SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION—CIVIL ACTIONS BRANCH

DISTRICT OF COLUMBIA,	*	
	*	
Petitioner,	*	Civil Case No. 2016 CA 000162 B
	*	Civil II, Calendar I
v.	*	Judge John M. Mott
	*	
1309 ALABAMA AVENUE, LLC, *et al.*,	*	
	*	
Respondents.	*	

ORDER

This matter is before the court on the District of Columbia's (the "District's") Motion for Respondents to Fund Implementation of the Receiver's Plan, the oppositions and reply thereto, the Sanford Respondents'[1] June 20, 2018 Supplemental Briefing, CityPartners 5914's June 20, 2018 Submission with Respect to the Receiver's Plan, CityPartners 5914's June 25, 2018 Supplemental Submission with Respect to the Receiver's Plan, the District's June 26, 2018 Response to CityPartners 5914's June 20, 2018 Submission, and the parties' arguments during the June 27, 2018 hearing in this matter. The court stated its findings and discussed the background of this case in open court at the beginning of the June 27, 2018 hearing, and the court incorporates these findings by reference.

Discussion

On November 10, 2017, the Receiver submitted his plan (the "Receiver's Plan") to remediate housing code violations at the Property. The Receiver's Plan includes a base estimate of $848,202 to replace windows and doors of balconies, remediate mold, replace roofing, ensure interior code compliance, and complete other repair work. To reach these estimates, the Receiver relies on a report by a licensed District of Columbia Mold Assessor, William

[1] The court uses this term to refer to 1309 Alabama Ave., LLC, 3210 13th Street, LLC, Alabama Ave., LLC, Oakmont Management Group, LLC, Sanford Capital, LLC, Sanford Capital II, LLC, and Aubrey Carter Nowell.

Spearman, and a work estimate that Consys, a construction company, developed based on the scope of work recommended in the mold remediation report. The Receiver's Plan also calls for relocation of the tenants during the remediation, such that "the entire project could cost over $2 million," and asks that the court order the respondents "to pay $2.4 million – $2 million with a 20% contingency – in advance of this process." If implemented, the Receiver's Plan ultimately would restore the Property, rather than demolish it, and allow the tenants to return to code-compliant buildings.

Throughout the briefing on the District's Motion for Respondents to Fund Implementation of the Receiver's Plan, the pre-hearing briefing in advance of the June 27, 2018 Hearing, and the arguments at that hearing, the parties have presented the following positions: the District asks the court to order that the Sanford Respondents and CityPartners 5914 are jointly and severally responsible for funding the Receiver's Plan, while the Sanford Respondents and CityPartners 5914 each argue that the other set of respondents is responsible to fund the Plan and that, in any event, the Receiver's Plan is excessive.

Briefing on the District's Motion for Respondents to Fund Implementation of the Receiver's Plan

The District moves for the court to enter an order requiring the Sanford Respondents and CityPartners 5914, jointly and severally, to fund the Receiver's Plan to fix longstanding health and safety violations at the property. The District makes the following arguments in support of its position: the Tenant Receivership Act ("TRA") authorizes the court to order any respondent to contribute funds beyond the rental income from a property to correct serious threats to the health, safety, or security of the occupants in "appropriate circumstances;" the Sanford Respondents "owned and operated the Property when it fell into its current state of disrepair" and the TRA "expressly contemplates situations where former owners … would continue to have on-

going financial liability for expenses incurred in connection with a receivership;" Nowell "is directly responsible for creating the unsafe conditions" at the property and "was in control of the Property" during all times relevant to the instant case; the TRA, as a remedial statute, creates "liability akin to tort liability," and the court may impose liability on Nowell as a corporate officer; and CityPartners 5914 should be ordered to fund the plan because it "acquired an interest in the property with full knowledge of the facts in this case, and they did so for the purpose of subverting this [c]ourt's Orders."

The Sanford Respondents oppose the District's motion on the basis that the District essentially seeks "summary relief" without "following the necessary procedures." In particular, the Sanford Respondents contend that the District's motion is essentially a motion for summary judgment which fails to include a separate and required "statement of material facts." According to the Sanford Respondents, "there is no dispute that [they] are not affiliated with the present owner of the properties," and the District is merely attempting to punish the Sanford Respondents for their past involvement with the property.

In its opposition to the Motion to Fund, CityPartners 5914 asserts that the District offers "no legal support for the proposition that [it] can be forced to fund the receiver's plan." CityPartners 5914 cites to authority from New York and Connecticut to support its proposition that the TRA "is not … a remedial enactment to be liberally construed" because a receiver may not take action without court approval. CityPartners 5914 also contends that it "needs to conduct physical inspections" of the property, although it concedes that the Receiver arranged for an inspection in March 2018.[2] In addition, CityPartners 5914 claims that "appropriate circumstances certainly do not exist to order that 2.4 million dollars be spent trying to renovate

[2] Since filing this opposition, CityPartners 5914's expert, Van Davenport, inspected the Property further, on June 5 and 14, 2018.

