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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

CITY OF LOS ANGELES DEPARTMENT OF WATER AND POWER, Plaintiff and Respondent, v. LAWRENCE LAZAR, Defendant and Appellant.	B231271 (Los Angeles County Super. Ct. No. SC111650)

APPEAL from a judgment and order of the Superior Court of Los Angeles County, Bobbi Tillmon, Judge. Affirmed.

Luna & Glushon and Robert L. Glushon for Defendant and Appellant.

Carmen A. Trutanich, City Attorney, Lisa S. Berger, Deputy City Attorney, and Richard M. Brown, General Counsel, for Plaintiff and Respondent.

Defendant and appellant Lawrence Lazar (Lazar) appeals a judgment and permanent injunction requiring him to remove a garage, shed, and other encroachments on property owned by plaintiff and respondent City of Los Angeles Department of Water and Power (DWP). We find that the trial court did not abuse its discretion by entering the injunction and judgment, and thus we affirm.

STATEMENT OF FACTS AND OF THE CASE

Lazar owns a home located at 1330 North Beverly Drive in Los Angeles. When he purchased the home in November 1996, the home's detached garage had been converted into an office and the property surrounding the home had been completely enclosed by a chain-link fence. Mature landscaping covered the chain-link fence and filled the yard enclosed by the fence.

In 2006, Lazar hired a contractor to build a two-car garage at the rear of what he believed to be his backyard. Neither Lazar nor his contractor sought a permit for the garage. When the garage was nearly complete, a code enforcement inspector from the Department of Building and Safety determined that the garage had not been properly permitted, and on June 14, 2006, the inspector issued a stop-work order requiring that no further work be done except that necessary to maintain the garage in a safe condition.

In June or July 2006, Lazar hired an architect to prepare "as-built drawings" to submit to the City of Los Angeles (City) to obtain a permit. The architect suggested that Lazar get a survey of the property to submit to the City with the architectural drawings. Lazar did so, discovering in the process that a significant portion of what he believed to be his backyard—including all of the land on which the new garage had been built, and some of the land under an existing shed and landscaping—was owned by the DWP.

By letter dated September 14, 2006, Lazar asked to purchase or acquire an easement for the portion of the land necessary to accommodate the new garage. The DWP denied the request on February 14, 2007. On April 18, 2007, Lazar sought

reconsideration of the decision, asking either to "purchase an easement, at an appropriate appraised value; in lieu thereof . . . a License Agreement for the parking of vehicles only." The DWP again denied the request on May 21, 2007, instructing Lazar to "completely remove the garage and the portion of the shed illegally constructed on Department property by July 12, 2007. You shall also immediately vacate and discontinue use of the Department property that you have landscaped and enclosed as a portion of the yard adjacent to your home. The Department will survey and fence the property line after July 12, 2007. [¶] . . . If such removal does not take place within the allotted time, the Department will be referring this matter to the City Attorney for appropriate action."

Lazar did not remove the garage or shed.

The City filed the present action on March 12, 2009. The operative complaint alleges that Lazar constructed a garage and portion of a shed on the City's property "with knowledge they would encroach upon plaintiff's property and thus committed an intentional trespass upon plaintiff's land." Further, the City "has no adequate remedy at law for the harm that has been inflicted" and "damages alone will not serve as an adequate deterrent to future encroachments upon [the City's] land by [Lazar]." The City sought a declaration that it owned the land on which Lazar constructed the garage and shed and a mandatory injunction requiring Lazar to remove "all outbuildings, or portions thereof, which encroach upon plaintiff's land."[1]

The parties filed a "Stipulation Re: Evidentiary Facts" on June 21, 2010. In it, the parties stipulated that in 1976, the DWP issued a license agreement permitting prior owners of 1330 North Beverly Drive to construct an enclosed patio and walkway over City property, and in 1981, 1986, and 1988, the DWP issued license agreements to prior owners for "fencing, landscaping, gardening, recreational purposes and an enclosed patio

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[1] On April 27, 2010, the City sought leave to amend the complaint to substitute as a "Doe" defendant "Lawrence Lazar, trustee under the Lawrence Lazar Living Trust dated March 5, 2003." The court granted the application to amend the complaint on July 28, 2010.

and walkway" over City property. The parties further stipulated that Lazar constructed the garage entirely on City property without permits from the Department of Building and Safety, and that Lazar is a licensed real estate broker and an experienced investor and developer of real estate in Los Angeles.

