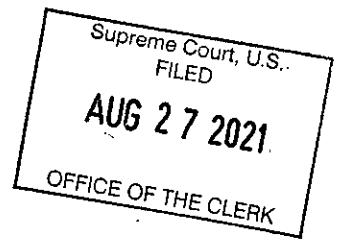


21-387



IN THE
Supreme Court of the United States

George Berka,
Petitioner,

v.

City of Middletown, Et. Al.,
Respondents.

**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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August 27th, 2021

QUESTION PRESENTED

Did the subject, February 14th, 2018 Blight Citation that the Defendant City had issued to the Plaintiff, violate many of the Plaintiff's important constitutional safeguards?

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TABLE OF AUTHORITIES

1. SC-200484, "Petition for Certification", Filed: 06-10-2021, Disposed: 06-29-2021
2. AC-43853, "George Berka v. City of Middletown, Et. Al.", Filed: 01-27-2020, Disposed: 06-08-2021
3. MMX-CV18-5010856-S, "George Berka v. City of Middletown, Et. Al.", Filed: 05-08-2018, Disposed: 01-16-2020

INTRODUCTION

The Defendant, City of Middletown, had issued to the Plaintiff, George Berka, a Notice of Blight, by letter, dated January 10th, 2018, for premises located at 5 Maple Place in Middletown. The notice was for seven (7) alleged blight conditions. The Defendant then issued to the Plaintiff a Blight Citation on February 14th, 2018, for the seven separate violations of the blight ordinance and imposed a \$100 per day civil fine for each violation (p. A56). On March 28th, 2018, the Defendant issued a Failure to Pay Fines Notice for the blight violations (p. A60). The Failure to Pay Fines Notice stated that the accumulated fines totaled \$29,400 (42 days x \$700). The Notice also advised the Plaintiff of his right of appeal. An appeal hearing was conducted by a citation hearing officer on May 2nd, 2018. The hearing officer issued a revised notice of decision / assessment on May 7th, 2018, assessing fines through the date of the appeal, which resulted in a total of \$53,900 (77 days x \$700, p. A69). Thereafter, the Plaintiff timely filed his petition to reopen the assessment under General Statutes 7-152c (g).

Pursuant to Practice Book 23-51, the Trial Court conducted a de novo hearing on November 7th, 2019. The blight proceedings regarding the Plaintiff's property at 5 Maple Place concerned seven separate violations of the Defendant's Blight Ordinance, Middletown's Code of Ordinances, c. 120, art. II, § 120-25A. The subject violations and the related sections of the Middletown Code of Ordinances (Code) are as follows: (1) missing, broken, or boarded windows or doors, if the building is not vacant or abandoned; id., § 120-20A(2)(a); (2) broken glass, crumbling stone, or other conditions reflective of deterioration or inadequate maintenance; id., § 120-20A(2)(b); (3) a collapsing or missing exterior wall, roof, stairs, porch, railings, basement hatchways,

chimneys, gutters, awnings, or other features; id., § 120-20A(2)(d); (4) siding or roofing that is seriously damaged, missing, faded or peeling; id., § 120-20A(2)(e); (5) the outside structure walls are not weather-watertight, that is cold air, dampness, rodents, insects, or vermin; id., § 120-20A(2)(h); (6) garbage, rubbish, refuse, accumulating refuse, putrescible items, trash or other accumulated debris that is being stored or accumulated in the public view; id., § 120-20A(2)(i); (7) abandoned or inoperable vehicles are improperly stored on the premises; id., § 120-20A(2)(i). For each of these violations, the notice of blight stated the remedy. The defendant did not dispute that at a hearing before this court, it had the burden to establish the violations of the blight ordinance and its entitlement to an assessment of fines. The defendant presented the testimony of Michelle T. Ford, who was the blight enforcement officer for the defendant at the time of the earlier proceedings. She is no longer employed by the defendant. Ford testified that she inspected the property on February 13th, 2018, and took photographs of the alleged blight conditions. After this inspection, she issued the blight citation dated February 14th, 2018. She again inspected the property and took more photographs on March 27th, 2018. Thereafter, she issued the failure to pay fines notice dated March 28th, 2018, that was the subject of the hearing officer appeal. Ford testified at the May 2nd, 2018 hearing officer appeal; however, there was no evidence presented to this court to establish that Ford ever inspected the property after the March 27th, 2018 inspection. Based upon Ford's testimony and the inspection photographs, the court found that the blight violations set forth in (1) through (6) above existed on February 14th, 2018, and continued to exist on March 27th, 2018. Because the defendant did not present evidence

