2012 IL App (1st) 102837-U

FOURTH DIVISION
June 28, 2012

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

Nos. 1-10-2837 and 1-11-0263 (consolidated)

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

CITY OF CHICAGO, a municipal corporation,	)	
	)	Appeal from the
Plaintiff-Appellee,	)	Circuit Court of
	)	Cook County.
v.	)	
	)	
7100 SHERIDAN CONDOMINIUM , aka	)	08 M1 401132
7100 SHERIDAN CONDOMINIUM	)	
ASSOCIATION, INC., et al.	)	
	)	The Honorable
Defendants-Appellants.	)	William G. Pileggi,
	)	Judge Presiding.

JUSTICE PUCINSKI delivered the judgment of the court.
Presiding Justice Lavin and Justice Sterba concurred in the judgment.

ORDER

HELD: In appeal from a judgment ordering demolition of property and denying a defendant's motion seeking a stay: (1) The manifest weight of the evidence established that the city proved demolition of the property was necessary; (2) the defendant waived any objection to the city's nuisance action for demolition based on lack of notice by failing to object below, and in any event the defendant was not entitled to notice because it was not an owner of any part of the building at the time the city filed the action; (3) the

defendant waived its constitutional argument by raising it for the first time in a motion to reconsider and not providing a reasonable explanation why the argument was not raised earlier and we can determine the issues on appeal on nonconstitutional grounds, and a statutory cause of action for public nuisance is not subject to the pleading requirements for a common law public nuisance claim; (4) the court did not err in denying the defendant's motion for summary judgment where genuine issues of material fact existed regarding the dangerous and unsafe condition of the property; (5) the defendant was not entitled to an automatic stay of this action due to bankruptcy because the action is within the police power and governmental regulatory exception to the bankruptcy automatic stay provision (11 U.S.C. 362(b)(4)); (6) equity would not aid the defendant where it purchased its interest in the subject property with knowledge of the pending demolition action; and (7) the defendant had no standing to appeal a ruling on a co-defendant's motion to vacate *ex parte* judgment.

¶1 BACKGROUND

¶2 On April 3, 2008, the City of Chicago filed suit against numerous defendants, including banks as trustees for certain trusts, and numerous individuals and limited liability companies, seeking to abate dangerous conditions created by a vacant three-story 16-unit building located at 7100-7118 South Cottage Grove Avenue in Chicago, Illinois. The building had been vacant for more than 10 years. The city's complaint alleged that the property had numerous building code violations and constituted a dangerous public nuisance.

¶3 The defendants are the following entities and individuals: 7100 Sheridan Condominium a/k/a Sheridan Condominium Association, Inc., which is the condominium association for the subject property; Pioneer Services, LLC was the trust beneficiary for units 1, 2, 3, 7, 9, 10, 11 and 16; Bridgeview Bank and Trust Group, was the owner of the land trust holding units 1, 2, 3, 7, 9, 10, 11 and 16, and under trust #1-3193 was a mortgagee of unit 14; Cole Taylor Bank #99-8403 was the last known taxpayer for units 1, 2, 3, 4, 5, 6, 7, 9, 11, 12, 13, 14, and 15; UM Acquisitions, LLC was the mortgagee for units 1 and 12; Salta Group, Inc. was the last known

taxpayer for units 1 and 9; Belmont Realty Corp. was the purchaser of unpaid taxes for unit 10; Ocean Financial Corp. was the trust beneficiary for units 4, 6, 12, 14, and 16, and the beneficiary of a trust that held unit 9; Cole Taylor Bank, as trustee for trust #01-9240 was the owner of a land trust that held unit 16, as trustee for trust #01-9225 was the owner of a land trust that held unit 4, as trustee for trust #01-9240 was the owner of a land trust that held units 12 and 16, and as trustee for trust #01-9238 was the owner of a land trust that holds unit 14; Regal One, LLC was a purchaser of unpaid taxes for units 6 and 16; Bryce Peters Financial Corp. was the owner of unit 5; Z Financial, LLC was the purchaser of unpaid taxes for unit 5; Paul Suder was the owner of unit 13; Rescomm Holdings No. 2, LLC, was a mortgagee of unit 4; Central Buyer Corp. was a purchaser of unpaid taxes for unit 4; Lynn West was the owner of unit 12; Ocean Financial was a mortgagee of unit 12; Georgetown Investors, LLC was a purchaser of unpaid taxes for unit 12; Green Point Mortgage Funding, Inc. was the owner of unit 13; Tax Play, Inc. was a purchaser of taxes for unit 13; Yvonne E. Moore a/k/a Yvonne E. Yokley a/k/a Yvonne E. Mack a/k/a Yvonne E. Hope a/k/a Yvonne E. Carter was the owner of unit 14; Pioneer Services was a mortgagee of unit 14; Interstate Funding Corp. was a purchaser of unpaid taxes for unit 14; JPMorgan Chase Bank, as trustee, was the owner of unit 15; and Homecomings Financial Network was the last known taxpayer for unit 15.

¶4 The city alleged in its complaint that on or about March 28, 2008, and continuing, the following dangerous and unsafe conditions existed at the property:

"a. The building is vacant and open at all three stories.

b. The building has dangerous and hazardous interior stairs leading to the third floor.

c. All utilities are stripped or missing with flex conduit hanging from the ceilings.

d. The drywall and plaster has been removed or is missing from wood studs.

e. Holes can be found in the floors throughout the building.

f. The southwest brick wall is deteriorating with missing pieces of brick.

g. There is garbage and debris throughout the building.

h. There is evidence of squatters.

i. The basement is filled with junk and debris.

j. The southwest elevation is butted up against the rail road track embankment.

k. Trash from the railroad embankment is hanging over the south elevation roof, low voltage wires, and television wires.

l. There is evidence of fire damage."

¶5 Count I sought equitable and injunctive relief for a court order requiring that defendants demolish, repair, enclose or clean up of the building for violations of the Unsafe Buildings Ordinance (Mun. Code Chicago § 13-12-130), and the Unsafe Property Statute (65 ILCS 5/11-31-1(a) (West 2008)). In the alternative, the city sough an order authorizing the city to demolish repair, enclose or clean up the property, permitting foreclosure of any city liens on the property, awarding the city costs and attorney fees (65 ILCS 5/11-31-1(c) (West 2008)), and granting any other equitable relief the court deemed appropriate.

