

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

APPELLATE DIVISION (CIVIL): AY
CASE NO.: 502018CA009373XXXXMB

M & A BROTHERS REALTY,
NO. 5, INC.

Appellant,

v.

TOWN OF LANTANA

Appellee.

Opinion filed: JUN 13 2019

Appeal from the Town of Lantana, Code Enforcement, Special Magistrate Bill Downey.

For Appellant: Louis Giovachino, Esq.
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PER CURIAM.

M & A Brother's Realty No. 5, Inc. ("M & A Realty" or "automotive center") owns a property on which an automotive center doing auto and body repair is operated. The Town of Lantana Code Enforcement Special Magistrate ("Special Magistrate") found M & A Realty to be in repeat violation of Code of Ordinances, Town of Lantana, Sections 12-52, 19-4, and 23-131, which regulate inoperable, junked, and unregistered vehicles, traffic and parking, and zoning and overall parking, respectively. M & A Realty appeals the Order Finding Repeat Violation and Imposing Fine ("Order") entered by the Special Magistrate on June 25, 2018.

Section 12-52, which governs nuisances and the exceptions, provides:

(a) Declared. No person shall park, store, leave or permit the parking, storing or leaving of any junked vehicle or appliance as defined herein, or any abandoned vehicle or appliance, as defined herein, upon any public or private property within the town for a period of time in excess of seventy-two (72) hours. The presence of such junked or abandoned article on public or private property is hereby declared a public nuisance which may be abated as such in accordance with the provisions of this article.

(b) Exception. This section shall not apply to:

(1) Any vehicle or appliance completely enclosed and fully shielded from public view within a building on private property;

(2) Lawfully established salvage yards, junk yards, wrecking yards, storage yards or other similar establishments which are legally licensed and zoned for the operation of such types of businesses and which fully comply with all applicable laws, ordinances and regulations pertaining to the operation of such types of businesses;

(3) Vehicles or appliances, or parts thereof, stored or parked on private property solely for prompt repair at a duly licensed business or enterprise operated and conducted for the repair of vehicles or appliances in full compliance with applicable laws, ordinances and regulations.

Pursuant to Section 12-52, inoperable, junked, or unregistered vehicles remaining on a property for longer than seventy-two (72) hours must fall within the scope of one of the three aforementioned exceptions. At the hearing on June 21, 2018, the parties disputed whether the vehicles stored on the parking lot while awaiting repair fall within the scope of the third exception. The Town of Lantana Code of Ordinances does not define "prompt repair," and neither the Town of Lantana nor the Special Magistrate offered a definition of "prompt repair" at the hearing.

In finding M & A Realty in violation of Section 12-52, the Special Magistrate articulated:

I -- I think the code where it talks about the prompt repair is referring to, somebody pulls in and you -- you need a brake job, you know, you're [sic] car's sitting there, it's -- it's -- it looks like any other car in the parking lot; it's not wrecked, you know, and when they get to it, they pull it in and they do the brakes and put it out in the parking -- parking space.

You know, I -- I think you have a -- a very different operation going on compared to, you know, what would be permissible in -- in designated parking spaces.

In describing the practice of performing body repairs, M & A Realty stated at the hearing, in pertinent part:

Auto body doesn't take half an hour; it takes days, sometimes months, to get it done. So when we bring it in, we work on it, pull it back out, because we attempt to get the faster cars in and out while in between doing the longer cars, okay?

So, yes, they're in designated parking spaces... it's always a flow; there's always, this car moved today, this moved -- this car moved an hour later, this car will move; it's always an in and out flow. There are times you'll see one car parked here for a day or two and then it will be parked in another spot two or three days later.

The Special Magistrate's hypothetical describes a repair to be accomplished in less than seventy-two (72) hours. However, a violation of Section 12-52 cannot arise until an inoperable, junked, or unregistered vehicle has been stored on any public or private property for a period of time *in excess* of seventy-two (72) hours. It is only after that seventy-two (72) hour timeframe lapses, and provided that none of the exceptions apply, that a person could be cited for a violation of Section 12-52.