60 year old buildings when everyone, including the tenants of the [Property] themselves, agree that the appropriate plan is to relocate the tenants, demolish the existing structures, and build new structures." Finally, CityPartners 5914 points out that the District challenges the transfer from Sanford to CityPartners 5914 as void, and it contends that it may not be held liable as an "owner without a finding of ownership."

In its reply, the District claims that the respondents attempt to impose procedural hurdles beyond those provided by the TRA, that its motion for the respondents to fund implementation of the Receiver's Plan is not the equivalent of a motion for summary judgment, and that such a motion is not required to fund the Receiver's Plan. The District notes that the court's November 9, 2017 Order offered the previous owners a five-day period to review the Receiver's Plan and offer any objections. The District further argues that any claim of lack of notice on the part of CityPartners 5914 is disingenuous because, as early as January 22, 2015, at a Zoning Commission hearing, during which tenants testified as to the condition of the Property, Geoffrey Griffis held himself out as a "joint venture partner with Sanford" for a plan to develop the Congress Heights site. Furthermore, the District contends, Griffis received regular updates about the instant litigation through email correspondence with Aubrey Carter Nowell since at least January 7, 2016. With respect to the Sanford Respondents, the District contends that it is appropriate to order them to contribute because they "owned, operated, and managed the Property for over eight years, including the period when the Property fell into disrepair."

Briefing in Advance of the June 27, 2018 Hearing

The Sanford Respondents, in their June 20, 2018 Supplemental Briefing, argue that if the court does not undo the December 27, 2017 transaction, then the Sanford Respondents would not

be the owners of the building and, therefore, would not be proper respondents and could not be ordered to fund the Receiver's Plan.

CityPartners 5914's June 20, 2018 Submission with Respect to the Receiver's Plan presents an alternative plan ("CityPartners 5914's Plan"),[3] and CityPartners 5914 argues that the court should not approve the Receiver's Plan, in part because the Receiver provides no explanation of how the $1.2 million needed to relocate residents was calculated. CityPartners 5914 further contends that since Consys prepared its estimates, "a considerable amount of work has been performed" at the Property. They argue that their alternative plan, which would cost $661,378.84, would address mold conditions and "repairs necessary to protect the health, safety, and security of the tenants." Furthermore, CityPartners 5914 contends that it should not be held financially responsible for any abatement plan because as the new owner of the Property, it "has been provided no opportunity to address the conditions" at the Property and did not cause or create the conditions.

In its June 25, 2018 Supplemental Submission with Respect to the Receiver's Plan, CityPartners 5914 argues that the Receivers' Plan is based on flawed analysis and lacks sufficient detail. CityPartners 5914 asserts that in his deposition, the District's mold remediation expert, Mr. Spearman, confirmed that he did not provide any mold remediation cost estimates to the Receiver or review the mold remediation costs produced by Consys. CityPartners 5914 further argues that Mr. Spearman's analysis was based on "very few apartments."

In its June 26, 2018 Response to CityPartners 5914's June 20, 2018 Submission, the District asserts that "the Receiver's Plan contains more than sufficient detail to support the entry of an Order for an initial payment of at least $1,080,242, which reflects the $848,202 baseline repair cost, $52,000 in initial relocation costs, and a standard $20% contingency fee." The

[3] Ex. D.

District argues that it is fair for CityPartners 5914 to pay the costs of these repairs because it was aware of the receivership when it purchased the Property. The District also contends that the Receiver's Plan and CityPartners 5914's Plan contain similar estimates for the cost of addressing mold and water intrusion and that the "bottom-line difference in the two estimates for repairs ($186,824) is due to the cost of replacement of windows and doors … as well as other interior code compliance costs … that appear only in the Receiver's estimate."[4] In addition, the District argues that the Receiver's estimates for mold remediation are reasonable. Finally, the District asserts that the Property can be rehabilitated for the long term and that no need exists to demolish the Property.

Testimony and Argument at the June 27, 2018 Hearing

At the hearing on the District's motion, the District's and CityPartners 5914's experts testified in support of the parties' respective plans. The District's expert, William Spearman, who was responsible for the mold remediation report that is the basis of the Receiver's Plan, testified about his multiple inspections of the Property and the grounds for his conclusions. CityPartners 5914's expert, Von Davenport, a construction manager and the Field Superintendent of a company that provides general contracting services and mold remediation services, and a Certified Mold Remediation Contractor, prepared CityPartners 5914's Plan. Mr. Davenport testified about how he developed his cost estimates based on a visual inspection of the property and in consultation with an associate who has expertise in mold assessment.