The case was tried to the court on October 19-21, 2010. On November 8, 2010, the court ruled as follows: "Finding that the parties stipulated that plaintiff is the legal owner of the land in dispute, the court grants plaintiff's request for a permanent injunction prohibiting defendant's use of City property for a garage and orders that defendant demolish and remove the garage structure and all related encroachments on City property within 60 days from issuance of judgment. Reasonable costs shall be awarded to plaintiff subject to the timely filing of a memorandum of costs. This tentative statement of decision shall serve as the court's statement of decision and plaintiff shall prepare [a] judgment within 15 days if no objections are received within 10 days."

Lazar filed objections to the proposed statement of decision on November 30, 2010. On December 15, 2010, the court entered judgment for the City, stating in pertinent part as follows: "The Court finds that although the City previously licensed a portion of the land in question to prior owners, such licenses only provided temporary, revocable use of City property. The Court finds that Mr. Lazar[,] as a real estate developer and investor and as a real estate professional, should be held to a higher standard of care. The court finds the property at 1330 North Beverly Drive had been primarily used for Mr. Lazar's personal use. The Court finds that if Mr. Lazar had applied for a permit or surveyed his property he would have learned that the site of the garage he proposed to build was not his property and he required the permission of the City. The Court finds Mr. Lazar should have realized the square footage of the triangular-shaped lot he purchased was approximately half the size of the square-shaped lot used by Mr. Lazar and therefore not all his property. The Court finds any financial hardship Mr. Lazar may incur in removing the garage is not as significant as his proposal to take public property for his personal use. The Court finds that Mr. Lazar's trespass was grossly negligent and his unlicensed use of the City's property, which is public

property, constitutes irreparable harm to the City. The Court further finds that the parties have stipulated that the City is the legal owner of the land in dispute and grants the City's request for a permanent injunction prohibiting Mr. Lazar's use of City property. [¶] It is therefore[] ordered, adjudged and decreed that the City is entitled to a mandatory injunction and orders that Mr. Lazar cease [his] use of City property and demolish and remove the garage structure and all encroachments on City property within 60 days from [the] issuance of this Judgment."

Lazar timely appealed.

STANDARD OF REVIEW

"'A permanent injunction is a determination on the merits that a plaintiff has prevailed on a cause of action . . . against a defendant and that equitable relief is appropriate.' [Citation.] The grant or denial of a permanent injunction rests within the trial court's sound discretion and will not be disturbed on appeal absent a showing of a clear abuse of discretion. [Citation.] The exercise of discretion must be supported by the evidence and, 'to the extent the trial court had to review the evidence to resolve disputed factual issues, and draw inferences from the presented facts, [we] review such factual findings under a substantial evidence standard.' [Citation.] We resolve all factual conflicts and questions of credibility in favor of the prevailing party and indulge all reasonable inferences to support the trial court's order. [Citation.]" (*Horsford v. Board of Trustees of California State University* (2005) 132 Cal.App.4th 359, 390.)

DISCUSSION

The rule governing the exercise of a trial court's discretion to order the removal of an encroachment on real property is well established. "In an action between adjoining landowners, when the defendant without privilege occupies the plaintiff's property, an injunction is granted to remove the encroachment. [Citation.] But 'where the

encroachment [1] does not irreparably injure the plaintiff, [2] was innocently made, and [3] where the cost of removal would be great compared to the inconvenience caused plaintiff by the continuance of the encroachment, the equity court may, in its discretion, deny the injunction and compel the plaintiff to accept damages.' (*Christensen v. Tucker* [(1952)] 114 Cal.App.2d 554, 559; see *Dolske v. Gormley* [(1962)] 58 Cal.2d 513; *Pahl v. Ribero* [(1961)] 193 Cal.App.2d 154, 163; *Baglione v. Leue* [(1958)] 160 Cal.App.2d 731, 734.)" (*Brown Derby Hollywood Corp. v. Hatton* (1964) 61 Cal.2d 855, 858; see also *Hirshfield v. Schwartz* (2001) 91 Cal.App.4th 749, 759.)

Lazar contends that the trial court abused its discretion by issuing an injunction because there was no evidence the encroachment caused the DWP irreparable harm, the balance of hardships favored the DWP, or the encroachment was not innocently made. Further, Lazar contends that the injunction, which required removal of the garage and "all related encroachments," was vague and exceeded the relief the DWP sought in its complaint. We consider these issues below.

