No. _____

In The
Supreme Court of the United States

JARED RAPP AND MOTI GOLDRING,

Petitioners,

v.

CITY OF EAST LANSING, MICHIGAN,

Respondent.

On Petition For Writ Of Certiorari To The 30th Circuit Court For The State Of Michigan

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

A state trial court made findings of responsibility on civil infractions for violation of a rental housing ordinance and imposed fines of over $53,000.00. The state trial court denied Petitioners discovery and consolidated 182 citations into one trial over objection. A jury trial was denied based on state law which also required proof on the part of Respondents by a preponderance of the evidence. An appeal of right to a state circuit court as appellate court resulted in affirmance of the sufficiency of the evidence and the trial court's rulings denying certain procedural protections. The state circuit court set aside the fines as excessive and remanded for imposition of appropriate fines. The Petitioners assert two questions:

I. Should this Court review the state circuit court's ruling that affirmed the denial of a jury where the Respondent obtained permission to combine into one civil infraction trial 86 civil infraction tickets against each Petitioner covering an 86 day period into one trial where the potential allowable fines exceeded $170,000.00 regarding a condominium unit which had been purchased two years earlier for approximately $200,000.00? Does the state circuit court's opinion violate the Sixth Amendment to the United States Constitution and deny the Petitioners due process of law?

QUESTIONS PRESENTED – Continued

II. Should this Court review the state circuit court's ruling that the evidence was sufficient where the two persons identified as excess occupants both testified they did not reside on the premises and no other admissible evidence was presented to meet the state statutory requirement of preponderance of the evidence so that the findings are in violation of the Fourteenth Amendment to the United States Constitution?

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

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STATEMENT OF JURISDICTION

The United States Supreme Court has jurisdiction over this petition pursuant to U.S. Const. art. III, § 2, cl. 2 and 28 U.S.C. § 1257(a). The Michigan Supreme Court denied leave to appeal on May 28, 2013.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

CONSTITUTIONAL PROVISIONS

Amendment VI

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for

obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

Amendment VII

In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any Court of the United States, than according to the rules of the common law.

Amendment XIV, Section 1

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATE CONSTITUTIONAL PROVISION

Michigan Const. Art. 1, § 20

§ 20. Rights of accused in criminal prosecutions

Sec. 20. In every criminal prosecution, the accused shall have the right to a speedy and public trial by an impartial jury, which may consist of less than 12 jurors in prosecutions

for misdemeanors punishable by imprisonment for not more than 1 year; to be informed of the nature of the accusation; to be confronted with the witnesses against him or her; to have compulsory process for obtaining witnesses in his or her favor; to have the assistance of counsel for his or her defense; to have an appeal as a matter of right, except as provided by law an appeal by an accused who pleads guilty or nolo contendere shall be by leave of the court; and as provided by law, when the trial court so orders, to have such reasonable assistance as may be necessary to perfect and prosecute an appeal.

STATE STATUTES

MCL 600.113 – Appendix 38

MCL 600.8705. Citations; form; modification; signature

(1) Each citation shall be numbered consecutively, be in a form as approved by the state court administrator, and consist of the following parts:

(a) The original, which is a complaint and notice to appear by the authorized official and shall be filed with the court in which the appearance is to be made.

(b) The first copy, which shall be retained by the ordinance enforcement agency.

(c) The second copy, which shall be issued to the alleged violator if the violation is a misdemeanor.

(d) The third copy, which shall be issued to the alleged violator if the violation is a municipal civil infraction.

(2) With the prior approval of the state court administrator, the citation may be modified as to content or number of copies to accommodate law enforcement and local court procedures and practices. Use of this citation for violations other than municipal civil infractions is optional.

(3) A citation for a municipal civil infraction signed by an authorized local official shall be treated as made under oath if the violation alleged in the citation occurred in the presence of the authorized local official signing the complaint and if the citation contains the following statement immediately above the date and signature of the official: "I declare under the penalties of perjury that the statements above are true to the best of my information, knowledge, and belief."

MCL 600.8721- Appendix 42

LOCAL ORDINANCES

East Lansing Michigan Ordinance 1001.0 – Appendix 44

East Lansing Michigan Ordinance 1001.2 – Appendix 45

East Lansing Michigan Ordinance 1010.0 – Appendix 47

East Lansing Michigan Ordinance 6-175:202 – Appendix 47

STATEMENT OF THE CASE

In mid-March, 2010, Petitioner Rapp learned that a ticket had been written to him and Petitioner Goldring alleging a violation on November 1, 2009 of the rental ordinance. After hiring counsel, he received an additional 86 tickets all signed as issued on March 29, 2010 which alleged violations on November 2, 2009 and the next 84 consecutive days (T1, 94-95).[1]

Code Enforcement Officer Irwin received authorization from the city attorney to issue a citation to Petitioners based on the statements in an incident report and she did so (T3, 286). The tickets were mailed January 29, 2010 (T3, 286). They were returned unclaimed (T3, 286). The tickets were ultimately served on counsel for Petitioners. A formal hearing was requested and was held over three days in September and October, 2010.

Petitioners submitted a written demand for trial by jury with counsel's appearance. The attorney filed a second demand for discovery which also demanded trial by jury and other information and this was dated July 27, 2010 (Appendix, 30th Circuit Opinion and Order, 10 [App.]). Petitioners objected to consolidation (T1, 4-6). The trial court, Michigan 54-B District Court, issued a written opinion and order finding both Petitioners responsible of all citations

[1] The formal hearing occurred over 3 days: September 21, 2010, October 13, 2010, and October 14, 2010. Each transcript is referred to as T1, T2 and T3, respectively.

(App., 54-B Opinion and Order Following Formal Hearing, 15-35). In this ruling, the state trial court said "Defendants have no right to jury trial. People v. Schomaker, 116 Mich App 507; 323 N.W.2d 461 (1982). See also People v. Antkoviok (sic), 242 Mich App 424; 618 NW2d 18 (2000)" (App., 54-B Opinion and Order Following Formal Hearing, 33). Judgments were entered March 8, 2011. Petitioners timely filed their claims of appeal.

The Michigan 30th Circuit Court, Judge William E. Collette, agreed with Petitioners that the fines and costs were excessive (App., 30th Circuit Opinion and Order, 12). Those sanctions were vacated and the matter was remanded to the state trial court by order of February 27, 2012 for a determination of constitutionally permissible fines (App., 30th Circuit Opinion and Order, 14).[2] The state circuit court sitting as an appellate court upheld the findings of responsibility and all other claims of error were denied. As to the occupancy of Mr. Tandogan, the Michigan 30th Circuit Court stated: "It was very reasonable for the lower court to conclude that the part of Mr. Tandogan's testimony that denied having paid rent was not true and to find the evidence as to where he listed his residence as persuasive. At a minimum there was sufficient evidence presented for the trial court to make this determination" (App., 30th Circuit Opinion and Order, 18). As to the occupancy by Mr. Martinez,

[2] The proceedings on remand are not part of this petition and are still being litigated in state court.

the Michigan 30th Circuit Court stated: "However, it is clear that the trial court had ample evidence on the record to find that Mr. Martinez was indeed using the Residence as his permanent home and it was reasonable to conclude he was also paying rent" (App., 30th Circuit Opinion and Order, 8-9). As to the issue of the denial of a trial by jury, the Michigan 30th Circuit Court relied on one of the cases referred to by the state trial court and affirmed the state trial court on this issue (App., 30th Circuit Opinion and Order, 10-12).

The Michigan Court of Appeals denied the Petitioners' application for leave to appeal for lack of merit on December 28, 2012 (App., Michigan Court of Appeals Order, 36). The Michigan Supreme Court declined to review the questions presented by written order of May 28, 2013 (App., Michigan Supreme Court Order, 37).

STATEMENT OF FACTS

Petitioner Goldring had a 50% ownership interest in 220 M.A.C., Unit 306 effective in June of 2008 (T1, 16 and 73:15-18). Petitioner Rapp owned the other 50% (*Id.*, 6:17-18). Petitioner Goldring is from Israel (T1, 94) but attended college and law school in Michigan. He graduated from law school in 2007 (T1, 17). He resided at 220 M.A.C. while in Lansing but he did not reside there from the spring of 2007 until the summer of 2008 (T1, 17).

Petitioner Goldring took the bar examinations in New York and New Jersey in the summer of 2007 and took up legal residency in New York City in the fall of 2007 through the summer of 2008 (T1, 19-20). Petitioner Goldring did not have any address other than 220 M.A.C., Unit 306 until August 1, 2010 when he moved into an apartment in Chicago. Between the summer of 2008 and August 1, 2010 he spent several days a month at Unit 306 but he travelled considerably in his work (T1, 21). Petitioner Goldring was doing contract legal work for a law firm in New York but did not establish a practice there (T1, 22). Petitioner Goldring denied telling Annette Irwin that he was still living in New York as late as October of 2008. (T1, 36-37).

Petitioner Goldring had a female roommate, Amy Lipkis, from the fall of 2008 until the fall of 2009 (T1, 57). Petitioner Goldring leased a room under a written lease within Unit 306 to Kumayl Ahsan from the fall of 2009 until the summer of 2010 (T1, 27). Petitioner Goldring paid all of the down payment when Unit 306 was acquired (T1, 30-31). The purchase price was approximately $200,000.00 (T1, 31). His initial intention was to live in Unit 306 without a roommate but the monthly payment was approximately $1,000.00 (T1, 31-32). With escrowed taxes and insurance, Petitioner Goldring's monthly payment was approximately $2,000.00. The lease to Mr. Ahsan contemplated rent of $1,500.00 per month at the time it was entered (T1, 33; T2, 163). No one else lived at Unit 306 while one room was rented to Mr.

Ahsan (T1, 35). Petitioner Goldring also testified that the association dues to the condominium association were approximately $332.00 per month (T1, 48).

Petitioner Goldring testified that the original deed from the purchaser was to Petitioner Rapp because the bank did not want to lend money or have the property titled to a non-U.S. citizen. Shortly after the closing, Petitioner Rapp signed a deed placing Unit 306 in both names (T1, 52-53). Petitioner Rapp testified that he and Petitioner Goldring were second cousins and he assisted in obtaining the mortgage because of his U.S. citizenship but Petitioner Goldring lived in and owned Unit 306 (T1, 80).

Petitioner Rapp recalled that Mr. Ahsan rented the master bedroom and Petitioner Goldring kept his things in the smaller bedroom of Unit 306. He recalled on one occasion seeing two twin beds in the master bedroom. Petitioner Rapp testified that he received rent payments at times on behalf of Petitioner Goldring when Petitioner Goldring was travelling (T2, 126).

Petitioner Goldring was at a Halloween party in Chicago on November 1, 2009 and was not present when Housing Enforcement Officer Dutcher appeared at the apartment (T1, 37). Petitioner Goldring acknowledged having two Michigan based checking accounts. He agreed that his New York address would be on some of his checks because he ordered some while living in New York from the spring of 2007 until the summer of 2008 (T1, 39). He acknowledged that

Unit 306 did not have a rental license through the City of East Lansing (T1, 40).

Petitioner Goldring explained that he does distribution research for R.G.I. Brands which imports and exports mostly alcoholic products. It requires analysis of import/export laws, legal work, and actually being in the various places to learn the requirements and set up the distributions. He travels frequently and extensively and the cities, states, countries, and continents that he travelled to were placed in the record (T1, 41-47:9).

Petitioner Rapp was not notified by Annette Irwin of the East Lansing housing office that there was a problem with or a violation at Unit 306 (T1, 89). He learned of the first problems when his brother went to check messages and mail at the units while Petitioner Rapp was in California (T1, 89). Petitioner Rapp recalled that in late December 2009 or early January 2010, Ms. Irwin had called him because she was trying to reach his brother. She made no mention of a problem with Unit 306 (T1, 92). Petitioner Rapp testified that it was approximately six months after the violations were written that he found out about them (T1, 92-94).

Kumayl Ahsan testified that he lived at 220 M.A.C. from August 2009 through the Spring of 2010 (T2, 147). He signed a written lease (T2, 148). He confirmed that he had moved into the larger bedroom (T2, 153). He acknowledged that his friend Mario stayed with him for about a week. The only beds

present were his king bed in his room and Petitioner Goldring's bed in the other bedroom (T2, 153-154). He paid two months' rent in the Spring of 2010 and expected to stay again. Mr. Ahsan gave Mario permission to have an item sent to the Unit 306 address on one occasion (T2, 160).

Mr. Ahsan acknowledged getting the noise ticket on Halloween night with the issue date apparently being November 1, 2009 (T2, 164). He also acknowledged that Mario was at the party and he also got a noise ticket. There was a time when Mario stayed over for two or three days at one stretch and then perhaps four or five days at another stretch during the fall of 2009 (T2, 170-171). Mr. Ahsan explained that Mario never gave Mr. Ahsan rent money or helped him with rent (T2, 174). Mr. Ahsan also testified that no one ever provided him any money for rent other than money sent to him by his father (T2, 182). Mr. Ahsan corroborated that he paid the electric bill, that no one (other than his father) ever provided money to assist with utilities and he never had any roommates other than Petitioner Goldring (T2, 183).