¶6 Count II sought fines for violation of the Unsafe Buildings Ordinance (Mun. Code Chicago §§ 13-12-020, 130).

¶7 Count III sought preliminary and permanent injunctive relief pursuant to both the

Injunction Statute (65 ILCS 5/11-13-15 (West 2008)) and the Municipal Code of Chicago (Mun. Code Chicago § 13-12-070). The City sought an order requiring defendants to abate the violations of the electrical (Mun. Code Chicago § 18-27-90.1 *et seq*.), plumbing (Mun. Code Chicago § 18-29-101 *et seq*.), heating and ventilation (Mun. Code Chicago § 18-28-101 *et seq*), and general building requirements of the Municipal Code of the City of Chicago (Mun. Code Chicago §§ 13-12-020, 13-196-010).

¶8 Count IV sought injunctive relief for public nuisance under the Public Nuisance Ordinance of the Municipal Code of Chicago (Mun. Code Chicago § 7-28-060). The city sought an order finding that the property constituted a public nuisance and requiring defendants to abate the public nuisance and sought any other relief the court deemed appropriate.

¶9 Count V sought civil penalties in fines and possible incarceration for violation of the Public Nuisance Ordinance (Mun. Code Chicago § 7-28-060).

¶10 Count VI sought injunctive relief for abatement of the nuisance under the Chicago Municipal Code (Mun. Code Chicago § 13-12-145(a)), and sought a court order declaring the building a public nuisance, assigning or forfeiting defendants' rights, title and interest in the property to the city or a third party designated by the city, permitting foreclosure of any city liens, awarding the city costs and attorney fees, and granting any other relief the court deemed appropriate.

¶11 Count VII sought fines under the Chicago Municipal Code for an improperly maintained building and structure (Mun. Code Chicago § 13-12-145(e)).

¶12 After this action was filed, Innercity Community Development, LLC (Innercity) also

acquired an interest in the property and intervened. Thereafter, Pioneer transferred the entirety of its interest for a nominal sum to Innercity. Innercity then became a majority interest holder of the property, owning all units except for the first floor commercial unit.

¶13 The day before the filing of the complaint, April 2, 2008, the city caused a demolition contractor, Dynamic Wrecking & Excavation, Inc., to be sent to the building to begin demolition. The contractor arrived at the building along with the city's Department of Buildings Commissioner and was met there by an agent of Pioneer, Greg Bingham. Bingham then called Ian Braunstein, an agent of Innercity. Innercity did not yet have any legal interest in the building but was interested in participating in development of the building. Bingham requested from the commissioner a copy of the order authorizing demolition. The commissioner did not produce a copy of any demolition order. Bingham offered to pay the city's demolition mobilization costs to get the demolition equipment off the property as long as all further demolition action was to stop immediately and Bingham and others were able to continue with the redevelopment of the building. According to Bingham, the commissioner agreed.

¶14 The following day, April 3, 2008, the complaint in the instant case was filed by the city. The city also filed an emergency motion for authorization to demolish the building. The demolition equipment remained on the property. The court did not enter a demolition order at that time.

¶15 On May 13, 2008, defendant Pioneer Services, LLC, the trust beneficiary for units 1, 2, 3, 7, 9, 10, 11 and 16, filed an answer to the city's complaint. Pioneer's agent applied for and was denied building permits from the city's Department of Construction and Permits because an order

had been entered that no permits could issue without a completed set of approved architectural plans. Innercity Community Development, LLC (Innercity) obtained title to three residential units and on August 19, 2008, Innercity intervened in the action. On March 19, 2009, Innercity submitted architectural plans to the Chicago Zoning Department.

¶16 On December 18, 2009, the Zoning Department approved the plans with the stipulation that Innercity replace the landscaping plans. On that same date, Innercity submitted the architectural plans. These revised plans have yet to be approved by the Department of Construction and Permits. Defendants allege that the circuit court ordered defendants to undertake specific actions to abate the public nuisance with respect to the property, but did not enter other orders that were necessary to allow defendants to obtain building permits from the Department of Construction and Permits. It is undisputed defendants have been unable to correct the conditions on the property that were alleged in the city's complaint.

¶17 On December 15, 2009, the court entered an order granting the city's motion for reimbursement of its mobilization costs in the amount of $9,526.73, and ordered defendants Innercity and Pioneer to pay these costs by no later than February 13, 2010, and ordering inspection of the building by the city Department of Buildings no later than January 29, 2010.

¶18 On January 14, 2010, Innercity and Pioneer filed a motion for reconsideration and motion to vacate the December 15, 2009, order. On February 9, 2010, the court entered an order denying Innercity and Pioneer's motion to reconsider and motion to vacate.

¶19 On April 6, 2010, the city filed a petition for rule to show cause why Pioneer and Innercity should not be held in civil contempt, stating that on December 15, 2009, the court

ordered them to reimburse the city's demolition mobilization costs by no later than February 13, 2010. Defendant Pioneer informed the court that it had transferred its interest in the building entirely to defendant Innercity, thereby making Innercity the owner of a majority of the units. The owner of the first-floor commercial unit, however, was not ever determined.

¶20 On June 7, 2010, Innercity and Pioneer moved for a continuance due to a scheduling conflict of defendants' counsel. In the motion, Innercity and Pioneer alleged that the conditions listed by the city as nuisance had been abated, with the exception of the fire damage, which Innercity and Pioneer alleged would be resolved during the redevelopment of the building, and electrical and heating and ventilating service, which would be established upon receipt of building permits from the city. On June 8, 2010, the court granted the motion for continuance over the city's objection. The case was continued to June 29, 2010, for trial.

¶21 On June 28, 2010, defendants Innercity and Pioneer moved for summary judgment, arguing that all the unsafe and dangerous conditions listed by the city were abated or would be addressed in redevelopment plans. Defendants Innercity and Pioneer alleged that they had been assigned the rights to, or hold deeds to, fifteen of the units in the building. Defendants also filed a motion for leave to amend their answer and file a counterclaim for breach of contract against the city based on Bingham's agreement with the commissioner to pay the city's mobilization costs in exchange for the halting of any demolition efforts.