I. Irreparable Harm

Lazar contends there is no substantial evidence that the City will suffer irreparable harm if his encroaching garage and shed are not removed.[2] He notes it was undisputed at trial that the City had licensed the land on which the garage and shed sit to his predecessors in interest from 1976-1990. Further, he notes that the City has no specific plans to use the property. The City disagrees, contending that the garage is a substantial encroachment and "[m]aintaining its property structure-free and reserving the right to terminate license agreements provides the City with flexibility, allowing it to act quickly when need arises." Thus, it urges that the evidence supported the court's finding of irreparable harm.

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[2] Lazar also contends that the trial court failed to make any findings as to whether the encroachment irreparably injured the City. In fact, the court made a specific finding regarding irreparable harm, stating in the judgment that "[t]he Court finds that Mr. Lazar's . . . unlicensed use of the City's property, which is public property, constitutes irreparable harm to the City."

We agree with Lazar that there is no substantial evidence of irreparable harm. The City had licensed the land on which the garage and shed sit to the property's prior owners for use as "an enclosed patio and walkway area" in 1976, and for "fencing, landscaping, gardening, & recreational purposes" in 1981, 1986, and 1988. Even after the licenses lapsed, the City permitted Lazar to continue to use City property as part of his backyard. Moreover, none of the DWP's witnesses suggested any purpose to which the DWP intended to put the property or any concrete harm the DWP would suffer if the encroachments were allowed to remain. Craig Luna, chief real estate officer for the DWP, testified that he was not aware of any operational issues that would be impacted if Lazar's garage were not removed. Martin Adams, DWP's director of water operations, testified that he was "not aware of a specific hardship" to the DWP if the garage was not removed, and he was "not aware of a specific need" the DWP had for the property. Similarly, Chere Lott, a real estate officer for the DWP, testified that when she processed Lazar's permit request in October 2006, she was not aware of any conflict between the use of the garage and any use by the water system.

The only witness who testified that the DWP would suffer a hardship if Lazar were permitted to continue to use DWP land was Steven Cole, a property manager and water works engineer for the DWP. He did not say that the DWP had any imminent plans to use the land at issue, but testified that Lazar's continued use of the land would harm the DWP because "the local community was contacted . . . [a]nd they were all essentially told about the illegal encroachment by [Lazar]. And so, if we allow that illegal encroachment to stay, it essentially sets precedent in the local neighborhood. And I'm anticipating that there will be additional encroachments, because word will essentially get out that it's okay to take Department of Water and Power land and then apply for a license afterwards, and there will be no repercussions for it. So I see that as a huge, huge impact to the Department."

Considering the record as a whole, we conclude that there is not substantial evidence that the DWP will suffer *irreparable* harm (as distinct from *some* harm) if Lazar is permitted to maintain the encroaching garage and shed. The DWP knowingly

permitted prior owners to use the property at issue and has no present or anticipated future need for it. The possibility that Lazar's use of DWP land will set a "precedent" for future unlicensed uses of public land, while a legitimate concern, does not constitute irreparable harm. We therefore conclude that the trial court erred in finding substantial evidence of irreparable harm.

II. Balancing of the Equities

In order to deny an injunction in a trespass case, "'[t]he hardship to defendant by the granting of the injunction must be greatly disproportionate to the hardship caused plaintiff by the continuance of the encroachment and this fact must clearly appear in the evidence and must be proved by the defendant.'" (*Linthicum v. Butterfield* (2009) 175 Cal.App.4th 259, 265; *Posey v. Leavitt* (1991) 229 Cal.App.3d 1236, 1248.) In the present case, the trial court found that "any financial hardship Mr. Lazar may incur in removing the garage is not as significant as his proposal to take public property for his personal use," a finding that Lazar contends is not supported by substantial evidence.

We do not agree with Lazar that the trial court's finding is unsupported by substantial evidence. As we have said, the burden of opposing the injunction is on the defendant, who must prove that the hardship to him if the injunction is granted is "*greatly disproportionate*" to the hardship to the plaintiff if the encroachment is permitted to continue. Here, while we agree with Lazar that there is scant evidence of harm to the City if the injunction were to be denied, we find similarly scant (and unquantified) evidence of harm to Lazar if the injunction is granted. That is, although the injunction requires Lazar to remove the garage and shed, which plainly entails *some* costs, there is absolutely no evidence in the record of *what* those costs are likely to be. Without knowing the extent of the costs, we cannot balance them against the harm to the City if the garage and shed are allowed to remain. Further, Lazar does not suggest that he will rebuild the garage and shed elsewhere if he is ordered to remove them from the DWP's property, and thus reconstruction costs are not part of weighing of the hardships. Finally, while removing the garage will require Lazar to park on the street, we conclude based on

the lack of any evidence to the contrary that the inconvenience of having to do so is minimal.