Tolga Tandogan also testified at trial. Respondent's counsel asked if he ever lived at Unit 206, 220 M.A.C. and the following occurred: "A. No. Q. You've never lived there? A. No. Q. And did you ever stay there for any extended period of time? A. Well, I stayed there like some like a week, my friend's place, in 306. . . ." (T2, 206:24-207:6). Apparently, Respondent's counsel used the wrong unit number but the witness caught it and corrected it. He again denied

that 220 M.A.C., Unit 306 was ever his permanent address (T2, 208). Mr. Tandogan never paid any rent because of his presence at 220 M.A.C., Unit 306 (T2, 220). Mr. Tandogan used Petitioner Goldring's room when he stayed at 220 M.A.C., Unit 306 as a guest of Mr. Ahsan's and while seeking a place of his own (T2, 221).

Mario Martinez also testified at trial. Mr. Martinez acknowledged that he would use 220 M.A.C., Unit 360 for mail and denied that he ever resided there (T2, 227). He also did not recall having a conversation with any city officials about residing at 220 M.A.C., Unit 306 (T2, 229). He denied ever paying any rent to Petitioners (T2, 231).

Robert Dutcher testified that he had been a Code Enforcement Officer for the City of East Lansing for nine years at the time of trial (T3, 258). On January 26, 2010, he went to 220 M.A.C. Unit 306 and spoke to Mr. Ahsan (259). While speaking to Mr. Ahsan, Mr. Dutcher claimed Mr. Tandogan came out of the smaller bedroom (T3, 259). Mr. Dutcher testified as to statements from Mr. Tandogan which were objected to. They were not admitted for the truth of the matter asserted (T3, 260). Mr. Dutcher testified that he received authorization from the city attorney to issue tickets for the time period of November 2, 2009 through January 26, 2010 (T3, 262).

Annette Irwin also testified at trial. She claimed that she had a conversation with Petitioner Goldring over the telephone during which he said he was living

part time in New York and part time in East Lansing as of October 14, 2008 (T3, 284).

REASONS FOR GRANTING THE PETITION

I. THE RESPONDENT OBTAINED PERMISSION TO COMBINE INTO ONE CIVIL INFRACTION TRIAL 86 CIVIL INFRACTION TICKETS AGAINST EACH PETITIONER COVERING AN 86 DAY PERIOD INTO ONE TRIAL. THE POTENTIAL ALLOWABLE CIVIL INFRACTIONS FINES AND COSTS EXCEEDED $170,000.00 REGARDING A CONDOMINIUM UNIT WHICH HAD BEEN PURCHASED TWO YEARS EARLIER FOR APPROXIMATELY $200,000.00. PETITIONERS REQUESTED DISCOVERY, OBJECTED TO CONSOLIDATION, AND DEMANDED A JURY TRIAL AND ALL REQUESTS WERE DENIED BY THE STATE TRIAL COURT. DID THE STATE TRIAL COURT VIOLATE THE SIXTH AMENDMENT AND DENY THE PETITIONERS DUE PROCESS OF LAW WHEN IT DENIED THESE PROCEDURAL PROTECTIONS?

A. Consideration of this issue by this Court.

This Court should consider this issue pursuant to Rule 10(c) because the right to a jury trial is a long-recognized, fundamental right.

> The guarantees of jury trial in the Federal and State Constitutions reflect a profound judgment about the way in which law should be enforced and justice administered. A right to jury trial is granted to criminal defendants in order to prevent oppression by the Government.[Footnote 23 in original].[3] Those who wrote our constitutions knew from history and experience that it was necessary to protect against unfounded criminal charges brought to eliminate enemies and against judges too responsive to the voice of higher authority. The framers of the constitutions strove to create an independent judiciary but insisted upon further protection against arbitrary action. Providing an accused with the right to be tried by a jury of his peers gave him an inestimable safeguard against the corrupt or overzealous prosecutor

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[3] Footnote 23 in original:

> 'The (jury trial) clause was clearly intended to protect the accused from oppression by the Government * * * .' Singer v. United States, 380 U.S. 24, 31, 83 S.Ct. 783, 788, 13 L.Ed.2d 630 (1965). 'The first object of any tyrant in Whitehall would be to make Parliament utterly subservient to his will; and the next to overthrow or diminish trial by jury, for no tyrant could afford to leave a subject's freedom in the hands of twelve of his countrymen. So that trial by jury is more than an instrument of justice and more than one wheel of the constitution: it is the lamp that shows that freedom lives.' P. Devlin, Trial by Jury 164 (1956).

Duncan, *supra*, 155, n.23.

> and against the compliant, biased, or eccentric judge.

Duncan v. Louisiana, 391 U.S. 145, 155-156; 88 S.Ct. 1444; 20 L.Ed.2d 491 (1968).

While the instant case consists of civil infractions, the prosecution was pursued by a governmental entity and all of the other concerns expressed in the above passage are prominently demonstrated by the result of a $53,300.00 fine. Because these citations were backdated and there was no opportunity to obtain compliance, the imposition of these fines without a jury is also contradictory to this Court's holding in ***International Union, United Mine Workers of America v. Bagwell***, 512 U.S. 821; 114 S.Ct. 2552; 129 L.Ed.2d 642 (1994).

B. Preservation of the issue.

Defendants demanded a trial by jury and discovery when their attorney first filed his appearance on June 3, 2010. The attorney filed a second demand for discovery which also demanded trial by jury on July 27, 2010 (App., 30th Circuit Opinion, 10). Defendants objected to the consolidation (T1, 4-6). After the testimony was finished on September 21, 2010, counsel for Defendants pointed out that, because the consolidation was granted over his objection, the amount in controversy exceeded $25,000.00 and he demanded a jury trial (App., 30th Circuit Opinion, 10). The demand was denied (T1, 116-117).

C. Jury trial

Defendants repeatedly asked for a jury trial in this case. Denial of a jury trial was error because of the way that the Plaintiff structured the charges, the delay in bringing the "daily" offenses to the court, and the trial court's consolidation of all cases into one trial. Because the total amount of fines and costs threatened is close to the state equalized value of the property, the fines were properly declared coercive. Especially at the local court, civil infraction level, it is difficult to find guidance in the case law as to when potential fines mandate a jury. The most frequent example that makes it to the appellate level is in the context of contempt which has always been a muddy mixture of civil and criminal sanctions. In ***International Union, United Mine Workers of America v. Bagwell***, *supra*, this Court held that extremely high "coercive" contempt fines are subject to the right to trial by jury. Where a fine is not compensatory, it is civil only if the contemnor is afforded an opportunity to purge. See ***Penfield Co. of Ca. v. S.E.C.***, 330 U.S. 585, 590; 67 S.Ct. 918, 921; 91 L.Ed. 1117 (1947). Accordingly, a "flat, unconditional fine" totaling even as little as $50.00 announced after a finding of contempt is criminal if the contemnor has no subsequent opportunity to reduce or avoid the fine through compliance. *Id*., at 588, 67 S.Ct., at 920.

A close analogy to coercive imprisonment is a per diem fine imposed for each day a contemnor fails to comply with an affirmative court order. Like civil imprisonment, such fines exert a constant coercive

pressure, and once the underlying order is obeyed, the future, indefinite, daily fines are purged. Less comfortable is the analogy between coercive imprisonment and suspended, determinate fines. In this Court's sole prior decision squarely addressing the judicial power to impose coercive civil contempt fines, ***Mine Workers***, *supra*, it held that fixed fines also may be considered purgable and civil when imposed and suspended pending future compliance.[4]

The rule applies to corporations as well as individuals and applies to situations where only fines and no incarceration are imposed. In ***United States v. R. L. Polk & Co.***, 438 F.2d 377 (6th Cir. 1971), a criminal contempt fine of $35,000.00 was vacated because there was no waiver of a jury. The imposition of such a punitive fine (it was issued later and there was no opportunity to purge the contempt) violated the federal constitution as to Courts (art. III, § 1) and the Sixth Amendment. Michigan's Constitution of 1963 provides a greater opportunity for trial by jury than its federal counterpart.[5] Accordingly, even if the Court views the ownership of this condo by Petitioners to be a "commercial" undertaking, they are still entitled to

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[4] See also ***Penfield v. Securities & Exchange Comm.***, *supra*, at 590; 67 S.Ct. at 921 ("One who is fined, unless by a day certain he [complies,] has it in his power to avoid any penalty"); but see ***Hicks v. Feiock***, 485 U.S. 624, 639, n.1; 108 S.Ct. 1423, 1433, n.11; 99 L.Ed.2d 721 (1988) (suspended or probationary sentence is criminal).

[5] See ***People v. Antkoviak***, 242 Mich. App. 424; 619 N.W.2d 18 (2000) [Petitioner's post trial brief in the trial court].

a jury absent a waiver. The Sixth Circuit in ***Polk*** made it clear that subjective considerations such as ability to withstand the punishment had no place in deciding whether a defendant was entitled to a jury. *Id*., at 380.

Another aspect of a jury trial embodied in the Sixth Amendment is to have punishment imposed based on findings made by the jury – not the court. In ***United States v. Yang***, Sixth Circuit docket numbers 03-4091, 03-4092, 03-4093, unpublished, decided August 12, 2005, the Sixth Circuit Court of Appeals set aside a fine against a corporation that was enhanced by the court based on factual findings made solely by the court. This concept has been litigated extensively in the federal courts in the context of imprisonment as calculated by the federal sentencing guidelines. In the instant case, however, the trial court imposed the amount of the fine on its own within its written decision. There was no opportunity given to Petitioners to allocute or have any input whatsoever before the amount of the fine was set by the trial court.

There can be a distinction under the Seventh Amendment to the United States Constitution between liability for civil penalties and the actual amount of the penalty itself. In ***Tull v. United States***, 481 U.S. 412; 107 S.Ct. 1831; 95 L.Ed.2d 365 (1987), this Court set aside a bench trial finding of liability and injunctive relief where the government was seeking to impose civil penalties for violations of the Clean Water Act. The developments in the law

that occurred because of litigation under the federal sentencing guidelines may temper the allowance for the court to set the fines since ***Tull*** was decided in 1987 because the guidelines litigation has been more recent. As of 1987, however, it was clearly established law that the federal constitution required a jury trial for at least the liability phase of non-petty civil fines.

For a discrete category of indirect contempt, however, civil procedural protections may be insufficient. Contempts involving out-of-court disobedience to complex injunctions often require elaborate and reliable factfinding.[6] Such contempt does not obstruct the court's ability to adjudicate the proceedings before it, and the risk of erroneous deprivation from the lack of a neutral factfinder may be substantial. *Id*., at 214-215; 78 S.Ct., at 659. Under these circumstances, criminal procedural protections such as the rights to counsel and proof beyond a reasonable doubt are both necessary and appropriate to protect the due process rights of parties and prevent the arbitrary exercise of judicial power.

The demand for a jury trial was not just a fanciful exploration of federal law such that the trial court

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[6] *Cf.* ***Green v. United States***, 356 U.S. 165, 217, n.33; 78 S.Ct. 632, 660, n.33; 2 L.Ed.2d 672 (1958) (Black, J., dissenting) ("Alleged contempts committed beyond the court's presence where the judge has no personal knowledge of the material facts are especially suited for trial by jury. A hearing must be held, witnesses must be called, and evidence taken in any event. And often . . . crucial facts are in close dispute") (citation omitted).

could simply rely on the state statutes that allow for civil infractions. A municipality cannot violate the federal constitution by attaching labels to punishment. For example, criminal contempt proceedings that have a limit of six months incarceration are typically considered petty offenses for which the full panoply of trial protections does not apply. This is not the case where the punishments are imposed consecutively. Combining a series of petty offenses and running sentences consecutively require a jury trial. To retain the categorization as a "petty offense," each offense must be treated discretely and as a separate matter. ***Codispoti v. Pennsylvania***, 418 U.S. 506; 94 S.Ct. 2687; 41 L.Ed.2d 912 (1974). When the trial court combined all of these matters into one trial, denied discovery, and denied a jury, the arguments that these were still petty offenses became fatally flawed. The protections of the Sixth Amendment to the United States Constitution apply directly to the states. ***Ballew v. Georgia***, 435 U.S. 223; 98 S.Ct. 1029; 55 L.Ed.2d 234 (1978).

The general rules of classification based on a nominal maximum fine and six months incarceration have been expanded when collateral consequences also apply. ***Blanton v. North Las Vegas***, 489 U.S. 538, 543; 109 S.Ct. 1289; 103 L.Ed.2d 550 (1989). In this case, the collateral consequences can include financial ruin and/or loss of the property based on collection efforts. In ***Brady v. Blair***, 427 F.Supp. 5 (S.D. Ohio 1976), the federal district court for the Southern District of Ohio held that a charge of operating while

intoxicated in Ohio was not a petty offense and a person so charged has a right to a trial by jury. Even though the maximum fine and incarceration are within the traditional "petty" category, the impact on financial resources, occupation and travel opportunities are so significant that federal law required a jury to be the factfinder.

