

Hearing Examiner Galt

BEFORE THE HEARING EXAMINER OF THE CITY OF MERCER ISLAND

In Re The Appeal of:

BARCELO HOMES, INC.,

Petitioner,

vs.

CITY OF MERCER ISLAND,

Respondent.

NO. APL21-003

(Ref. CE20-0058)

PETITIONER’S HEARING BRIEF

HEARING DATE: APRIL 8, 2021

Petitioner submits this hearing brief in advance of the hearing scheduled for April 8, 2021.

Petitioners submit this hearing brief in advance of the hearing scheduled for April 8, 2021.

I. BACKGROUND

The evidence will show:

A. The Petitioners

Petitioners Nadezhda (“Nadia”) and Bogdan Maksimchuk are a married couple who reside on Mercer Island. After immigrating to the United States from the Ukraine in 1998, the Maksimchuks began working in the local construction industry. After specializing in siding for ten years, Bogdan started Benjamin Custom Homes in 2009, which focused on

1 the construction of high-end modern homes. In 2013 Bogdan changed the name of
2 Benjamin Custom Homes to Petitioner Barcelo Homes, Inc. (“Barcelo”). Including its time
3 as Benjamin Custom Homes, Barcelo has now built over 150 homes—including eight
4 homes on Mercer Island¹—and two commercial buildings. Barcelo had never received a
5 notice of violation from any municipality during any of this construction until the
6 construction of what eventually became the Maksimchuks’ personal home at 9104 SE 50th
7 Street (discussed further below).
8

9 Petitioner Nadia Maksimchuk founded Petitioner Premium Homes of Mercer Island
10 LLC (“Premium Homes”) in 2014 with the goal of starting a business focused on remodeling
11 and then reselling homes on Mercer Island. But those plans were pushed aside for the next
12 five years, as Nadia focused on other construction projects and raising her and Bogdan’s
13 five children. Neither Bogdan nor Barcelo has ever had any interest in Premium Homes.

14 Nadia handled most permitting and bookkeeping responsibilities for Barcelo
15 through 2019. After finishing construction of their personal home in 2019, Nadia refocused
16 her energy on Premium Homes and gave up responsibility for handling permitting and
17 bookkeeping for Barcelo (that work is now done by a Barcelo employee).² To that end,
18 Premium Homes purchased three properties:
19

- 20 • 7216 93rd Ave. SE, a 1349 sf home build in 1946. 1349 sf home. The property was
21 initially purchased by Barcelo Homes Inc. on July 14, 2019; Barcelo transferred the
22 home to Premium Homes on November 6, 2019.
- 23 • 7847 SE 40th St., which Premium Homes purchased on July 31, 2020.
24

25
26 ¹ Four homes were built when the company was known as Benjamin Custom Homes.

² Contrary to the City’s apparent contention, Nadia is not Barcelo’s registered agent.

- 1
- 2906 74th Ave. SE, a 2920 sf home built in 1948. Premium Homes purchased this
- 2 property on August 26, 2020.

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4 **B. Stop Work Order**

5 This appeal involves a Notice of Violation issued regarding the third property acquired

6 by Premium Homes, 2906 74th Ave. SE (“the Property”).

7 The roof of the Property as leaking and needed to be replaced, and in order to do that

8 the above-roof portion of a small, free-standing (not attached to trusses) chimney that

9 served no purpose (it was not connected to a fireplace) needed to be removed. This was

10 done on October 12, 2020. Contrary to the City’s representations, this work was not done

11 by Barcelo. Rather, Premium Homes rented a work trailer from Barcelo to assist in the

12 work.³

13 Following its purchase of the Property on August 26, 2020, Premium Homes hired an

14 architect and an engineer to develop plans for the remodel.⁴ These plans and an

15 application for a remodel permit were submitted to the City the first week of January 2021.

