

IN THE COURT OF COMMON PLEAS
LORAIN COUNTY, OHIO

2007 JAN 11 P 2 2b

STATE OF OHIO ex rel. JIM PETRO COMMON PLEAS CASE NO. 03CV136143
ATTORNEY GENERAL, RON NABAKOWSKI

Plaintiff,

v.

LORNE J. ELBERT, JR., et al,

Defendants.

JUDGE KOSMA GLAVAS

JUDGMENT ENTRY

HEREBY CERTIFY THIS TO BE A TRUE COPY
OF THE ORIGINAL ON FILE IN THIS OFFICE.
RON NABAKOWSKI LORAIN COUNTY
CLERK OF THE COURT OF COMMON PLEAS
BY B. Beudler DEPUTY

1. This Case was heard before the Honorable Kosma Glavas as a bench trial with this Honorable Court, commencing on November 2, 2006, and ending on November 8, 2006, with closing arguments submitted November 27, 2006.

2. The Plaintiff, State of Ohio, ex Rel. Jim Petro Attorney General, commenced this case by filing a Complaint on September 8, 2003, against Defendants Lorne J. Elbert, Jr., Elbert Excavating and Wrecking, Elbert Building Co. , Inc., and Kasper Properties, Inc., later Amended to twenty-one counts of alleged violations of Ohio Environmental Protection Agency(Ohio EPA) related laws and rules, and seeking civil fines and injunctive relief pursuant to RC. 3704.06, (air pollution relief), 3734.10 and 3734.13(solid and hazardous waste relief).

3. This Court hereby finds, by a preponderance of the evidence and by clear and convincing evidence, that Defendants Lorne Elbert, Jr., dba. Elbert Excavating and Elbert Building Co. are liable for two violations of R.C. 3704.06 for failing to timely send

notices of commercial property demolition to the Ohio EPA for two buildings in 1998 and 2001. The Court also finds that these Defendants have since conducted numerous demolitions of commercial property since those times and have properly tested for asbestos and sent appropriate notices of demolition to the Ohio EPA.

4. This Court also finds, by a preponderance of the evidence and by clear and convincing evidence, that Defendant Lorne Elbert Jr. dba. Elbert Excavating is liable for one violation, and Defendant Kasper Properties, Inc. is liable for six violations of R.C. 3704.06 for open burning. This Court also finds that Defendants have taken steps to prevent such open burning which have successfully limited such violations.

5. This Court does not find sufficient and credible evidence to support the other alleged violations in the twenty-one counts in Plaintiff's Complaint, for R.C. 3734.10, 3734.13, and 3704.06, and other related statutes and rules, either by a preponderance of the evidence or by a clear and convincing evidence standard.

6. This Court also finds that the civil penalties requested by Plaintiff are within the sound discretion of the trial court, and the Court has carefully considered the evidence presented to the Court as to the civil penalties sufficient and necessary to deter future conduct, the good and bad faith of the Defendants, the financial gain to Defendants, as well as the financial harm proven to be caused.

7. This Court also has considered the equitable injunctive relief requested, and carefully considered the relief reasonable and necessary under Civil Rule 65 and the Ohio Revised Code.

8. This Court also finds that there is not sufficient evidence or cause to find Lorne Elbert Jr. liable for the acts of Defendants who were incorporated at the time any

violation was committed by it, and that attorneys' fees and expert fees are not justified to be paid by the Defendant, either directly or as costs.

THEREFORE, IT IS HEREBY ORDERED:

A. That Defendants Lorne Elbert, Jr. and Elbert Building Co. shall pay a civil penalty of \$100.00(one hundred dollars) to Plaintiff, as Plaintiff directs, for the two violations of RC. 3704.06 relating to the failure to give Notice of commercial demolition and of proper asbestos tests in 1998 and 2001. Payment is to be made within 60 days of the filing of this order.

B. Further, this Court hereby orders Lorne Elbert, Jr. and Elbert Building Co., Inc. to continue to notify the Ohio EPA of any commercial demolition and to perform proper asbestos tests in commercial buildings before such buildings are begun to be demolished and to keep records of such notifications and tests for six years. If the law changes such that this injunctive relief is no longer applicable, this paragraph shall thereafter become moot and unenforceable.

C. Defendant Lorne Elbert Jr. is liable for one violation, and shall pay a civil penalty of \$100.00(one hundred dollars), and Kasper Properties Inc. is liable for six violations, and shall pay a civil penalty of \$250.00(two hundred and fifty dollars) under RC. 3704.06 for open burning violations, as directed by Plaintiff. Such civil penalties shall be paid within 60 days of the filing of this order.

D. Defendant Kasper Properties Inc. shall continue to maintain the fence currently around its real property, and further shall notify all its tenants, lessees, and employees within 60 days by writing that unlawful burning is grounds to immediately terminate any lease agreement or employment contract. Records of such written notifications shall be

kept for six years. If the law changes such that this injunctive relief is no longer applicable, this paragraph shall thereafter become moot and unenforceable.

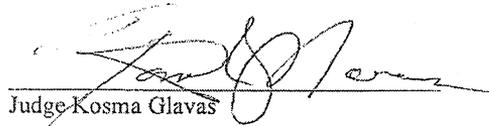
E. Court costs shall be paid equally by Defendants Kasper Properties Inc. and Lorne Elbert, Jr. within 60 days of receipt. No other fees or costs shall be allowed.

F. An appeal bond of \$1,000.00 (one thousand dollars) for any one or all Defendants together is hereby set.

G. Certified copies of this order shall be sent to the attorneys for all parties of record, pursuant to rule as a final appealable order.

IT IS SO ORDERED.

1-10-07


Judge Kosma Glavas