The sheer staggering concept of a $53,300.00 fine for civil infractions addressing a singular time period is a sufficient consequence in its own right. It is the potential punishment which dictates the classification, not the stated statutory maximum "per offense" that is the focal point when analyzing whether a defendant is entitled to a jury trial for a particular offense under the Sixth Amendment. ***Blanton***, *supra*, at 543; 109 S.Ct. 1289.[7]

[7] Moreover, Michigan has interpreted its state constitution to grant a broader right to a jury trial than the federal counterpart. In ***People v. Antkoviak***, 242 Mich. App. 424; 619 N.W.2d 18 (2000), the Michigan Court of Appeals held that minor in possession of alcohol required a jury trial because it was a crime even though jail time was not authorized. The collateral consequences were taken into consideration along with a slight difference in language between the two constitutional provisions. Mich. Const. 1963, art. 1, § 20.

II. STATE STATUTES SET THE BURDEN OF PROOF ON THE PLAINTIFF IN A STATE CIVIL INFRACTION ACTION AT PREPONDERANCE OF THE EVIDENCE ON EACH ELEMENT OF EACH CLAIM. RESPONDENT AS PLAINTIFF BELOW CLAIMED THAT PETITIONERS VIOLATED THE EAST LANSING HOUSING ORDINANCE BY ALLOWING MORE THAN ONE UNRELATED PERSON TO RESIDE ON THE PREMISES WITHOUT A RENTAL LICENSE. THE TWO PERSONS IDENTIFIED AS EXCESS OCCUPANTS BOTH TESTIFIED THEY DID NOT RESIDE THERE AND NO OTHER ADMISSIBLE EVIDENCE WAS PRESENTED TO ESTABLISH THEIR RESIDENCY OR OCCUPANCY AS DEFINED BY THE ORDINANCE. DID THE STATE TRIAL COURT'S FINDING OF RESPONSIBILITY VIOLATE THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT WHEN IT DENIED PETITIONERS' MOTION FOR DIRECTED VERDICT?

A. Consideration of this issue by this Court.

The requirements of due process are flexible and depend on a balancing of the interests affected by the relevant government action. E.g., ***Cafeteria Workers v. McElroy***, 367 U.S. 886, 895; 81 S.Ct. 1743, 1748; 6 L.Ed.2d 1230 (1961). This Court should consider this issue pursuant to Rule 10(c) because the due process clause of the Fourteenth Amendment requires that deprivation of property by government action be

supported by sufficient evidence to support the decision. This is required to prevent arbitrary and capricious government action. Relevant previous decisions of this Court in various contexts are being disregarded by this state court decision.

In a prison setting, the requirements of due process are satisfied if some evidence supports the decision by a prison disciplinary board to revoke good time credits. ***Superintendent, Massachusetts Correction Institution, Walpole v. Hill***, 472 U.S. 445; 105 S.Ct. 2768; 86 L.Ed.2d 356 (1985). There is no distinction between due process protections for property interests and liberty interests. See ***Lynch v. Household Finance Corp.***, 405 U.S. 538, 552, 92 S.Ct. 1113, 1121, 31 L.Ed.2d 424 (1972) ("[T]he dichotomy between personal liberties and property rights is a false one").

State statutes set the burden of proof at "preponderance of the evidence." A state statute also mandates a judgment for a defendant if the burden is not met. MCL 600.113(3) (App. 38-42); MCL 600.8721(5) (App. 42-43). These rights afforded Petitioners became rights protected by the Fourteenth Amendment to the United States Constitution. ***Board of Regents of State Colleges v. Roth***, 408 U.S. 564; 92 S.Ct. 2701; 33 L.Ed.2d 548 (1972). The trial court's finding of responsibility and the corresponding imposition of a fine without a preponderance of evidence in the record violate the Fourteenth Amendment rights of Petitioners and places at risk those same rights of other citizens subjected to such proceedings.

B. Preservation of the issue.

In Petitioners' written closing argument, they argued that the evidence was insufficient and each ticket should be dismissed. Petitioners raised this as ISSUE I in their brief to the state circuit court. Petitioners added additional grounds on the factual insufficiency concerning definitions within the rental licensing ordinance and the zoning ordinance in a supplemental brief invited by the circuit court as part of ISSUE II. The state circuit court acknowledged the challenge to the sufficiency of the evidence (App., 30th Circuit Opinion, 4-5, 8-10).

C. The elements and the lack of evidence.

The ordinance violation tickets cited East Lansing City Ordinance 1010.2 (App. 47) which states:

> 1010.2 Occupancy without a license. No person shall occupy, and no owner or owner's legal agent shall allow a person to occupy, a rental unit unless a rental license applicable to the rental unit has been issued and remains in effect. Each day that a violation exists shall constitute a separate offense.

Certain words are defined within the codified ordinances. For example, "guest" is defined in Ordinance 6-175, Section 202 (App. 47) as:

> Guest. Any person who occupies a room for living or sleeping purposes without consideration and for no longer than 30 consecutive days, no more than 60 days in a year;

> except that for dwellings not required to be licensed pursuant to chapter 10, "guest" means a person who occupies a room for living or sleeping purposes in a dwelling unit with the owner or owner's family residing therein without consideration.

The same section defines "occupy" as "live, sleep or have possession of a space in a building other than as a guest."

For some unexplained reason, the trial court omitted the last phrase of the definition of "guest" from its opinion of March 2, 2011 (App., 54-B Opinion, 17). This omission is important because the city failed to prove that a license was required in the first instance. East Lansing Ordinances 1000.1 and 1001.1 (App. 44) state:

> 1000.1 Scope. This article shall regulate the lease or rental of every dwelling, with or without valuable consideration, by any person.
>
> 1001.1 Rental requirements. No dwelling shall be leased or occupied for rental purposes by any person unless it is first in compliance with the provisions of every section of this article. Occupancy of any dwelling by any person other than the owner of record shall be presumed to require a rental license.

The word "leased" from 1001.1 is not defined. The same statutory construction rules applied to statues also apply to ordinances. ***Gora v. City of Ferndale***,

456 Mich. 704, 711; 576 N.W.2d 141 (1998). Where a term is not defined, the plain and ordinary meaning of the word is controlling. ***Stanton v. City of Battle Creek***, 466 Mich. 611; 647 N.W.2d 508 (2002). "Lease" or "leased" is defined as "[a]ny agreement which gives rise to relationship of landlord and tenant (real property) or lessor and lessee (real or personal property)." BLACK'S LAW DICTIONARY 889 (6th ed. 1990). A non-legal source defines "lease" as: "a contract by which one conveys real estate, equipment, or facilities for a specified term and for a specified rent. . . ."[8]

Additional definitions exist in the ordinance and in the zoning ordinance. Zoning ordinance definitions are important because the rental license ordinance actually expressly relies on them in certain circumstances. Defined words necessary to this appeal are:

> 102.1 Conflict of chapters. In any case where a provision of this chapter is found to be in conflict with a provision of any zoning, building, fire, safety or health ordinance or code of the City of East Lansing, the provision which establishes the higher standard and specification for the promotion and protection of the health and safety of the people shall prevail. (E.L. Code of Ordinances, Part II, Chapter 6, Sec. 6-175, section 102.1)

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[8] Obtained from http//:www.merriam-webster.com/dictionary/lease on September 7, 2011.

and

102.7 Referenced codes and standards. The codes and standards referenced in this code shall be those that are listed in Chapter 8 as defined by Chapter 2 and considered part of the requirements of this code to the prescribed extent of each such reference. (E.L. Code of Ordinances, Part II, Chapter 6, Sec. 6-175, section 102.7)

and

106.1 Corrective orders. Violations of chapter 1 and *chapter 10*, and use of non-habitable or occupiable space as prohibited by chapter 4, *shall be charged without prior issuance of a corrective order.* For all other violations, corrective orders shall be issued by the code official. Violations of chapters 3 through 9 of the property maintenance regulations which would result in an identical corrective order, as described in sections 106.2(5) and 106.2(6), being issued during any six-month period, may be charged without issuance of a second corrective order. It shall be a defense to a violation charged without issuance of a second corrective order pursuant to this section, that none of the tenants that resided at the premises during the time when the initial corrective order was issued, resided on the premises at the time of the violation. (E.L. Code of Ordinances, Part II, Chapter 6, Sec. 6-175, section 106.1) (emphasis added)

and

1001.2 Exceptions. A rental unit license is not required under the following circumstances:

(1) Family occupancy. Any member of a family, as defined by chapter 50 of the City Code, including nieces and nephews, may occupy a dwelling as long as any other member of that family *is the owner* of that dwelling. (E.L. Code of Ordinances, Part II, Chapter 6, Sec. 6-175, section 1001.2) (emphasis added)

and

50-6 – Definitions, D through F.

Family.

(1) Family means one person, *two unrelated persons*; or where there are more than two persons residing in a dwelling unit, persons classified constituting a family shall be limited to husband, wife, son, daughter, father, mother, brother, sister, grandfather, grandmother, grandson, granddaughter, aunt, uncle, stepchildren, and legally adopted children, or any combination of the above persons living together in a single dwelling unit. (E.L. Code of Ordinances, Part II, Chapter 50, Sec. 50-6) (emphasis added).

1. No leasing occurred.

Both of the persons alleged to be the excess occupants clearly testified that they never paid any

rent, never paid any expenses, and were guests of no longer than seven consecutive days by permission of Mr. Ahsan. Respondent utterly failed to even attempt the presentation of evidence that either Mr. Martinez or Mr. Tandogan displayed any conduct which would reach the plain, ordinary meaning of "lease."

2. No "occupancy" occurred as defined.

Respondent will rely heavily on the fact that the ordinance focuses on "occupy" and not just lease. This effort, however, is defeated by language from its own ordinance which excludes guests from that definition.

The other phrase in 1001.1 – "occupied for rental purposes" – is also lacking in proof. The phrase is not defined in the ordinance. It appears to be redundant because of the use of the word "leased" which precedes it but it could logically be intended to broaden the scope of the ordinance to cover situations where the physical presence of the person is targeted regardless of any written or verbal contractual relationship with an owner or agent. The phrase "rental purposes," however, brings the definition back to the concept of "consideration paid for use or occupation of property. In a broader sense, it is the compensation or fee paid, usually periodically, for the use of any rental property, land, buildings, equipment, etc." BLACK'S LAW DICTIONARY 1297 (6th ed. 1990). Again, not one single witness – not even Respondent's agents – presented any evidence that Mr. Martinez

or Mr. Tandogan ever paid any compensation, rent, or expenses in any form for their nights as guests.

3. Goldring absent.

First, by its own definitions, Respondent's ordinances would allow Ahsan and Tandogan (or Ahsan and Martinez) to both reside in the unit at the same time without a license unless the Respondent proved that more than two persons resided there at the same time. The Respondent made no effort to establish any specific dates during which Tandogan and Martinez would have met the definition of occupy (30 consecutive days, more than 60 days in a year) or reside.[9] Respondent specifically claimed that Petitioner Goldring *did not* live there. This failure of proof means that Respondent never took this case by a preponderance of the evidence outside of the express exception in its own ordinance. Petitioner Goldring's presence is irrelevant as long as Ahsan is viewed as the other member of the allowed "family" of two or

[9] This is not defined in the Building Code (Chapter 6 of the City Code of Ordinances) or the Zoning Code (Chapter 50 of the City Code of Ordinances). Even BLACK'S LAW DICTIONARY has difficulty settling on a definition and recognizes that it is usually contextual. One helpful quote from BLACK'S is "[t]o settle oneself or a thing in a place, to be stationed, to remain or stay, to dwell permanently or continuously, to have a settled abode for a time, to have one's residence or domicile; specifically to be in residence, to have an abiding place, to be present as an element, to inhere as a quality, to be vested as a right." BLACK'S LAW DICTIONARY 1308 (6th ed. 1990).

more unrelated persons. The exception requires that a family member be an "owner," not an occupant or resident.

Petitioner Goldring asked the trial court to take notice of the address on each ticket issued to him. Each ticket bore the address of 220 M.A.C. Unit 306 which is the very unit at issue in this case and the unit Respondent claimed Petitioner Goldring did not live in. During trial, Respondent attempted to prove its case by simply asserting to the Court an association between Tandogan or Martinez and the "rental unit" based on their use of the location as an address. In other words, the Respondent's position is that use of the address equals residency or occupancy. Respondent's use of the address likewise equates with an admission by Respondent that Petitioner Goldring lived at the residence because service must be properly made on the recipient of the ticket. Respondent's agent used 220 M.A.C. #306 as the address for Petitioner Goldring and claimed that he personally served them on Petitioner Goldring. Respondent is estopped from claiming that Petitioner Goldring did not reside there.

Mr. Dutcher also checked the box for personal service on Petitioner Rapp's 11/02/09 through 11/25/10 tickets but the testimony does not support this claim on the face of the ticket. While no one ever claimed that Petitioner Rapp lived anywhere other than unit 308, this false claim under oath should have been devastating to Mr. Dutcher's credibility.

