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Supreme Court Watch

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Piercing the Corporate Veil By Way of Municipal Ordinance Violation: *The Village of Antioch v. Anthony J. Ash, et al.*

In *The Village of Antioch v. Anthony J. Ash, d/b/a Ash Pallet Inc., and Ash Property Management*, 2025 IL App (2d) 240589-U, the Illinois Supreme Court chose to not take up the Petition for Leave to Appeal made by an individual who was fined more than a quarter-million dollars as a result of municipal ordinance violations pertaining to properties not owned in the individual's name. The Appellant had received a total of 27 charges brought by the fire marshal of the Village of Antioch. *Ash*, 2025 IL App (2d) 240589-U, ¶ 7. Anthony Ash (Ash) did not appear or file an answer and a default judgment was entered against him personally. *Id*. ¶ 8. The default judgment was later vacated and Ash filed a motion for summary judgment that included an affidavit stating that he resided in Wisconsin and did not "personally have possession of," "personally occupy," or personally own either property to which the violations pertained. *Id*. ¶ 11.

The owners of the two properties in question were Ash Pallet Inc., which was incorporated in 2012, and Ash Property Management, LLC, a limited liability corporation. *Id*. ¶¶ 5-6. Ash was listed as president and secretary of Ash Pallet Inc., and the manager of Ash Property Management. *Id*. ¶ 9. During the hearing the motion for summary judgment, the court considered the testimony of the village fire marshal who testified he had routine contact with Mr. Ash regarding the code compliance and inspections. *Id*. ¶ 12.

Ash raised two claims on appeal: first, that the trial court erred as a matter of law for applying the municipal ordinance violations against him personally; and second, that the trial court abused its discretion in issuing fines when progress in remedying the violations occurred before trial. *Id*. ¶ 20.

In Ash's appellate brief, much was made of the somewhat awkward nature of ordinance violations as "hybrid" offenses that are "not strictly or exclusively civil or criminal." *City of Danville v. Clark*, 63 Ill.2d 408, 411 (1976). Ash also pointed to a long line of caselaw that shielded corporations' shareholders, officers, and directors from liability for a corporation's obligations.

The appellate court made no consideration of the mixed criminal and civil nature of municipal ordinance violations, and instead analyzed the municipal ordinance which directly incorporated the International Fire Code (IFC). *Ash*, 2025 IL App (2d) 240589-U, ¶ 5. Instead of questioning whether the legal entity owning the property was ultimately responsible, or the quasi-criminal status of an individual related to the legal entity, the appellate court went directly to the language of the IFC. Beginning with the section 109.2 of the Code, as adopted in whole by the Village of Antioch, "correction and abatement of violations of this code shall be the responsibility of the *owner*. If an occupant creates, or allows to be created, hazardous conditions in violations of this code, the occupant shall be held responsible for the abatement of such hazardous conditions." *Id*. ¶¶ 23-24 (citing Int'l Fire Code § 109.2 (emphasis in original)).

The legal owner of the properties in question was not Ash as an individual, but rather the defendant corporation and limited liability corporation. Ash had argued that he was neither the legal owner of the properties nor the occupant of the

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buildings, but the appellate court did not analyze Illinois law regarding protections and responsibilities afforded Illinois corporations. *Id*. ¶ 11.

The appellate court looked to definitions of the IFC as well as the common definition of "agent" as found in Merriam Webster's dictionary. *Id*. ¶¶ 24-26. "OWNER" was defined as "a corporation, firm, partnership, association, organization and any other group acting as a unit, or a person who has legal title to any structure or premises with or without accompanying actual possession thereof, *and shall include the duly authorized agent*." *Id*. ¶ 24.

The appellate court further looked into the IFC's definitions for "authorized agent" as "a *person who shall have charge, care or control of any structure as owner, or agent of the owner* . . . Any such person representing the actual *owner* shall be bound to comply with the provisions of this code to the same extent as if that person was the *owner*." *Id.* ¶ 24 (emphasis in original). For the definition of "agent" as a practically applied to both Ash Pallet and Ash Property Management, the appellate court looked not to Illinois' Business Corporations Act of 1983, 805 ILCS 5/1, but "[i]nsofar as the definition of 'agent' is tautological, we turn to section 201.4 of the IFC, which states that terms that the IFC does not define 'shall have ordinarily accepted meanings, such as the context implies. *Merriam Webster's Collegiate Dictionary, 11th Edition*, shall be considered as providing ordinarily accepted meanings.'" *Ash*, 2025 IL App (2d) 240589-U, ¶ 25. The Merrian Webster's dictionary provides that an "agent" is "'one who is authorized to act for or in the place of another.'" *Id*.

The appellate court also reasoned that under an additional section of the IFC, section 109.1, that "[i]t shall be unlawful for a *person*, firm or corporation" to be in violation of any provisions of the IFC, and that testimony had established Ash "had apparent operational control of the entities." *Id*. ¶ 27.

The less interesting analysis was whether the trial court abused its discretion in issuing fines when progress in remedying the violations occurred before trial. The appellate court found that the trial court was indeed required to impose fines for all violations in spite of later compliance. *Id*. ¶ 38. It was stressed by the appellate court that the defendant did not contest that the violations were present on the dates the ordinance violations were issued, and did not contest that he received notice of the violations. *Id*. ¶ 28.

Further, the IFC states: "Persons who shall violate a provision of this code or shall fail to comply with any of the requirements thereof . . . *shall be guilty* of a [SPECIFY OFFENSE], punishable by a fine of not more than [AMOUNT] dollars [here $750] . . . Each day that a violation continues after due notice has been served *shall be deemed a separate offense*." (Emphases added.) *Id.* at109.4 §. The appellate court then looked to *City of McHenry v. Suvada*, 396 Ill. App. 3d 971 (2009), where the court found that the plain language of penalty provisions did not excuse fines, and *Village Square III Condominium Ass'n*, 2022 IL App (2d) 210098, where the court examined an ordinance which had adopted section 109.4 of the IFC where the court found it was required to impose a daily fine. *Ash*, 2025 IL App (2d) 240589-U, ¶¶ 36-37.

In short, municipalities seemingly have the ability to pierce the corporate veil easily in prosecutions of ordinance violations.

About the Author

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