¶22 Also on June 28, 2010, Innercity filed a petition for bankruptcy for Chapter 11 reorganization in the Northern District of Illinois, Eastern Division, case number 10 BK 28756. Innercity moved to stay the instant action due to the bankruptcy proceedings. However, the

circuit court did not stay the case, finding that the "bankruptcy court doesn't have jurisdiction over the enforcement of the City ordinance for the health, safety and welfare of the community at large."

¶23 At trial, building inspector Hector Exclusa testified that he had been employed by the city of Chicago, Department of Buildings as an inspector for 14 years and had inspected the building about 15 times over the course of several years. At trial, Exclusa identified photos he took of the property the day before his testimony, June 28, 2010, and the photos were admitted into evidence. There was no work in progress and no construction materials on site. Also admitted into evidence were photos Exclusa took of the property on April 14, 2010, during an inspection. There was no work in progress on the building on that date either.

¶24 The property was secured in that the Cottage Grove side of the building was boarded up and there was an iron gate in the parking area that was secured with a chain and lock. There was fire damage to the building, charred floor joists, rotted porch railings, the risers were water saturated, and all the mortar joints through most of the exterior of the building were washed out and loose. There was one portion that was repaired. The roof overhang on the porches was rotted throughout. Some of the windows were boarded up due to the fire damage, but other windows were broken. Every portion of the three-story porch system on all of the tiers showed extensive water saturation or rotted wood and missing rails and pickets. All of the brickwork was eaten up to such a degree that it would require the removal of partial wall systems, not mere tuck pointing. The stair system also showed missing pickets and a steep run, which most likely meant they were not properly anchored or bolted to the brick system for proper support. Exclusa

testified that if firemen had to enter the building for an emergency "they are truly put in harm's way."

¶25 Regarding the interior of the building, Exclusa testified that there was a lot of loose asbestos insulation in the basement area, several holes in the floor near entry areas, and an area where it looked like someone started a fire. All the vital systems of the building – plumbing, electrical and heating – were stripped out. It appeared some drainage had been done without permits. A section of the staircase was missing with only plywood preventing anyone from falling, with a large open space that someone could fall through. On the south end of the Cottage Grove side of the building, support walls were removed. There was a court order in the past to shore up those areas but it had not been done properly, as only 2 by 4's were used instead of 6 by 6's, so there was still "a lot of sag." The masonry and brick work on a landing was crumbling. The foundation was starting to wash out which can compromise the wall and allow it and the deck to collapse. There was no apparent effort to abate the fire damage; those areas were only secured.

¶26 Inspector Exclusa further testified that the area where the building was situated was a high traffic area, with a police station across the street and a new high school being built on the northeast corner. Exclusa testified he felt the building posed a threat to the surrounding community due to its structural instability. Exclusa testified he did not think there was anything, short of complete demolition, that would cure all the violations in an effective manner.

¶27 At the conclusion of trial, the circuit court found the building was dangerous and beyond reasonable repair. Specifically, the court found the following: the building had been "continually

vacant and periodically accessible;" "the rear porch and stair systems [were] structurally compromised;" the electrical, plumbing, and heating and ventilation systems had been removed and were not functional; the drywall and plaster had been "vandalized or otherwise removed;" the interior stair system was "structurally compromised and unstable;" the interior flooring was "worn and open in areas;" the exterior brickwork was "deteriorating, with areas of loose and missing mortar and falling brick;" the window glazing was "missing in areas;" and the building had "suffered multiple fires, which have charred structural elements of the building – including the joists – and interior flooring." The court also found that defendants had not corrected the dangerous conditions even though the case had been pending for more than two years. The court further found that Innercity, the only defendant contesting demolition, did not own the entire building and would not be able to obtain full ownership anytime soon, as numerous units in the building were the subject of fraudulent transfers and without full ownership Innercity would likely not be able to obtain financing or perform the necessary structural repairs. The court also noted Innercity would most likely not be able to obtain financing due to its bankruptcy. Thus, the court concluded demolition was appropriate.

¶28 On June 30, 2010, the circuit court entered an order authorizing the city to proceed with demolition and finding defendants Innercity and Pioneer liable on Count I under the Unsafe Property Statute, and Count IV and Count V under the Nuisance Ordinance of the city's complaint. The remaining counts were voluntarily withdrawn. The court entered a judgment against defendants Innercity and Pioneer pursuant to Count V for nuisance to pay $100,000 in demolition costs. The order stated that it was appealable pursuant to Illinois Supreme Court

Rule304(a) (Ill. S. Ct. R. 304(a) (eff.)).

¶29 On July 29, 2010, defendants Innercity and Pioneer filed post-trial motions to reconsider. Pioneer had no further interest in the property and did not appeal the demolition portion of the judgment but, rather, only contested the fine imposed against it. Innercity moved to reconsider both the demolition order in the judgment and the $100,000 fine imposed in the judgment on the nuisance count. Innercity moved to vacate the monetary judgment for violation of the stay in bankruptcy and to stay the demolition order until the bankruptcy court has determined if the city's action was regulatory. On July 30, 2010, defendants Innercity and Pioneer also moved to vacate the court's June 30, 2010 order, arguing that the court did not have jurisdiction to conduct the hearing because the action was subject to a stay due to the bankruptcy court proceedings.

¶30 On July 30, 2010, defendant 7100 Condominium Association filed a motion to vacate the judgment as an *ex parte* judgment, arguing that at the time of the judgment it was unrepresented and, as such, unable to respond because in Illinois corporations cannot proceed without the representation of an attorney. 7100 Condominium Assocation alleged that it was formed on May 19, 2009, and that it had never been served a summons of the proceedings.