4. Petitioner Goldring's presence.

Petitioners maintain their position at trial that Petitioner Goldring resided in the unit when he was not travelling on business. A rental license was not needed because Petitioner Goldring and Mr. Ahsan as two unrelated persons fall within the definition of family occupancy (T1, 47 and T3, 296-297). The proofs establish that both Tandogan and/or Martinez were – at most – guests and there was absolutely no proof that they ever paid any consideration. There is no evidence in the record that they were guests at the same time. Under the definition of family, Ahsan is considered a member of Petitioner Goldring's family (one unrelated person), both Petitioner Goldring and Ahsan resided there, they had a guest and there is no evidence anyone other than Ahsan (a family member by definition) paid consideration. Accordingly, no license was required.

C. Erroneous factual findings and trial court bias.

The trial court issued a ten-page opinion. The first eight pages extensively discuss what the evidence did not establish on the part of Petitioners or Ahsan. *Petitioners did not have the burden of proof.* Nowhere in those ten pages does the trial court ever address the elements of the ordinance and it made absolutely no findings that these premises or these circumstances even required a license. On the contrary, an agent of Respondent told Petitioner Goldring specifically that he was allowed to rent to one person

which would be Mr. Ahsan (T1, 47). This agent, Annette Irwin, confirmed this at trial under oath (T3, 296-297).

The trial court demonstrated numerous erroneous factual conclusions either unsupported by the evidence or contradictory to it. Each error will be discussed separately.

1. Inconsistencies between Petitioner Goldring and Ahsan.

A clear example of the trial court's erroneous findings is at App., 54-B Opinion, 28:

> Ahsan and Goldring testified, meanwhile, that Ahsan rented the *smaller* bedroom, and Goldring maintained the larger bedroom.
>
> The testimony just cited, provided by Ahsan and Goldring, was inconsistent with Goldrings' [sic] earlier testimony that he had rented "a room" to Ahsan and that the room rented was the smaller of the two bedrooms (emphasis added).

The trial court did not cite to the transcript and for good reason – the trial court is flat wrong. Mr. Ahsan confirmed that he had moved into the larger bedroom (T2, 153). Petitioner Rapp's testimony was consistent (T1, 82-86). Mr. Tandogan testified that the week he was there he used the smaller of the rooms (T2, 221:5-9 and 20-24). Petitioner Goldring's direct testimony is at pages 16-40 of Volume I of the transcript. It appears that he acknowledged renting

"a room" (page 26:14 and 34:22-23) but it does not appear that he was asked which room. His testimony goes on through page 57 which is devoid of any questions as to which room was lawfully rented to Mr. Ahsan. The trial court's finding as to "conflicting" testimony because Petitioner Goldring testified that Ahsan took the smaller bedroom is pure fiction. Since the testimony relied upon to support the inference – lack of credibility or "conflicting" testimony – is non-existent, the inference falls as well.

2. Mr. Martinez "maintained" this unit as his address.

The trial court's willingness to assist the Respondent causes the factual findings as to Mr. Martinez to be tainted to the extent they do substantial injustice to the integrity of the verdict. The trial court found that Mr. Martinez "*maintained* his address as 220 M.A.C., Apt. 306, from the date of the violation, November 1, 2009 through the date of disposition of the case [noise violation] December 3, 2009, and through the date of payment of civil fines by Martinez February 1, 2010, payment being made in file No. 09-4347X" (App., 54-B Opinion, 26 (emphasis added)). The trial court justified this finding by noting that Mr. Martinez never changed his address with the court during the pendency of the action all the way through to the payment of fines and costs as required by the pre-trial release document in his file. As Mr. Martinez clearly testified, however, he wanted to use that address to receive important things because of

his lack of a stable residence. It is clearly a logical inference to suggest that Mr. Martinez would consider a communication from the 54-B District Court to be such an important document and that his friend, Mr. Ahsan, would be likely to receive it and bring it to his attention. Indeed, the trial court acknowledged that Mr. Martinez "maintained the 220 MAC, unit no. 306 address *for purposes of communicating with passport authorities during the period in question.*" (App., 54-B Opinion, 30; emphasis added).

Since Petitioners, Mr. Ahsan, Mr. Tandogan, and Mr. Martinez all testified that there were no tenants other than Mr. Ahsan and that no one ever paid rent, the trial court would have to rely on other sources to find sufficient admissible evidence to meet the elements. A police officer wrote Mr. Martinez a ticket on November 1 and used unit 306 as Mr. Martinez's address. Mr. Dutcher testified that Mr. Tandogan was present on January 26, 2010. Not one witness ever confirmed another particular date or any set of consecutive dates for either Mr. Martinez or Mr. Tandogan.[10] Accordingly, Respondent was confronted with the necessity of proving its case by establishing a series of inferences on these two pieces of circumstantial evidence to meet all of the definitions such as "guest," "lease," and "occupy."

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[10] Mr. Dutcher attempted to establish that Martinez was present on January 26, 2010 but this was clearly excluded for the truth of the matter asserted as hearsay and is more fully discussed below.

3. Tandogan resided in unit 306's smaller bedroom.

As to Mr. Tandogan, the trial court's enthusiasm for assisting Respondent with its burden of proof is again demonstrated in its decision. While discussing Mr. Dutcher's testimony, the trial court slipped in the following one sentence statement which was likely intended as a finding: "On that date [January 11, 2010], Ahsan answered the door, an individual identified as Tandogan was present. Tandogan resided in unit no. 306 in the smaller bedroom. . . ." (App., 54-B Opinion and Order Following Formal Hearing, 27). The trial court had already warned Respondent at the end of the trial that Dutcher's testimony as to Tandogan's statements were to be utilized as impeachment only, were hearsay, and were not going to be accepted as proof of truth of the matter asserted. In Volume III, at page 260, the testimony from Mr. Dutcher was admitted after a hearsay objection and the trial court said "It can't be offered for the truth. Mr. Yeadon: I understand" (*Id*., lines 19-20). The trial court again offered an admonishment that this testimony from Mr. Dutcher could not be used to establish Mr. Tandogan's residency or occupancy (T3, 304).

4. Petitioner's credibility due to conflicting testimony.

The trial court stated "[t]he court is of the opinion that the testimony of Rapp and Goldring, when considered as a whole in the court's attempt to reconcile the testimony and determine facts is simply not

credible" (App., 54-B Opinion, 22). The opinion heavily refers to the testimony but fails to identify a specific contradiction. The trial court may have been unsatisfied with the clarity, precision, and documentary support for their testimony. *They were called by the Respondent* and the Respondent had the burden of proof. Because of consolidation, the stakes became high enough that everyone involved desired to have a supportable, credible, fair outcome. It is simply clear from the trial court's opinion that it started its analysis with the presumption that Petitioners had the burden of proof.

Neither lower court cites to the record to support the credibility finding. The general outline was that Petitioner Rapp already had his unit (308), Petitioner Goldring wanted to purchase one, an offer was made with a seller, complications with financing arose because Petitioner Goldring was not a U.S. citizen, Petitioner Rapp stepped as the purchaser, obtained permission from the lender to transfer to Petitioner Goldring, and the sale was completed. The fact that Respondent and the trial judge might have conducted their own affairs in a different manner says nothing about the credibility of the witnesses. Even if the trial court did not believe a word of testimony from Petitioners, the trial court has not pointed out a preponderance of admissible evidence from Respondent to support the elements of any of the 172 violations issued. The trial court's opinion and order assumes that Petitioners had the burden of proof.

The testimony presented also did not support reasonable inferences and the findings that the trial court utilized. As to inferences generally in Michigan jurisprudence, they are left largely to the discretion of the factfinder but "cannot be based upon evidence which is uncertain or speculative or which raises merely a conjecture or possibility." ***People v. Hardiman***, 466 Mich. 417, 427; 646 N.W.2d 158 (2002) quoting ***People v. Orsie***, 83 Mich. App. 42, 47; 268 N.W.2d 278 (1978).

In ***Elsey v. J. L. Hudson Co.***, 189 Mich. 135 (1915), the Michigan Supreme Court affirmed a directed verdict in favor of the defendant retail store. The plaintiff in ***Elsey*** asserted that the mere fact of the injury (from an unexplained elevator drop) and the absence of negligence on the part of the plaintiff was sufficient to take the case to the jury. The Michigan Supreme Court held that the rule of law in Michigan required some facts to be present in the record which would allow logical and reasonable inferences before a circumstantial case can proceed.

Four years later, the Michigan Supreme Court took that same concept and specifically held that the rule of *res ipsa loquitur* has not been adopted in Michigan. ***Burghardt v. Detroit United Ry.***, 206 Mich. 545; 173 N.W. 260 (1919). When circumstantial evidence is used, it is necessary that "the circumstances are such as to take the case out of the realm of conjecture and within the field of legitimate inferences from established facts. . . ." ***Burghardt***, at 547.

In ***Yoost v. Caspari***, 295 Mich. App. 209; 813 N.W.2d 783 (2012), the Michigan Court of Appeals discussed that an analysis of a case should first determine whether the party with the burden of proof has made out a prima facie case based on either evidence or inferences from evidence. In ***Yoost***, three basic facts were presented as to who was controlling litigation in an abuse of process claim. Those three basic facts did "not provide a logical chain of inference to the conclusion that Asher in fact conspired with Yoost or otherwise directed this litigation" (***Yoost***, at 227). This case has the same shortcomings. Too many inferences are being pieced together. Neither the trial court nor the circuit court opinions start with an analysis of the elements and cite to or reference facts either directly or inferentially establishing those elements.

What is most problematic for the trial court's conclusion and Respondent's judgment is the fact that the trial court made no findings that Petitioner Goldring was not in fact an owner and resident. No evidence was presented to support Respondent's burden of proof that this was not an owner-occupied unit. The entire opinion of the trial court can be criticized as focused almost exclusively on what was *not* established rather than addressing the elements of the claimed ordinance violation. On those points where the trial court did attempt to make an affirmative finding harmful to Petitioners, the information cited above shows that the findings are either completely unsupported by or contrary to the record.

The affirmative findings of responsibility run contrary to the Michigan Supreme Court's distinction between "conjecture" and "reasonable inference." In ***Kaminski v. Grand Trunk W. R. Co.***, 347 Mich. 417; 79 N.W.2d 899 (1956), the Michigan Supreme Court said:

> [A] conjecture is simply an explanation consistent with known facts or conditions, but not deducible from them as a reasonable inference. There may be 2 or more plausible explanations as to how an event happened or what produced it; yet, if the evidence is without selective application to any 1 of them, they remain conjectures only. On the other hand, if there is evidence which points to any 1 theory of causation, indicating a logical sequence of cause and effect, then there is a juridical basis for such a determination, notwithstanding the existence of other plausible theories with or without support in the evidence.

Kaminski, at 422.

This Court has previously established that a verdict which rests upon mere speculation and conjecture must be set aside. ***Pennsylvania R. Co. v. Chamberlain***, 288 U.S. 333; 53 S.Ct. 391; 7 L.Ed. 819 (1933). ***Chamberlain*** has received criticism but it was relied on by the Sixth Circuit in 1962 (***Stevens v. Continental Can Co.***, 308 F.2d 100 (6th Cir. 1962)) and 1984 (***Arms v. State Farm Fire & Cas. Co.***, 731 F.2d 1245 (6th Cir. 1984) (interpreting Tennessee law)). This is especially true where the inferences,

speculation, or conjecture point equally to opposing conclusions but one party has the burden of proof. ***Chamberlain***, *supra* at 339. The Sixth Circuit has likewise recognized and applied Michigan law concerning reliance upon speculation or conjecture as being insufficient to support a verdict. ***Niklas v. Joseph R. Ryerson & Son, Inc.***, 995 F.2d 1067 (6th Cir. 1993).

CONCLUSION

The evidence presented at trial fails to establish even the most fundamental of the elements. No evidence was presented and no findings were made that a rental license was even required. Assuming it was for sake of argument, Petitioners were at all times in full compliance based on the record evidence. Respondent identified two people it claimed were excess occupants. Both testified that they did not reside there, they did not pay rent, they did not contribute to expenses, they had no lease, and they used the address because the one allowable tenant was their friend who could receive important items for them. No witness – even Respondent's agents – could contradict this testimony. The trial court's opinion and order is rife with erroneous factual conclusions either unsupported by or contradicted by the record. About eighty percent of the opinion and order focuses on what Petitioners failed to establish yet they had no burden of proof.

The Respondent and the trial court have clearly violated Petitioners' due process rights and their

rights to have a trial by jury. The state law denying a jury trial may not be facially unconstitutional but when consolidation occurred causing the potential risk to be $170,000.00, due process required a different set of procedural protections.

The procedures and the result here are offensive to concepts of due process. The labels applied by the Respondent are irrelevant under constitutional analysis. Their own agent testified under oath that having one non-family renter in this owner-occupied unit did not require a license. Their own definitions of "guest" completely undermine their "evidence."

RELIEF REQUESTED

WHEREFORE, Petitioners respectfully request that this Honorable Court grant this petition, ultimately reverse the state circuit court's affirmance of the finding of responsibility, order the matter dismissed due to insufficient evidence, or remand the matter for a trial by jury.

