



once within a five year period. See ALLENTOWN, PA., PROPERTY REHABILITATION AND MAINTENANCE CODE, Art. 1759.06.

In the case *sub judice*, the Plaintiffs are the tenants of a non-owner occupied rental unit located at 246 East Maple Street which is in Allentown's Fourteenth Ward. In compliance with Article 1759.06, a letter was sent to the owners of Plaintiffs' residence giving a sixty-day notice of the inspection. On March 9, 2001, Defendant Robert Sandt ("Sandt"), who is a Code Enforcement Officer for the City of Allentown responsible for inspecting all rental properties located within the Fourteenth Ward of Allentown, arrived at Plaintiffs' residence in order to conduct the inspection. Plaintiffs refused to allow Sandt to inspect the unit without a search warrant. On March 13, 2001, Sandt procured a search warrant from the Magistrate and peacefully conducted the inspection of 246 East Maple Street along with another inspector and two uniformed police officers. Plaintiffs' only contention is that the search warrant obtained by Sandt was deficient on its face and, therefore, their Fourth Amendment rights were violated. For the following reasons, we find that Defendants have not violated the United States Constitution, and shall enter summary judgment in their favor on both counts of Plaintiffs' Complaint.

## **II. STANDARD**

Pursuant to Rule 56(c) of the Federal Rules of Civil Procedure, summary judgment is proper "if there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law." FED. R. CIV. P. 56(c). The moving party has the initial burden of informing the court of the basis for the motion and identifying those portions of the record that demonstrate the absence of a genuine issue of material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). An issue is genuine only if there is a sufficient evidentiary basis on

which a reasonable jury could find for the non-moving party. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249 (1986). A factual dispute is material only if it might affect the outcome of the suit under governing law. Id. at 248. To defeat summary judgment, the non-moving party cannot rest on the pleadings, but rather that party must go beyond the pleadings and present "specific facts showing that there is a genuine issue for trial." FED. R. CIV. P. 56(e). If the court, in viewing all reasonable inferences in favor of the non-moving party, determines that there is no genuine issue of material fact, then summary judgment is proper. Celotex, 477 U.S. at 322; Wisniewski v. Johns-Manville Corp., 812 F.2d 81, 83 (3d Cir. 1987).

### **III. DISCUSSION**

Based upon the information contained in the warrant, Plaintiffs contend that probable cause did not exist to issue the warrant and, therefore, challenge the sufficiency of the warrant which allowed Sandt to enter their residence. Defendants contend that the search warrant was proper and consistent with the tenets of the Fourth Amendment as it was attained for the purpose of an area inspection pursuant to Article 1759 of the City of Allentown's Property Rehabilitation Code, which was enacted in an effort to alleviate substandard housing and urban blight. (Defs.' Mem. of Law, 8).

The Supreme Court set forth the principles governing area code-enforcement inspections in Camera v. Municipal Court of the City and County of San Francisco. 387 U.S. 523 (1967). The Camera Court concluded that "in determining whether a particular inspection is reasonable- and thus in determining whether there is probable cause to issue a warrant for that inspection- the need for the inspection must be weighed in terms of these reasonable goals of code enforcement". Id. at 538. Therefore, "reasonableness [of the inspection] is the ultimate

standard.” Id. at 536.

A. Reasonableness of the Ordinance

Article 1759 of the Codified Ordinances of the City of Allentown, which addresses the licensing of residential rental units, was passed by certified voter initiative on May 18, 1999. The purpose of the ordinance, in addition to protecting and promoting the public health, safety and welfare of its citizens, is to establish rights and obligations of owners and occupants relating to residential rental units in Allentown and to encourage owners and occupants to maintain and improve the quality of rental housing within the community. ALLENTOWN, PA., PROPERTY REHABILITATION AND MAINTENANCE CODE, Art. 1759.01. Accordingly, the ordinance provides for a systemic inspection program, registration and licensing of residential rental units and penalties. Article 1759 was adopted based upon the City of Allentown’s following findings: (1) a general decline in the physical condition of residential rental units; (2) a greater incidence of problems with the maintenance and upkeep of residential properties which are not owner occupied as compared to those that are owner occupied; (3) a greater number of disturbances at residential rental units than all other properties combined; and (4) violations of the various codes are generally less severe at owner-occupied units as compared to residential units. Id. The inspections are to occur once within a five year period and a minimum of sixty days notice is given for all initial inspections. ALLENTOWN, PA., PROPERTY REHABILITATION AND MAINTENANCE CODE, Art., 1759.06.

The City of Allentown’s above-stated reasons for the need of the residential inspection program are consistent with purpose of such inspections as enunciated by the Court in Camera. In Camera, the Court noted the following factors in support of area code-enforcement

inspection programs: a long history of judicial and public acceptance; the public interest demands that all dangerous conditions be prevented or abated; and inspection programs involve a relatively limited invasion of the urban citizen's privacy since they are neither personal in nature nor aimed at the discovery of evidence of a crime. Camera at 537. For all the foregoing reasons, this Court finds that the residential rental inspection program set forth in Article 1759 is reasonable and thus the search of Plaintiffs' residence was a proper search within purview of the Fourth Amendment's prohibition against unreasonable searches and seizures. See also Smith v. Borough of Glenolden, No. 94-3819, 1994 WL 672618, (E.D. Pa. Nov. 30, 1994)(finding the municipal code requiring annual inspections of all private residential apartments reasonable and not a violation of the Fourth Amendment).

**B. Probable Cause To Issue a Warrant**

Probable cause in the gamut of an area inspection is based upon an appraisal of conditions in an area as a whole, not upon knowledge of conditions in each particular building. Camera at 536. The search warrant in this case was issued after the Plaintiffs refused to allow Sandt to conduct the area inspection. The search warrant identifies the area to be searched as "246 East Maple Street, single family dwelling, basement, 1st Floor, 2nd Floor and 3rd Floor" as well as identifies the type of search as an "inspection of interior premises according to the Residential Licensing Program 1759.06(A)." The warrant further states that, pursuant to 1759.06 (A), the city inspector must have full access to the rental unit and that probable cause is based upon the tenants' refusal to allow the inspector to conduct the inspection at the scheduled time.

Although Plaintiffs challenge the validity of the search warrant which allowed Sandt access to inspect the rental unit, Plaintiffs argument is flawed as it rests wholly on case law regarding probable cause in the criminal context. “Where considerations of health and safety are involved, the facts that would justify an inference of ‘probable cause’ to make an inspection are clearly different from those that would justify such an inference where a criminal investigation has been undertaken.” Camera at 538. Accordingly, “the test of probable cause required by the Fourth Amendment can take into account the nature of the search that is being sought.” Id. (internal citations omitted). As stated previously, probable cause in the context of an area inspection is based upon the reasonableness of the relevant ordinance. This Court already determined that Article 1759 is reasonable and thus there was probable cause to issue the warrant. Therefore, probable cause to issue the warrant for inspection of Plaintiffs’ residence existed and the search conducted at Plaintiffs’ residence was proper within the purview of the Fourth Amendment.

#### **IV. CONCLUSION**

Based upon the foregoing, probable cause existed for the issuance of the search warrant, and the search conducted at Plaintiffs’ residence was proper.

An appropriate Order follows.



