Filed 2/3/05 Hill v. City of Glendale CA2/2

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 977(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 977(b). This opinion has not been certified for publication or ordered published for purposes of rule 977.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

JOHN HILL, Plaintiff and Appellant, v. CITY OF GLENDALE, Defendant and Respondent; ANDREW JEFFREY MART, Real Party in Interest and Respondent.	B173383 (Los Angeles County Super. Ct. No. BS082249)

APPEAL from a judgment of the Superior Court of Los Angeles County. Dzintra Janavs, Judge. Affirmed.

Cox, Castle & Nicholson, Stanley W. Lamport, Beth R. Palmer, and James Repking for Plaintiff and Appellant.

Scott H. Howard, City Attorney and Steven E. Weitz, Assistant City Attorney for Defendant and Respondent.

Law Offices of Cassity & Sommers and C. Fred Cassity for Real Party in Interest and Respondent.

Appellant John Hill (Hill) claims that he adequately pleaded a petition for writ of mandate (Code Civ. Proc., § 1085) against respondents City of Glendale (the City) and real party in interest Andrew Jeffrey Mart (Mart). The trial court disagreed and sustained demurrers by the City and Mart without leave to amend. At issue was whether Mart's garage lost its nonconforming status[1] when he expanded it, and whether the garage must be brought into compliance with current zoning ordinances. The trial court correctly ruled that the garage did not lose its nonconforming status and that, as a consequence, the City did not have a ministerial duty to revoke the permit it issued for the garage. Having found no error, we affirm.

FACTS

Hill's third amended petition for writ of mandate and complaint for declaratory relief (the petition) alleged: Hill's prior neighbor, Mart, owned a property with a nonconforming garage that was only three and one-half feet from the street. Mart expanded the garage[2] without a building permit and failed to bring it into compliance with the City's 15 foot setback requirement. Over the next several years the City cited and prosecuted Mart. When Mart stated that he planned to sell the property, the City saw an opportunity to rid itself of its ongoing enforcement burden. The City issued an after-the-fact permit for the illegal expansion of the nonconforming garage. In April 2003, Mart sold his property to Robert Thomas.

Hill requested an order forcing the City to revoke the permit and enforce the setback requirement. In addition, he requested a declaration of the parties' rights and obligations under the City's municipal code.

---

[1] The garage was built before the City's present zoning scheme was enacted. As a preexisting structure, it was given an exemption from, inter alia, the requirement that it be set back 15 feet from the street. Under the City's municipal code, an exempt structure has "nonconforming status." A structure can lose its nonconforming status and becomes illegal if certain events transpire.

[2] According to Hill's opening brief, Mart expanded the rear of the garage. In other words, the garage is still three and one-half feet from the street.

The City and Mart successfully demurred, the matter was dismissed, and this timely appeal followed.

DISCUSSION

On appeal from a judgment of dismissal after a demurrer is sustained without leave to amend, we review the pleading from a blank slate to determine whether it alleges a cause of action under any possible legal theory. (*Cantu v. Resolution Trust Corp.* (1992) 4 Cal.App.4th 857, 879.)

The sole issue presented is the meaning of the City's municipal code. The parties each interpret the applicable ordinances differently. Hill contends that when a nonconforming structure is expanded, it loses its nonconforming status. The City takes the position that a nonconforming structure can be expanded up to 50 percent and remain legal. Finally, Mart argues that the municipal code is silent on the issue, which means that expansions are allowed.

Whether we are interpreting a municipal code or a state statute, we engage in the same analytical process. (See *Carson Harbor Village, Ltd. v. City of Carson Mobilehome Park Rental Review Bd.* (1999) 70 Cal.App.4th 281, 290.) When interpreting a statute, our task is to ascertain the intent of the legislative body so as to effectuate the purpose of the law. (*Dyna-Med, Inc. v. Fair Employment & Housing Com.* (1987) 43 Cal.3d 1379, 1386.) We must "look first to the words of the statute themselves, giving to the language its usual, ordinary import and according significance, if possible, to every word, phrase and sentence in pursuance of the legislative purpose. A construction making some words surplusage is to be avoided. The words of the statute must be construed in context, keeping in mind the statutory purpose, and statutes or statutory sections relating to the same subject must be harmonized, both internally and with each other, to the extent possible. [Citations.]" (*Id*. at pp. 1386-1387.)

The City's municipal code contains an article that is devoted to nonconforming structures. (Glendale Mun. Code, § 30.16.710 et seq.)[3] Pursuant to section 30.16.710, the purpose of the article on nonconforming uses and buildings "is to permit reasonable continuance of the operation of nonconforming . . . structures while providing for their gradual elimination if certain specified events occur." The provisions of the article apply to all structures "which are nonconforming at the time of adoption of this ordinance." (§ 30.16.720.)