08/26/2013

Respectfully submitted,

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STATE OF MICHIGAN
IN THE 30TH JUDICIAL CIRCUIT
FOR INGHAM COUNTY

CITY OF EAST LANSING,	**OPINION AND ORDER**
Plaintiff/Appellee,	**(Filed Feb. 27, 2012)**
v	
JARED RAPP and MOTI GOLDRING,	**CASE NO. 11-374-AV**
Defendant/Appellants.	**HON. WILLIAM E. COLLETTE**

At a session of said Court
held in the city of Mason, county of Ingham,
this 27th Day of February, 2012.

PRESENT: HON. WILLIAM E. COLLETTE

This matter comes before the Court on Defendant/Appellants' (Defendants) appeal of right from the March 8, 2011 final order of the Honorable Richard D. Ball pursuant to MCR 7.101. The Court being fully advised in the premises makes the following determinations.

FACTS

Defendants Jared Rapp and Moti Goldring jointly own a condominium property located at 220 MAC, Unit 306 in East Lansing, Michigan (hereinafter "the

Residence").[1] Sometime before August 30, 2009 Defendant Goldring executed a lease in favor of Kumayl Ahsan lasting until August 13, 2010. The lease required Ahsan to pay Defendant Goldring $1,500 per month in rent. Testimony before the trial court established that Mr. Ahsan had paid approximately $500 per month prior to, and immediately subsequent to, this lease to rent housing at other locations. The Residence has never had a rental license.

On November 1, 2009 East Lansing Police were called to the Residence due to noise complaints. Mario Martinez opened the door when police knocked; the parties dispute whether he was living at the Residence at this time, however, the address listed on the citation he was given listed his address as the Residence. Mr. Ahsan was issued citations for minor in possession of alcohol and a misdemeanor noise violation. Likewise, the citation written to Mr. Ahsan listed his address as the Residence. Due to this, the trial court found that both Mr. Martinez and Mr. Ahsan were living at the residence on November 1, 2009. The lower court also found that Mr. Martinez lived at the residence through at least February 1, 2010 when he finished paying the civil fines assessed

[1] The trial court noted that there was no evidence of joint ownership; however, the parties accepted the fact that ownership was joint, and therefore, the trial court found it to be a stipulated fact. The record on appeal, nor the parties briefs, disclose any such information, therefore, this Court for purposes of this appeal, will consider joint ownership of the property as a stipulated fact as well.

to him due to this incident.[2] Furthermore, both Mr. Martinez and Mr. Ahsan used the Residence for their address listed with Michigan State University for the 2009-2010 academic year.

Tolga Tandogan testified at the trial as well. He stated that the Residence was never his permanent address, but conceded that he had stayed there for short periods of time on different occasions. However, the address listed on Mr. Tandogan's passport and with Michigan State University was the Residence. Furthermore he stated that when he did stay at the residence he stayed in Mr. Goldring's room and that the two had never met. It should be noted, however, that Mr. Tandogan's testimony was impeached during the trial. The trial court eventually found that the testimony of Mr. Goldring, Mr. Rapp, Mr. Ahsan, Mr. Martinez, and Mr. Tandogan was not credible due to impeachment and inconsistent testimony.[3]

In September of 2008 Douglas Stover, the president of the condominium association the Residence was a part of, notified the city that he believed Mr. Goldring was illegally renting the Residence. The City informed Mr. Stover of who the true owners of the Residence were; thereafter, Mr. Stover printed off

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[2] During arraignment, and throughout the judicial process, Mr. Martinez only provided the Residence as his address.

[3] The trial court's opinion and the party's briefs go into great detail regarding the many, many discrepancies in the testimony below.

pictures of Mr. Goldring and Mr. Rapp to see if they were the individuals coming and going from the Residence. Since the fall of 2008 Mr. Stover testified that he has only saw [sic] Mr. Goldring at the Residence once. Contrary to this testimony, Mr. Goldring had testified that he stayed at the residence a few days a month from the fall of 2008 to the fall of 2010. Furthermore, Mr. Stover testified that he saw three other individuals coming and going from the Residence regularly, with their own keys, that were not Mr. Goldring or Mr. Rapp.

Robert Dutcher, the city's code enforcement officer, went to the Residence on January 26, 2010 and spoke with Mr. Ahsan. While speaking with Mr. Ahsan, Mr. Tandogan came out of the smaller bedroom. Ultimately tickets for illegally renting the Residence were mailed to Defendants on January 29, 2010 and returned unclaimed; the tickets were eventually served on Defendants' counsel who accepted service. Defendants requested and received a formal hearing regarding the violations and each was found responsible for all of the citations. Subsequently, Defendants timely and properly filed this instant appeal.

DISCUSSION

I. Standard of Review

Finding of facts by a trial court are reviewed by this Court for clear error. *People v Jordan*, 275 Mich App 659; 739 NW2d 706 (2007). A finding is clearly

erroneous "where although there is evidence to support the finding, the reviewing Court is left with a definite and firm conviction that a mistake has been made." *Heindlmeyer v Ottawa County Concealed Weapons Licensing Board*, 268 Mich App 202; 707 NW2d 353 (2005). When a bench trial's findings are reviewed it must be remembered that "the trial judge is the trier of the facts and may give such weight to the testimony as in his opinion it is entitled to. In such cases we do not reverse unless the evidence clearly preponderates in the opposite direction." *Hanson v Economical Cunningham Drug Stores*, 299 Mich 434, 437 (1941); quoting *Vannett v Public Service Co*, 289 Mich 212, 218 (1939). Furthermore, when sufficiency of the evidence in a civil action is the basis for review the court must examine the evidence in a light most favorable to the prevailing party. *Price v Long Realty, Inc*, 199 Mich App 461, 472 (1993).

II. Analysis

A. Service

The issue of service was not raised below; however, upon this Court's request the parties researched and briefed the issue. MCR 4.101(A)(1)(b) states that "[i]f the [municipal civil] infraction involves the use or occupancy of land or a building . . . service may be accomplished by posting the citation at the site and sending a copy to the owner by first class mail." Plaintiff attempted to use this rule to effectuate

service upon Defendants. However, the mail was returned as unclaimed, and therefore, Plaintiff was not able to properly serve Defendants pursuant to MCR 4.101(A)(1)(b). However, Defendants' counsel did accept service and filed his appearance thereafter.[4] Most importantly, "[a] general appearance waives all questions of the service of process, and is equivalent to a personal service." *Nelson v McCormick*, 334 Mich 387, 390 (1952). Therefore, whatever service claims Defendants' [sic] had were waived upon the filing of their attorney's general appearance.

B. Violation of Rental Requirements

Defendants were found in violation of East Lansing City Ordinance 1010.2 which prohibits the occupancy of a residential housing unit by anyone other than the owner without a rental license, and further provides that "[e]ach day that a violation exists shall constitute a separate offense." The City's housing code also provides definitions for certain terms contained therein. The City code defines a rental unit as "any dwelling occupied or offered for occupancy by any person other than the owner, owner's family, or guest as defined by this article." § 202 of the Property Maintenance Code (the Code). The Code then goes on to define "guest" as

[4] Filing of an appearance by an authorized attorney is the equivalent of personal service. *Michigan Trust Co v Luton*, 267 Mich 547, 552 (1934).

> Any single person who occupies a room for living or sleeping purposes without consideration and for no longer than 30 consecutive days, no more than 60 days in a year; except that for dwellings not required to be licensed pursuant to chapter 10, "guest" means a person who occupies a room for living or sleeping purposes in a dwelling unit with the owner or owner's family residing therein without consideration.

Furthermore, this same code section defines "occupy" as "live, sleep, or have possession of a space in a building other than as a guest." Section 1001 of the Code sets forth the requirement of a license to lease a dwelling. More specifically § 1001.1 of the Code presumes that occupancy of "any dwelling by any person other than the owner of record" requires a rental license.

Defendants take great strides to define the term "lease" in § 1001.1[5]. Defendants argue that Mr. Martinez and Mr. Tandogan do not meet any of the definitions of "leasing," and that there was not sufficient evidence presented at trial that they were in fact leasing. However, Defendants recognize, as they must, § 1001.1 prohibits leasing *or* "occup[ying] for rental purposes." Defendants then go on to argue that there was insufficient evidence below to support the assertion that either Mr. Martinez or Mr. Tandogan

[5] The Code does not define the term "lease."

ever paid any consideration to live at the Residence. This Court disagrees with that argument.

Mr. Tandogan stated that he never lived anywhere without paying rent; as Defendants points out Mr. Tandogan denies ever having lived at the residence. While it is true that Mr. Tandogan did testify to that effect, it is also true that he listed the Residence as his permanent address for some very important purposes; namely for his passport and with Michigan State University. It was very reasonable for the lower court to conclude that the part of Mr. Tandogan's testimony that denied having paid rent was not true and to find the evidence as to where he listed his residence as persuasive. At a minimum there was sufficient evidence presented for the trial court to make this determination.

Mr. Martinez likewise used the Residence as his address to communicate with passport authorities. Furthermore, as stated above, he used the Residence as his address during the court proceedings regarding the noise ticket. Defendants argue that Mr. Martinez was somewhat of a vagabond, and that the testimony showed that he only used the Residence as his address to receive important mail. The trial court found that to be unpersuasive, and conversely it found the fact that he used the Residence as his address with MSU, the courts, and passport authorities as very persuasive. This Court was not present for the testimony in this matter and does not make the sort of credibility findings that the trial court made. However, it is clear that the trial court had ample evi-

dence on the record to find that Mr. Martinez was indeed using the Residence as his permanent home and it was reasonable to conclude he was also paying rent.

Finally, Defendants assert that Plaintiff put forth no evidence that Mr. Goldring was not living in the Residence during the period in question, and therefore, makes it an owner occupied dwelling and not in violation of the Code. However, there was ample evidence before the trial court to reach its conclusion that Mr. Goldring was in fact not living there from early November 2009 and late January 2010. Mr. Stover testified at trial that he had only once saw Mr. Goldring in the condominium building from roughly September 2008 to the date of trial. Furthermore, there was testimony that the alleged tenants had never seen, nor met, Mr. Goldring.[6] This, along with the fact that Mr. Goldring also had a residence in Chicago at the time, is ample evidence on the record for the trial court to reach its conclusion that Mr. Goldring was in fact not living in the Residence during the period in question.

Therefore, this Court finds no clear error to overturn the factual and credibility findings of the trial court. Furthermore, there is sufficient evidence

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[6] Even if it were conceded that Mr. Martinez and Mr. Tangodan were not in fact tenants, they were at a minimum admittedly frequently present at the Residence as gusts [sic] of Mr. Ahsan.

on the record for the trial court to reach the conclusions that it did.

B. [sic] *Jury Trial Demand and Excessive Fines*

Defendants allege that they made multiple demands for a jury trial to the trial court. First, when Defendants' counsel filed his initial appearance. Defendants also assert that they requested a jury trial in July 2010 on a second demand for discovery and information when they checked a box indicating they would like a "speedy jury trial."[7] Finally, half way through the first day of the hearing before the trial court Defendant requested a jury trial; the trial court judge found it was an untimely request and that regardless of timing issues Defendants had no right to a jury trial. However, this Court will accept the demand as timely as it was requested on Defendants' initial appearance.

Const 1963 art 1 § 14 provides for the right to a jury trial in certain situations. The Michigan Court of Appeals has held that Const 1963 art 1 § 14 provides no constitutional right to a jury trial in a case involving civil infractions. *People v Schomaker*, 116 Mich App 507 (1982). The *Schomaker* Court based its decision on the fact that the penalties at issue in that case were purely monetary and not criminal. *Id.* Furthermore, it found that there was no right to a

[7] The form filed was one typically used by criminal defense attorneys.

jury trial for a civil infraction at the time of adoption of our 1963 Constitution, and therefore, none exists now.[8]

Defendants argue that due to the high amount of fines being assessed against them that they had a right to a jury trial. However, as stated above there is no right to a jury trial regarding civil infractions. Furthermore, the argument that consolidation of multiple civil infractions imputes a right to a jury trial is also misplaced. MCR 2.505(A) allows for consolidation of cases "involving a substantial and controlling common question of law or fact." The court must conduct separate proceedings if it would cause prejudice to one of the parties. MCR 2.505(B). Upon Plaintiff's motion to consolidate all of the infractions prior to the hearing before the trial court Defendant's counsel simply stated that "there is prejudice . . . [a]nd we would actually move for dismissal of the entire case because we believe all the evidence the City has is based on hearsay;" the trial court granted Plaintiff's motion. This Court finds no reason to overturn the trial court's determination that Defendants would not be prejudiced by consolidating the hearing regarding the infractions. Each violation dealt with the same facts and issues and consolidation was

[8] Defendants do not address *Schomaker*, but instead they argue that this Court should look to case law involving contempt. This is unnecessary as *Schomaker* makes clear there is no right to a jury trial for a civil infraction and is directly on point.

appropriate. Simply because cases are consolidated for purposes of judicial economy does not change the fact that there is no right to a jury trial regarding civil infractions, and Defendants fail to point out anything to the contrary. Defendants fail to cite to any legal authority that requires a jury trial if multiple civil infractions are consolidated.

