IN THE COURT OF COMMON PLEAS OF THE STATE OF DELAWARE

IN AND FOR SUSSEX COUNTY

STATE OF DELAWARE,	)	
	)	
Plaintiff	)	
	)	
v.	)	Case # 1112018931
	)	
	)	
DARIUS MANSOORY,	)	
	)	
Defendant	)	

Submitted March 12, 2013
Decided April 30, 2013

Michael J. Hoffman, Esquire, Attorney for Plaintiff
Kevin P. O'Neill, Esquire, Attorney for Defendant

DECISION AFTER TRIAL

The Defendant in the above-captioned criminal matter is charged with two violations of ordinances of the City of Rehoboth Beach. A bench trial was held on March 12, 2013. After consideration of the evidence and the applicable law, the Court finds the Defendant **NOT GUILTY.**

Findings of Fact

Defendant, Darius Mansoory is a managing member of Stingray Rock, LLC. That entity owns and operates the Stingray Sushi Bar and Latino Grill located at 59 Lake Avenue, Rehoboth Beach, Sussex County, Delaware. On or about September 7, 2011, Teresa Sullivan, Chief Building Inspector for the City of Rehoboth Beach, noticed a

truck filled with debris in the parking lot of the restaurant and, therefore, performed an inspection.

The Chief Building Inspector discovered that a water feature was being installed inside the banquet area of the restaurant. The water feature consisted of two fifty gallon tubs with a tile facing attached to a faux wall. At trial, the Defendant explained that the water in the feature cycles from the 50 gallon tubs through small tubes hidden behind the faux wall, flows over the wall covered in pebbles and then, returns to the 50 gallon tanks. He further explained that the water feature is not attached to the existing plumbing and no additional electric work needed to be performed for its installation or maintenance. The water feature was constructed almost entirely outside in the parking lot and carried into the restaurant for installation. The Court finds from the credible evidence that the entire water feature construction is a free-standing, self-contained display, similar to a large art object, placed in front of and secured to an existing wall in the restaurant. That same day, September 7, 2011, the Chief Building Inspector wrote a letter to Defendant. She claimed in the letter that Defendant needed to obtain a building permit for the work being performed, and ordered him to cease work. The letter stated:

> "In order to get a City building permit you need drawings sealed by a design professional, Fire Marshall approval, a copy of the construction proposal from the licensed contractor and the Health Department approval since it is a restaurant. You will also need to apply for a plumbing permit since there is what looks like a water feature with a direct line. In addition, you will need to either have an engineer do an analysis of the wall to verify that what was constructed meets code or have the finishes removed so that the Building and Licensing Department can do the framing inspection this is required."

Defendant did not respond to the letter, and apparently completed installation of the water feature.

On November 27, 2011, the Chief Building Inspector performed an additional inspection of the restaurant. In her subsequent December 1, 2011 letter to Defendant she noted that Defendant had not sought to obtain a permit for the water feature and,

additionally, that Defendant changed the floor plan of the restaurant by rearranging tables in the restaurant. The Defendant, again, did not respond to the letter.

On January 20, 2012, Defendant was charged with Commencement of Work without a Building Permit in violation of Rehoboth Beach Ordinance §270-84(B), and Modification of Floor Plan in violation of Rehoboth Beach Ordinance §215-11(A).

Discussion

Count 1

Rehoboth Beach Ordinance §270-84(B), Building Permits provides that: "[n]o person shall commence work for the erection or alteration of any building or structure until a building permit has been duly issued therefor."[1] The code defines "building" as "a structure, usually roofed, walled and built for permanent use, as for a dwelling or for commercial purposes."[2] Likewise, a "structure" is defined by the code as:

> [A]nything constructed or erected, including any part thereof, the use of which requires permanent location on the ground or attachment to something having a permanent location on the ground, including, but without limiting the generality of the foregoing, house trailers, mobile homes, relocatable homes, signs, swimming pools, porches, balconies, decks, canopies, fences, backstops for tennis courts, pergolas, gazebos, heating, ventilating and cooling devices, compressors or pumps and showers, and excluding driveways and sidewalks.[3]

In the present case, the water feature object was placed or installed in the existing restaurant building or structure. It is not, itself, a separate "structure" as defined in the Ordinance because it does not "require" "permanent location on the ground or attachment to something having a permanent location on the ground." Thus, the Court must determine whether it amounts to an "alteration" of the building or structure within the meaning of the Ordinance.

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[1] Id.

[2] Rehoboth Beach Ordinance §270-4.

[3] Id.

Some definitional guidance is derived from the fact that, at the time of the alleged violations, the City's Code incorporated Section 105.2 of the International Building Code. That section provides, in pertinent part, that: "[p]ermits shall not be required for…painting, papering, tiling, carpeting, cabinets, countertops and similar finish work."[4] The installation of this water feature object seems most akin to the installation of "cabinets" or "countertops," both of which are large, heavy items secured to existing walls but removable without structural changes to a building. The Court finds that a reasonable interpretation of this section would include a decorative water feature as akin to a cabinet or other finish work.

