IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

DISTRICT OF COLUMBIA Petitioner, v. **1309 ALABAMA AVENUE, LLC**, *et al*. Respondents.	Civil Case No. 2016 CA 000162 B Judge John M. Mott Next Court Date: 02/16/18 at noon Event: Status Hearing

THE DISTRICT OF COLUMBIA'S OPPOSED MOTION FOR AN ORDER DIRECTING RESPONDENTS AND A. CARTER NOWELL TO SHOW CAUSE WHY THEY SHOULD NOT BE HELD IN CONTEMPT AND AUTHORIZING DISCOVERY BY THE DISTRICT

The District of Columbia (the "District"), through the Office of the Attorney General, respectfully requests that the Court order Respondents and their principal, A. Carter Nowell, to appear and show cause why they should not be held in contempt for violating the Court's September 26, 2017 and November 9, 2017 Orders. These violations are part of Respondents' continued refusal to provide the tenants at Congress Heights with safe and habitable housing, and a blatant attempt to frustrate this Court's Orders and the ability of its Receiver to begin implementing its Rehabilitation Plan for the property.

According to their attorney in this case, Respondents "sold" the Congress Heights apartments to a new owner, CityPartners 5914, LLC. This alleged new owner is a business partner that has been working with Respondents for years to redevelop the property. Respondents' decision to sell or transfer the property to its long-time business partner was in violation of the Court's November 9, 2017 Order directing Respondents to exclusively negotiate any sale with the tenants. Moreover, the overall transaction by which Respondents "sold" the Property included an assignment of loans. Respondents' involvement in, or facilitation of, any

transaction assigning loans on the Property violated the Court's September 26, 2017 Order, which gave the Receiver sole authority to enforce or avoid mortgages or other loans on the property.

Respondents' transfer of the property is simply a blatant attempt to frustrate this Court's Receiver and his implementation of a plan to finally provide the tenants of the property with safe and habitable housing. On November 2, 2017, in open court and in order to forestall paying up to $2 million for repairs to the property recommended by the Receiver, Respondents agreed to fund emergency repairs to address code and health and safety issues at the property, while at the same time exclusively negotiating a sale to the existing tenants. The Court subsequently reduced these commitments to its Order dated November 9, 2017. Respondents have flouted that Order. Respondents failed to provide the Receiver all Court-ordered interim funds, causing the Receiver to file a Motion to Show Cause on December 7, 2017. Then, the very same day they were before this Court for a show cause hearing for failing to pay the Receiver – December 27, 2017 – Respondents, via Mr. Nowell, sold or transferred the property to their business partner, not the tenants.

By flouting this Court's orders, Respondents have circumvented the Court's direction that Respondents' negotiate a sale exclusively with the tenants, and have impinged on the Receivers' exclusive right to enforce or avoid any loans or other contracts related to the property. The Court should direct Respondents and Mr. Nowell to appear and show cause why they are not liable for contempt. The District also requests that the Court permit discovery from Respondents, their attorneys and mortgagors, and the purported new owner of the property, to permit the District to establish facts regarding whether other parties participated in a knowing violation of the Court's orders in this case.

Respectfully submitted,

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Dated: January 9, 2018

Attorneys for the District of Columbia

HEARING REQUESTED

[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 STATEMENT

The undersigned certifies that prior to filing the instant motion, the District contacted Stephen O. Hessler and Jeffrey Styles, counsel for Respondents, by electronic mail on January 8, 2018, to seek consent to the relief in the instant Motion, and Respondents advised that they do not consent.

/s/ Jimmy R. Rock
Jimmy R. Rock
Attorney for the District of Columbia

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on January 9, 2018, I caused the foregoing Motion, the Memorandum of Points and Authorities, and a proposed order to be served on all counsel of record via the court's CaseFileXpress e-filing service.

