

STATE OF MICHIGAN
COURT OF APPEALS

RAPP REALTY, LLC and AARON RAPP,

Plaintiffs-Appellants,

v

CITY OF EAST LANSING, ANNETTE M.
IRWIN, HOWARD ASCH and ROBERT
DUTCHER,

Defendants-Appellees,

and

JOHN DOES 1-10,

Defendants.

UNPUBLISHED

April 16, 2013

No. 310902

Ingham Circuit Court

LC No. 10-001017-CZ

Before: M. J. KELLY, P.J., and CAVANAGH and MURRAY, JJ.

PER CURIAM.

Plaintiffs appeal as of right from an order of the circuit court granting defendants' motion for reconsideration of the court's previous denial of summary disposition on plaintiffs' takings claims. The trial court had previously granted defendants' motion for summary disposition under MCR 2.116(C)(10) on all other claims raised by plaintiffs, and that order has been appealed as well. We affirm.

The underlying facts of this case have been the source of multiple legal challenges by plaintiff Rapp Realty LLC, (Rapp Realty) with many of these challenges ending up before this Court. Rapp Realty is a limited liability company owned and operated by Steven and Judith Rapp, as trustees of the Steven M. Rapp and Judith G. Rapp living trusts. On August 5, 2008, Steven Rapp purchased a two-bedroom condominium unit at 220 MAC Avenue (the unit) in East Lansing, Michigan, and quitclaimed the property to Rapp Realty. As a result of a settlement agreement between defendant city and the unit's previous owner, the unit was listed as a Class IV rental property, meaning that the unit could be occupied by three unrelated persons, so long as one of the occupants was a child of the owner of the unit.

Judith Rapp submitted a rental license to defendant city on September 15, 2008. Thereafter, the unit's condominium association filed a complaint with defendant city questioning whether it was appropriate for plaintiff, as an LLC, to own the unit. As a result, Annette Irwin, defendant's Assistant Director of Code Enforcement, sent a letter informing Rapp Realty that because an LLC cannot have children, it was in violation of the terms of the previous rental license/agreement. Irwin therefore requested that an actual person be listed as the owner of the unit by February 27, 2009. However, defendant city erroneously generated a rental license for the unit to Rapp Realty in March 2009.

Following issuance of the license, defendant city continuously informed Rapp Realty that it could not rent the property as an LLC. Eventually, Howard Asch, defendant's Director of Code Enforcement, investigated the unit, and discovered that Aaron Rapp was not actually living in the unit. Asch sent a letter informing Rapp Realty that its rental license had expired by operation of law because the agreement required at least one occupant be a child of the owner. After an appeal hearing, the East Lansing Housing Commission affirmed Asch's decision, and Rapp Realty's rental license remained expired by operation of law. On October 6, 2009, Asch sent a letter informing Rapp Realty that "the license is currently expired. In order to avoid citations for renting without a license, the conditions must be complied with and an application filed by Monday, October 12, 2009." Rapp Realty failed to comply with Asch's request. As a result, defendant city issued fifty (50) individual citations for renting without a license from October 12, 2009, through November 30, 2009.

An appeal was taken to the district court which imposed fines and costs in the amount of \$21,750, and then a further appeal was taken to the circuit court. On appeal, the circuit court outlined the status of the case as follows:

When the Rapps purchased the property, it was subject to a unique condition that required "no more than 3 persons occupy the unit with one being a child of the owner." This special condition was negotiated by the original owner pursuant to a settlement with the City.

A conditional license was originally issued to Dr. Judith Rapp. Subsequently, a license was erroneously generated by computer to Rapp Realty LLC as the owner of record. City advised Dr. Judith Rapp by letter on January 30, 2009 that the LLC could not license the unit because the LLC could not have a child and, therefore, could not satisfy the special licensing condition

At a hearing on September 17, 2009, the Housing Commission affirmed City's determination that the license had expired due to failure of the special condition. In a letter dated October 6, 2009, City informed Rapp Realty LLC that in order to avoid citations for renting without a license, the unit had to be deeded to one or both of Aaron Rapp's parents and proof of Aaron Rapp's residency would need to be confirmed. The letter indicated the conditions had to be met and an application filed by October 12, 2009

Confining its decision "to the [district] court's decision on the licensing violations, Rapp Realty LLC's due process claims, and whether the fines imposed were excessive," the circuit

court affirmed the district court's "ruling that Rapp Realty LLC violated city code by renting without a license," but reversed in part the fines imposed. The case was "remanded back to district court for recalculation of fees and costs."¹

Rapp Realty requested leave to appeal the circuit court's order to this Court, arguing that defendant city improperly revoked its rental license, that defendant city violated its due process rights, and that the fines levied by the district court (prior to the remand) were excessive. This Court denied leave to appeal for "lack of merit in the grounds presented." *City of East Lansing v Rapp Realty, LLC*, unpublished order of the Court of Appeals, entered March 23, 2012 (Docket No. 306281).² Then, in May 2012, Rapp Realty requested leave to appeal to the Michigan Supreme Court, which denied leave on July 24, 2012. *City of East Lansing v Rapp Realty, LLC*, 492 Mich 858; 817 NW2d 109 (2012).

On a separate track, plaintiffs filed this action on August 24, 2010, bringing claims against defendants for promissory estoppel, equitable estoppel, denial of procedural due process, taking without just compensation, violations of equal protection, unconstitutionally excessive fines, fraud, misrepresentation, and failure to provide adequate notice. Defendants filed a motion for summary disposition, which the circuit court granted with respect to all claims except for the takings claims.³ Those claims were later dismissed when the trial court granted defendants' motion for reconsideration. Plaintiffs now appeal the trial court's orders dismissing all the claims.

