

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION**

DISTRICT OF COLUMBIA)	
)	
)	
Petitioner/Plaintiff,)	2016 CA 007767 2
)	Judge John M. Mott
v.)	
)	
TERRACE MANOR, LLC, <i>et al.</i>)	Next Event: April 25, 2017 at 2:00pm
)	Status Hearing
)	
Respondents/Defendants.)	
)	

DISTRICT OF COLUMBIA’S MOTION TO APPOINT A RECEIVER

The District of Columbia (“the District”), by and through its undersigned attorneys and the Office of the Attorney General, pursuant to D.C. Code § 42-3651.05(a)(2)(B), hereby respectfully requests this Court enter an order appointing a receiver. Respondents Terrace Manor, LLC, Sanford Capital, LLC, and Oakmont Management Group, LLC (collectively, “Respondents”) were given an opportunity to abate the violations *in lieu* of appointment of a receiver by completing an Abatement Plan, agreed to by the Parties and entered as an order of the Court on January 26, 2017. Respondents have substantially failed to comply with that Abatement Plan and have continued to neglect the safety and security of Terrace Manor residents.

Respondents are in default of the following three provisions of the Abatement Plan:

1. Respondents are in default of Footnotes 1 and 2 of the Abatement Plan for failing to abate an emergency within 24 hours after being notified of that emergency by Inspector Michael Lampro, the Designated Inspector, on February 17, 2017.
2. Respondents failed to grant Inspector Lampro unfettered access to Terrace Manor Apartments on March 1, 2017. *See* Abatement Plan, ¶B(4).

3. Respondents are in default of ¶A(6) of the Abatement Plan because they failed to install fireproof drywall in the vacant units within thirty days of the entry of the Abatement Plan.

Therefore, the District of Columbia respectfully requests that this Court:

- 1) Declare that Respondents are in default and have not made sufficient progress to complete the Abatement Plan;
- 2) Appoint a receiver who has demonstrated to the Court the expertise to develop and supervise a viable financial and repair plan for the satisfactory rehabilitation of Terrace Manor Apartments; and
- 3) Provide any other relief deemed appropriate by the Court.

In support of this Motion, Plaintiff relies upon the attached memorandum of points and authorities.

Oral Hearing Requested.

I HEREBY request an oral hearing pursuant to Super. Ct. Civ. R. 12-I(f).

Dated: March 31, 2017

Respectfully Submitted,

KARL A. RACINE
Attorney General for the District of Columbia

ROBYN BENDER
Deputy Attorney General, Public Advocacy Division

PHILIP ZIPERMAN
Director, Office of Consumer Protection

JIMMY R. ROCK
Deputy Director, Office of Consumer Protection

/s/ Jane Lewis

JANE LEWIS¹
Chief, Housing and Community Justice Section

/s/ Argatonia Weatherington

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¹ Practicing in the District of Columbia pursuant to Ct. App. R. 49(c)(4) and under the supervision of a member of the D.C. Bar.

RULE 12-I CERTIFICATE

On March 30, 2017, the undersigned made contact telephonically with Respondents' counsel in order to obtain Respondents' consent. Respondents' counsel stated that they do not consent to the District of Columbia's motion and requested relief.

/s/ Argatonia Weatherington
ARGATONIA WEATHERINGTON

RULE 5(e) CERTIFICATE

I HEREBY CERTIFY that a copy of the foregoing District of Columbia's Motion to Appoint a Receiver was delivered to the chambers depository designated by the Clerk of the Court on March 31, 2017.

/s/ Argatonia Weatherington
ARGATONIA WEATHERINGTON

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing District of Columbia's Motion to Appoint a Receiver was served upon counsel for Respondents, Stephen Hessler, via *CaseFileExpress* on March 31, 2017.

/s/ Argatonia Weatherington
ARGATONIA WEATHERINGTON

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**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF THE DISTRICT
OF COLUMBIA’S MOTION TO APPOINT A RECEIVER**

This is an action brought pursuant to the Tenant Receivership Act, D.C. Code §§ 42-3651.01, - to.08. The purpose of this action is to “safeguard the health, safety, and security” of the tenants at Terrace Manor through prompt abatement of ongoing housing code violations. *In lieu* of appointing a receiver for this purpose, the Court gave Respondents Terrace Manor, LLC, Sanford Capital, LLC, and Oakmont Management Group, LLC (collectively, “Respondents”) an opportunity to abate the violations according to an Abatement Plan drafted by Respondents themselves. The purpose of the Abatement Plan was to delineate necessary repairs and prescribe management protocols for the Respondents to follow.