Balanced against these uncertain costs to Lazar if he is required to remove the garage and shed are the equally uncertain costs to the City if Lazar is *not* required to do so. We have already noted the potential of harm to the City if other landowners, encouraged by Lazar's unlicensed use of public property, take City property for their own use. We additionally note that there is no evidence either of the value of the land Lazar is unlawfully occupying or of the amount he is willing to pay for the use of that land, and thus we cannot conclude that the amount Lazar proposes to pay to license City land will adequately compensate the City for its loss.

Lazar contends that there was substantial evidence at trial that maintaining the garage will benefit the surrounding community by providing off-street parking in a congested neighborhood with significant on-street parking problems. However, he cites no authority for the proposition that a supposed benefit to third parties is legally relevant to the trial court's calculus when determining whether to enjoin an encroachment. Moreover, the community benefit of two off-street parking spaces appears to us to be limited at best.

For all of these reasons, we cannot conclude that the hardship to Lazar by the granting of the injunction is "greatly disproportionate" to the hardship caused the DWP by the continuance of the encroachment. Indeed, because of the paucity of evidence on both sides, we cannot properly weigh the relative harms to Lazar and the City. And, since "doubtful cases should be decided in favor of granting the injunction" (*Linthicum v. Butterfield, supra,* 175 Cal.App.4th at p. 266), we conclude that the trial court did not err by enjoining Lazar's future unlicensed use of the property.[3]

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[3] Because we have so concluded, we need not reach the third prong of the inquiry, whether Lazar's encroachment was "innocent."

III. Scope of the Injunction

The trial court's proposed statement of decision, issued November 8, 2010, ordered Lazar to "demolish and remove the garage structure and all related encroachments on City property." Lazar filed objections, noting that while the complaint sought removal only of "outbuildings, or portions thereof," defined as "a garage and portion of a shed," the statement of decision ordered removal of "all *related* encroachments." (Italics added.) Lazar urged that the statement of decision therefore was vague and would require removal of encroachments which are beyond the scope of relief specifically requested by the City in its Complaint and prayer for damages. He requested that the court "modify its proposed Statement of Decision to require exactly what the City requested in its Complaint—the removal of the garage structure and portion of the shed encroaching on its property."

The court granted Lazar's request only in part, issuing a judgment that ordered Lazar to "cease [his] use of City property and demolish and remove the garage structure and all encroachments on City property within 60 days from issuance of this Judgment."

On appeal, Lazar again contends that the judgment goes beyond the City's claims for relief and the evidence at trial by requiring removal of "all encroachments."[4] He also contends that the judgment is ambiguous because it does not specify what must be removed. For the following reasons, we do not agree that the relief the trial court granted exceeds the scope of the pleadings or is ambiguous.

"Well established is the rule that a party must recover on the cause of action alleged in the complaint and not on a separate and distinct cause of action disclosed by the evidence. [Citations.] 'Findings of fact must be responsive to the pleadings. [Citations.] The admission of evidence as to matters not within the pleadings is prejudicial error.' [Citation.] 'A judgment that goes beyond the issues litigated is void insofar as it exceeds those issues.' [Citation.]

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[4] Lazar contends that the judgment orders removal of "all *related* encroachments," a term which he contends is undefined. (Italics added.) In fact, the judgment orders removal of "all encroachments."

"But only a 'material variance' between the pleading and proof is fatal to the case. [Citation.] A material variance is one which is prejudicially misleading to the adverse party. [Citations.] 'A difference between the allegation and the proof which relates merely to quantity or degree rather than kind, is not a variance in contemplation of law.' [Citation.]

"Further, a variance, even if material, will be disregarded if the new matter was received and the action fully and fairly tried on the merits. [Citations.] As noted in *Davis v. Cordova Recreation & Park Dist.* (1972) 24 Cal.App.3d 789, 794, quoting from *Duncan v. Sunset Agricultural Minerals* (1969) 273 Cal.App.2d 489, 494: '"It has long been settled law that where (1) a case is tried on the merits, (2) the issues are thoroughly explored during the course of the trial and (3) the theory of the trial is well known to court and counsel, the fact that the issues were not pleaded does not preclude an adjudication of such litigated issues and a review thereof on appeal."'" (*People v. Toomey* (1985) 157 Cal.App.3d 1, 11; see also *Pierce v. Pacific Gas & Electric Co.* (1985) 166 Cal.App.3d 68, 78 [quoting *Toomey*].)

