

**D OF APPEALS
for
MONTGOMERY COUNTY**

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**Case No. A-6592
APPEAL OF TIEMOKO COULIBALY**

OPINION OF THE BOARD

(Worksession held November 14, 2018)
(Effective Date of Opinion: November 30, 2018)

Case No. A-6592 is an administrative appeal filed September 28, 2018, by Tiemoko Coulibaly (the "Appellant"). Appellant charged error on the part of Montgomery County's Department of Permitting Services ("DPS") in the issuance of building permit number 850423 on August 30, 2018. Appellant alleged that the "authorization to build a garage issued on 8/30 should be vacated because of fraud violations."

Permit number 850423 was issued for the property at 2013 Grace Church Road, Silver Spring, Maryland 20910 (the "Property"). See Exhibit 6, ex. A. Appellant resides at 14061 Jump Drive, Germantown, Maryland 20874. See Exhibit 1.

Pursuant to section 59-7.6.1.C of the Zoning Ordinance, the Board scheduled a public hearing for November 28, 2018. Pursuant to sections 2A-7 and 2A-8 of the County Code, and Board of Appeals' Rule of Procedure 3.2, the County filed a Motion for Summary Disposition of the administrative appeal on October 26, 2018. Siavash Asgari, the foreclosure purchaser of the Property who had been permitted to intervene in this administrative appeal (the "Intervenor"), filed Intervenor's Motion for Summary Disposition through counsel, Abdul-Ali Wali, Esquire, on October 29, 2018. Appellant filed an Opposition to the Montgomery County and Intervenor's Motion for Summary Disposition and Appellant's Timely Motion for Summary Judgment on November 8, 2018, and submitted an additional email as part of his response on November 12, 2018. The Board, pursuant to Board Rule 3.2.5, decided the Motions for Summary Disposition, and the opposition thereto, at a worksession on November 14, 2018. Appellant appeared *pro se*. Associate County Attorney Charles L. Frederick represented Montgomery County. Abdul-Ali Wali, Esquire, appeared on behalf the Intervenor.

Decision of the Board: County and Intervenor's Motions for Summary Disposition
granted;
Administrative appeal **dismissed.**

RECITATION OF FACTS

The Board finds, based on undisputed evidence in the record, that:

1. Skyline Homes, LLC, on behalf of Intervenor, filed an application with DPS on August 28, 2018 for building permit number 850423. See Exhibit 6, ex. A.

2. As part of their application for building permit number 850423, Skyline Homes, LLC, provided to DPS copies of a Memorandum of Purchase at Public Auction, the Substitute Trustees' Sale of Real Property and any Improvements Thereon, and ALTA Settlement Statement for the sale of the Property, all of which identified Intervenor as the purchaser of the Property. See Exhibit 6, ex. A.

3. On June 1, 2018, the Montgomery County circuit court entered an Order granting possession of the Property to Intervenor. See Exhibit 6, ex. B.

4. On June 6, 2018, the Montgomery County circuit court entered an Order of Ratification of Sale of the Property, civil case number 436150-V. See Exhibit 6, ex. B. On that same date, the Clerk of the circuit court executed a writ directing the Sheriff of Montgomery County to place Intervenor in possession of the Property.

3. On August 30, 2018, DPS issued building permit number 850423 to Skyline Homes, LLC, on behalf of Intervenor, for the Property. See Exhibit 6, ex. A.

MOTION FOR SUMMARY DISPOSITION—SUMMARY OF WRITTEN ARGUMENTS

1. Counsel for the County argued in his Motion for Summary Disposition that section 8-24(c) of the County Code provides that an application for a building permit may be made by the owner of the property or the owner's agent. He argued that in this case, the owner's contractor submitted the application as the owner of the Property's agent.

Counsel argued that Intervenor submitted proof he was the Foreclosure Purchaser of the Property and that review of the circuit court case *Ward v. Coulibaly*, civil case number 436150-V, demonstrates that Intervenor is the owner of the Property. He argued there is no dispute of material fact that Intervenor, as the owner of the Property, and Skyline Homes, LLC, as Intervenor's agent, were qualified applicants to apply for a building permit under section 8-24(c) of the County Code. Counsel for the County argued that DPS properly issued building permit number 850423.

2. Appellant argued in his opposition motion, motion for summary judgment, and supplemental filing that for a variety of reasons, the circuit court acted improperly in the foreclosure proceedings and that the foreclosure sale should be voided. He questioned the legal validity of the circuit court's actions and orders in the foreclosure proceeding. Appellant argued that because the foreclosure sale should be voided, the Board should deny the Motions for Summary Disposition. He noted that he has a long history of conflict with Montgomery County judges and their orders, citing to his experiences in other proceedings as evidence of this long-

standing conflict.

