

on December 27, 2017. At that time, the Court had already appointed David Gilmore as the Receiver over the Property, and had ordered the Sanford Capital Respondents to exclusively negotiate a sale with the tenants. The Receiver had sole authority to enforce or avoid terms of a mortgage on the Property, and the Sanford Capital Respondents could not transfer the Property as part of an alleged foreclosure process without the Receiver's involvement. The District therefore seeks to have the Court declare the purported transfer of the Property void or, alternatively, seeks to add in Respondent CityPartners 5914, LLC to this case so that it can begin contributing funds towards the ongoing Receivership. The District also seeks to add CPPA claims against the Sanford Capital Defendants to recover restitution for tenants, penalties and other injunctive relief.

The District's proposed First Amended Petition and Complaint is attached as Exhibit A. Exhibit B is a redline comparison between the District's Petition as originally filed and the proposed First Amended Petition and Complaint. A proposed Order is also attached.

Dated: February 8, 2018

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

/s/ Jimmy R. Rock
JIMMY R. ROCK [493521]
Assistant Deputy Attorney General
Public Advocacy Division

JANE LEWIS
Chief, Housing and Community Justice Section

/s/

ARGATONIA WEATHERINGTON [1021691]

STEPHON D. WOODS [1025232]

Assistant Attorneys General

441 4th Street, N.W. Suite 1060N

Washington, D.C. 20001

(202) 727-6338 / (202) 724-5319 (phone)

(202) 730-1806 (e-fax)

Email: Argatonia.Weatherington@dc.gov

Email: Stephon.Woods@dc.gov

Attorneys for the District of Columbia

SUPERIOR COURT CIVIL RULE 12-I CERTIFICATION

Undersigned counsel contacted counsel for Respondents 1309 Alabama Avenue LLC, Alabama Avenue LLC, 3210 13th Street LLC, Sanford Capital LLC, and Oakmont Management Group LLC to seek consent to the relief requested in this motion. As of the date of this filing, Counsel for Respondents did not consent to the District filing a Motion for Leave to File First Amended Petition and Complaint.

/s/ _____
Stephon D. Woods
Assistant Attorney General

CERTIFICATE OF SERVICE

I, Stephon Woods, certify that on February 8, 2018, a copy of the foregoing Motion for Leave to File First Amended Petition was served electronically via CaseFileXpress to:

Stephen O. Hessler
Counsel for Respondents/Defendants

Jeffery Styles
Counsel for Respondent 1309 Alabama Avenue LLC

Benjamin Gilmore
Counsel for Receiver

/s/ _____
Stephon D. Woods
Assistant Attorney General

the property.² This 60-day exclusive negotiation period was a concession to the Sanford Capital Respondents as it stayed their obligation to file objections to the Receiver's Abatement Plan or to begin providing additional funds for that plan's implementation.

On January 2, 2018, Counsel for Respondents filed a Praecipe and a Motion to Dismiss alleging CityPartners 5914, LLC ("CityPartners") took ownership of the Property on December 27, 2017 pursuant to a deed in lieu of foreclosure.³ CityPartners apparently purchased the debt on the property and then sought to immediately foreclose on the Property. In lieu of proceeding with a foreclosure, the debtor and creditor executed Special Warranty Deeds transferring the property to CityPartners. This entire process happened without the Receiver's or the Court's knowledge, despite the fact that the Receiver had exclusive authority to enforce or avoid any mortgages on the Property.

The District seeks leave to amend its Petition and Complaint to add CityPartners as a party so that the District can seek to have this Court declare that the transaction by which CityPartners allegedly obtained the Property is void. Alternatively, if this court determines CityPartners to be the legal owner of the Property, the District seeks to add CityPartners as a Respondent to the District's Tenant Receivership Act claims in this matter. The District also seeks to add Sanford Capital II, LLC as a Respondent/Defendant based on previous statements and email communications from Respondents noting that the Sanford Capital Respondents are subsidiaries of Sanford Capital II, LLC, a foreign corporation currently not licensed to conduct business within

² Will Merrifield, Counsel for the Tenant Association, made representations to the Court at a Status Hearing on November 2, 2017 that the tenants had already selected a potential purchaser for the property. The 60-day period was intended to finalize the sale contract between Respondents and the Tenants.