Importantly, both experts agreed on two points. They testified that the building is not at the end of its useful life, and they opined that it is difficult to derive an exact price estimate because removal of drywall and other features often reveals additional mold that must be treated.

[4] The June 26, 2018 Response contains a line-by-line comparison of cost estimates on pages three and four.

The court heard argument from all parties at the June 27, 2018 hearing with regard to the specific line-items of the Receiver's Plan and who should be responsible for funding implementation of the plan. The District argued that the court should adopt the Receiver's Plan and hold the Sanford Respondents and CityPartners 5914 jointly and severally liable for its costs and order an initial installment of $1,080,242. In response, both sets of respondents took the position that the Receiver's Plan was flawed, excessive, and based on faulty assumptions, and each contended that the other should be responsible in the entirety for any costs ordered. The Sanford Respondents argued that the transfer to CityPartners 5914 removed them from ownership and liability, that the Receiver's Plan is excessive, and that CityPartners 5914 should fund it as the current owner. CityPartners 5914 argued that the Sanford Respondents should fund implementation as the party responsible for causing the code violations.

Finally, during a conference call on the record scheduled by the court on June 29, 2018 to pose certain follow-up questions, the Receiver further explained the "Interior Code Compliance" line item in the Receiver's Plan. The Receiver explained that the $48,700 estimate would cover the cost of remedying code violations unrelated to mold, such as holes in wall and missing door hardware. The Receiver also explained that the Receiver's Plan does not include a line item for "[s]tormwater management" as the CityPartners 5914's Plan does, and that such expenses are not necessary at this time, although they may eventually be required.

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The court notes at the outset that its role under the TRA is not to choose between dueling "alternative plans;" rather, the TRA contemplates consideration of the Receiver's Plan, subject to objections by the respondents, which the court has considered. *See* D.C. Code § 42-3651.06 (a)(4)(A) (it is the Receiver's duty to "within 30 days following the issuance of the order of

appointment" provide the court "with a plan for the rehabilitation"); September 26, 2017 Appointment Order at ¶ 12 (stating that the parties "shall file any objections to the Initial Assessment and Plan within five (5) days" after receipt). The court has in fact made adjustments, when respondents have proven such to be justified, to arrive at a first installment of funding for the Receiver's Plan.

After all, the court appointed Mr. Gilmore as the Receiver with the consent of the then-parties,[5] he operates as an officer of the court, and the court considers his report as a starting point, with due consideration for any challenges by the respondents, all of which is contemplated by the TRA. While CityPartners 5914 refers to the owner's opportunity to present an abatement plan pursuant to D.C. Code § 42-3651.04 (a)(1), this opportunity is only available *before* the court appoints a Receiver and, in any event, the court need not accept such a plan if it is insufficient to remediate conditions at the property. *See* D.C. Code § 42-3651.05 (a)(2).[6] Accordingly, the court does not consider CityPartners 5914's Plan as an "alternative" *per se*; instead, the court evaluates the estimates therein as objections or challenges to the Receiver's Plan.

The Receiver's Plan includes five line items of repairs totaling $848,202. While the Receiver's Plan and CityPartners 5914's Plan are comparable in some respects, the Receiver's Plan includes two line items for which CityPartners 5914's plan does not feature directly comparable estimates. First, the Receiver's Plan calls for $176,786 to replace windows and balcony doors. Mr. Davenport testified that he did not include such an estimate in CityPartners 5914's Plan because he intended to cover most of the broken windows with plywood instead of replacing them. Because the receiver's mandate is to safeguard the health, safety, and security of

[5] The court recognizes that the CityPartners 5914 was not a party to the case at that time.
[6] The court finds that CityPartners 5914's Plan, taken as a whole, is in fact insufficient to abate the conditions at the property, for the reasons discussed herein.

the tenants, and the court finds it consistent with this mandate and entirely appropriate to replace the broken windows and balcony doors, the court finds this category of expense to be reasonable and notes that respondents presented no credible evidence in the form of objections to the amount allocated of $176,786. In addition, the Receivers' Plan calls for $48,700 in Interior Code Compliance, while CityPartners 5914's Plan does not include a directly comparable estimate. During an on-the-record conference call on June 29, 2018, the Receiver explained that this estimate is the cost of remedying code violations not related to mold. The court also finds this work to be appropriate and no evidence undercuts the reasonableness of the estimate.