16 But the City professed to have multiple issues with the submission,⁵ and it was not formally

17 submitted until March 2, 2021.⁶

18 In the meantime, Premium Homes applied for and was issued on November 16, 2020

19 a permit to replace the leaking roof. When Premium Homes replaced the roof on or about

20 January 14, 2021, it also constructed the roof over the second-story deck called for in the

21 plans submitted for the pending remodel permit.⁷

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23

24 ³ Exhibit 1001

25 ⁴ These plans are attached as Exhibit 1002

26 ⁵ Exhibit 1003

⁶ Exhibit 1003

⁷ Exhibit 1002

1 Premium Homes experienced some problems with trespassers on the Property, so it
2 installed temporary fencing around the property. This fencing included temporary plywood
3 fencing that provided neighbors with a buffer from the anticipated construction. Contrary
4 to the City's contention, this fence does *not* hide an "addition" to the home on the
5 Property—as the plans show, there is no planned addition on the Property as part of the
6 remodel,⁸ and none has been built. There are only two changes to the current footprint:
7 the roof over the existing second-story deck, which was constructed when the roof was
8 replaced; and an enclosed connection between the existing home and garage, which has
9 yet to be constructed.
10

11 No work as occurred on the Property since the roof was replaced on or about January
12 14, 2021. Again, there has been no addition.

13 Barcelo and Bogdan have no relation to the Property. Nadia is the owner of Premium
14 Homes, which is a fully compliant LLC under the laws of the State of Washington.
15

16 II. CALCULATION OF PENALTY

17 There are multiple issues with the calculation of the penalty imposed by the Notice
18 of Violation.

19 First, the City seeks to impose penalties against Nadia and Bogdan individually as
20 well as Barcelo. This is highly improper. As set forth above, the Property is owned solely by
21 Premium Homes. While Barcelo briefly owned it before Premium Homes, none of the
22 violations occurred during its period of ownership. Bogdan has no relationship to the
23 Property or Premium Homes. And pursuing Nadia individually for a violation made by
24 Premium Homes is directly contrary to Washington law:
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26 _____
⁸ Exhibit 100

1 Disregarding the corporate form or “Piercing the corporate veil,” is an
2 equitable remedy imposed only in exceptional circumstances. A plaintiff
3 seeking to impose direct shareholder liability must demonstrate that: (1) the
4 corporate form has been intentionally used to violate or to evade a duty; and
5 (2) disregard of the corporate form is necessary to prevent an unjustified
6 loss to the creditor. Piercing the corporate veil requires a showing of fraud or
7 abuse. Piercing the corporate veil also requires an “overt intention to
8 disregard the corporate entity by using it for an improper purpose.”⁹

9 Second, the City misuses prior violations to radically increase the amount of the
10 penalty on the basis that they are “repeated” violations:
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- 12 • CE20-0057: This Notice of Violation was issued solely to Barcelo *for the*
13 *same violations that are in this current Notice of Violation*. The City withdrew
14 the Notice of Violation after Barcelo pointed out it did not own or otherwise
15 have a relationship with the Property. In any event, using the CE 20-0057 as
16 a basis for increasing the penalty is double counting.
- 17 • CE18-0140: Barcelo purchased the property in question, 7223 93rd Ave. SE
18 on April 30, 2014 and sold it November 14, 2015.¹⁰ The Stop Work Order in
19 question was issued three years later, on November 21, 2018, and has
20 nothing to do with Barcelo. Premium Homes has never had any relationship
21 with the property.
- 22 • CE19-0007 and CE19-0023: These alleged violations involved Barcelo on
23 property it owned at the time. Premium Homes had no involvement with the
24 property. CE19-0023 was also strongly disputed by Barcelo, but the City told
25 Barcelo—incorrectly, Barcelo believes—that it had no right to appeal.

26 ⁹ § 2:7. Piercing the corporate veil, 33 Wash. Prac., Wash. Construction Law Manual § 2:7 (2020-2021 ed.)
(internal citations omitted).

¹⁰ Exhibit 1004

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- CE20-0017: Barcelo, Premium Homes, Bogdan, and Nadia have no interest in the property in question. The owners are family members of Bogdan and Nadia, and they agreed to have Barcelo apply for a permit for the owners (in the owners' names) after a Stop Work Order was issued while the owners were out of town. But Barcelo has never done any work on the property, including the work that apparently led to a later Notice of Violation.

8

III. CONCLUSION

9 The Notice of Violation and Penalty is based on incorrect facts and law. No penalty should have been issued under the circumstances. To the extent the Hearing Examiner believes a penalty is warranted, it should only be against Premium Homes and not include any acceleration due to prior violations.

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14 DATED this 1st day of April 2021.

15 GORDON THOMAS HONEYWELL LLP

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