Dated: January 9, 2018

/s/ Argatonia D. Weatherington
Argatonia D. Weatherington
Attorney for District of Columbia

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DISTRICT OF COLUMBIA Petitioner, v. **1309 ALABAMA AVENUE, LLC**, *et al*. Respondents.	Civil Case No. 2016 CA 000162 B Judge John M. Mott Next Court Date: 02/16/18 at noon Event: Status Hearing

MEMORANDUM IN SUPPORT OF THE DISTRICT'S OPPOSED MOTION FOR AN ORDER DIRECTING RESPONDENTS AND A. CARTER NOWELL TO SHOW CAUSE WHY THEY SHOULD NOT BE HELD IN CONTEMPT AND AUTHORIZING DISCOVERY BY THE DISTRICT

INTRODUCTION

On December 27, 2017, the same day that they appeared in this Court for another Show Cause Hearing, Respondents, through their principal, A. Carter Nowell, violated this Court's September 26, 2017 and November 9, 2017 Orders by selling or otherwise transferring the Congress Heights apartments to CityPartners, a long-time business partner of Respondents.[1] These violations are yet another attempt to avoid providing the tenants at Congress Heights with safe and habitable housing as is required under D.C. law, and a blatant attempt to frustrate this Court's Orders and the ability of its Receiver to begin implementing its Rehabilitation Plan for the property. Respondents have shown that they will do whatever they can to avoid their responsibilities to the tenants under D.C. law. Respondents should not be allowed to evade their responsibilities to the tenants, this Court's Orders, or obligations under D.C. law any longer.

[1] Neither Respondents, nor counsel for Respondents, informed the Court at the December 27, 2017 hearing that Respondents were in the process of allegedly transferring the property to a new owner that very same day.

FACTUAL BACKGROUND

1. Prior Proceedings

This is a Tenant Receivership Act case brought by the District to remedy housing code (and other) violations at the Congress Heights apartments (the "Property"). Based on the deteriorating conditions at the Property, the District filed a Petition and Complaint for Appointment of Receivership and for Declaratory and Injunctive Relief commencing this action in January 2016. The Court subsequently approved an Abatement Plan, with which Respondents failed to comply. On September 12, 2017, the Court held a hearing on the District's motion to appoint a receiver. To resolve that motion, on September 26, 2017, the Court entered an order appointing a Receiver to abate the numerous D.C. Code violations and threats to life, health, safety, and security at the Property, and to ensure compliance with the D.C. Housing Code, the D.C. indoor mold law, and other regulations at the Property. *See* Ex. 1 (Order to Appoint Receiver, Sept. 26, 2017, the "Receivership Order"). Among other rights, the Receivership Order granted the Receiver "all the powers and duties conferred in D.C. Code § 42-3651.06," which include "[a]ssum[ing] all rights of the owner to enforce or avoid terms of a . . . mortgage, secured transactions, and other contracts related to the rental housing accommodation and its operation." *See* D.C. Code § 42-3651.06(a)(7).

Prior to a status hearing on November 2, 2017, the District and Respondents (the Parties") conferred with the Receiver on the progress of his Initial Assessment and Plan for fully addressing the code violations and health and safety issues at the Property. The Receiver informed the Parties that remediation of the property could cost up to $2 million, of which $1.2 million was the estimated cost of mold remediation. Respondents requested an opportunity to find a buyer for the Property willing to take on the rehabilitation, in order to avoid bearing the projected costs themselves. The District agreed to ask the Court to stay consideration of the

Receiver's Plan for sixty days, in return for Respondents negotiating a sale ***exclusively*** with the tenants, and Respondents agreed to this proposal.

The Parties informed the Court of their agreement in open court at the status hearing on November 2, 2017. Respondents participated in this hearing through counsel and via Mr. Nowell, Respondents' principal. Pursuant to the agreement, the Court entered an Order on November 9, 2017 giving Respondents sixty days from the date of the Order "to negotiate *exclusively with the tenants, or the tenants' representatives*, regarding the terms of a sale of the Property." That sixty-day exclusivity period continued through Monday, January 8, 2018. The November 9, 2017 Order also directed Respondents to fund the Receiver's on-going emergency and maintenance work.

2. Respondents' Violations of the Court's Orders

As soon as November 15, 2017, Respondents were violating the Court's November 9, 2017 Order. Pursuant to the November 9, 2017 Order, during the sixty-day exclusivity period, the Receiver was authorized to make emergency repairs and conduct routine maintenance, for which the Respondents were required to pay, unless they timely objected to the Receiver's sixty-day cost estimate. The Receiver provided the sixty-day cost estimate on November 10, 2017, but Respondents failed to timely object and failed to timely pay in full. Almost a month later, Respondents paid approximately half of the costs, and the Receiver filed a Motion for Order to Show Cause to obtain the balance of the Court-ordered funds. On December 22, 2017, the Court ordered Respondents to appear on December 27, 2017 to show cause as to why the Court should not find Respondents in contempt. Counsel for Respondents appeared on December 27, 2017 with a check for the remainder of the sixty-day cost estimate. At no time during this hearing (which commenced at 2 pm), did Respondents' counsel advise the Court of the sale or transfer of ownership of the Property that was apparently happening that very day.

