

Ohio Supreme Court Ruling Is a Victory For Owners Of Investment Property

Today the Ohio Supreme Court ruled that a utility company could not shut off gas service to a 240-unit apartment complex to force the owner of the complex to retrofit the ventilation systems at the units – at a minimum cost of \$1,500 per unit or \$360,000 – to comply with the National Fuel Gas Code because the owner’s decision not to retrofit the ventilation systems at the complex did not pose an imminent threat or verifiable safety hazard to residents at the complex.

In August 2008, the utility company notified the owner that the ventilation systems at the apartment units did not comply with the NFG Code and, according to the utility company, the systems could cause an unsafe buildup of carbon monoxide in the units. The utility company told the owner that, on account of the NFG Code violation, it would disconnect gas service to the units if they were not retrofitted to comply with the NFG Code by the end of October 2008. In response, the owner pointed out that, when the units were built in 1997 and 1998, the City of Columbus issued building and occupancy permits to the owner after concluding that the ventilation systems complied with all applicable codes in force at that time. At the time of construction of the units, the owner modified its original building plans to add a fresh-air-supply duct to each unit to bring outdoor air into the unit, thereby mitigating the threat of carbon monoxide poisoning to unit dwellers. The owner also equipped each of the units with a combination smoke-detector and carbon-monoxide alarm. But the utility company nevertheless maintained that any violation of the NFG Code created a significant safety hazard and a threat to human life and persisted that the ventilation systems at the units

had to be retrofitted to address the NFG Code violation or else gas service would be halted.

In September 2008, the apartment complex owner filed a complaint with the Ohio Public Utilities Commission and requested an order from the commission barring the utility company from shutting off gas service to the units. The commission granted the owner's request and issued an order stating that compliance with the NFG code is a safer harbor for apartment complex owners, but a utility company cannot compel an owner to comply with the NFG code when it is economically unreasonable and the owner has provided its tenants with a reasonable margin of safety through an engineered solution that complies with local building code and is supported by a professional engineer's verification of adequacy. As stated, earlier today the Supreme Court issued an opinion affirming the commission's order prohibiting the utility company from discontinuing gas service at the apartment complex. The Supreme Court's opinion is styled *In re Complaint of Cameron Creek Apts. v. Columbia Gas of Ohio, Inc.*

In affirming the commissions order in favor of the apartment complex owner, the Supreme Court noted that the apartment complex complied with all applicable building codes when constructed and explained that the utility company did not challenge any of the evidence, including expert testimony, that the commission relied on its support of its finding that "there was no evidence of any imminent or verifiable threat and Cameron Creek was providing a 'reasonable margin of safety' for its residents."

A PDF version of the Supreme Court of Ohio's opinion issued today in the *Cameron Creek Apartments* case is available for download from the Court's website at:

<http://www.supremecourt.ohio.gov/ROD/docs/pdf/o/2013/2013-Ohio-3705.pdf>.