If "prompt repairs" can only be completed in seventy-two (72) hours or less, then there would be no need for the exception. The third exception to Section 12-52 plainly recognizes that some businesses licensed to perform vehicle or appliance repairs cannot complete such repairs within a seventy-two (72) hour period. Thus, rather than limiting such businesses to a seventy-two (72) hour period, the Town of Lantana instead requires repairs to be "prompt." The third exception applies to businesses like M & A Realty, which operates a licensed business conducting body repairs on vehicles. The Court finds that the Special Magistrate did not follow

the essential requirements of the law in its interpretation of the length of time necessary to trigger a violation of Section 12-52 and in its application of the third exception.

The Court also finds that the Special Magistrate's findings were not supported by competent substantial evidence. At the hearing, the Town of Lantana provided photographs of several vehicles parked around the automotive center as evidence of M & A Realty's violations. There was no competent, substantial evidence presented that the individual vehicles were not being repaired, let alone promptly repaired. At the hearing, M & A Realty argued, "[prompt] says as fast as possible. And that is what we do. I don't keep cars longer than I have to because I don't get paid if I don't -- if I keep the cars." The photographs provided by the Town of Lantana do not support a finding that the vehicles stored on the parking lot were not there solely for the purpose of awaiting "prompt repair." Accordingly, the Special Magistrate's finding of a violation of Section 12-52 is not supported by competent substantial evidence.

The Town of Lantana concedes error with respect to the Special Magistrate's finding that M & A Realty is in violation of Section 19-4. We agree. Section 19-4.2 provides that the registered owner of any vehicle parked in the town in violation of chapter 19 shall be liable for the penalties prescribed for such violation. No evidence was presented at the hearing showing M & A Realty to be the registered owner of the vehicles stored on the parking lot. The finding of a violation of Section 19-4 ought to be vacated because 1) the Special Magistrate did not follow the essential requirements of the law, Section 19-4.2, when he imposed on M & A Realty a penalty for a violation of Section 19-4, and 2) there was not competent substantial evidence to support the Special Magistrate's finding that M & A Realty is the correct party on whom the penalty should be imposed.

Finally, M & A Realty argues that no discussion had taken place at the hearing surrounding the facts of M & A Realty's alleged violation of Section 23-131, and that the Order does not articulate any evidentiary findings with respect to the violation. We agree, and hold that the Special Magistrate's finding of a violation of Section 23-131 was not supported by competent, substantial evidence.

The Order Finding Repeat Violation and Imposing Fine entered by the Special Magistrate on June 25, 2018 is hereby **REVERSED**.

ARTAU, GILLEN, HAFELE, JJ., concur.

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IN AND FOR PALM BEACH COUNTY, FLORIDA

APPELLATE DIVISION (CIVIL): AY
CASE NO.: 502018CA009373XXXXMB
L.T. NO.: C-2018-1228

M & A BROTHERS REALTY, NO. 5, INC.,
Appellant,

Opinion/Decision filed: JUN 13 2019

v.

Appeal from the Town of Lantana
Department of Code Enforcement

TOWN OF LANTANA, FLORIDA,
Appellee.

Date of Appeal: September 12, 2018

DATE OF PANEL: March 19, 2019

PANEL JUDGES: ARTAU, GILLEN, HAFELE

AFFIRMED/REVERSED/OTHER: REVERSED

PER CURIAM OPINION/DECISION BY: PER CURIAM

CONCURRING:)	DISSENTING:)	CONCURRING SPECIALLY:)
)	With/Without Opinion)	With/Without Opinion)
<i>Edward L. Artau 6/10/19</i>)))
DATE: J.))))
<i>Jeffrey Dana Gillen 06/10/19</i>)))
DATE: J.))))
<i>(see dts 5/3/2018)</i>)))
<i>6/14/19</i>)))
DATE: J.))))