¶31 On August 26, 2010, the court heard defendants' motions, including Innercity's motion to vacate the June 30, 2010 demolition order, which the court denied. The court entered an order granting Innercity and Pioneer's motion to vacate the $100,000 monetary judgment. The order denied Innercity's motion to stay demolition and motion to reconsider the court's judgment of June 29, 2010, motion to vacate the court's order of June 30, 2010 [sic], and Innercity's motion to reconsider the denial of its motion for summary judgment and motions to amend the answer and

file a counterclaim. The court stated in open court that the fines were being vacated pending a calculation of final demolition costs, which the court stated the city could then pursue. 7100 Condominium Association's motion to vacate *ex parte* judgment was ordered held on call until August 31, 2010, when the court entered an order denying the motion. On September 24, 2010, Innercity timely filed a timely notice of appeal which it later amended. Innercity also filed another appeal under case number 1-11-0263. We consolidated the appeals.

¶32 On March 28, 2011, we granted Innercity's motion to stay the trial court's June 29, 2010 order of demolition staying any demolition proceedings pending appeal and also staying enforcement of the order. Although Innercity's brief on appeal refers to "defendants," we note that only Innercity has appealed. Pioneer did not appeal. 7100 Condominium Association also did not appeal. The only notices of appeal on file and in the record were filed by Innercity only, dated September 24, 2010, and September 27, 2010. Innercity's counsel moved to withdraw, which we allowed on December 28, 2011.

¶33 **ANALYSIS**

¶34 **I. The City Proved Demolition of the Property Was Necessary**

¶35 The Illinois Municipal Code (65 ILCS 5/1-1-1 *et seq*. (West 2010)) provision on unsafe property provides, in relevant part:

> "§11-31-1. Demolition, repair, enclosure, or remediation.
>
> (a) The corporate authorities of each municipality may demolish, repair, or enclose or cause the demolition, repair, or enclosure of dangerous and unsafe buildings or uncompleted and abandoned buildings within the territory of the municipality and may

remove or cause the removal of garbage, debris, and other hazardous, noxious, or unhealthy substances or materials from those buildings. ***

The corporate authorities shall apply to the circuit court of the county in which the building is located (i) for an order authorizing action to be taken with respect to a building if the owner or owners of the building, including the lien holders of record, after at least 15 days' written notice by mail so to do, have failed to put the building in a safe condition or to demolish it ***. It is not a defense to the cause of action that the building is boarded up or otherwise enclosed, although the court may order the defendant to have the building boarded up or otherwise enclosed. ***

* * *

The cost of the demolition, repair, enclosure, or removal incurred by the municipality, by an intervenor, or by a lien holder of record, including court costs, attorney's fees, and other costs related to the enforcement of this Section, is recoverable from the owner or owners of the real estate ***." 65 ILCS 5/11-31-1(a) (West 2010).

"Section 11-31-1 requires two findings before an order of demolition may issue. The court must find that the building is dangerous and unsafe." *Stokovich*, 211 Ill. 2d at 131 (citing *City of Aurora v. Meyer*, 38 Ill. 2d 131, 133 (1967)). "The court must also find that the building is beyond reasonable repair." *Stokovich*, 211 Ill. 2d at 131 (citing *City of Aurora*, 38 Ill. 2d at 137). "We review the court's findings to ensure that they are supported by the evidence and that they are not against the manifest weight of the evidence." *Stokovich*, 211 Ill. 2d at 131 (citing *City of Chicago v. Birnbaum*, 49 Ill. 2d 250, 254, 274 N.E.2d 22 (1971)). We will not disturb

factual findings unless they are against the manifest weight of the evidence. *Village of Ringwood v. Foster*, 405 Ill. App. 3d 61, 74 (2010) (citing *City of Chicago v. Old Colony Partners, L.P.*, 364 Ill. App. 3d 806, 812 (2006)). " 'A finding is against the manifest weight of the evidence only if the opposite conclusion is clearly evident or if the finding itself is unreasonable, arbitrary, or not based on the evidence presented.' " *Foster*, 405 Ill. App. 3d 61, 74-75 (2010) (quoting *Best v. Best*, 223 Ill. 2d 342, 350 (2006)).

¶36 The trial court made both required findings sufficient to support an order of demolition of the property, and its findings are not against the manifest weight of the evidence. First, the trial court found that the building was dangerous and unsafe. In a proceeding for demolition, the burden of proof is on the municipality as petitioner to prove that the building is "dangerous and unsafe" or "uncompleted and abandoned." *Stokovich*, 211 Ill. 2d at 127. The city proved numerous examples of how the building was dangerous and unsafe through Inspector Exclusa's testimony, including large holes in the floors, missing portions of staircases, water-saturated and unsound joists, deteriorating masonry, extensive fire damage, and the complete absence of any water, electrical, or heating systems. The evidence showed that the entire structure of the building was unsound. The court's finding that the building was dangerous and unsafe was not against the manifest weight of the evidence.

¶37 Second, the court also found that the building was beyond reasonable repair. The second required finding that the building is beyond reasonable repair must be based on a comparison of the cost of repair with the value of the building. *Stokovich*, 211 Ill. 2d at 131 (citing *City of Aurora*, 38 Ill. 2d at 135-36). However, here there was no such calculation because the

inspector's testimony was that no reasonable repair was possible. Although Innercity now asserts this failure to conduct a cost comparison as error, it raised no objection below before the court, thereby waiving it. In any event, the record reveals the court considered Innercity's estimate of the present value of the building at $800,000 in an affidavit in its summary judgment motion, but discounted this valuation due to the severe downturn in the real estate market, and the fact that Pioneer had transferred all its units to Innercity for almost nothing. Inspector Exclusa testified that the building was so dilapidated and structurally unsound that no reasonable repair was possible and that the only alternative was to demolish it. The court specifically found that "demolition of the property is the least restrictive alternative for the Court to abate the conditions that this building imposes on the community at large." The court's finding on the second requirement that the building was beyond reasonable repair was not against the manifest weight of the evidence.

¶38 Regarding any safety concerns, Innercity argues that there would not be any injuries because the building is boarded up. However, as the city points out, this is not a defense under the Illinois Municipal Code: "It is not a defense to the cause of action that the building is boarded up or otherwise enclosed, although the court may order the defendant to have the building boarded up or otherwise enclosed." 65 ILCS 5/11-31-1(a) (West 2010).