Plaintiffs argue⁴ that the lower court should not have dismissed their claims for promissory estoppel, equitable estoppel, equal protection, due process, fraud, misrepresentation, unlawful taking, and failure to provide adequate notice. But, to prevail on all of these claims there would need to be a finding that defendant city either acted improperly with respect to the expiration of the rental license, or unconstitutionally issued the civil infractions. Indeed, three of the five substantive issues raised in plaintiffs' brief are based upon the validity of the city's

¹In Docket No. 310834, Rapp Realty has filed for leave to appeal from the circuit court's order affirming the fines imposed by the district court on remand. A decision on that application is pending.

² After filing for leave, but before this Court's order was entered, the unit was apparently sold in October 2011.

³ Plaintiffs filed an application for leave to appeal from the order granting in part defendants' motion for summary disposition. The application was denied, and our Court subsequently concluded that the application was vexatious and remanded to the trial court for a determination of the amount of fees and costs to be awarded. *Rapp Realty LLC v City of East Lansing*, unpublished order of the Court of Appeals, entered March 6, 2013 (Docket No. 309467).

⁴ As defendants note, plaintiffs have apparently taken the "kitchen sink" approach to briefing by setting forth any possible argument in a somewhat confusing and unstructured manner. This is not always the best approach. See, e.g., *Dyneyg Mktg & Trade v Multiut Corp*, 648 F3d 506, 513 (CA 7, 2011), and cases cited therein.

finding of an ordinance violation, and the other substantive issue is saturated with these issues.⁵ However, these are a collateral attack on matters decided in lower court no. 10-001090-AV, which remain in force after having moved through the appellate process. A party may not attack a court's order or judgment in a second lawsuit. See *SS Aircraft Co v Piper Aircraft Corp*, 159 Mich App 389, 393; 406 NW2d 304 (1987). See also *People v Carpentier*, 446 Mich 19, 37; 521 NW2d 195 (1994) (noting that “collateral attacks threaten . . . finality”); *Crow v Wayne Co*, 365 Mich 656, 680 n *; 114 NW2d 240 (1962) (BLACK, J., concurring) (noting that “decisions of administrative boards have a finality, and are not open to collateral attack”) (quotation marks and citation omitted).

In sum, although this case was running parallel with lower court no. 10-001090-AV, what plaintiffs are attempting to do in this case is collaterally attack the decision made in lower court no. 10-001090-AV, which was decided in defendant city's favor and for which all appeals have been exhausted, as well as the appeal taken to the housing commission, which was never appealed to the circuit court. We hold that the validity of the rental license has been decided in favor of defendant city and is no longer subject to challenge.

This leaves us with several legal and procedural arguments. We conclude that none require reversal. First, plaintiffs were not denied procedural due process because they were provided an avenue for appeal from both the city's original decision as well as from the Housing Commission decision. Plaintiffs availed themselves of some of these appellate rights, others they did not. But for procedural due process purposes, the ability to appeal before a neutral decision-maker⁶ forecloses a due process violation. *Electro-Tech, Inc v HF Campbell Co*, 433 Mich 57, 67; 445 NW2d 61 (1989). Second, because plaintiffs never reapplied for the license as requested by the city, their takings claims under the state and federal constitutions are not ripe for review. *Lake Angelo Assoc v White Lake Twp*, 198 Mich App 65, 70-71; 498 NW2d 1 (1993). Third, there is no evidence that plaintiffs were denied an appeal because of some suspect classification (such as their religion), and there is nothing to show that they were denied an appeal when others similarly situated were not. Hence, there is no basis for an equal protection claim on this record. *Moore v Spangler*, 401 Mich 360, 369-370; 258 NW2d 34 (1977).⁷

⁵ Specifically, argument I states there are genuine issues of material fact as to whether Aaron Rapp lived in the condo, thus putting into question the city's decision as to “non-eligibility for the rental license.” The heading for argument II also asserts the existence of genuine issues of material fact on “whether a condition on a rental housing license expired due to non-compliance” And, within argument V, plaintiffs argue due process issues involving the citations and subsequent appeals, arguing in part that defendants were “fraudulently creating an imaginary code violation for which there is no support”

⁶ Plaintiffs did not raise a genuine issue of material fact as Asch being a decision-maker for the Housing Commission.

⁷ Whether the fines imposed after remand to the district court were excessive is an issue specifically raised in Docket No. 310834, and is not properly raised in this appeal.

Fourth, and finally, the trial court did not abuse its discretion in denying plaintiffs motion to amend the complaint. The motion was made at the time defendants' motion for summary disposition was being heard, and plaintiffs made no attempt to amend the complaint (as they were specifically permitted to do) during an extended discovery time frame. On these grounds alone the trial court's decision was not an abuse of discretion. See, *Gordin v William Beaumont Hosp*, 180 Mich App 488, 494; 447 NW2d 793 (1989). The same holds true for the trial court's discretionary decision to not grant plaintiffs motion to compel discovery, as the trial court had already extended discovery once before and it was within its discretion to preclude further discovery for efficiency purposes.⁸

Affirmed.

Defendants may tax costs, having prevailed in full. MCR 7.219(A).

/s/ Michael J. Kelly
/s/ Mark J. Cavanagh
/s/ Christopher M. Murray

⁸ We need not address plaintiffs' argument about the length of briefs in the circuit court, as that issue is governed by court rules not cited by plaintiffs (nor is any other law on this issue) and which is otherwise clearly within the trial court's discretion.