Appellant argued that the County sent him a notice of a violation at the Property after the Sheriff had evicted him from the Property, and questioned the authority of the County to do so. He argued that Intervenor is the one who is responsible for the building activity on the Property. He asked the Board to grant his Motion for Summary Judgment.

3. Mr. Wali, counsel for Intervenor, argued in his Motion for Summary Disposition that Appellant has no possessory interest or right of redemption in the Property, and that any rights Appellant had in the Property were extinguished when Intervenor purchased the Property at foreclosure sale on March 23, 2018. Counsel argued that Appellant cannot use this administrative appeal to stay the foreclosure order or otherwise impede Intervenor's right to possession of the Property.

CONCLUSIONS OF LAW

1. Section 2-112(c) of the Montgomery County Code provides the Board of Appeals with appellate jurisdiction over appeals taken under specified sections and chapters of the Montgomery County Code, including section 8-23.

2. Section 2A-2(d) of the Montgomery County Code provides that the provisions in Chapter 2A govern appeals and petitions charging error in the grant or denial of any permit or license or from any order of any department or agency of the County government, exclusive of variances and special exceptions, appealable to the County Board of Appeals, as set forth in section 2-112, article V, chapter 2, as amended, or the Montgomery County Zoning Ordinance or any other law, ordinance or regulation providing for an appeal to said board from an adverse governmental action.

3. Section 8-23(a) of the County Code provides that "[a]ny person aggrieved by the issuance, denial, renewal, amendment, suspension, or revocation of a permit, or the issuance or revocation of a stop work order, under this Chapter may appeal to the County Board of Appeals within 30 days after the permit is issued, denied, renewed, amended, suspended, or revoked or the stop work order is issued or revoked. A person may not appeal any other order of the Department, and may not appeal an amendment of a permit if the amendment does not make a material change to the original permit. A person must not contest the validity of the original permit in an appeal of an amendment or a stop work order."

4. Section 59-7.6.1.C.3 of the Zoning Ordinance provides that any appeal to the Board from an action taken by a department of the County government is to be considered *de novo*. The burden in this case is therefore upon the County to show that building permit number 839068 was properly issued.

5. Section 8-24(c) of the County Code provides:

Qualified applicants. Application for a permit shall be made by the owner or lessee of the building or structure, or agent of either or by the licensed engineer or architect employed in connection with the proposed work. If the application is made by a person other than the owner in fee, it shall be accompanied by a duly verified affidavit of the owner or the qualified person making the application that the proposed work is authorized by the owner in fee and that the applicant is authorized to make such application. The full names and addresses of the owner, lessee, applicant and of the responsible officer, if the owner or lessee is a corporate body, shall be stated in the application.

6. Under section 2A-8 of the County Code, the Board has the authority to rule upon motions and to regulate the course of the hearing. Pursuant to that section, it is customary for the Board to dispose of outstanding preliminary motions at a worksession prior to the hearing. Board Rule 3.2 specifically confers on the Board the ability to grant motions to dismiss for summary disposition in cases where there is no genuine issue of material fact and dismissal should be rendered as a matter of law (Rule 3.2.2). Under Board Rule 3.2.2, the Board may, on its own motion, consider summary disposition or other appropriate relief.

7. Under Board Rule 3.2.5, the Board must decide the motion after the close of oral argument or, as in this case, at a worksession.

8. The Board finds that there are no genuine issues of material fact to be resolved by the Board. The Board finds, based upon the uncontested evidence, that Intervenor is the Foreclosure Purchaser of the Property and that the Board cannot overrule the circuit court's actions in granting the foreclosure. The Board further finds that there is no dispute that Intervenor and/or his agent are a "qualified person" under the County Code to apply for building permit number 850423. Therefore, the Board further finds that DPS properly issued the building permit under section 8-24(c) of the County Code as a matter of law.

9. The County and the Intervenor's Motions for Summary Disposition in Case A-6592 are granted, and the appeal in Case A-6592 is consequently **DISMISSED**.

On a motion by Chair John H. Pentecost, seconded by Vice Chair Edwin S. Rosado, with Member Stanley B. Boyd, Member Bruce Goldensohn, and Member Katherine Freeman in agreement, the Board voted 5 to 0 to grant the County and the Intervenor's Motions for Summary Disposition and to dismiss the administrative appeal and adopt the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland that the opinion stated above be adopted as the Resolution required by law as its decision on the above entitled petition.



John H. Pentecost
Chair, Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 30th day of November, 2018.



Barbara Jay
Executive Director

NOTE:

Any request for rehearing or reconsideration must be filed within ten (10) days after the date the Opinion is mailed and entered in the Opinion Book (see Section 2A-10(f) of the County Code).

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County in accordance with the Maryland Rules of Procedure (see Section 2-114 of the County Code).