¶39 Innercity takes issue with the inspector's testimony as "suspect" because he failed to include in his report that the roof had been replaced. However, Innercity acknowledges that the court was made aware of the fact that the roof had been replaced in accepting photographic and other evidence. We also note the photographs in the record which show the building in a severe

state of dilapidation and depicting all the various ways it was structurally unsound and dangerous. Thus, the court had all the evidence before it. The court was free to make its own credibility determinations which we will not second-guess on appeal. The finding that the building was unsafe and dangerous was not against the manifest weight of the evidence. Thus, the city proved demolition of the property was necessary.

¶40 **II. The City Was Not Required to Provide Innercity Notice**

¶41 Innercity argues that they did not receive the required notice before the commencement of the instant lawsuit by the city. The Illinois Municipal Code provision on unsafe property provides that the corporate authorities shall apply to the circuit court for an order authorizing action to be taken with respect to a building only if "after at least 15 days' written notice by mail" the owner or owners have failed to put the building in a safe condition or demolish it. 65 ILCS 5/11-31-1(a) (West 2010).

¶42 However, as the City points out, this argument is specious for two reasons: (1) Innercity waived any objection based on notice by not raising it below during the proceedings; and (2) Innercity was not an owner of the property at the time the action was commenced and therefore was not entitled to any notice.

¶43 First, Innercity intervened and appeared in the instant action and litigated the matter, including filing a motion for summary judgment, without objecting at any point based on any lack of notice. The lack of notice to a party can be waived. *In re B.L.*, 315 Ill. App. 3d 602, 605 (2000) (citing *In re C.R.H.*, 163 Ill. 2d 263, 272-73 (1994); *In re J.P.J.*, 109 Ill. 2d 129, 136-37 (1985)). Where a party does not raise the issue of lack of notice before the trial court, he or she

waives the issue on appeal. *Illinois National Ins. Co. v. Universal Underwriters Ins. Co.*, 261 Ill. App. 3d 84, 93 (1994) (citing *Thompson v. Heydemann*, 231 Ill. App. 3d 578 (1992); *Kable Printing Co. v. Mount Morris Bookbinders Union Local 65-B*, 27 Ill. App. 3d 500 (1975), *aff'd and rem'd*, 63 Ill. 2d 514 (1976)). Innercity did not raise any objection in the trial court. Thus, Innercity waived any argument based on lack of notice.

¶44 Second, Innercity was not an owner of any part of the building at the time the action was filed and therefore was not entitled to notice. The Municipal Code requires only notice to owners:

> "13-12-130 Dangerous or unsafe buildings – Written notice – Demolition, repair – costs.
>
> If any building shall be found in a dangerous and unsafe condition or uncompleted and abandoned, the building commissioner or the fire commissioner shall notify in writing *the owner or owners* thereof, directing *the owner or owners* to put such building in a safe condition, to enclose or to demolish it. here, upon diligent search, the identity or whereabouts of the owner or owners of any such building shall not be ascertainable, the notice shall be mailed to *the person or persons in whose name such real estate was last assessed*. ***" (Emphasis added.) Mun. Code Chicago § 13-12-130.

Innercity does not dispute that it was not an owner of the building at the time the action was filed. Innercity also does not contend that it was a taxpayer for the property at the time this action was filed. Innercity makes *no* reply in this appeal to the city's argument concerning the fact that it was not an owner of the building at the time of this action. In fact, the record reveals

that in the proceedings below Pioneer and Innercity specifically plead in their memorandum in support of their motion for summary judgment that Innercity "at that time owned no legal interest in the Building whatsoever, but was interested in participating in its subsequent development." Innercity was not an owner at the time of this action and was not entitled to any notice. Therefore, we reject Innercity's notice argument.

¶45 **III. The Municipal Code Provision on Nuisance Does Not Violate State And Federal Due Process**

¶46 The city first argues that we lack jurisdiction in this appeal over both nuisance counts, because the court vacated the fine imposed in the June 30, 2010 order and stated the fine would be determined at a later date. In *Liberty Mutual Insurance Co. v. Wetzel*, 424 U.S. 737 (1976), the Supreme Court held that an order is not final if it finds the defendant liable but does not fix the amount of damages. *Wetzel*, 424 U.S. at 742. Where an order constitutes a judgment only as to liability with the question of damages yet undetermined, it is not a final order and can not be made appealable even by a finding under Ill. Sup. Ct. R. 304(a) that there is no just reason for delaying enforcement or appeal. *Lindsey v. Chicago Park District*, 134 Ill. App. 3d 744, 747 (1985) (citing *Martino v. Barra*, 37 Ill. 2d 588, 595 (1967)). See *Lamar Whiteco Outdoor Corp. v. City of West Chicago*, 395 Ill. App. 3d 501, 505-06 (2009) (holding that an appeal from a trial court's ruling that an advertiser was eligible for attorney fees and costs was dismissed for lack of jurisdiction because the order was not a final order in that it found liability but did not specify the amount of the award). Additionally, an order vacating a judgment is not final and consequently not appealable because the merits of the case are still pending. *AAA Disposal Systems, Inc. v.*

Aetna Casualty and Surety Co., 355 Ill. App. 3d 275, 281 (2005) (citing *In re Marriage of Agustsson*, 223 Ill. App. 3d 510, 514 (1992)). The city is therefore correct that the later order vacating the fines on the nuisance counts rendered the judgment a nonfinal order regarding the nuisance counts.

¶47 However, the order appealed from denied Innercity injunctive relief in that it denied the stay it sought of the city's demolition proceeding, and therefore is appealable as of right pursuant to Supreme Court Rule 307(a)(1). Ill. S. Ct. Rule 307(a)(1) (eff. Feb. 26, 2010). An appeal may be taken from an interlocutory order of court: "(1) granting, modifying, refusing, dissolving, or refusing to dissolve or modify an injunction." Ill. S. Ct. Rule 307(a)(1) (eff. Feb. 26, 2010). The denial of a motion to stay proceedings may be treated as a denial of a request for a preliminary injunction, and this may form the basis for an interlocutory appeal as of right pursuant to Supreme Court Rule 307(a)(1). *Estate of Bass v. Katten*, 375 Ill. App. 3d 62, 70 (2007) (citing *Lundy v. Farmers Group, Inc.*, 322 Ill. App. 3d 214, 216 (2001), citing *Beard v. Mount Carroll Mutual Fire Insurance Co.*, 203 Ill. App. 3d 724, 727 (1990); *Zurich Insurance Co. v. Raymark Industries, Inc.*, 213 Ill. App. 3d 591, 594 (1991)).