Finally, Defendants argue the fines assessed against them are excessive.[9] The Eighth Amendment to the United States Constitution provides that "excessive fines [shall not be] imposed." US Const amend VIII. The Supreme Court has interpreted this clause to "limit[ ] the government's power to extract payments, whether in cash or in kind, "as *punishment* for some offense.'" *Austin v US*, 509 US 602, 609-610 (1993); quoting *Browning-Ferris Industries of Vt., Inc v Kelco Disposal, Inc*, 492 US 257, 265 (1989); emphasis original. The "touchstone" of excessive fines analysis comes down to proportionality; in other words, "[t]he amount of the forfeiture must bear some relationship to the gravity of the offense that it is designed to punish." *US v Bajakajian*, 524 US 321, 334 (1998). Finally, "a punitive forfeiture violates the Excessive Fines Clause if it is grossly disproportional to the gravity of a defendant's offense." *Id.*

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[9] Defendants did not raise this issue at the trial court; however, this Court finds that the issue was preserved due to the fact that Defendants would not know the amount of the fines against them until the conclusion of the proceedings below.

Here, it is clear that the fines levied against Defendants for illegally renting the Residence are not proportional to the offense. Defendants were found to have illegally rented the Residence from November 1, 2009 until January 26, 2010. For roughly three months of violations Defendants were assessed $53,300 in fines. The civil infractions issued to Defendants are intended to discourage them from renting the Residence without a license. This amount in relation to the offense of illegally renting a residential housing unit is grossly disproportional. The impact on the community for illegally renting one residential housing unit is also minimal. In fact, under the City's own ordinances both owners and Mr. Ahsan could have lived at the Residence with no violation at all. Here, there were three people living there; the same number that might have if the ordinance were properly complied with.

Certainly the City has an interest in preventing unauthorized rental housing. Michigan State University is a major public university with many students. The Court understands that if the City did not act in some fashion its residential/non-rental neighborhoods would be overrun with college students. However, in assessing fines for violating rental housing ordinances it must keep them in proportion to the violation.

Plaintiff argues that aggregate penalties assessed on a daily basis for each violation do not constitute excessive fines simply because adding

them together equals an excessively high total. Plaintiff cites to *Joy Mgmt Co v Detroit*"[10] for this proposition. However, *Joy* does not address the issue presented in it in relation to excessive fines. In fact no where in *Joy* is the Excessive Fines Clause even mentioned. Therefore, this case is wholly inapplicable to excessive fines analysis. The only precedential value *Joy* holds in this case is the fact that aggregated penalties that make each day of violation a separate offense do not violate Defendants due process rights, which this Court accepts.

III. Conclusion

There was sufficient evidence on the record for the trial court to find that there was a violation of the rental housing ordinances. Furthermore, there was no clear error committed by the trial court which would require this court to overturn any of the factual findings below. However, the fines assessed in this case were excessive in violation of the Constitution.

THEREFORE IT IS ORDERED that and this case is **REMANDED** for a determination of an amount of fines consistent with this opinion.

/s/ William E. Collette
Hon. William E. Collette
Circuit Court Judge

[10] 183 Mich App 334 (1990).

STATE OF MICHIGAN

IN THE 54B DISTRICT COURT

CITY OF EAST LANSING, Plaintiff, v. MOTI GOLDRING, Defendant.	File No. 10-81276 thru 10-81360 & 10-75627-ON
CITY OF EAST LANSING, Plaintiff, v. JARED RAPP, Defendant.	File Nos. 10-81361 thru 10-81400-ON 10-81501-ON thru 10-81520-ON and 10-81551-ON thru 10-81575-ON & 10-75626-ON

Opinion and Order Following Formal Hearing

At a session of the court held
this 2 day of March, 2011:

Present: Honorable Richard D. Ball, District Judge

The captioned matters came before the court for formal hearing September 21, 2010, and were continued on October 13 and 14, 2010. Following conclusion of the formal hearings, the court required counsel to file written closing arguments, to include proposed findings of fact.

Each defendant was cited for violating an East Lansing ordinance by renting property, specifically a condominium unit within 220 MAC, City of East

Lansing, unit no. 306, to one or more tenants without first obtaining a rental license. East Lansing ordinances ES-1010.2 provides, in part:

> No personal shall occupy, and no owner or owner's legal agent shall allow a person to occupy, a rental unit unless a Rental License applicable to the unit has been issued and remains in effect. Each day that a violation exists shall constitute a separate offense.

Because the ordinance provides for a separate violation, or count, for every day a violation of the ordinance occurs, *id*., defendants were each cited for violating the ordinance from November 2, 2009 through January 25, 2010, i.e. 86 days.

The penalty for violation of the ordinance is payment of civil fines plus costs and expenses incurred by the City "in connection with the action". The offense is a municipal civil infraction. The applicable procedural rule is MCR 4.101 and the applicable statutory authority may be found at MCL 600.8701 *et seq*.

East Lansing ordinance 1010.2 provides, in part:

> A person who violates [ES 1010.2] shall be responsible for a civil infraction as defined by MCL 600.113 and as governed by MCR 4.100. Upon a finding of responsibility before any court of competent jurisdiction, the violator shall be punished by a fine of not less than $250 for each offense plus the costs of the action including all expenses of the City, direct and indirect, in connection with the action.

State law provides for a maximum fine amount of $500, MCL 600.8727(3) while the ordinance provides for a minimum fine of $250 and a maximum fine of $500. Each defendant, if found responsible, is exposed to payment of fines from $21,500 to $43,000, plus any costs or expenses as provided by law.

East Lansing ordinance ES-201.0 includes definitions of words which may be relevant to this matter, including:

> Guest: Any person who occupies a room for living purposes in a dwelling or dwelling unit with or without compensation, for no longer than (3) [sic] thirty consecutive days, nor more than (60) days in one year.
>
> Occupant: An individual, over (1) year of age, living, sleeping, cooking, eating in or otherwise actually having space in a dwelling, dwelling unit or a rooming unit.

The burden of proof to be applied by the court is preponderance of the evidence as provided by MCL 600.8721(3). Defendants have no right to a jury trial. 600.8721(4).

The court is the finder of fact in this proceeding. As such, it must weigh the evidence; it must determine the credibility of witnesses; it must consider the appropriate weight to be given to evidence admitted. Guidance with respect to fact-finding is set forth in M Civ JI 4.01 which provides that the finder of fact:

> . . . must determine which witnesses to believe and what weight to give to their testimony.

> In doing so [the finder of act] should consider each witness's ability and opportunity to observe, his or her memory, manner while testifying, any interest, bias or prejudice, and the reasonableness of the testimony considered in the light of all the evidence.

The court, as fact finder, may consider circumstantial evidence in the manner contemplated by M Civ JI 3.10:

> Facts can be proved by direct evidence from a witness or an exhibit. Direct evidence is evidence about what we actually see or hear. For example, if you look outside and see rain falling, that is direct evidence that it is raining.
>
> Facts can also be proved by indirect or circumstantial evidence. Circumstantial evidence is evidence that normally or reasonably leads to other facts. So, for example, if you see a person come in from outside wearing a raincoat covered with small drops of water, that would be circumstantial evidence that it is raining.
>
> Circumstantial evidence by itself, or a combination of circumstantial evidence and direct evidence, can be used to prove or disprove a proposition. You must consider all the evidence, both direct and circumstantial.

Per M Civ JI 4.01:

> [The finder of fact] must determine which witnesses to believe and what weight to give

> to their testimony. In doing so [he] may consider each witness's ability and opportunity to observe, his or her memory, manner while testifying, any interest, bias or prejudice, and the reasonableness of the testimony considered in the light of all the evidence.

Testimony was presented, and exhibits were offered and admitted into evidence, from which evidence the court finds the following facts set forth below. To the extent findings of fact are made contrary to the testimony of one or more witnesses, the court has made those findings after assessing the demeanor and credibility of the witnesses and after attempting to reconcile conflicting testimony or evidence. The court has had the benefit of presiding over the formal hearing, listening carefully to the testimony, observing the witnesses, reviewing exhibits admitted into evidence, and reviewing hearing transcripts.

It should first be noted that the court heard and/or observed no indication that either of the defendants, or any of the witnesses, was or were not able to understand questions or respond to questions because of any language deficiencies. Neither counsel questioned the ability of any party or witness to understand English. No party or witness produced a translator.

On November 1, 2009, a condominium property located at 220 MAC, unit no. 306, was owned by Jared Rapp and Moti Goldring.

(The court makes this finding notwithstanding the court was presented with no documentary evidence to support defendants' joint ownership, other than an unrecorded deed. Exhibit 1. The *only* recorded document admitted into evidence was the June 23, 2008 mortgage, hereinafter described more fully, signed by Rapp only at the time he presumably acquired title to unit no. 306. Exhibit 3. However, throughout the course of the hearing all parties accepted the fact that unit no. 306 was jointly owned by Rapp and Goldring during the time period described in the multiple citations, i.e., November 2, 2009 through January 25, 2010. The court will thus regard joint ownership by Rapp and Goldring as a stipulated fact.)

Both Rapp and Goldring, during their testimony, expressed confusion as to the manner in which title had been established. Indeed the nature and extent of the confusion expressed by Goldring and Rapp during their testimony cannot be overstated.

Goldring testified he and Rapp each owned a one-half interest in unit no. 306, beginning June 23, 2008. However on that date Rapp took *sole* title to the property and gave a mortgage to secure money loaned to him by Quicken Loans, Inc., or Quicken's assignee or assignor. The mortgage signed by Rapp describes Mortgage Electronic Registration Systems, Inc., as "mortgagee". Exhibit 3. At the time the transaction was closed, Goldring took no ownership of the unit, and was not obligated to repay the mortgage.

No other closing documents emanating from the apparent June 23, 2008 closing were offered or admitted into evidence.

Rapp, a May, 2009 graduate of MSU College of Law (therefore a law student on June 23, 2008) referred to himself as a "straw man"; he testified he quitclaimed an interest in unit no. 306 to Goldring, also a 2007 MSU College of Law graduate, immediately after closing. However, no certified copy, indeed no photocopy of the purported quitclaim deed, allegedly prepared by the closing officer and dated on or about June 23, 2008 was offered or admitted into evidence. The court concludes that no quitclaim or warranty deed conveying an interest in unit no. 306 was created, presented at closing, delivered, or properly recorded.

Exhibit 2 is a quitclaim deed purportedly drafted by Rapp, signed by him August 13, 2008. The exhibit shows no recording data. The record in these cases does not establish with documentary evidence that any duly recorded conveyance was ever made to Goldring by Rapp. Rapp testified he conveyed a half interest in the unit to Goldring as a "tenant in common". According to Goldring this conveyance occurred no more than "a few days" after the closing of the sale of unit 306 to Rapp.

Rapp testified he "technically" owned an interest in unit no. 306, 220 MAC, but that he only acquired title to assist Goldring in obtaining a mortgage. This testimony is not consistent with the terms of the

unrecorded quitclaim deed, Exhibit 1, inasmuch as that deed creates a joint tenancy with full rights to the survivor. Accordingly, if that deed is legitimate, if and when Goldring dies, title to the property will vest in Rapp, notwithstanding his claims and his testimony that he did not make the $41,000 down payment required at closing, and does not pay the monthly mortgage payments, property taxes or condominium owner assessments.

The court is of the opinion that the testimony of Rapp and Goldring, when considered as a whole in the court's attempt to reconcile the testimony and determine the facts is simply not credible.

Rapp testified the deed admitted as Exhibit 2 was "noneffective [sic]" inasmuch as he had signed a quitclaim deed the day after closing June 23, 2008, conveying an interest in unit no. 306 to Goldring. Again, the June 23, 2008, deed, if it existed, if it was recorded, was not offered into evidence. The finder of fact is left with a record from which the court must determine the ownership status of property when only oral testimony has been offered to show ownership.

Inasmuch as there is no evidence that either of Rapp's deeds was recorded, or, for that matter, delivered to a grantee, the court cannot be certain which of the defendants "owns" the unit; nonetheless the court accepts Goldring's testimony that he and Rapp each owned a half interest in the property and notes, again, the parties have stipulated to ownership.

Current ownership of unit no. 306 is at least messy, inviting litigation by the heir of the first of the two "owners" to die so that a court will may be required to quiet title. Under oath, Goldring and Rapp testified that Rapp, on or after June 23, 2008 quitclaimed an interest in unit no. 306 to Goldring, but neither appeared to understand that the August 13, 2008 quitclaim deed created a joint tenancy with full rights to the survivor as between Rapp and Goldring. If their testimony was accepted as true, If Goldring died next week, Rapp, who claimed he had not made any financial contribution to the acquisition of the property, would receive a windfall, i.e., full title of unit no. 306, notwithstanding the testimony of Goldring and Rapp was that the approximate $41,000 down payment made to the sellers of unit no. 306 at closing June 23, 2008, was paid completely by Goldring. Further, Goldring made the down payment and apparently did not acquire an ownership interest in unit no. 306 until August 13, 2008 at the earliest.

