

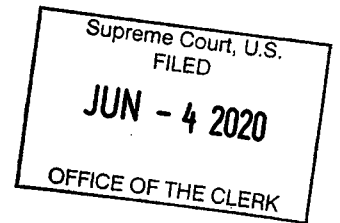
20-7

IN THE
Supreme Court of the United States

George Berka,
Petitioner,

v.

City of Middletown,
Respondent.



**On a Petition for a Writ of Certiorari
to the Connecticut Appellate Court**

PETITION FOR A WRIT OF CERTIORARI

Appearances:

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For the Respondent:

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June 4th, 2020

QUESTION PRESENTED

Should appeal instructions have been included with the subject, February 14th, 2018

Blight Citation that the Defendant City had issued to the Plaintiff?

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TABLE OF AUTHORITIES

1. SC 190387, “Petition for Certification”, Filed: 02-21-2020, Disposed: 03-11-2020
2. AC 41902, “George Berka v. City of Middletown”, Filed: 07-24-2018, Disposed:
02-11-2020
3. MMX-CV18-5010739-S, “George Berka v. City of Middletown”, Filed: 03-22-2018,
Disposed: 07-20-2018

INTRODUCTION

This case pertains to a blight citation that the City of Middletown, Connecticut, had issued to the Plaintiff for his two-family dwelling at 5 Maple Place in Middletown. The Plaintiff disagrees with the blight citation, and wishes to dispute it. Since no appeal instructions were included with the blight citation, the Plaintiff simply appealed it to the Connecticut Superior Court. The Superior Court dismissed the Plaintiff's appeal for lack of subject matter jurisdiction, because the Plaintiff had "failed to exhaust his administrative remedies first", by failing to request an appeal hearing for the blight citation with the City first. However, the blight citation itself did not state that the Plaintiff had the option to do this. So, how should the Plaintiff have known? Was it fair and reasonable of the Superior Court to expect the Plaintiff to have known this? Should the blight citation have included instructions about this?

OPINIONS BELOW

The opinions of the Connecticut Appellate Court (AC-41902) and the Connecticut Superior Court (MMX-CV18-5010739-S) in this matter are listed in the Appendix. They are also available on line at the Connecticut Judicial Branch web site.

JURISDICTION

The Connecticut Appellate Court had entered its judgment on February 11th, 2020, and the Connecticut Supreme Court had denied a petition for certification (SC-190387) on March 11th, 2020. Therefore, this Court's jurisdiction is hereby invoked under 28 U.S.C. § 1254 (1).

STATEMENT OF THE CASE

On February 14th, 2018, the Defendant City of Middletown had issued to the Plaintiff a blight citation for his 2-family property located at 5 Maple Place in Middletown, which is shown on page A15 in the Appendix. The fairness, validity, appropriateness, and constitutionality of this blight citation have been disputed at length in Matters MMX-CV18-5010739-S, AC-41902, MMX-CV18-5010855-S, AC-42139, MMX-CV18-5010856-S, and AC-43853. Suffice it to say that the Plaintiff believes this blight citation to be completely unfair, inappropriate, predatory, and, above all, unconstitutional.

The Plaintiff disagrees with this blight citation and wishes to dispute it. Since the citation did not contain any instructions on how to dispute or appeal it, the Plaintiff simply appealed it to the Middletown Superior Court, under Docket # MMX-CV18-5010739-S. The Defendant City had then filed a motion to dismiss the appeal for lack of subject matter jurisdiction, because the Plaintiff had failed to “exhaust his administrative remedies” prior to appealing the matter to the Superior Court.

Specifically, the Plaintiff had filed his appeal before the “Failure to Pay Fines Notice” had been issued to him, and before a hearing was conducted on the matter with a citation hearing officer. The Superior Court, siding with the City, had then dismissed the Plaintiff’s appeal for lack of subject matter jurisdiction, and the Appellate Court had recently upheld the Superior Court’s decision in Matter # AC-41902, which brings us to this Petition for Certification.

On page 3 of the blight citation (page A18 in the Appendix), there is a mention of a blight lien if the defendant (home owner) fails to pay the fines within (15) days of the issuance of the citation, as well as certain additional fines of up to \$250 per day, and a

brief discussion of the City's "right" to enter a blighted premises to abate any alleged "violations".