¶48 Here, the judgment order not only entered judgment in favor of the city authorizing demolition and imposing fines but also denied Innercity's motion for summary judgment, in which Innercity sought a stay of the action. Thus, the court's order of June30, 2010, also constituted a denial of a motion to stay proceedings, which is treated as a denial of a request for preliminary injunction and is appealable as of right under Supreme Court Rule 307(a)(1) (eff. Feb. 26, 2010).

¶49 The city also contends we should not review any issue as to constitutionality because Innercity waived the issue by not raising it below before the entry of judgment and raising it for the first time in its motion to reconsider. "Where new issues are raised for the first time in a motion to reconsider or supplement thereto, *and where there is a reasonable explanation for why the additional issues were not raised at the original hearing*, the trial court has the discretion to address them." (Emphasis in original.) *Kopley Group V., L.P. v. Sheridan Edgewater Properties, Ltd.*, 376 Ill. App. 3d 1006, 1022 (2007) (quoting *O'Casek v. Childrens Home & Aid Society of Illinois*, 374 Ill. App. 3d 507, 513 (2007), citing *Delgatto v. Brandon Associates, Ltd.*, 131 Ill. 2d 183, 19 (1989). Here, Innercity did not explain below why its constitutional argument was not raised during the proceedings, and also does not explain its waiver on appeal before us. The circuit court was well within its discretion in not considering the argument, and we decline to review it. Additionally, "[i]t is settled that courts should avoid constitutional questions when a case can be decided on other grounds." *Innovative Modular Solutions v. Hazel Crest School Dist. 152.5*, 2012 IL 112052 at ¶ 38 (citing *People v. Alcozer*, 241 Ill. 2d 248, 253 (2011)). Therefore, we do not review Innercity's constitutional arguments concerning the judgment on the nuisance counts IV and V and proceed instead to its other arguments which dispose of this appeal.

¶50 Innercity argues that "[w]hile a municipality has the power to declare practically anything a nuisance through statute under a nuisance [*per se*] theory, a successful public nuisance claim must prove an interference with a public right." In a related argument, Innercity also argues that actual injury is also required to establish a public nuisance.

¶51 Section 7-28-060 provides as follows:

> "No building, vehicle, structure, receptacle, yard, lot, premises, or part thereof, shall be made, used, kept, maintained, or operated in the city if such use, keeping, maintaining, or operating shall be the occasion of any nuisance, or shall be dangerous to life or detrimental to health.
>
> Every building or structure constructed or maintained in violation of the building provisions of this Code, or which is in an unsanitary condition, or in an unsafe or dangerous condition, or which in any manner endangers the health or safety of any person or persons, is hereby declared to be a public nuisance. Every building or part thereof which is in an unsanitary condition by reason of the basement or cellar being covered with stagnant water, or by reason of the presence of sewer gas, or by reason of any portion of a building being infected with disease or being unfit for human habitation, or which by reason of any other unsanitary condition, is a source of sickness, or which endangers the public health, is hereby declared to be a public nuisance.
>
> Any person found guilty of violating any of the provisions of this section shall be subject to a penalty of not less than $200.00 nor more than $500.00, or imprisonment not to exceed 10 days, or both such fine and imprisonment for each offense. Each day such violation shall continue shall constitute a separate and distinct offense." Mun. Code Chicago § 7-28-060.

¶52 The elements of common law public nuisance are: (1) the existence of a public right; (2) the defendant's substantial and unreasonable interference with that right; (3) proximate cause;

and (4) injury. *Helping Others Maintain Environmental Standards v. Bos*, 406 Ill.App.3d 669, 689 (2010) (citing *City of Chicago v. Beretta U.S.A. Corp.*, 213 Ill. 2d 351, 369 (2004)).

"Common law nuisance and statutory nuisance are, however, independent causes of action. *McCarthy v. Kunicki*, 355 Ill. App. 3d 957, 965 (2005) (citing *Donaldson v. Central Illinois Public Service Co.*, 199 Ill.2d 63, 100 (2002)). "A municipality has the power to declare anything a nuisance, which is either nuisance *per se*, a nuisance at common law or statute. A municipality also has the authority to regulate as a nuisance anything in which there could be an honest difference of opinion if, in the municipality's opinion, such an item constitutes a nuisance." *McCarthy*, 355 Ill. App. 3d at 965 (citing *Caseyville v. Cunningham*, 137 Ill. App. 3d 186, 189 (1985).

¶53 Here the city brought its claim for public nuisance based on the Public Nuisance Ordinance of the Municipal Code of Chicago (Mun. Code Chicago § 7-28-060), not common law nuisance. Thus, the pleading and proof standard for a common law nuisance claim does not apply.

¶54 **IV. Innercity was Not Entitled to Summary Judgment On the Nuisance Claims**

¶55 Defendant also argues that the circuit court erred in denying its motion for summary judgment. Innercity filed a motion for summary judgment on June 29, 2010, which was summarily denied. Summary judgment is appropriate only where "the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." 735 ILCS 5/2-1005(c) (West 2008). "In determining the existence of a genuine issue of material fact,

courts must consider the pleadings, depositions, admissions, exhibits, and affidavits on file in the case and must construe them strictly against the movant and liberally in favor of the opponent." *Purtill v. Hess*, 111 Ill. 2d 229, 240 (1986) (citing *Kolakowski v. Voris*, 83 Ill. 2d 388, 398 (1980)). If the undisputed material facts could lead reasonable observers to divergent inferences, or where there is a dispute as to a material fact, summary judgment should be denied and the issue decided by the trier of fact. *Jackson v. TLC Associates, Inc.*, 185 Ill. 2d 418, 424 (1998). This court reviews a summary judgment ruling *de novo*. *Roth v. Opiela*, 211 Ill. 2d 536, 542 (2004); *Outboard Marine Corp. v. Liberty Mutual Insurance Co.*, 154 Ill. 2d 90, 102 (1992).