The August 13, 2008 quitclaim deed on its face raises issues with respect to Goldring's acquisition of an interest in unit no. 306. Rapp testified that at the time of closing a *warranty* deed was executed wherein title to unit no. 306 was conveyed to Goldring. The quitclaim deed dated August 13, 2008, drafted by Rapp, was apparently drafted for signature June 23, 2008 according to the pen and ink changes to the typed dates contained in the original document.

The findings recited above, given the parties have stipulated to the joint ownership of unit no. 306

by Goldring and Rapp, is nonetheless important to a determination of the credibility of the testimony offered by Goldring and Rapp.

Goldring and Rapp, asserting under oath that each owned an undivided half interest in unit no. 306, gave conflicting testimony concerning the property tax status of the property. Goldring testified the property taxes amounted to about $12,000 per year. Rapp testified the property taxes on his solely owned unit, no. 308, amounted to about $6,000 per year, and if Goldring's property taxes were in the amount he claimed, Goldring apparently did not file for the property tax relief accorded to one's homestead. See MCL 211.7cc.

Prior to August 30, 2009, Goldring executed a lease agreement, wherein the property was leased or rented to Kumayl Ahsan, who commenced occupancy of the property at about that time. Goldring testified he leased [sic] "leased a room" to Kumayl Ashan [sic]. He was uncertain of the spelling of his tenant's name. Goldring was also uncertain as to the pronunciation of his tenant's name because "he never used it. You know, it was in one document".

Goldring lived with Rapp in unit 308 for a period of time prior to June or July 2009, but he could not recall how much rent he paid to Rapp. His best estimate was "a few hundred dollars". Rapp testified he received rent payments from Goldring in the amount of "six hundred bucks approximately . . . maybe five or six hundred dollars . . . "

Relative to his acquisition of an interest in unit 306, Goldring could not remember the amount of the selling price. Indeed, Goldring could not remember the name of the seller of the property, notwithstanding he testified he was present at the closing and whatever amount of down payment was required was made by Goldring. According to Rapp, although he "didn't write the check", a down payment of "about forty-one thousand" dollars was made to the sellers of unit no. 306 in June, 2008, when he, Rapp, purchased and mortgaged unit no. 306. Again, neither defendant moved to admit copies of the closing documents signed by Rapp June 23, 2009, other than the warranty deed and mortgage. Exhibits 2 and 3.

The fall semester for Michigan State University commenced approximately August 30, 2009. Ahsan's right to occupancy commenced August 30, 2009, and ended under the written lease agreement August 13, 2010. Exhibit 5. Goldring testified that after November 1, 2009, he "resided" in unit 306 no less than 4-5 days per month and up to 14 days per month.

During the early morning hours of November 1, 2009, East Lansing police were called to unit no. 306, 220 MAC because of a loud noise complaint. When the police arrived, the door to the premises was opened by Mario Martinez. Whether Martinez was an occupant of the premises on November 1, 2009, is disputed by defendants, but he was present on that date, was issued a citation on which his address was noted to be 220 MAC, unit no. 306. Martinez ultimately accepted responsibility for a civil infraction

(reduced from a misdemeanor noise violation per plea agreement), recorded in this court's file no. 09-4347-OM. Ahsan was charged with a misdemeanor noise violation and a misdemeanor minor in possession of alcohol, and ultimately entered a plea of guilty to a misdemeanor charge of possession of open alcohol in exchange for dismissal of the noise and MIP misdemeanors, in files 09-4361-OM and 09-4362-OM.

There is no evidence indicating that either Martinez or Ahsan questioned the residence address placed on the citations referenced above, either at the time of issuance, or during the noise misdemeanor/civil infraction proceedings. The court infers from this finding and the contents of the original citation issued to Martinez and Ahsan, that they were both residents of unit no. 306 on November 1, 2009.

With respect to Martinez, per the Register of Actions for file no. 09-4347-OM, this court, based on Martinez's representation to the arresting officer, based upon which information was set forth in the citation given to Martinez, maintained his address as 220 MAC, Apt. 306, from the date of the violation, November 1, 2009, through the date of disposition of the case December 3, 2009, and through the date of payment of civil fines by Martinez February 1, 2010, payment being made in file no. 09-4347X.

The court's Register of Actions slows no action on the part of Martinez to change his residence address as provided to the court notwithstanding he executed a pretrial release document when he was arraigned

requiring him to provide the court with a change of address.

The court is permitted to take judicial notice of its own records and files. *In matter of D. M. Kleyla*, ___ Mich App ___; ___ NW2d ___ (2010).

East Lansing code enforcement officer Bob Dutcher visited unit no 306 on or about January 11, 2010, as part of his investigation as to whether the premises had been rented without the owner having obtained a rental license from the City of East Lansing as required by East Lansing ordinance 1010.2. On that date, Ahsan answered the door, an individual identified as Tandogan was present. Tandogan resided in unit no. 306 in the smaller bedroom, and. Dutcher was advised a third individual, Martinez, was in the shower. Dutcher testified that Martinez "refused to come out" of the shower to speak with him.

At the time he visited unit no. 306 on January 11, 2010, Dutcher observed two bedrooms and three separate beds, all of which had been used by one person or another. On that date three persons were present in unit no. 306, no one of which was Motring [sic].

During the MSU academic year 2009-2010, Martinez and Ahsan each maintained the address of 220 MAC, unit no. 306, with the university.

Prior to November 1, 2009, Ahsan, Martinez, and Tolga Tandogan were friends, and had met prior to that date while three were "international students"

at MSU, during the time Ahsan resided in unit no. 306, during those times when either Martinez or Tandogan, or both, did not reside in unit no. 306, Ahsan, according to his testimony, did not know where either of this "good" or "best" friends resided.

Indeed, no credible evidence was provided to support a contention that Martinez or Tandogan resided other than at 220 MAC, unit no. 306. Credible evidence was admitted that proved the opposite to be true.

During the time he resided in unit no. 306, Goldring "would come and go". "He [Goldring] had his own bedroom. . He [Goldring] was there irregularly . . . a few days a month". When Dutcher entered the unit in January, 2010, he observed three beds in the two bedrooms. Ahsan owned a king size bed, situated in the larger of the two bedrooms, and the bed could be divided into two twin beds. Dutcher observed a twin bed situated in the second, smaller bedroom in unit no. 306. Total number of beds: 3. Ahsan and Goldring testified, meanwhile, that Ahsan rented the smaller bedroom, and Goldring maintained the larger bedroom.

The testimony just cited, provided by Ahsan and Goldring, was inconsistent with Goldring's earlier testimony that he had rented "a room" to Ahsan and that the room rented was the smaller of the two bedrooms in the unit.

Ahsan's practice was to pay rent in the amount of $1500 per month, by check, and present the check to

Rapp. The lease nevertheless provided for rent checks to be mailed to Goldring's post office box in Bloomfield, MI, where Goldring at all times pertinent to these cases maintained one or two bank accounts. Goldring testified his combined monthly mortgage and property tax escrow payment was approximately $2000.

From the record the court cannot find that during his tenancy under his lease with Motring [sic] for unit no. 306 Ahsan paid his rent in one way or another. Perhaps he paid it to Rapp, or perhaps Ahsan paid his rent to Rapp's brother Aaron, or perhaps he paid it to a post office box maintained by Goldring in Bloomfield Hills, in accordance with the payment requirements placed in the lease.

During the time Ahsad [sic] resided in unit no. 306, if he had problems the landlord was required to fix, he made contact with Rapp. Tandogan and Martinez never saw or met Goldring. The president of the condominium association, no stranger to Rapp (they clashed frequently) never saw and never met Goldring within the confines of 220 MAC.

Rapp and Goldring are second cousins and business associates. Both are lawyers. Neither is licensed to practice in the State of Michigan; Goldring is licensed to practice law in the states of New Jersey and New York. Rapp is a resident and owner of the condominium unit located at 220 MAC, unit no. 308, in the same building as unit 306. Indeed unit no. 308 is adjacent to unit no. 306.

Rapp and Goldring both traveled extensively for business purposes.

Goldring testified that before and after November 1, 2009, he maintained his residence at 220 MAC, unit no. 306, even though he was not there on a continuous basis, and that he maintained one of the two bedrooms on the premises as his own throughout the time period for which the citations in this case were issued.

Both Ahsan and Martinez maintained the 220 MAC, unit no. 306 address for purposes of communicating with passport authorities during the period in question.

Ahsan gave conflicting testimony relating to his characterization of his move in unit no. 6 by using the term "we". At one point, he provided an evasive answer to the question of who was included in his use of the term "we". Later, he testified Martinez helped him move in to unit no. 306 and stayed for three days. Virtually the same question was asked of Ahsad [sic] two separate times during his testimony; he provided two different answers.

Generally, Ahsan was unable to identify the dates that Martinez or Tandogan stayed with him in unit no. 306. He was also unable to identify the addresses where either of his close friends stayed when they were not staying in unit no. 306.

Martinez claimed he stayed in unit no. 306 mostly on weekends, and was not able to specify the

number of nights he had spent in that unit during the period September 1, 2009 through January, 2010.

Douglas Stover has most recently been the president of the condominium owners' association for 220 MAC. He has never seen or met Goldring, notwithstanding Goldring testified that he "would see [Stover] down the hall all the time. He [Stover] walks around like a guard, you know, making sure that everything is the way it is suppose [sic] to be". Stover testified that from the fall of 2008 through August, 2010, he never saw Goldring enter or leave unit no. 306, while Martinez and Tandogan "were in and out of unit 306 last fall [2009] through some time the beginning of this year (2010)". When asked whether he observed Ahsan, Martinez and Tandogan often enough that he formed a belief that all three resided in unit no. 306, Stover said, "There was no question about that . . I have not been away over night from the condo since December 19, 2008. . . And I know all the owners. I make it a point as the president of the board to know all the owners. . . [I] never saw Mr. Goldring. . .".

The question presented to the court with respect to each citation is whether a preponderance of the evidence establishes, with respect to each defendant, each of whom is treated separately, that either or both defendants violated East Lansing ordinance ES-1010.2 from November 2, 2009 through January 25. 2010, i.e., 85 consecutive days.

Based on the whole record, and after considering the application of East Lansing city ordinance 1010.2

and the definitions set forth in East Lansing city ordinance ES-201.0, and based on the factual findings set forth above, the court finds, based on a preponderance of the evidence, though circumstantial for the most part, that each defendant is responsible for each of the 84 infractions for which he was cited.

With respect to the issues raised in defendants' post-trial motion:

With respect to defendants' post-trial assertions the East Lansing city ordinance 1010.1 is constitutionally defective as applied:

The court responded to plaintiff's motion to strike with a ruling that the court would consider issues raised by defendants only to extent the issued raised were supported by the record.

However, the court is of the opinion that constitutional issues can be raised any time. See *People v. Colon*, 250 Mich App 59; 644 NW2d 790 (2002).

The court reads defendants' post-formal hearing motion as a motion to dismiss based on assertions that the procedure utilized by plaintiff with respect to the manner of investigation, and the manner in which "notice" was provided was constitutionally defective, and that denial of defendants' right to jury trial was unconstitutional. Nevertheless, the court is able to dispose of the various issues raised by defendants post-trial quickly and in a manner that is not prejudicial to plaintiff.

The last question may be answered quickly. inasmuch as the court is bound by precedent established by the appellate courts. MCR 7.215(C)(2).

Defendants have no right to jury trial. *People v Schomaker*, 116 Mich App 507; 323 NW2d 461 (1982). See also *People v Antkoviok*, 242 Mich App 424; 618 NW2d 18 (2000).

Robert Dutcher's signature on each complaint did not mean he represented to the court that he had actually observed an ordinance violation each day between November 2, 2009 and January 23, 2010. His signature meant that the allegation set forth in each complaint was true to the best of his information knowledge and belief.

MCL 600.8705 simply describes the form and contents of a complaint alleging a municipal civil infraction. So far as the court is aware no issues were raised prior to the formal hearings relating to plaintiff's alleged lack of compliance MCL 600.8705.

MCL 600.8705(3) merely provides that the allegations contained in a complaint shall be deemed to have been made under oath *if* the complainant personally witnessed the alleged violation and *if* certain language is included in the complaint, to wit: "I declare under penalties of perjury that the statements above are true to the best of my information, knowledge and belief." Per MCL 600.8705(3) the complainant's signature is otherwise not deemed to have been made under oath.

Defendants provided no authority in support of their assertions that plaintiff violated the provisions of MCL 600.8705.

The court deems Dutcher to have complied with the requirements of MCL 600.8707(2) inasmuch as he conducted an investigation, spoke to a number of witnesses, and then sought and received the authority of an assistant city attorney to file the complaints with the court.

The issue as to whether Dutcher complied with the requirements of MCL 600.8707(4) is moot, inasmuch as the defendants appeared in court to contest the allegations set forth in the citations.

Defendants provided no authority in support of their assertions that plaintiff violated the provisions of MCL 600.8707.

With respect to defendants' assertions that plaintiff violated the provisions of MCR 4.101(C)(2), the court simply points out that the provisions of the subrule *expressly* apply to *informal* hearings.