The City had the authority to enter the restaurant and perform a thorough inspection of the water feature before and after its completion, or even to obtain a warrant to search for evidence that the water feature's installation was criminal. At trial, however, the City's Chief Inspector could not inform the Court whether the water feature required electrical alterations, whether the water feature was sourced directly to the plumbing, or whether the framing of the water feature was attached to the supporting walls of the restaurant. Such evidence could have assisted the Court's analysis of whether the device's installation amounted to an "alteration." The only credible evidence of the device's nature, construction and installation was offered by the Defendant. The evidence offered by the State was insufficient for it to meet its burden in a criminal prosecution of proving the elements of the offense beyond a reasonable doubt. Therefore, the Court finds the Defendant **NOT GUILTY** of Count 1 of the Information.

[4] Id.

Count 2

After her November 27, 2011 inspection of the restaurant's premises, the Chief Building Inspector informed Defendant in writing on December 1, 2011 that the "current layout of the floor plan as with the new construction the tables in that area have been rearranged," rendering it different from the floor plan previously approved and apparently reflected in a floor plan affidavit Defendant had provided the City in April, 2011. In the arrest warrant affidavit submitted by the Chief Building Inspector, she alleged that when she went to the restaurant on November 28, 2011, she noticed that "the floor plan had been modified. Modification of the floor plan is illegal . . .." Finally, Count 2 of the Information filed in this matter alleges that "on or about January 20, 2012 [the Defendant] did rearrange the seating in the restaurant once the construction was completed. The seating no longer matches the approved arrangement."

Rehoboth Beach Ordinance §215-11(A) provides that "[i]t shall be illegal for any restaurant or dinner theater to ***substantially modify*** its floor plan, seating arrangement and/or the location and number and sizes of bar areas and permanent seated dining areas from the plans submitted to the City."[5] Under §215-11(B) of the Ordinance, "[m]odification . . . means internal rearrangements limited to the interior walls of only that portion of the structure used for restaurant or dinner theater purposes as shown on the floor plan on file with the City Manager."[6]

Testimony was offered at trial regarding two separate changes in seating arrangements in the restaurant. One was a pre-existing change that occurred some time prior to April, 2011, regarding the apparent conversion of standard tables and chairs in one area (on the opposite side of the restaurant from where the water feature was

[5] Id. (Emphasis added.)
[6] Id.

installed) to a lounge dining area with sofas and smaller tables. The evidence shows that Defendant had informed the City of this seating arrangement on April 14, 2011 at the latest, with the affidavit floor plan he filed with the City regarding a separate variance issue. That lounge-seating conversion clearly is not the subject of, or an element of, the present charge, which charges the Defendant with rearranging seating "once the construction was completed."

The second change the State offered evidence upon was the rearrangement of tables and chairs in the "banquet area" immediately adjacent to the water feature installation. The State's witness alleged that the banquet area now includes a few additional tables. However, she could not provide the Court with an accurate accounting of the number of seats in the restaurant area reserved for diners before or after the alterations to the seating arrangement occurred. Additionally, she did not know whether the changes altered the ratio of dining area to bar area.

In its prosecution of this matter both the City and the State have repeatedly focused on the fact that Defendant rearranged some seating in the restaurant, and that the new seating arrangement does not "match the approved arrangement." However, the Ordinance does not require City approval of *every* change in seating arrangement; it only prohibits unapproved "**substantial"** modifications of floor plans and seating arrangements. "Substantial" is an adjective of, for lack of a better word, substance. The Ordinance does not define the term, so the Court will apply its ordinary meaning.[7] It has many dictionary definitions, not all of which apply in this context. It is clear to the Court however that the following definitions of the word are directly on point: "Of

[7] *See Eliason v. Englehart,* 733 A.2d 944, 946 (Del.1999); *Am. Ins. Ass'n v. Delaware Dep't of Ins.,* CIV.A. 05C-10-309SCD, 2008 WL 44322 (Del. Super. Jan. 2, 2008)

ample or considerable amount or size." "Sizeable, fairly large." "Of real significance."[8] Since "substantial modification" is a plain element of this offense, the State must prove beyond a reasonable doubt that the Defendant made seating arrangement changes to the restaurant that were "sizeable" and "of real significance." The State's evidence on this element has wholly failed to convince this trier of fact. Accordingly, the Court finds the Defendant **NOT GUILTY** on Count 2.

IT IS SO ORDERED this _____ day of April, 2013.

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Kenneth S. Clark, Jr.
Judge

[8] *The New Shorter Oxford English Dictionary, vol.2,* p. 3124 (Clarendon Press, Oxford, 1993).