The same day as the Court's December 27, 2017 contempt hearing, Respondents executed Special Warranty Deeds for each of the parcels comprising the Property. Each Special Warranty Deed was executed by Aubrey Carter Nowell, principal for Respondents, and purported to transfer the Property to CityPartners 5914, LLC ("CityPartners"). CityPartners was a long-time business partner of Respondents in an attempt to re-develop the Property. Specifically, on March 2015, Square 5914, LLC, a partnership of Respondent Sanford Capital, LLC ("Sanford") and CityPartners,[2] received approval for a Planned Unit Development ("PUD") that requires demolition of the Property to allow construction of a 446,000 square foot mixed use project. Also executed on December 27, 2017 were: (1) a Deed of Trust and Security Agreement between Respondent Sanford's business partner, CityPartners, and EagleBank, and (2) several documents entitled "Assignment and Assumption of Loan Documents," executed by Kevjorik Jones for EagleBank, Gregory H. Griffis for Respondent Sanford's business partner, CityPartners, and Robert W. Armstrong for Revere Bank. The Special Warranty Deeds and the Deed of Trust were notarized by the same notary (Benjamin Soto) – suggesting these documents were signed as part of a single transaction on December 27, 2017. All of these documents were executed on December 27, 2017, forty-three days after this Court entered its November 9, 2017 Order directing Respondents to exclusively negotiate a sale of the Property with the tenants.

On January 2, 2018, Respondents' counsel wrote to the District via email to request consent to Respondents' motion to dismiss the action with prejudice and to terminate the receivership. In this email, Respondents' counsel stated that he "was advised on 12/28 that the [Property was] **sold**." Ex. 4 (email from Respondents) (emphasis added). The purported sale was

[2] Ex. 3, Transcript of January 22, 2015 hearing before the Office of Zoning, 34: 1-3 (statement of Geoff Griffis); *See also* Michael Neibauer, *Congress Heights project tweaked, still a massive neighborhood change*, Washington Business Journal (Sept. 17, 2014, 2:54pm), https://www.bizjournals.com/washington/breaking_ground/2014/09/congress-heights-project-tweaked-still-a-massive.html.

not negotiated with the tenants or the tenants' representatives, even though Respondents were under Court order to negotiate exclusively with the tenants. Later, on January 2, 2018, Respondents filed a Praecipe with the Court providing copies of the transaction documents executed on December 27, 2017 as well as a motion to dismiss the case and terminate the Receivership.[3]

ARGUMENT

I. Respondents Should Appear and Show Cause Why They Are Not In Civil Contempt Of The Court's November 9, 2017 Order and Receivership Order.

All Respondents and their principal, A. Carter Nowell, should appear and show cause why they should not be held in contempt for violating this Court's November 9, 2017 Order and its Receivership Order by negotiating an apparent sale and transfer of ownership of the Property. "One who is subject to a court order has the obligation to obey it honestly and fairly, and to take all necessary steps to render it effective." *D.D. v. M.T.*, 550 A.2d 37, 44 (D.C. 1988). The Receivership Order, and orders related to it, are a type of injunctive Order, and therefore apply not only to Respondents, but their "officers, agents, servants, employees, and attorneys," SCR-Civil 65(d)(2)(B), which here would include Mr. Nowell. When a person is subject to an order of the Court, and fails to comply with that order, civil contempt is available as a sanction to enforce compliance and to compensate the aggrieved party for any loss or damage sustained as a result of the noncompliance. *Loewinger v. Stokes*, 977 A.2d 901, 915-16 (D.C. 2009) (internal citation and quotation omitted). Civil contempt, unlike criminal contempt, is not "designed to punish the