Judgments finding each defendant responsible for each of the municipal civil infractions described in each complaint may enter.

With respect to each citation, the named defendant shall pay fines and costs in the amount of $300. A justice system assessment in the amount of $10 shall be paid with respect to each citation. MCL 600.8727(4). Costs in the amount of $500 shall be

added to the first citation issued to each defendant, consistent with MCL 600.8727(3).

IT IS SO ORDERED.

/s/ B
Richard D. Ball P-26513
District Judge

Court of Appeals, State of Michigan

ORDER

City of East Lansing
v Jared Rapp

Docket No. 309426

LC No. 11-000374-AV

Stephen L. Borrello
Presiding Judge

Donald S. Owens

Michael J. Kelly
Judges

The Court orders that the delayed application for leave to appeal is DENIED for lack of merit in the grounds presented.

/s/ Stephen Borrello
Presiding Judge

[SEAL] A true copy entered and certified by Larry S. Royster, Chief Clerk, on

DEC 28 2012
Date

/s/ Larry S. Royster
Chief Clerk

Order

May 28, 2013

Michigan Supreme Court
Lansing, Michigan

Robert P. Young, Jr.
Chief Justice

Michael F. Cavanagh
Stephen J. Markman
Mary Beth Kelly
Brian K. Zahra
Bridget M. McCormack
David F. Viviano,
Justices

CITY OF EAST LANSING,
Plaintiff-Appellee,

v

JARED RAPP and
MOTI GOLDRING,
Defendants-Appellants.
/

SC: 146667
COA: 309426
Ingham CC: 11-000374-AV

On order of the Court, the application for leave to appeal the December 28, 2012 order of the Court of Appeals is considered, and it is DENIED, because we are not persuaded that the questions presented should be reviewed by this Court.

[SEAL]

I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

MAY 28 2013 /s/ Larry S. Royster
Date Clerk

M.C.L.A. 600.113

600.113. Civil infractions; definitions; governing laws; burden of proof

Sec. 113. (1) As used in this act:

(a) "Civil infraction" means an act or omission that is prohibited by a law and is not a crime under that law or that is prohibited by an ordinance and is not a crime under that ordinance, and for which civil sanctions may be ordered. Civil infraction includes, but is not limited to, the following:

(i) A violation of the Michigan vehicle code, Act No. 300 of the Public Acts of 1949, being sections 257.1 to 257.923 of the Michigan Compiled Laws, designated as a civil infraction.

(ii) A violation of a city, township, or village ordinance substantially corresponding to a provision of Act No. 300 of the Public Acts of 1949, if the ordinance designates the violation as a civil infraction.

(iii) A violation of an ordinance adopted pursuant to Act No. 235 of the Public Acts of 1969, being sections 257.941 to 257.943 of the Michigan Compiled Laws.

(iv) A violation of a city, township, or village ordinance adopting the uniform traffic code promulgated under Act No. 62 of the Public Acts of 1956, being sections 257.951 to 257.954 of the Michigan Compiled Laws, if the uniform traffic code designates the violation as a civil infraction.

(v) A violation of an ordinance adopted by the governing board of a state university or college pursuant to Act No. 291 of the Public Acts of 1967, being sections 390.891 to 390.893 of the Michigan Compiled Laws, if the ordinance designates the violation as a civil infraction.

(vi) A violation of regulations adopted by a county board of commissioners pursuant to Act No. 58 of the Public Acts of 1945, being section 46.201 of the Michigan Compiled Laws.

(vii) A municipal civil infraction.

(viii) A state civil infraction.

(ix) A violation of the pupil transportation act, Act No. 187 of the Public Acts of 1990, being sections 257.1801 to 257.1877 of the Michigan Compiled Laws, designated as a civil infraction.

(b) "Civil infraction action" means a civil action in which the defendant is alleged to be responsible for a civil infraction.

(c) "Municipal civil infraction" means a civil infraction involving a violation of an ordinance. Municipal civil infraction includes, but is not limited to, a trailway municipal civil infraction. Municipal civil infraction does not include a violation described in subdivision (a)(i) to (vi) or (ix) or any act or omission that constitutes a crime under any of the following:

(i) Article 7 or section 17766a of the public health code, Act No. 368 of the Public Acts of 1978, being

sections 333.7101 to 333.7545 and 333.17766a of the Michigan Compiled Laws.

(ii) The Michigan penal code, Act No. 328 of the Public Acts of 1931, being sections 750.1 to 750.568 of the Michigan Compiled Laws.

(iii) Act No. 300 of the Public Acts of 1949, being sections 257.1 to 257.923 of the Michigan Compiled Laws.

(iv) The Michigan liquor control act, Act No. 8 of the Public Acts of the Extra Session of 1933, being sections 436.1 to 436.58 of the Michigan Compiled Laws.

(v) Part 801 (marine safety) of the natural resources and environmental protection act, Act No. 451 of the Public Acts of 1994, being sections 324.80101 to 324.80199 of the Michigan Compiled Laws.

(vi) The aeronautics code of the state of Michigan, Act No. 327 of the Public Acts of 1945, being sections 259.1 to 259.208 of the Michigan Compiled Laws.

(vii) Part 821 (snowmobiles) of Act No. 451 of the Public Acts of 1994, being sections 324.82101 to 324.82159 of the Michigan Compiled Laws.

(viii) Part 811 (off-road recreation vehicles) of Act No. 451 of the Public Acts of 1994, being sections 324.81101 to 324.81150 of the Michigan Compiled Laws.

(ix) The railroad code of 1993, Act No. 354 of the Public Acts of 1993, being sections 462.101 to 462.451 of the Michigan Compiled Laws.

(x) Any law of this state under which the act or omission is punishable by imprisonment for more than 90 days.

(d) "Municipal civil infraction action" means a civil action in which the defendant is alleged to be responsible for a municipal civil infraction. Municipal civil infraction action includes, but is not limited to, a trailway municipal civil infraction action.

(e) "State civil infraction" means a civil infraction involving either of the following:

(i) A violation of state law that is designated by statute as a state civil infraction.

(ii) A violation of a city, township, village, or county ordinance that is designated by statute as a state civil infraction.

(f) "State civil infraction action" means a civil action in which the defendant is alleged to be responsible for a state civil infraction.

(g) "Trailway municipal civil infraction" means a municipal civil infraction involving the operation of a vehicle on a recreational trailway at a time, in a place, or in a manner prohibited by ordinance.

(h) "Trailway municipal civil infraction action" means a civil infraction action in which the defendant is alleged to be responsible for a trailway municipal civil infraction.

(2) Except as otherwise provided in this act:

(a) A civil infraction action involving a traffic or parking violation is governed by Act No. 300 of the Public Acts of 1949.

(b) A municipal civil infraction action is governed by chapter 87.[1]

(c) A state civil infraction action is governed by chapter 88.2

(3) A determination that a defendant is responsible for a civil infraction and thus subject to civil sanctions shall be by a preponderance of the evidence.

Credits

Amended by P.A.1994, No. 12, § 1, Eff. May 1, 1994; P.A.1995, No. 54, § 1, Eff. Jan. 1, 1996; P.A.1996, No. 79, § 1, Imd. Eff. Feb. 27, 1996.

Notes of Decisions (1)

M.C.L.A. 600.8721

600.8721. Formal hearing; judge; representation of defendant by attorney; representation of plaintiff by prosecuting attorney, witnesses; no jury trial; preponderance of the evidence standard

Sec. 8721. (1) A formal hearing shall be conducted only by a judge of the district court or a municipal court.

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[1] M.C.L.A. § 600.8701 et seq.

(2) In a formal hearing, the defendant may be represented by an attorney, but is not entitled to counsel appointed at public expense.

(3) Notice of a formal hearing shall be given to the prosecuting attorney or the attorney who represents the plaintiff political subdivision. That attorney shall appear in court for a formal hearing and is responsible for the issuance of a subpoena to each witness for the plaintiff. The defendant may also subpoena witnesses. Witness fees need not be paid in advance to a witness. Witness fees for a witness on behalf of the plaintiff are payable by the district control unit of the district court for the place where the hearing occurs, or by the city or village if the hearing involves an ordinance violation in a district where the district court is not functioning.

(4) There shall not be a jury trial in a formal hearing.

(5) If the judge determines by a preponderance of the evidence that the defendant is responsible for a municipal civil infraction, the judge shall enter an order against the defendant as provided in section 8727.1 Otherwise, a judgment shall be entered for the defendant, but the defendant is not entitled to costs of the action.

SECTION 1001.0 RENTAL HOUSING – CITY OF EAST LANSING, MICHIGAN

1001.1 Rental requirements. No dwelling shall be leased or occupied for rental purposes by any person unless it is first in compliance with the provisions of every section of this article. Occupancy of any dwelling by any person other than the owner of record shall be presumed to require a rental license.

(1) This presumption may be rebutted by evidence that the occupant has ownership equity of 25 percent or more of the fee or life estate evidenced by:

(a) A recorded deed; or

(b) A recorded land contract; or

(c) An unrecorded land contract with supporting evidence that it was not entered into in order to circumvent the requirements of this article, including subsequent recordation.

(2) Occupants of any dwelling, claiming any form of ownership in accordance with a land contract, option to purchase, exchange contract, or any other legal instrument shall provide proof that the transfer of ownership is supported by a substantial equity interest in the property by the person or persons claiming ownership.

1001.2 Exceptions. A rental unit license is not required under the following circumstances:

(1) Family occupancy. Any member of a family, as defined by chapter 50 of the City Code, including nieces and nephews, may occupy a dwelling as long as any other member of that family is the owner of that dwelling.

(2) House-sitting. During the temporary absence of the owner and owner's family of a domicile for a period not to exceed two years in any five-year period, the owner may permit up to two unrelated individuals or a family to occupy the premises without a rental license by notifying the code enforcement department, on a form provided by the department, of the address of the owner's temporary domicile, the projected duration of the owner's absence, and the identity of the unrelated individual or family who will occupy the premises during the owner's absence.

(3) One- and two-family dwelling sales. The sale of any one- or two-family dwelling intended for occupancy by the owner or owners of record which are to be occupied by the seller under a rental agreement for a period of less than 90 days following closing. The sale of any one- or two-family dwelling intended for occupancy under a lease with option to purchase agreement, life estate agreement or any other form of conditional sale agreement, shall require a rental unit license if legal or equitable ownership is not transferred in its entirety within 90 days of execution of the conditional sales agreement.

(4) Exchange student, visiting clergy, medical caregiver, child care. For an owner-occupied dwelling, additional occupancy by exchange students placed through a recognized education exchange student program, one visiting clergy and their immediate family members, or clerical aide to a local church or congregation, or one person to provide child care or medically prescribed care but only if the person providing child care or medically prescribed care does not pay any monetary consideration for residing in the dwelling.

(5) Estate representative. Occupancy by a personal representative, trustee, or guardian of the estate and their family where the dwelling was owner-occupied for the last year prior to the owner's death, and the occupancy does not exceed two years from the date of death of the owner by notifying the code enforcement department on a form provided by the department of the owner's name, date of death, and name of the person occupying the premises.

(6) Domestic servants. Occupancy by a domestic servant with the owner or owner's family if the domestic servant is employed full time as a domestic servant for the owner or owner's family and the owner or owner's family is paying social security taxes for the domestic servant's employment as a domestic servant.

(7) Religious occupancy. Occupancy of property owned by a religious organization for two unrelated or a family if occupied by clergy, religious leaders,

religious officials, or other persons integrally involved in the religious organization and no rent is either being paid by the occupants or collected from the occupants by the religious organization solely for the occupancy. For purposes of this provision, religious organization means an organization that presents sufficient evidence to the court or code official that the organization has been determined by the Internal Revenue Service to be tax exempt pursuant to IRC § 501(c)(3) because it is operated exclusively for religious purposes or a religious or apostolic association or corporation determined by the Internal Revenue Service to be tax exempt pursuant to IRC § 501(d).

SECTION 1010.0 ENFORCEMENT – CITY OF EAST LANSING

1010.2 Occupancy without a license. No person shall occupy, and no owner or owner's legal agent shall allow a person to occupy, a rental unit unless a rental license applicable to the rental unit has been issued and remains in effect. Each day that a violation exists shall constitute a separate offense.

CITY OF EAST LANSING – PROPERTY MAINTENANCE CODE

Sec. 6-175. – Amendments to International Property Maintenance Code.permanent link to this piece of content

The following chapters of the 2006 edition of the International Property Maintenance Code are hereby amended or added as set forth herein:

. . .

CHAPTER 2. DEFINITIONS

The specific provisions of Chapter 2, Definitions, identified herein are amended, added or deleted as follows with the remaining portion of Chapter 2 being left unchanged:

. . .

202 General definitions, amended to add and delete the following definitions:

. . .

Guest. Any person who occupies a room for living or sleeping purposes without consideration and for no longer than 30 consecutive days, no more than 60 days in a year; except that for dwellings not required to be licensed pursuant to chapter 10, "guest" means a person who occupies a room for living or sleeping purposes in a dwelling unit with the owner or owner's family residing therein without consideration.