¶56 Section 7-28-060 of the Municipal Code of Chicago provides, in part:

> "Every building or structure constructed or maintained in violation of the building provisions of this Code, or which is in an unsanitary condition, or in an unsafe or dangerous condition, or which in any manner endangers the health or safety of any person or persons, is hereby declared to be a public nuisance." Mun. Code Chicago § 7-28-060.

¶57 Innercity contends that the trial court should have granted its motion for summary judgment due to the absence of any evidence that the property was a nuisance under the Municipal Code. Innercity argued that it abated or would abate the nuisance and in its motion included new architectural plans. However, there was ample evidence produced by the city that the property constituted a public nuisance, which we must construe strictly against Innercity and liberally in favor of the city. The evidence established that the property was in an unsafe or dangerous condition. There was also evidence that the property endangered the health or safety of people. Though Innercity contends it abated would abate the dangerous conditions and

considered the property secure enough in the meantime to be safe, the evidence in this case produced by the city clearly established genuine issues of material fact. Thus, the court did not err in denying Innercity's motion for summary judgment. There were numerous genuine issues of material fact demonstrating that the building constituted a public nuisance under the statute.

¶58 **V. The Circuit Court was Not Required to Stay the Proceedings Due to Defendants' Bankruptcy**

¶59 Innercity argues that the court erred in refusing to either stay or vacate the demolition order pending the decision of the bankruptcy court. Although the city argues that the issue regarding the automatic stay is now moot because the bankruptcy court case has been dismissed, Innercity's argument is that it was prejudiced because the action should not have been maintained while the bankruptcy case was pending, and that a stay would have allowed it to get necessary permits and abate the nuisance. However, we find that Innercity was not entitled to a stay of the instant action below, because the action is within the police power and governmental regulatory exception to the bankruptcy automatic stay provision.

¶60 Section 362(a)(1) of the Bankruptcy Code provides for an automatic stay of enforcement of claims outside the jurisdiction of the bankruptcy court. 11 U.S.C. 362(a)(1). However, section 362(b)(4) provides a governmental regulatory exception to automatic stays in bankruptcy:

> "(b) The filing of a petition under section 301, 302, or 303 of this title [11 USCS § 301, 302, or 303] *** does not operate as a stay–
>
> * * *
>
> (4) under paragraph (1), (2), (3), or (6) of subsection (a) of this section, of

> the commencement or continuation of an action or proceeding by a governmental unit or any organization exercising authority *** to enforce such governmental unit's or organization's police and regulatory power, including the enforcement of a judgment other than a money judgment, obtained in an action or proceeding by the governmental unit to enforce such governmental unit's or organization's police or regulatory power ***." 11 U.S.C. 362(b)(4).

¶61 The city cited, and the trial court relied on, *Javes v. City of Hazel Park (In re Javens)*, 107 F.3d 359 (6th Cir. 1997), where the bankruptcy court held that "[t]he automatic stay does not prevent government from the exercise of police or regulatory power." *In re Javens*, 107 F.3d at 363-64. "As the legislative history of the [Bankruptcy] Code explains, '[t]hus, where a governmental unit is suing a debtor to prevent or stop violation of fraud, environmental protection, consumer protection, safety, or similar police or regulatory laws...the action or proceeding is not stayed under the automatic stay.' " *In re Javens*, 107 F.3d at 363 (quoting S. Rep. No. 95-989, at 52 (1978)).

¶62 In reply, Innercity cites to *In re Dunbar*, 235 B.R. 465, 472 (B.A.P. 9th Cir. 1999), in support of its argument. However, this case actually supports the conclusion that a stay was not required. *In re Dunbar* explains the two different tests for a bankruptcy court to determine whether a state agency's administrative actions fall within the scope of the automatic stay provision: (1) the pecuniary purpose test and (2) the public policy test. *In re Dunbar*, 235 B.R. at 471. The *Dunbar* court explained that under the pecuniary purpose test, the court must determine whether the government action relates primarily to the protection of the government's

pecuniary interest in the debtors' property or to matters of public safety and welfare, and explained that most such government actions have some pecuniary component, particularly those associated with fraud, and that this does not abrogate the police power. *In re Dunbar*, 235 B.R. at 471. The court further explained that " '[o]nly if the action is pursued "solely to advance a pecuniary interest of the governmental unit' will the automatic stay bar it.' " *In re Dunbar*, 235 B.R. at 471 (quoting *Universal Life Church*, 128 F.3d at 1299 (9th Cir. 1997), quoting *In re Thomassen*, 15 B.R. 907, 909 (9th Cir. BAP 1981)).

¶63 The public policy test exception to an automatic stay distinguishes between government proceedings that effectuate public policy and those that adjudicate private rights. *In re Dunbar*, 235 B.R. at 471. Where the government agency's action affects only the parties immediately involved in the proceedings, the debtor is entitled to the protection. *Id.*

¶64 Under either test, Innercity was not entitled to an automatic stay of the city's action to demolish the building. First, under the pecuniary purpose test, the city's action to demolish the building was founded upon the building constituting a public nuisance and a danger to health and safety. Under the public policy test, the city's action clearly was for the public policy of health and safety, as it was brought under the state and municipal code provisions for public nuisance. The city's action was not a mere adjudication of private rights. Thus, under either test, the demolition action was not entitled to a stay.

¶65 Innercity acknowledges that the court had the authority to not stay the proceedings due to the regulatory exception to automatic stays in bankruptcy, but merely argues that the court made the wrong determination and that the use of the city's regulatory power here was "inappropriate."

Innercity does not explain how the instant action does not qualify as an exercise of the city's police and regulatory power.

¶66 Under the regulatory exception of section 362(b)(4) of the Bankruptcy Code, the nonmonetary portion of the judgment allowing demolition was not subject to a stay. 11 U.S.C. 362(b)(4). As the city points out, only the enforcement of the fines portion of the judgment was entitled to a stay, as these funds would have to be paid out of Innercity's assets in bankruptcy court. Here, the trial court appropriately entered an order staying the enforcement of the judgment below. We also granted a stay of enforcement pending appeal. The trial court did not err.