The events that can cause a structure to lose its nonconforming status are set forth in section 30.16.730, subdivision (b).

Any nonconforming structure that is "destroyed or damaged by natural disaster, accident, or fire beyond . . . [50] percent of its replacement cost . . . loses its nonconforming status and any reconstruction must comply with provision of this title." (§ 30.16.730, subd. (b)(1).) If the damage is less than 50 percent of the replacement cost, the structure can be repaired. (*Ibid*.) In the absence of destruction or damage by natural disaster, accident or fire, the following rule pertains: "If more than 50 percent of the combined area of all the exterior walls and roof are replaced or voluntarily reconstructed, then the [structure] loses its nonconforming status and must comply with the current zoning code. . . . When an enlargement of floor area occurs, the . . . structure must comply with the provisions of chapter 30.124 of this title as it relates to parking and loading areas." (§ 30.16.730, subd. (b)(2)(b).)

These ordinances do not establish whether a nonconforming structure can be expanded, which Hill admits. He contends, however, that his position is vindicated by the general zoning provisions.

"All new construction, building improvements, alterations or enlargements undertaken after April 23, 1986, . . . shall conform with the requirements, character, and conditions as to use, height, and area for each of the several zones. . . . No person shall

---

[3] All further references to zoning provisions are to the Glendale Municipal Code unless otherwise indicated.

. . . alter [or] enlarge . . . any building, structure [or] improvement . . . in any zone described . . . contrary to the provisions herein." (§ 30.12.010.) As defined, "addition" means "a new structure on a site with an existing structure, or a new component to an existing structure" (§ 30.08.035), "alteration" "means any change or modification in the construction of a building or structure other than for repairs" (§ 30.08.050), and "enlarged" "means an increase in floor area or height of a building or structure" (§ 30.08.300). According to Hill, these ordinances establish that any time a nonconforming structure is added to, altered or enlarged, the entire structure must be brought into compliance with the zoning scheme. We examine this argument.

The zoning scheme is silent as to whether a nonconforming structure can be added to, altered or enlarged. Section 30.16.730, subdivision (b)(2)(b), however, contemplates the possibility of "an enlargement of floor area" in a nonconforming structure.[4] More importantly, section 30.16.710 establishes that nonconforming structures shall be eliminated when specified events occur. Additions, alterations or enlargements of nonconforming structures are not identified as events which cause a structure to lose its nonconforming status. Reading sections 30.16.710 and 30.16.730, subdivision (b) together, we glean that their purpose is to allow nonconforming structures to continue unless they are destroyed or replaced to a specified degree. Thus, expansion does not per se change a property's status.[5]

Hill points out that section 30.20.020 provides that accessory structures shall conform to the development standards of a zone, and that a garage is an accessory structure pursuant to section 30.28.040, subdivision (f). This leads Hill to posit that

---

[4] Hill points out in his reply brief that floor space could be added without enlarging a structure. For example, a loft or attic could be installed in a nonconforming structure. By the same token, however, section 30.16.730, subdivision (b)(2)(b) is not limited to such a scenario.

[5] We express no opinion as to the legal effect of an addition that creates a violation that did not previously exist, i.e., when it is the addition itself that encroaches upon a height or setback restriction.

section 30.20.020 requires the entirety of a structure to conform to the City's development standards, not just part of a structure. That is true, but only if a structure lacks nonconforming status. Similarly, we are not persuaded by Hill's reliance on the first sentence in section 30.16.710, which provides that nonconforming structures "shall be subject to . . . the general provisions of this title." As we have shown, the general provisions are silent on the issue presented.

We conclude that the trial court properly sustained the demurrers by the City and Mart and dismissed Hill's action.

A traditional writ of mandate lies "to compel the performance of an act which the law specifically enjoins, as a duty resulting from an office, trust, or station. . . ." (Code Civ. Proc., § 1085.) The duty to be compelled must be ministerial in nature. (*Rodriguez v. Solis* (1991) 1 Cal.App.4th 495, 501.) Contrary to what Hill alleges, the City does not have a ministerial duty to rescind the permit and enforce the 15 foot setback requirement. Mart's garage did not lose its nonconforming status by virtue of the expansion. Therefore, the garage is not in violation of the City's zoning scheme and Hill was not entitled to a writ of mandate.

We need not reach the parties' other arguments.

DISPOSITION

The judgment is affirmed.

The City and Mart shall recover their costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

_____, J.
ASHMANN-GERST

We concur:

_____, P. J.
BOREN

_____, J.
NOTT