Respondents have failed to make substantial progress under the Abatement Plan, and have violated three of the Plan’s express provisions. Specifically, Respondents failed to: (1) address emergency issues within 24 hours, (2) give the Designated Inspector unfettered access to the Property, and (3) install fireproof drywall in the vacant units. Therefore, the District respectfully requests that the Court appoint a receiver.

FACTUAL BACKGROUND²

Terrace Manor Apartment³ (the “Property”) is a rental housing accommodation located within the District of Columbia that comprises of 11 buildings with a total of 61 rental units. Respondents own, operate, manage, lease, and otherwise control Terrace Manor Apartments, which suffers from recurring and continual housing code violations. After the District filed suit to remediate the numerous housing code violations at Terrace Manor, the Parties agreed that the Property would undergo a series of inspections by DCRA Inspector Michael Lampro and that Respondents would take certain abatement actions intended to protect the health and safety of the remaining tenants. Among other things, the Abatement Plan specifically required Respondents to: fix emergency issues within 24 hours of notification; give the Designated Inspector “unfettered access” to the Property; replace drywall in vacant units, including fireproof dry wall where required; and to remove all debris and hazards in the vacant units.”⁴

During a February 17, 2017 re-inspection, Inspector Lampro took note of two emergency situations: the first was the lack of a front door at 2276 Savannah Street SE and the second was a ruptured pipe at 3373 23rd Street SE. During the inspection, it became apparent that someone had kicked in the front door at 2276 Savannah Street SE, making the entire building open and accessible to any passerby. When Inspector Lampro entered the building, there was a bullet hole through an apartment window and evidence of human habitation, despite the interior being completely stripped of drywall and fixtures. After seeing the conditions, Inspector Lampro

² The factual allegations alleged and submitted herein are based upon the affidavit of Inspector Michael Lampro, hereby attached as Exhibit 1.

³ Terrace Manor apartment complex houses 11 buildings with 12 discrete addresses: 2270 Savannah Ave SE, 2272 Savannah Ave SE, 2276 Savannah Ave SE, 3341 23rd St SE, 3343 23rd St SE, 3345 23rd St SE, 3347 23rd St SE, 3349 23rd St SE, 3351 23rd St SE, 3353 23rd St SE, 3371 23rd St SE, and 3373 23rd St SE.

⁴ The installation of fireproof drywall is necessary because the drywall serves as a fire suppression mechanism that will protect tenants in occupied units in the event that a fires starts in a vacant unit.

turned to Carter Nowell, the principal of Sanford Capital and Oakmont Management, and told him that the absence of a front door and the state of the building was a serious safety issue and needed to be addressed immediately. To rectify the situation, the porters on site took a piece of plywood and nailed it over the front entryway at 2276 Savannah Street SE.

The other emergency issue was a burst pipe in the basement at 3373 23rd Street SE. When Inspector Lampro entered the basement – which was also unsecured – he detected a stench of mold. In the basement, the Inspector observed approximately an inch or so of standing water and mold covering the walls and ceilings. Inspector Lampro then located the source of the moisture, a broken pipe with a green secretion dangling from the ruptured end. Based on these observations, Inspector Lampro informed owner Carter Nowell that the pipe was leaking raw sewage and needed to be addressed immediately. In response, Mr. Nowell denied that the pipe was leaking raw sewage and claimed that the pipe had only ruptured the night before, despite the mold creeping up the wall and the accumulation of water throughout the basement.

At the end of the inspection, Inspector Lampro told Mr. Nowell and the porters that he would return on Wednesday, February 22, 2017 to inspect repairs on the two emergency issues. When Inspector Lampro returned on that date, he found no change in the conditions of the basement at 3373 23rd Street SE. At that point, Inspector Lampro made an appointment with Respondents to return one week later, on March 1, 2017, to re-inspect the sewage leak. When Inspector Lampro returned at the appointed date and time, no one from management was present to grant him access to the basement. The pipe was not fixed until March 10, 2017 – 21 days after Inspector Lampro told Respondents the pipe constituted an emergency.

Inspector Lampro conducted another property-wide re-inspection on March 16, 2017. During that inspection there were several troubling issues: two tenants were using their ovens to

heat their apartments, and the housing conditions at 2270 Savannah Street SE had not been addressed at all. Inspector Lampro noted to the Oakmont Management porter that the lack of heat, especially with the low temperatures, constituted an emergency and he would return the following day to insure that the two tenants had heat. The following day, the tenants were still without heat and complained that running the ovens to heat their apartments had drastically raised their electric bills. When Inspector Lampro entered 2270 Savannah Street SE, none of the issues that were cited during the February 17, 2017 had been addressed.