³ The alleged transfer of ownership took place within the 60-day period the Court ordered the Receiver to remain in place while the Respondents negotiate exclusively with the tenants to find a purchaser. As discussed further below, the District is challenging the validity of the transfer.

the District. The District also seeks to add Aubrey Carter Nowell in his individual capacity as a Respondent and Defendant, as he is the founder, principal, and managing partner of Sanford Capital, LLC and its subsidiaries and therefore had control over the Respondents' acts and omissions.

Finally, the District seeks leave to amend its Petition and Complaint to include a Count against the Sanford Capital Defendants for violations of the Consumer Protection Procedures Act ("CPPA"), D.C. Code § 28-3901, *et seq.* By adding this Count, the District seeks to hold those Defendants liable for their misrepresentations to the tenants that they would provide habitable housing and to seek monetary relief for these unlawful practices, including restitution to consumers who were harmed.

As set out further below, the factors this Court should consider when evaluating a request to file an amended pleading all favor granting leave to the District here. Accordingly, the District respectfully requests the Court grant it leave to amend, and deem the attached First Amended Petition and Complaint filed in this action.

ARGUMENT

Pursuant to SCR-Civil R. 15(a), "leave [to amend a pleading] shall be freely given when justice so requires." "Although the decision is a matter of trial court discretion, there is a 'virtual presumption' a court should grant leave to amend unless there is a good reason to the contrary." *Howard University v. Good Food Services*, 608 A.2d 116, 120 (D.C. 1992) (citing *Bennett v. Fun & Fitness of Silver Hill*, 434 A.2d 476, 478 (D.C.1981)). In deciding whether to grant leave to file an amended petition, the Court should consider the following factors: (i) the number of requests for leave to amend, (ii) whether the request will delay trial or the completion of discovery, (iii) the existence of bad faith or dilatory motive, (iv) the merits of the amended pleading, and (v) any

prejudice to the other parties. *Bennett*, 434 A.2d at 478-79. Here, an examination of each of these factors points in favor of allowing the District to file its First Amended Petition and Complaint and against upsetting the “virtual presumption” in favor of granting leave to amend.

A. The District’s Proposed First Amended Petition And Complaint Has Merit.

The District’s proposed First Amended Petition and Complaint properly adds CityPartners as a Respondent and Defendant based on the allegations set forth in Respondents’ January 2, 2018 Praecipe and subsequent Motion to Dismiss identifying CityPartners as the purported new owner of the Property. The District properly seeks to add Sanford Capital II, LLC as a Respondent and Defendant based on Respondent Aubrey Carter Nowell’s statements in open Court that the individual single-asset LLCs are subsidiaries of this separate company which is currently not a party to this suit. Furthermore, the District properly seeks to add Aubrey Carter Nowell as a Respondent and Defendant based on his ownership and control over the Sanford Capital Defendants’ acts and omissions throughout the time periods relevant in this suit. One purpose of the District’s amendments is to include all parties that may have an interest in the Property with respect to the necessary repairs, particularly as the Court continues to oversee the abatement of Housing Code Violations through its Receiver.

Additionally, the District’s proposed addition of a Count for a declaratory judgment concerning the validity of the transfer of ownership of the Property is also proper. The Sanford Capital Respondents claim they executed a deed in lieu of a foreclosure to CityPartners. However, the Tenant Receivership Act divests the owner of a property of any right to unilaterally negotiate mortgages, and instead provides that “the receiver shall [a]ssume all rights of the owner to enforce or avoid terms of a lease, mortgage, [or] secured transactions” on a property. D.C. Code § 42-3651.06(a)(7). Because the alleged transaction between the Sanford Capital Respondents and CityPartners involved avoiding or enforcing mortgages on the Property, the Tenant Receivership

Act required the Receiver's involvement, and Respondent Nowell lacked the authority to engage in that transaction either individually or on behalf of the corporate Sanford Capital Defendants. The District's addition of a declaratory judgment count concerning the validity of this purported transfer is therefore appropriate.