of inspection of the property after March 27th, 2018, there was found to be a lack of evidence to establish violations after March 27th, 2018. This determination was without prejudice to the defendant to pursue blight violations after March 27th, 2018, should it choose to do so in the appropriate proceedings.

As to blight violation (7), the court did not find that the trailer on the property, which was the subject of blight violation (7), was inoperable. Although the defendant's photograph showed that a fallen tree limb was resting on the top of the trailer, there was no evidence to establish that the trailer itself was mechanically inoperable. The Plaintiff had subsequently appealed the matter to the Appellate Court on constitutional and "right to a jury" grounds, among others, as outlined in Section I above. The Appellate Court had recently upheld the Superior Court's decision in Matter # AC-43853, and the Connecticut Supreme Court has denied Petition for Certification No. SC-200484 on June 29th, 2021, which brings us to this Petition for Certiorari.

OPINIONS BELOW

The opinions of the Connecticut Appellate Court (AC-43853) and the Connecticut Superior Court (MMX-CV18-5010856-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 June 8th, 2021, and the Connecticut Supreme Court had denied a petition for certification (SC-200484) on June

29th, 2021. Therefore, this Court's jurisdiction is hereby invoked under 28 U.S.C. § 1254 (1).

STATEMENT OF THE CASE

Background

This matter is the latest in a long "saga" of seven related cases between the Plaintiff and the City of Middletown, which began in the fall of 2014. This ongoing dispute has lasted for almost six years now; and is believed to revolve around the central issue of *maximum occupancy*, and not necessarily "blight", per se. Blight, in this case, is believed to be mainly a "tool of coercion", used by the City to try to force the Plaintiff to surrender his right of maximum occupancy for the property. The Plaintiff bases this belief on the fact that the City had approached him in the past, and offered to "settle this matter" if an "agreement could be reached" on the maximum occupancy issue. Since the length of this petition is limited to only (10) pages, the Plaintiff also asks this Court to refer to his Appellate brief for this matter (AC-43853), which more fully explains the issues in this case. This Petition is only a summary. The main points of the Plaintiff's argument now follow.

Should the Plaintiff Have Been Granted a Jury Trial?

On November 13th, 2018, the Plaintiff had requested a jury trial in his appeal of the blight citation, and paid the \$440 jury fee. (See Entry No. 105.00 in Matter # MMX-CV18-5010856-S). Then, on October 30th, 2019; the City had filed a motion to strike the Plaintiff's claim for the jury trial (Entry No. 112.00), on the grounds that there is no

right to a jury trial in citation assessment appeals, pursuant to Practice Book § 23-51(c).

On November 6th, 2019, the Court had granted the City's motion (Entry No. 112.10).

The title of Section 23-51 of the Practice Book reads "Petition to Open *Parking* or *Citation Assessment*"; it is interesting to note that these blight citations are grouped together with parking tickets, which are generally around \$20, and seldom more than \$100. Perhaps the authors here had these types of "small" citations in mind when writing this section, and it is understandable that they likely saw these small citations as "too trivial" to warrant a jury trial. However, a \$53,900 blight fine is a "far cry" from a \$20 parking ticket! Doesn't a case in which a person's home is on the line deserve a hearing before a jury? After all, people are granted jury trials for far lesser matters.