[3] Because the Court's Receivership is over the Property, and not any specific owner, the Receiver remains in place until "[t]he Court determines that the receivership is no longer necessary because the grounds on which the appointment of the receiver was based no longer exist." D.C. Code § 42-3651.07(a)(1). Given that fact, and since the alleged transfer of ownership is likely void, the District will file an opposition to Respondents' motion to dismiss within the time permitted by the Court's Rules. The District also shortly intends to file a Motion for Leave to Amend its Petition adding CityPartners and any other appropriate parties as a Respondent and Defendant to this action.

contemnor," *In re T.S.*, 829 A.2d 937, 940 (D.C. 2003), so the contemnor's intent is immaterial to a civil contempt proceeding. *Loewinger*, 977 A.2d at 916. Rather, "the general rule with respect to civil contempt is that where noncompliance with a judicial order has been factually established, the burden of establishing justification for noncompliance shifts to the alleged contemnor." *Bolden v. Bolden*, 376 A.2d 430, 433 (D.C. 1977).

Here, there is no credible factual dispute that Respondents and Mr. Nowell were subject to several orders of the Court, which they appear to have plainly violated. Respondents (through Mr. Nowell) consented to the November 9, 2017 Order establishing a sixty-day period to negotiate the sale of the Property exclusively with the tenants or the tenants' representatives. Respondents also consented to the Receivership Order, which granted the Receiver all the powers and duties conferred in D.C. Code § 42-3651.06, including the right to "[a]ssume all rights of the owner to enforce or avoid terms of a . . . mortgage, secured transactions, and other contracts related to the rental housing accommodation and its operation." *See* D.C. Code § 42-3651.06(a)(7). The Receivership Order also directs and orders Respondents to "refrain from doing any act or thing whatsoever to . . . interfere with the duties of the Receiver."

There is clear and convincing evidence that Respondents and Mr. Nowell violated the terms of the orders of the Court by purporting to sell or transfer ownership of the Property to a business partner in a series of transactions that were not negotiated with the tenants, the tenants' representatives, or entered with the approval of the Receiver. The transaction documents attached to Respondents' January 2, 2017 Praecipe are evidence of the violations of the Court's orders. Respondents did not negotiate or consult with the tenants or their representatives regarding the sale or transfer of ownership of the Property, in direct contravention of the Court's November 9, 2017 Order. The transactions documents also suggest that well before December 27, 2017 (the date of the purported transaction), Respondents and Mr. Nowell were in discussions with its

business partner to transfer the property, and could not have been in good faith discussions with the tenants to sell the Property. In addition, the attachments to Respondents' Praecipe demonstrate that Respondents violated the Receivership Order by interfering with the Receiver's exclusive authority to enforce or avoid the terms of a mortgage, secured transactions, and other contracts related to the Property.

Based on the clear and compelling evidence that Respondents have violated the Court's Receivership Order and November 9, 2017 Order, the District requests that the Court order Respondents and Mr. Nowell to appear and show cause why they are not liable for civil contempt for violating the Court's orders.[4]

II. The Court Should Permit Discovery from Respondents and the Other Parties to the Purported Sale and Transfer of Ownership of the Property.

The District requests that the Court additionally permit the District to take discovery related to the issue of whether Respondents violated the Court's orders, including the substance and timing of the alleged transfer of ownership of the Property and whether any third parties acted in concert with Respondents or participated in those violations. It is within the authority of the Court to permit discovery on the issue of whether a person subject to an order of the Court has violated that order. *See Floyd v. Leftwich*, 456 A.2d 1241, 1243 (D.C. 1983).

[4] Criminal contempt is also available to the Court under D.C. Code § 11-944 and "shall be conducted in the name of the United States by the United States Attorney for the District of Columbia or its assistants, except as otherwise provided by law." D.C. Code § 23–101(c). However, the Court can authorize OAG to prosecute criminal contempt as an appointed private prosecutor. *E.g.*, *In re Peak*, 759 A.2d 612, 615 n.8 (D.C. 2000) (noting that trial court did not object to a request to send a letter to OAG to determine if it would be willing to prosecute criminal contempt), *amended on denial of reh'g*, 829 A.2d 464 (D.C. 2003). "Criminal contempt consists of a contemptuous act accompanied by a wrongful state of mind." *In re Dixon*, 853 A.2d 708, 711 (D.C. 2004). To be convicted of criminal contempt, a contemnor "must engage in [ ] willful disobedience of a court order causing an obstruction of justice." *Brooks v. U.S.*, 686 A.2d 214, 223 (D.C. 1996) (citations omitted); *see also* 18 U.S.C.A. § 402. When punishing a party for criminal contempt, a judge may impose fines, imprisonment, or both. *See* 18 U.S.C.A. § 402. SCR-Crim. Rule 42(b) provides that a party may be prosecuted for criminal contempt on "notice … given orally by the judge in open court in the presence of the Defendants."