However, no matter how carefully one reads the blight citation, there is not one iota of information describing how to dispute or appeal the citation, if one wishes to do so.

There is no mention of having to wait for the "Notice of Failure to Pay Fines", and no mention of a hearing before a Citation Hearing Officer. In the absence of any such appeal instructions, what is a lay person (non-lawyer) to do?

In the absence of any appeal instructions, a lay person would likely do what he or she believes to be reasonable, which is to appeal the blight citation directly to the Connecticut Superior Court.

And this is the key question before the U.S. Supreme Court here today – "Is it sufficient for a home owner's direct appeal of a matter such as this to the Connecticut Superior Court to simply be "reasonable", even if it does not strictly comply with the letter of the law (§7-152c)?"

In its opinion recently issued in another related Matter, AC-42139, the Connecticut Appellate Court had held that the trial court had "failed to construe the self-represented plaintiff's complaint in the *broad and realistic manner* as required by our case law" (page A8 in the Appendix).

Therefore, the plaintiff asks, "should the trial court have also construed the self-represented plaintiff's direct (even if premature) appeal of the blight citation (Docket No. MMX-CV18-5010739-S) in a more "broad and realistic manner", in the absence of any appeal instructions?

If this court finds that the Plaintiff's actions were simply "reasonable", even though they may not have complied strictly with the provisions of §7-152c of the Connecticut General Statutes, the blight citation should be dismissed, and its associated fines should be vacated.

Finally, it is also worth noting that a separate violation issued to the Plaintiff by the Defendant City's health department in 2014 *did contain* instructions on how to appeal it, as shown on page A19 in the Appendix. These instructions, entitled "RIGHT OF APPEAL", were about one page long, and clearly instructed the defendant (home owner) about what to do if they wished to dispute the violation. *Did the City of Middletown set a precedent for the general public by including these appeal instructions on some of its health code violations?* Should this blight citation have also included similar instructions, which, at the very least, should have mentioned either the requirement for the home owner to wait for the "notice of failure to pay fines" to be issued, and to then attend a hearing before a citation hearing officer, before having the opportunity to appeal the citation to the Superior Court?

In any event, the Plaintiff believes that the strict provisions of §7-152c should either be relaxed for future self-represented appellants of these municipal enforcement matters, or that the trial courts should treat these types of appeals in a more "broad and realistic" manner, as specified in our case law, *especially in the absence of any sufficiently detailed or specific appeal instructions.*

STATUTORY PROVISIONS INVOLVED

Section 7-152c of the Connecticut General Statutes, which pertains to the hearing procedures for municipal citations, is relevant to this matter. Also relevant are general internal procedures at Connecticut municipalities, which spell out the specific procedures. The Petitioner believes that these procedures should be amended to require that adequate appeal instructions be included with any blight citations.

REASON FOR GRANTING THE PETITION

The Petitioner believes that this Court should grant this petition for the following reason:

This matter is of somewhat significant public importance because it poses a key question of whether existing procedures at Connecticut municipalities, and Section 7-152c of the Connecticut General Statutes, violate the public's right to due process, by failing to include written appeal instructions with blight citations. The appeals of many appellants were possibly "cut short" by the cities' failure to provide these instructions, and a review of their cases by the Superior Court was subsequently denied to them. This may have been a violation of their right to full due process of law, because some of them may have possibly prevailed in their appeals at the Superior Court. This issue is of particular importance for self – represented appellants, many of whom find themselves drawn into these matters with no legal training, are forced to "run a difficult gauntlet", and are often denied access to full due process of law because of legal technicalities they should not be expected to know. Providing especially these appellants with brief *written* instructions on how to appeal their blight citations, first

with the City, and then at the Superior Court, would be an important step toward helping safeguard their right to due process, and would not create an undue burden on the municipalities.

CONCLUSION

In light of the above, the Petitioner hereby requests this Court to grant his Petition for a Writ of Certiorari.

Respectfully submitted,

George Berka *George Berka*

George Berka,
Petitioner

June 4th, 2020