Therefore, the Plaintiff asks that this blight citation be dismissed, and that the associated fine be vacated in its entirety, because the Plaintiff was, after all, denied reasonable access to due process, because he was denied a jury trial. A jury may well have returned a different verdict when presented with the facts and evidence in this case. It is quite possible that at least one or several jurors could have viewed the Plaintiff as a "fellow home owner in a dire predicament", facing harassment and substantial fines from the City over questionable allegations, and could have sympathized with him more than a single judge did. The jurors may have been more likely to "place themselves in the Plaintiff's shoes" because, frankly, something like this could potentially happen to any one of them as well. For these reasons, perhaps these types of blight citations, in which large fines are at stake, should be granted jury trials in the future?

Should the Plaintiff Have Been Allowed to Raise Constitutionality Issues?

Twice the Plaintiff had requested to raise constitutionality issues over blight and, on both occasions, his request was denied. First, the Plaintiff had filed a "Request to Amend the Complaint" (Entry No. 121.00), and then he submitted an Amended Complaint (122.00) on November 4th, 2019. (This Amended Complaint contained the Plaintiff's argument about the basic constitutionality, (or lack thereof), of blight citations in general.) The City had then objected to the Plaintiff's request on November 5th; (123.00), and the Court had sustained the City objection (123.10), and dismissed the Plaintiff's request to amend his complaint. During the hearing, the Plaintiff had again asked the Judge if he could present testimony as to why he believed this entire blight citation to be unconstitutional in the first place, and again, the Judge denied the Plaintiff's request. The Plaintiff believes this constitutionality (or, more accurately, *unconstitutionality*) argument against blight citations in general to be of vital importance here, and that he should have been permitted to present it. The fact that the Trial Judge had *refused* to permit the Plaintiff to present this important constitutionality argument should be tantamount to deprivation of due process of law, and should be grounds for the outright dismissal of this blight citation and its associated fine in its entirety. Also, this is another reason why the jury trial issue (discussed above) is important here, and why the Plaintiff should have been granted a jury trial. A jury may well have seen this constitutionality issue in a substantially "different light" than the judge. A jury may well have agreed with the Plaintiff, in that these blight citations are an assault on some of our most cherished provisions in the Constitution and the Bill of Rights - specifically the provision of the security in our homes and possessions, and

the provision against the unjust taking of our homes without due process of law. It is possible that from a pool of six jurors, at least one or more would have been deeply concerned about this issue, and could have decided in the Plaintiff's favor because of it.

This Blight Citation Violates Important Constitutional Safeguards

As he has mentioned in the past, the Plaintiff believes that this blight citation violates several of his important constitutional safeguards, namely:

1st Amendment, which pertains to "The freedom of speech", may also be more broadly applied to one's freedom of self-expression, and hence the freedom to have an unsightly, or aesthetically offensive home, which others may find objectionable. By seeking to fine the Plaintiff for items of a purely aesthetic nature, this citation hereby seeks to declare and enforce one standard of beauty over another, in violation of one's 1st Amendment rights to the freedom of speech and self-expression.

4th Amendment, i.e. "The right of the people to be secure in their homes and possessions shall not be violated." This provision is infringed upon because this blight citation effectively gives the Middletown City Government the ability to seize the Plaintiff's home via unreasonably high blight fines, and a subsequent lien. The blight citation also infringes upon the Plaintiff's general right to privacy, as he has the right to not be disturbed by city officials over the appearance of his property.

5th Amendment; "People shall not be deprived of life, liberty, or property without due process of law, nor shall private property be taken without just compensation." This blight citation and lien seeks to simply take the Plaintiff's property without any compensation whatsoever.

8th Amendment; "Excessive bail shall not be required, nor excessive fines imposed..." Fines of \$100 per day for these aesthetic items, and the resulting \$25,200 fine would be viewed by most reasonable people as being "excessive". Because it violates these key constitutional safeguards, this blight citation should be dismissed in its entirety, and the associated fine should be vacated.

Shouldn't One Be Allowed to Board Up Their Basement Windows?

In Item (1) of the blight citation, the Plaintiff was cited for having his basement windows boarded up. He therefore asks why this should not be permitted? People sometimes board up their basement windows for various reasons, the primary one being security. Having the basement windows boarded up does help to deter break-ins and theft, especially if one has personal property in their basement. Above all, however, shouldn't it be the home owner's *prerogative* if they choose to board up their windows?