The Court should permit the District to take discovery not just from Respondents, but also from all parties to and participants in the December 27, 2017 transactions that purported to transfer the ownership of the Property from Respondents to one of their business partners. This discovery may help determine whether additional parties should also be held in contempt for participating in the knowing violation of the Court's orders. "Even a stranger to litigation can be held in contempt for violation of a court order if he or she has notice of it and acts in concert or privity with the party against whom the order is directed." *D.D.*, 550 A.2d at 50; *see also* SCR-Civil 65(d)(2)(C) (making an injunctive order binding on "other persons who are in active concert or participation with" other parties subject to injunctive order). Discovery on the substance and timing of the transaction may also help the Court in its determination of whether its orders were violated, and if so, by whom.[5]

As noted above, the purported new owner of the property is CityPartners, Respondent Sanford's business partner in Square 5914, LLC ("Square"). Square obtained approval of a PUD which requires the Property to be demolished and a large mixed-use development built in its place. Geoffrey Griffis, the Founder and Managing Member of CityPartners who executed sale and transfer of ownership documents that were attached to Respondents' Praecipe, has been deeply involved in the Respondents' actions and inactions in relation to the Property and the tenants. *See* Petition, Exh. 1 (October 14, 2015 article in The Washington Post that details Mr.

[5] Respondents and CityPartners may argue that the alleged transaction at issue here was a deed in lieu of foreclosure and not a sale of the Property. Respondents and CityPartners would likely make such an argument because if this transaction is, in substance, a sale (as it appears to be), the transaction would be void because the tenants' rights under the District's Tenant Opportunity to Purchase Act ("TOPA") were violated. *See* D.C. Code § 42-2404.02. Even if the transfer of the Property were a "bona fide" deed in lieu of foreclosure transaction, such a transaction would still be void because the Receiver currently has the owner's authority to enter into transactions avoiding or enforcing mortgages, secured transactions or other contracts related to the Property, and the Receiver therefore would need to have been included in the transaction. However, the facts here suggest the transaction was not a "bona fide" deed in lieu of foreclosure, and therefore a sale subject to TOPA.

Griffis' statements that he and Respondents had been meeting with tenants of the Property since 2009, and that he offered to pay the tenants' moving costs). Mr. Griffis was also extensively quoted in a recent news report regarding the December 27, 2017 transactions. *See* Katie Arcieri, CityPartners advancing $120M Congress Heights Metro project, minus Sanford," *Washington Bus. J.* (Jan. 4, 2018).[6] Given Mr. Griffis' long-time partnership and association with Respondents, it is likely that he was well-aware of the Receivership Order and the November 9, 2017 Order, and that he may have acted in concert with Respondents in the violation of this Court's orders.

Accordingly, the Court should enter an order permitting the District to take depositions and request documents from Respondents, as well as the following parties: (i) Aubrey Carter Nowell, (ii) Gregory H. Griffis and/or CityPartners under Rule 30(b)(6), (iii) Kevjorik Jones and/or EagleBank under Rule 30(b)(6), (iv) Robert W. Armstrong and/or Revere Bank under Rule 30(b)(6), and (v) Benjamin Soto and/or Premium Title & Escrow LLC under Rule 30(b)(6). Additionally, the Court's order should permit the District to take limited discovery by deposition and document requests from Respondents' counsel, Stephen Hessler and Jeffrey Styles related only to their knowledge of the Respondents' violations of this Court's Receivership Order and November 9, 2017 Order. The District believes such discovery from counsel for Respondents is appropriate in this case given counsel's participation in the hearings on November 2 and December 27, 2017.

CONCLUSION

For the foregoing reasons, the District respectfully requests that the Court enter an Order directing Respondents and A. Carter Nowell to show cause why they should not be held in civil

[6] Available at https://www.bizjournals.com/washington/news/2018/01/04/citypartners-advancing-120m-congress-heights-metro.html.

contempt as well as authorizing discovery related to violations of the Court's orders.

Respectfully submitted,

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