In the present case, the operative complaint alleges that the City is the owner of real property known as the Franklin Reservoir, the boundaries of which are depicted on a survey map attached as an exhibit to the complaint, and it seeks "a declaration that plaintiff is the owner of the land upon which defendant constructed his outbuildings and . . . defendant has no right to have his outbuildings remain on plaintiff's land," "a mandatory injunction requiring the defendant to remove forthwith all outbuildings, or portions thereof, which encroach upon plaintiff's land," and "such other and further relief as the court may deem just and proper." The judgment adjudicates ownership of precisely the land identified in the complaint and its attachments, and it orders Lazar to remove encroachments from that land. Although Lazar is correct that the judgment orders removal of *all* encroachments, not merely the garage and shed, such an order is well within the scope of "such other and further relief as the court may deem just and proper" and the court's broad equitable powers.

Further, even if the relief granted were a "'material variance'" from that sought in the pleadings, it was "'"thoroughly explored during the course of the trial."'" (*People v. Toomey*, *supra*, 157 Cal.App.3d at p. 11.) In her opening statement, the City's attorney stated that the City "seeks an injunction to have *the improvements on the City's property* removed, and Mr. Lazar's use of the property enjoined." (Italics added.) Witnesses testified not only about the garage and shed, but about all the encroachments on City property, including mature landscaping over the entirety of what Lazar believed to be his yard and a fence surrounding the whole yard. In closing argument, counsel for the City requested "a mandatory injunction issue to compel the Defendant to remove *all encroachments* on the City's property, and to cease *all use* of the City's property. Return to the City what has always been rightfully theirs." (Italics added.) In short, *all* encroachments on the identified property were explored at trial, and thus the trial court did not abuse its discretion in ordering all such encroachments removed.

Looper v. Looper (1963) 222 Cal.App.2d 247, cited by Lazar, does not suggest a different result. That case involved a judgment entered following a proceeding "equivalent to a default proceeding." (*Id*. at p. 253.) Under such circumstances, pursuant to Code of Civil Procedure section 580, "'"[t]he relief granted to the plaintiff[,] if there be no answer, *cannot exceed*[] that which he shall have *demanded* in his complaint; but *in any other case*, the court may grant him any relief consistent with the case made by the complaint and embraced within the issue." [Emphasis added.] (Code Civ. Proc., § 580.) . . . [¶] . . . The essence of the policy underlying section 580 of the Code of Civil Procedure, *supra*, is that in default cases, defendant must be given notice of what judgment may be taken against him—a policy underlying all precepts of jurisprudence and protected by our constitutions. If a judgment other than that which is demanded is taken against him, he has been deprived of his day in court—a right to a hearing on the matter adjudicated. . . . He must strictly stay within his statutory authorization and a failure to do so renders the judgment *void*. [Citing cases.]'" (*Id*. at pp. 251-252.) *Looper* has no application to the present case, where the judgment followed a contested trial, not a default.

Lazar also contends the injunction is ambiguous because it orders the removal of all encroachments, but "there is no evidence of what such other related encroachments are." We do not agree. There was evidence at trial that in addition to the garage and shed, the DWP land was encroached upon by landscaping and a chain-link fence. In any event, even if the encroachments were not specified, that would not render the judgment ambiguous because there appears to be no dispute as to the boundary between the properties owned by Lazar and the DWP. Accordingly, the scope of the judgment is unambiguous: Lazar must remove *all* encroachments on DWP land.

DISPOSITION

The judgment and permanent injunction are affirmed. The City shall recover its costs on appeal.

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SUZUKAWA, J.

I concur:

WILLHITE, J.

EPSTEIN, P.J., Concurring.

I agree with the judgment in this case, but I reach that conclusion on bases that differ from those relied upon by the majority.

Most of the facts in this case are undisputed, and are accurately recounted in the majority opinion. The following is a brief recap. The appellant, Lawrence Lazar, erected a garage on residential property he did not own. The structure is on land owned by respondent City, through its Department of Water and Power. Appellant hired a contractor to build the garage, but there is no evidence of any plans or drawings for the project predating this construction. When the structure was 95 percent completed, a City inspector, employed by the Department of Building and Safety, inspected the site in response to a citizen complaint. He determined that no permit had been issued for the construction, and issued a cease and desist order. Appellant then hired an architect to prepare "as build" drawings (i.e., after-the-fact plans for a structure already built). The architect recommended that a survey be conducted, and that was done. The survey showed that the new structure was entirely on City property. When made aware of the encroachment, the Department demanded that the structure be demolished and the City property be restored to its previous condition. Appellant sought an easement or revocable license from the Department, but this was refused. When appellant still did not comply with the Department's demand, the City brought an action for injunctive relief. After a bench trial, the court issued the mandatory injunction. The appeal is from the judgment.

