

NOTICE: Summary decisions issued by the Appeals Court pursuant to M.A.C. Rule 23.0, as appearing in 97 Mass. App. Ct. 1017 (2020) (formerly known as rule 1:28, as amended by 73 Mass. App. Ct. 1001 [2009]), are primarily directed to the parties and, therefore, may not fully address the facts of the case or the panel's decisional rationale. Moreover, such decisions are not circulated to the entire court and, therefore, represent only the views of the panel that decided the case. A summary decision pursuant to rule 23.0 or rule 1:28 issued after February 25, 2008, may be cited for its persuasive value but, because of the limitations noted above, not as binding precedent. See Chace v. Curran, 71 Mass. App. Ct. 258, 260 n.4 (2008).

COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT

21-P-442

TOWN OF NORTHBOROUGH<sup>1</sup>

vs.

SANTO ANZA<sup>2</sup> & another.<sup>3</sup>

MEMORANDUM AND ORDER PURSUANT TO RULE 23.0

The defendants, Santo Anza, individually and as trustee of the 429 Whitney Street Realty Trust, and S.A. Farm, LLC, appeal from a civil contempt judgment entered against them for violation of a preliminary injunction, and from the denial of a motion to vacate the judgment of contempt pursuant to Mass. R. Civ. P. 60 (b) (6), 365 Mass. 828 (1974). The defendants claim the judge erred in finding them in contempt because the preliminary injunction did not contain a clear and unequivocal command. We affirm.

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<sup>1</sup> By and through its Health Agent, Building Inspector/Zoning Enforcement Officer, and Chief of Police.

<sup>2</sup> Individually and as Trustee of the 429 Whitney Street Realty Trust.

<sup>3</sup> S.A. Farm, LLC.

Background. In August 2018, the town of Northborough (town) filed a complaint against the defendants alleging nuisance, violation of the town's zoning bylaw, and violations of air pollution control regulations with respect to operations at the defendants' Whitney Street property. The town requested both a preliminary and permanent injunction.

A Superior Court judge granted the town a preliminary injunction in October 2018, ordering the defendants "to cease-and-desist from receiving, accepting, bringing or taking onto the Property any spent, discarded or previously used organic material in excess of the quantity reasonably required for the reasonable and ordinary feeding of any farm animals and/or livestock maintained at the Property."

The town filed a complaint for contempt (and later an amended complaint) alleging the defendants violated the preliminary injunction by receiving and accepting food waste products outside the scope of reasonable and ordinary feed for animals or livestock on the property. After a two-day contempt trial on July 9 and 10, 2019, the judge found the defendants violated the injunction and held them in civil contempt. Among other things, the judge found "that the sheer volume, type, variety, packaging, storage, and piling of the discarded food products, as well as the length of time those products were exposed to the elements, confirms that large portions of the

products depicted in the aerial images were not being used to feed the livestock." The judge credited the testimony of both of the town's witnesses and relied on photographic exhibits to find that "large portions of discarded food products remained on the property, on some occasions, for at least days or weeks at a time." The town's expert witness testified, and the judge found, that while discarded food can be used as animal feed, the food is only edible for a short period of time, after which the food spoils or decomposes. The judge also credited the expert's testimony that poor composting practices were consistent with the odors emanating from the property.<sup>4</sup> Judgment entered on the contempt finding, and the judge subsequently denied the defendants' Rule 60 (b) (6) motion.

Discussion. "We review the judge's ultimate finding of contempt for abuse of discretion, but we review underlying conclusions of law de novo and underlying findings of fact for clear error." Commercial Wharf E. Condominium Ass'n v. Boston Boat Basin, LLC, 93 Mass. App. Ct. 523, 532-533 (2018), citing

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<sup>4</sup> Anza was prohibited from engaging in commercial composting operations as a result of a May 1, 2014, sentencing order placing him on five years' probation for violations of the Solid Waste Act, G. L. c. 111, § 150A. The sentencing order stated, "Defendant shall, during the term of probation, not engage, personally or as part of any corporate or other entity, in any activity, transaction or operation that involves processing, storing, transferring, treating or disposing of solid waste or any operation that commercially recycles, composts or converts recyclable or organic materials."

Judge Rotenberg Educ. Ctr., Inc. v. Commissioner of the Dept. of Mental Retardation (No. 1), 424 Mass. 430, 443, 451 (1997).

The sole issue on appeal is whether the preliminary injunction was ambiguous.<sup>5</sup> A finding of civil contempt must be predicated on "clear and convincing evidence of disobedience of a clear and unequivocal command." In re Birchall, 454 Mass. 837, 853 (2009). "Civil contempt . . . can be used as an enforcement mechanism only if the underlying order is sufficiently clear, so that the party to be bound is provided with adequate notice of the required or prohibited activity." Demoulas v. Demoulas Super Mkts., Inc., 424 Mass. 501, 565-566 (1997). "However, where the enforcement of the underlying court order is not dependent on terms subject to judicial discretion, a mere dispute over the legal meaning of certain terms in the injunction does not render it unenforceable." Id. at 567, and cases cited. "[A] party's . . . characterization of a provision as 'ambiguous' does not make it so" (citation omitted). Stabile v. Stabile, 55 Mass. App. Ct. 724, 726-727 (2002).

The order unambiguously prohibits the defendants from holding or storing organic material that is unsuitable for feeding animals or livestock. It put the defendants on notice that keeping organic material on the property that was not used

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<sup>5</sup> On appeal, the defendants do not challenge the judge's finding of "clear and undoubted disobedience" of the order.

for animal feed would subject them to citations for contempt. The meaning of this aspect of the preliminary injunction was not susceptible to dispute, nor was any judicial discretion involved in the factual finding that large quantities of discarded organic materials, unsuitable for feeding farm animals of livestock, was present. See Demoulas, 424 Mass. at 567. The finding of contempt is justified on this basis alone.

Nor does the defendants' assertion that the terms "reasonably required" and "reasonable and ordinary" are ambiguous and dependent on discretionary judgment make the injunction unenforceable. In context, these terms did not create uncertainty as to what conduct the preliminary injunction prohibited -- the defendants could not keep on the property organic matter in excess of what was necessary to feed the animals. In any event, the judgment of contempt did not turn on a discretionary call as to how much organic matter was reasonably necessary for the defendants' legitimate agricultural pursuits. Their conduct was a clear violation of the order.<sup>6</sup>

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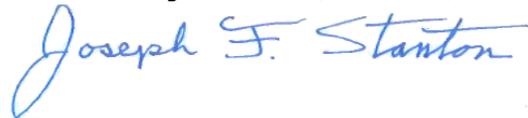
<sup>6</sup> Additionally, given the quantity and age of the material stored, the individual defendant's prosecution for illegal waste storage, and the probationary terms barring storage or composting of discarded organic materials, the defendants had "no reasonable basis for doubting" the meaning of the judge's order. See Allen v. School Comm. of Boston, 400 Mass. 193, 194 (1987) (order commanding school committee to provide special needs students "reliable, timely, and substantially uninterrupted transportation" was clear and unambiguous).

As we have determined that the order did constitute a clear and unequivocal command, it follows that the judge did not abuse his discretion in denying the Rule 60 (b) (6) motion.

Judgment affirmed.

Order denying rule 60 (b) (6)  
motion affirmed.

By the Court (Sullivan,  
Massing & Shin, JJ.<sup>7</sup>),



Clerk

Entered: May 13, 2022.

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<sup>7</sup> The panelists are listed in order of seniority.