In addition to the emergency issues not being promptly addressed, Respondents have not installed fireproof drywall in the vacant units. Per ¶A(6) of the Abatement Plan, Respondents are required to clean out vacant units and install fireproof drywall. As of the date of the filing of this motion, Respondents have not pulled the necessary permits to even begin the work.

ARGUMENT

If the Court “[f]inds the respondent has not made sufficient progress to complete the plan, [the Court] may order appointment of a receiver....” D.C. Code § 42-3651.05(a)(2)(B). The Court orally entered the Abatement Plan on January 26, 2017 as an order. Respondents themselves drafted the terms of the Abatement Plan but still failed to comply and defaulted on its provisions. Although the Abatement Plan is designed to address the housing code violations at Terrace Manor, Respondents have not made sufficient progress to comply despite the numerous opportunities to do so. Respondents’ inertia in implementing the Abatement Plan has resulted in the tenants at Terrace Manor continuing to endure unsafe and substandard living conditions.

On March 2, 2017, the District provided the Respondents notice of default pursuant to ¶B(8) of the Abatement Plan. The notice also provided that Respondents failed to appear for a DCRA scheduled re-inspection for March 1, 2017, effectively denying DCRA Inspector Lampro

access to the Property. Respondents acknowledged receipt of the default and countered by asking the District to withdraw its Notice of Default. The District respectfully declined. Despite the Notice of Default, Respondents still did not act with the necessary haste, and the ruptured pipe at 3373 23rd Street SE remained unaddressed for three weeks as other housing code violations continued to accrue.

Respondents have defaulted under three provisions of the Abatement Plan. First, they failed to abate an emergency within 24 hours as agreed upon in Footnotes 1 and 2 of the Abatement Plan. In fact, Respondents took a total of three weeks to address a raw sewage leak at the Property. Second, they have failed to provide the District Inspector with access to the Property to inspect ongoing violations. After Respondents failed to repair the sewage leak a second time, they also prevented the Inspector from assessing the status of this ongoing emergency violation by failing to appear for their appointment on March 1, 2017. Finally, Respondents are in default of ¶A(6) of the Abatement Plan because they have refused to install the fireproof drywall in all of the vacant units.

In addition to violating these specific provisions, Respondents have also betrayed the intended purpose of the Abatement Plan, which was timely repair of substandard conditions caused by a pattern and practice of neglect. As of the date of this filing, the Property remains riddled with unabated housing code violations. On February 17, 2017, Inspector Lampro issued 56 notices of violation in addition to the two emergency items discussed *supra*. Of those 56 violations, 14 were infractions that “are imminently dangerous to the health, safety, or welfare of persons within the District of Columbia.” 16 DCMR ¶ 3200.1(b). These violations include, but are not limited to: failure to provide adequate electric power, failure to maintain smoke detectors, and failure to keep emergency lights in an operable condition.

On March 16, 2017, Respondents had just started to abate these violations despite some of the violations being over a year old. Moreover, during that inspection, Inspector Lampro discovered that two tenants were forced to use their ovens to heat their apartments because Respondents had failed to provide them with adequate heat during the week of a winter storm. When Inspector Lampro returned to the Property the following day, both units were still without heat.

It is apparent from Respondents' willful disregard of the terms of the Abatement Plan, and their lack of progress in addressing conditions at the Property, that Respondents are unwilling or unable to protect the health, safety, and security of their tenants. Therefore, the only way to ensure the safety of the tenants and the upkeep of the Property is to appoint a receiver. The District has two potential receivers that are ready and willing to undertake repairs at the Property.

Concurrent with this Motion, Petitioners have also filed a Motion for Civil Contempt based on Respondents' failure to comply with this Court's orders to abate violations at the Property. In that Motion, Petitioners ask that the Court find Respondents in contempt and impose a fine of \$2,000 per day for each day that violations remain unabated at the Property. Appointment of a receiver, rather than imposition of the fines, would also serve to cure the contempt. The District's position is that between these two remedies, appointment of a receiver is more likely to result in lasting repairs to the Property than allowing Respondents to continue managing this process.

CONCLUSION

For the foregoing reasons, the Court should order that a receiver be appointed to collect the rents and begin immediate rehabilitation of the property.

Dated: March 31, 2017

Respectfully Submitted,

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