Was it Fair to Expect Painting and Concrete Work in the Winter?

In Items (2) and (5) of the blight citation, the Plaintiff was asked to perform concrete repairs on certain portions of the foundation, and to paint the foundation as well. The Zoning Officer's notice of blight was issued on January 10th, 2018, and the blight citation, which began to accrue fines, was issued on February 14th, 2018. During these winter months, the temperatures were cold, and frequently dipped below freezing, especially at night. It is generally recommended that concrete be poured when the temperature is above 50°F. The necessary chemical reactions that set and strengthen concrete slow significantly below 50°F and are almost non-existent below 40°F. The

Plaintiff had also raised this issue during the appeal hearing, and, although the Trial Judge acknowledged that he understood the Plaintiff's concern, a fine was still imposed.

Was the Zoning Officer Qualified to Make Structural Assessments?

In Item (3) of the blight citation, the Plaintiff was cited for supposedly having an "unstable front porch and rear exterior stairs", among other things. The term "unstable" is more of a structural assessment, which does not really apply to blight. Moreover, questions of structural stability are generally evaluated by qualified personnel, such as structural engineers. It was established at the appeal hearing that then-Zoning Officer Michelle Ford is neither a structural engineer, nor does she have any type of construction background. Ms. Ford testified that she made this determination only because the front porch and the rear stairs "appeared" unstable; she did not take any concrete steps to verify that they were indeed unstable. In reality, the front porch and rear stairs are sound and in daily use, and there is nothing structurally wrong with them. In any event, the attempt to evaluate the stability of a structure by an unqualified person, a lay person, was improper, and this type of practice in general should not be permitted. The soundness of a particular structure, especially when significant fines are at stake for the home owner, should be evaluated only by qualified persons, such as licensed or experienced structural or civil engineers. Since this particular item in the blight citation was determined by an unqualified person, it should be dismissed.

Was the Siding Indeed “Seriously Damaged”?

In Item (4) of the blight citation, the Plaintiff was cited for having “seriously damaged siding”. Hence, the question here is, “was the damage to the Plaintiff’s siding really serious enough to warrant a citation? The damage to the siding was generally minor, consisting of small cracks and divots in a few locations, with no large sections of siding broken or missing. Moreover, there is another, older layer of siding under the existing siding, which still protects the home, even if the outermost layer of siding had been slightly damaged. So, by definition, small, localized damage to the siding was not “serious”, as defined by the ordinance, so this violation was downright misapplied.

Were the Outside Walls Indeed Not Weather-Tight?

In Item (5) of the blight citation, the Plaintiff was cited for supposedly not having the outside structure walls weather-tight or water-tight. This violation does not apply here because the outside walls are indeed weather – tight, owing to a second (older) layer of siding installed below the existing siding. This siding is actually visible in certain areas of the home. These two layers of siding together provide ample weather protection for the home. The home actually retains its heat quite well, and there are no leaks.

The Hearing Officer May Have Had a Conflict of Interest

Prior to being permitted to appeal his blight citation to the Superior Court, the home owner must attend a hearing on the matter before the City officials and a “Citation Hearing Officer”, whom the City designates. This hearing officer who presided over this hearing, Sylvia Rutkowska, is actually a local attorney, who has business dealings, and

an attorney – client relationship with the City. Due to these circumstances, the Plaintiff believes that this local attorney was unlikely to be objective, and was more inclined to decide in favor of the City, for fear of compromising her firm's business relationship, or otherwise alienating the City. For these reasons, the Plaintiff believes that the Citation Hearing Officer should be someone completely external to Middletown.

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.

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 Connecticut municipal blight ordinances violate key constitutional safeguards of homeowners. "Public aesthetics should not be an interest within the scope of the police powers," as was the conventional wisdom in the United States from about the year 1620, up until after the Second World War.

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,
Petitioner

August 27th, 2021