actually litigated; (3) the issue was determined by a valid and final judgment; and (4) the determination of the issue was essential to the prior judgment.¹ In re Docteroff, 133 F.3d 210, 214 (3d Cir. 1997). With respect to the third requirement, a case's resolution is sufficiently firm to warrant claim preclusion only when the parties were fully heard, the court filed a reasoned opinion, and the decision could have been or was appealed. In re Brown, 951 F.2d 564, 568 (3d Cir. 1991). Finally, a reasoned

¹Although it is not certain, it seems likely that the Board of Review, as part of a municipal agency, potentially can render a decision a court can consider conclusive. See Crossroads Cogeneration Corp. v. Orange & Rockland Utils., Inc., 159 F.3d 129, 135 (3d Cir. 1998).

opinion is one that, at a minimum, demonstrates an appreciation of the relevant facts and a familiarity with the applicable law. See id. at 569.

The Court finds issue preclusion is inappropriate here primarily because there was no final judgment: the Board of Review's decision was not a reasoned one, grounded in material fact and law.² The decision plainly stated the Board would sustain the homeowners' appeal only in the event that within two weeks a licensed engineer filed a report stating no repairs were necessary and the homes were structurally sound. If the Plaintiffs could not produce an expert to issue these reports, if the reports were filed in more than two weeks, or if the reports were not sealed and stamped, the Board of Review would affirm the violations. The Board, then, found nothing. Rather, it abdicated its fact finding to an unknown engineer, to be chosen by the Plaintiffs, so long as Plaintiffs filed properly sealed and stamped reports within two weeks. The Board of Review's decision was far from a reasoned decision grounded in evidence and law, and it does not present a valid and final judgment from which the Court can preclude relitigation of, and discovery into, the violations L & I found.³

Although Defendants may conduct discovery into the condition of the homes, that discovery will be limited. Defendants have asked for photographs of the residences taken within

²Moreover, the Board of Review proceedings may be suspect, as the homeowners apparently either were not given the opportunity to cross-examine L & I's witnesses or were restricted in the scope of their cross-examination. (L & I Review Bd. Hr'g at 18-19.) The case, therefore, also may not be sufficiently firm because the parties were not adequately heard.

³Plaintiffs cite two cases in support of their claim that the Board of Review's decision was a final judgment, but both discuss finality only in the context of exhaustion of remedies, not issue preclusion. Sameric Corp. of Del., Inc. v. City of Phila., 142 F.3d 582, 596-98 (3d Cir. 1998); Midnight Sessions, Ltd. v. City of Phila., 945 F.2d 667, 686 (3d Cir. 1991). Accordingly, these cases do not compel a result other than the one the Court has reached.

the last five years and have asked about work done to the 1431 South 10th Street residence between January 30, 1996, and April 24, 1998. Both of these requests are far too expansive. As described above, what is relevant here, and what information these requests are designed to elicit, is the condition of the homes in June 1996. Photographs documenting the homes' condition prior to the inspection and information concerning work done to the homes after the inspection, possibly repairing the conditions the inspectors' cited, accordingly are relevant, but only to the extent those areas of investigation reasonably are related to the citations. To accomplish this reasonable relationship, the Court will order the following: Plaintiffs must produce photographs of the homes taken from June 1995 to June 1996, and must provide responses to interrogatories relating to work done at the 1431 South 10th Street residence from June 1996 to June 1997.

Plaintiffs have claimed discovery into these areas invades their privacy. The Court, however, does not find this objection availing as Plaintiffs have put the condition of their home in issue by claiming L & I issued the citations pretextually. Plaintiffs' objection to this discovery, therefore, is overruled.

An Order follows.

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ORDER

AND NOW, this 9th day of March, 1999, in consideration of Plaintiffs' Motion for a Protective Order (Document No. 18), and Defendants' response thereto, it is hereby **ORDERED**:

1. Plaintiffs' Motion for a Protective Order is **DENIED**;
2. Plaintiffs must produce any photographs in their possession depicting the interiors of their homes taken from June 1995 to June 1996 only; and
3. Plaintiffs must respond to interrogatories relating to work done at the 1431 South 10th Street residence only during the period from June 1996 to June 1997.

BY THE COURT:

JAMES McGIRR KELLY, J.