Third, the District's proposed amendment to include claims that the Sanford Capital Defendants violated the CPPA has merit. The CPPA prohibits entities and individuals from misrepresenting the nature of quality of consumer goods and services, and the Office of Attorney General is authorized to enforce the CPPA in the landlord-tenant context.⁴ Here, the District's proposed amended Petition and Complaint alleges that the Sanford Capital Defendants explicitly and implicitly warranted they would provide habitable housing to their tenants, when in fact they would not. Although these violations of the CPPA represent a new claim and separate Count, the allegations upon which these claims are founded are the same as those asserted in the District's original petition – that Respondents engaged in a pattern of neglect at the Congress Heights properties so as to constitute a serious threat to the health, safety, and welfare of its tenants. In a related case against some of the same Defendants, the Court has found that similar “allegations constitute legally-cognizable CPPA claims.” *District v. Terrace Manor, LLC, et al.*, 2016 CA 007767 2 (Sup. Ct. April 10, 2017), Slip Order at 6 (attached as Exhibit C). Moreover, the fact that the Sanford Capital Respondents continued to refuse to address issues at the Property while this case was pending and proceeding under an agreed-upon Abatement Plan supports allowing the District to add CPPA claims at this time.

In short, the District's proposed amendments have merit and the District should be

⁴ The D.C. Council recently confirmed that OAG's enforcement authority under the CPPA extends to landlord-tenant issues in the “At-Risk Tenant Protection Clarifying Temporary Amendment Act of 2017” (B22-0497), available at <http://lims.dccouncil.us/Legislation/B22-0497>.

permitted to file its proposed Amended Petition and Complaint.

B. The Other Factors Support Granting the District Leave to Amend.

The other four factors the Court should consider in connection with granting this motion also support allowing the District leave to amend.

First, this is the first time the District has sought to amend its Petition.

Second, permitting the District to amend its Petition will not significantly delay trial or the completion of discovery. A trial has not been held or set in this matter. Moreover, because this was only a Tenant Receivership Act case initially, no scheduling order concerning discovery was entered.

Third, the District is not acting in bad faith in seeking to amend its Petition. The factual allegations the District is adding to the Petition are in large part based on information the District has recently learned, specifically the purported sale of the property. Additionally, by adding its claims under the CPPA, the District seeks to utilize judicial resources in the most efficient manner as possible and to address the Defendants' misconduct since the inception of this case. Though the District could file a separate suit for these claims, amending the instant Petition allows the District to litigate related claims against the same parties in a Court that has great familiarity with the parties, the history and the conditions of this property. Requiring the District to litigate these claims separately would only lead to prolonged litigation between the parties and a strain on the Court's resources.

Fourth, no party will be unduly prejudiced by allowing the District to amend its Petition. The Sanford Capital Respondents should have no objection to adding CityPartners, an entity the Sanford Capital Respondents claim now has control over the property.

CONCLUSION

For the foregoing reasons, the District respectfully requests the Court grant leave to file an

amended petition, and deem the attached First Amended Petition and Complaint filed.

Dated: February 8, 2018

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

/s/ Jimmy R. Rock

JIMMY R. ROCK [493521]
Assistant Deputy Attorney General
Public Advocacy Division

JANE LEWIS
Chief, Housing and Community Justice Section

/s/

ARGATONIA WEATHERINGTON [1021691]
STEPHON D. WOODS [1025232]
Assistant Attorneys General
441 4th Street, N.W. Suite 1060N
Washington, D.C. 20001
(202) 727-6338 / (202) 724-5319 (phone)
(202) 730-1806 (e-fax)
Email: Argatonia.Weatherington@dc.gov
Email: Stephon.Woods@dc.gov

Attorneys for the District of Columbia

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

DISTRICT OF COLUMBIA, Petitioner/Plaintiff, v. 1309 ALABAMA AVENUE, LLC, <i>et al.</i> , Respondents/Defendants.	Civil Action No.: 16-000162 B
--	-------------------------------

ORDER

This matter having come before the Court on the District of Columbia’s Motion for Leave to File First Amended Petition and Complaint, it is this ____ day of _____, 2018,

ORDERED, that the District’s Motion for Leave to File First Amended Petition and Complaint is hereby **GRANTED**; and

IT IS FURTHER ORDERED, that the District’s First Amended Petition and Complaint shall be accepted for filing by the Clerk.

IT IS SO ORDERED.

Date

The Honorable John M. Mott

Copies:
All counsel of record (by eService)