¶67 **VI. Equity Concepts Do Not Change the Result**

¶68 Innercity also argues that justice and equity require us to vacate the circuit court's order of demolition. However, Innercity does not cite to any authority in support of its equity argument. "Points raised but not argued or supported with authority in a party's brief are deemed waived." *Zdeb v. Allstate Insurance Co.*, 404 Ill. App. 3d 113, 121-22 (2010).

¶69 Further, even in considering Innercity's contention, it is clear that equity should not assist Innercity in this case. The fact that Innercity made substantial investment in a building that was already the subject of a demolition proceeding by the city at the time it acquired its interest is not a good equitable argument. Notice of a claim regarding property sufficient to defeat *bona fide* purchaser status " 'may be actual or constructive and contemplates the existence of circumstances or facts either known to a prospective purchaser or of which he is chargeable with knowledge which imposes upon such purchaser the duty of inquiry.' " *Schaffner v. 514 West Grant Place*

Condominium Ass'n, Inc., 324 Ill. App. 3d 1033, 1046 (2001) (quoting *LaSalle National Bank v. 850 De Witt Condominium Ass'n*, 211 Ill. App. 3d 712, 719 (1991), quoting *Burnex Oil Company v. Floyd*, 106 Ill. App. 2d 16, 21 (1969)).

¶70 Here Innercity was aware of the proceedings at the time it acquired its interest. Innercity's agent was called to the property when the city had mobilized a wrecking company for demolition at the site. Thus, at worst Innercity had constructive notice that the city had a claim for public nuisance and was seeking demolition of the property. See *Mortgage Electronic Systems v. Gipson*, 379 Ill. App. 3d 622, 634 (2008) (holding that a purchaser claiming status as *bona fide* purchaser for value is chargeable with knowledge of facts he might have discovered by diligent inquiry if the purchaser has notice of facts that would put a prudent man on inquiry). See also *Anundson v. City of Chicago*, 97 Ill. App. 2d 212, 218 (1968) (holding that "it is incredible" that the purchasers "did not have notice of the action or that *** their contractor[] had not advised them of the filing of a prior declaratory judgment and decree affecting zoning and that the purchasers should have applied to court for leave to become parties to litigation").

¶71 Here Innercity was aware of the instant lawsuit when it acquired its interest in the property to become a majority owner. Innercity focuses on the investment viability of the property and argues generally that it would be unfair to allow demolition when it has invested money in the property and believes it is a good investment. The fact that Innercity believes allowing it to redevelop the property would increase the value of the property does not trump the city's prior determination that the property constituted a nuisance and was unsafe and dangerous. Equity does not lie with Innercity in this case.

¶72 **VII. Innercity Has No Standing To Appeal**

7100 Condominium's Motion to Vacate *Ex-Parte* Judgment

¶73 As the city correctly argues, Innercity has no standing to appeal the court's denial of 7100 Condominium's motion to vacate *ex parte* judgment. "In order for a party to have standing to appeal a particular judgment, that party's rights must have been prejudiced by that particular judgment." *Cianci v. Safeco Ins. Co. of Illinois*, 356 Ill. App. 3d 767, 775 (2005) (citing *Clay v. Pepper Construction Co.*, 205 Ill. App. 3d 1018, 1022 (1990)). "The doctrine of standing is designed to insure that the courts are accessible to parties to resolve actual controversies between them and not ' "address abstract questions, moot issues, or cases brought on behalf of others who may not desire judicial aid." ' " *Burton v. Ramos*, 341 Ill. App. 3d 122, 127 (2003) (quoting *Owner–Operator Independent Drivers Association v. Bower*, 325 Ill. App. 3d 1045, 1050 (2001), quoting *Jenner v. Wissore*, 164 Ill. App. 3d 259, 267 (1988)). "In order to have standing to appeal, a party must assert its own rights and interests and may not base its allegations of error on the rights of third parties." *Burton*, 341 Ill. App. 3d at 127 (citing *Commercial Credit Loans, Inc. v. Espinoza*, 293 Ill. App. 3d 915, 929 (1997)).

¶74 Here, the motion to vacate *ex parte* judgment was brought by 7100 Condominium Association. 7100 Condominium did not appeal the ruling on its motion. If there had been an *ex parte* judgment against Innercity, Innercity could have brought its own motion to vacate. See *Garvy v. Seyfarth Shaw LLP*, 2012 IL App (1st) 110115 at ¶ 22 (holding that the defendant law firm had no standing to appeal a ruling on its codefendant's motion). Here, however, there was no *ex parte* judgment against Innercity. It is axiomatic that Innercity has no standing to appeal on

behalf of 7100 Condominium. Furthermore, Innercity makes no reply to the city's argument, thereby conceding the issue. Thus, we determine Innercity does not have standing to raise this argument and therefore we do not address the merits.

¶75 CONCLUSION

¶76 We find that the manifest weight of the evidence established that the city proved demolition of the property was necessary. Regarding any alleged lack of notice, Innercity waived any such objection by failing to object below. Also, in any event Innercity was not entitled to notice because it was not an owner of any part of the building at the time the city filed the action. Innercity waived its constitutional argument by raising it for the first time in a motion to reconsider and not providing a reasonable explanation why the argument was not raised earlier. Also, we should determine the issues on appeal on nonconstitutional grounds. In addition, the public nuisance counts were brought as a statutory cause of action, and not a common law action for public nuisance, and thus does not require a showing on the elements necessary for common law public nuisance.

¶77 We further hold the trial court did not err in denying the defendant's motion for summary judgment because genuine issues of material fact existed regarding the dangerous and unsafe condition of the property. Further, Innercity was not entitled to an automatic stay of this action due to bankruptcy because this action was within the police power and governmental regulatory exception to the bankruptcy automatic stay provision (11 U.S.C. 362(b)(4)). Additionally, equity does not lie with Innercity and will not aid it where Innercity purchased its interest in the property with knowledge of the pending demolition action. Finally, we hold that Innercity has no

standing to appeal a ruling on 7100 Condominium's motion to vacate *ex parte* judgment.

Therefore, we affirm the judgment of the circuit court.

¶78 Affirmed.