The trial court found that appellant, an experienced real estate developer and investor, was "grossly negligent" in trespassing on City's property. It specifically found that if he "had applied for a permit or surveyed the property he would have learned that the site of the garage he proposed to build was not his property and [that] he required the permission of the City" to build it. I conclude that the record supports this finding.

The majority opinion engages in a "balance of hardship" analysis and concludes that the balance weighs in favor of the City. I agree that it does, but differ in my analysis.

The City's primary argument is that appellant cannot simply appropriate the property for his own use, and retain the property. Yet, as the majority opinion recognizes, if the appropriation is "innocent" in the sense that the appropriator was reasonably unaware he did not own the property, a balance of hardship review is appropriate. The City recognized that appellant would be satisfied with a license, revocable on reasonable notice if the City decided it needed the land. The City's concern is that getting a person in appellant's position to demolish the structure and surrender the property is something easier said than done. The City was concerned that if it granted the requested easement or license, word would spread and others would demand the same accommodation, placing the City in repeated disputes with property owners who wanted to use City property they were occupying.

The majority finds "there is no substantial evidence of irreparable harm" and that there is "scant" evidence of harm to the City. I would not be so dismissive of the City's claim. As a property owner, it seeks to follow a prudent policy of avoiding situations fraught with disputes in future cases. I do not believe we can say this kind of prudence in management of public property is insignificant.

On the other hand, the majority opinion finds only minimal hardship to appellant. It states that "there is absolutely no evidence in the record of the cost" of removing the garage (and an adjacent shed, about which there is no dispute). Appellant did not present evidence of how much it would cost to demolish the garage and restore the site, but it is evident that this cannot be done for free. The opinion does not mention what Lazar spent to build the garage, money that will be entirely lost if the garage has to be removed. The evidence shows that sum is over $24,000.

Appellant argued that his principal concern is not the money but the need for on-site parking. But he holds the solution to that problem in his own hands. The record shows that there was a garage on the property. That building sits there still, adjacent to the driveway apron. A predecessor in title converted it to "living quarters" or, as the majority has it, to an office. If he wished to do so, Lazar could convert it back to its

original use and thereby resolve the on-site parking issue, (provided, of course, that he first pulled whatever permits may be required for the conversion).

The real problem with Lazar's position is that there *is* evidence in the record to support the trial court's conclusion that, had he acted with minimal prudence, he would have discovered that he did not own the land on which he planned to build the garage.

First, Jack Mattillo, the code enforcement officer for the City Department of Building and Safety (the permit issuing agency) who issued the cease and desist order, testified without objection that "[a] good contractor would always get a survey in a case like this." The reason is "[s]o they know exactly where you're putting the structure whether or not – you know, the setbacks, whether or not it's on your property, and planning will – their discretion, they will often ask for a survey." He testified that there could be setback or other requirements, and that sort of issue would be reviewed by the "plan check" people in his department.

Ronald Ettinger, the architect who prepared the after-the-fact plans for the structure, agreed that a survey was called for in this case. A survey was not needed on some other projects he did for appellant, where the improvement was just "conforming to the size [*sic*: site] of the home." In this case, he explained, it did not conform, and the home site was flat and surrounded by vegetation, and the fence that apparently had been taken to mark the boundary had been there for a long time.

Finally, Daniel Alvidrez, a civil engineer with 11 years experience with the Department of Building and Safety, testified that while there was no setback requirement for a structure with a "one hour wall" – apparently a wall without a door or aperture facing the property line – built adjacent to the property line, "a plan check person [would] have to know the condition of the wall *and the location of the boundary* in order to determine whether the building is properly placed." (Italics added.) Obviously, that cannot be determined without knowing where the property line is. Absent some countervailing evidence, and possibly even with it, this supports the trial court's implied finding that if appellant had sought a permit, supported with even minimal drawings, the

plan check would have revealed that the structure he planned to build was not on his property.

Here, appellant proceeded with the construction project without drawings or formal plans, without a survey, and without a permit. Assuming he was not actually aware that he was building on property he did not own, the trial court was amply justified in granting the mandatory injunction sought by the City.

I would affirm for that reason.

EPSTEIN, P. J.