The Receiver's Plan includes three line items for which CityPartners 5914's Plan does include comparison estimates. First, the Receiver's Plan calls for $108,150 in mold remediation based on Mr. Spearman's scope of work and a cost estimate provided by Consys, while CityPartners 5914's Plan estimates a cost of $193,171 for "mold remediation." The court finds the Receiver's estimate to be reasonable, based on the testimony of Mr. Spearman and the fact that CityPartners 5914 presented a higher estimate for this category of work. In addition, the Receiver's Plan calls for $209,876 to replace the roof and 50% of the roof deck at all four buildings, while CityPartners 5914's Plan asks for $165,456 to patch the roof. Based on Mr. Davenport's testimony that he reached the $165,456 estimate based on the assumption that the building would be used for only one year, which is not an appropriate premise given the purpose of the Receiver's Plan, and Mr. Spearman's testimony about the extensive water intrusion he observed that led him to conclude that the roof must be replaced, the court finds the Receiver's estimate of $209,876 to be reasonable. Finally, the Receiver's Plan calls for $304,690 to complete repair work "in 7 mold affected units, 1309 Storage Room and 1331 Basement," while CityPartners 5914's Plan calls for $267,271 to complete comparable repair work. Based on

inconsistencies in the testimony of Mr. Spearman regarding the extent of material that must be replaced, Mr. Davenport's testimony about his methodology for measuring the specific amount of material to be replaced, which the court finds reasonable, Mr. Davenport's detailed estimates, and the Receiver's own acceptance in open court of $267,271 as a reasonable initial amount, the court finds CityPartners 5914's $267,271 to be a reasonable cost estimate for this work.

Thus, the court finds that the estimates of $176,786 to replace windows and balcony doors, $108,150 to perform mold remediation, $209,876 to replace roofing, $48,700 for interior compliance, and $267,271 for other repair work, are reasonable initial estimates for the work necessary to remediate conditions at the Property. These estimates total $702,633.

In addition, because both experts testified that mold remediation assessments and other means of estimating costs are "inexact," and because it is common to discover additional mold or other conditions that must be remediated in the course of removing drywall and otherwise conducting repairs, the court finds it appropriate to include a 20% contingency of $140,526.60. Finally, the court also orders the $52,000 in initial relocation costs that the District requests, for a total of $895,159.60. The court orders this amount based on the understanding that, as the parties discussed at the June 27, 2018 hearing, if this amount is insufficient to cover remediation costs, the Receiver is free to apply for additional funds.

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The court finds CityPartners 5914 responsible for providing the $895,159.60 in funding. CityPartners 5914 is the current owner of record, as all parties agreed during the June 27, 2018 hearing, and the language of the TRA clearly suggests that the owner of record shall be responsible for funding any rehabilitation plan. *E.g.*, D.C. Code § 42-3651.06 (a)(4)(B) (stating that the Receiver shall serve "a copy of the [rehabilitation] plan upon the owner of record"); *id.*§

(a)(5)(B) (requiring the Receiver to serve the "owner of record" with a report describing the "progress made in abating the conditions … [and] updating the financial forecast for the rehabilitation"). Nothing in the TRA supports imposing costs on a former owner in these circumstances. While the District points to D.C. Code § 42-3651.07 (b)(1) as imposing liability on a former owner, that provision only states that the court need not terminate a receivership "in favor of any person who was the owner … at the time the petition was filed" unless the former owner first reimburses the District for "the expenses incurred in creating the receivership." While the Sanford Respondents arguably were responsible for creating the conditions that must now be remediated, the notion that the court may impose a quasi-tort liability on the Sanford Respondents does not comport with the "nonpunitive" nature of the statute, *see John v. District of Columbia*, 813 A.2d 178, 182 (D.C. 2002), at least where, as here, the current record owner of the Property to whom the Property was transferred while under receivership and, even, while the Receiver's Plan was pending, is available to fund the remediation.

Moreover, as the owner of record, CityPartners 5914 has the legal obligation to maintain the Property in habitable condition and, even absent the receivership, CityPartners 5914 would be financially responsible for funding repairs. Similarly, it is CityPartners 5914 who stands to benefit from the remediation. In addition, the court finds, based on the evidence in the record, that CityPartners 5914 purchased the property with knowledge of its condition and notice of the receivership. CityPartners 5914, therefore, should have reasonably anticipated a need to fund the remediation of the conditions at the Property, and it is appropriate that they should fund the Receiver's Plan.

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The court orders CityPartners 5914 to fund $895,159.60 with the understanding that significant additional sums of money may be necessary to remediate the property. The court understands that CityPartners 5914 would rather demolish the buildings than remediate them, and is in negotiations with the tenants regarding their right to purchase the property or, alternatively, to compensate the tenants for their right to purchase along with a right to return to comparable units in a new building.[7]

Absent such an agreement, the court must order the owner to remediate the Property to a suitable condition to protect the health, safety, and security of the tenants. As such, the court orders that CityPartners 5914 must fund the plan within thirty days and holds the contempt proceedings in abeyance for thirty days.

Accordingly, it is this **13th** day of **July, 2018**, hereby

ORDERED that CityPartners 5914 shall pay the Receiver $895,159.60 within thirty days of this Order; and it is further

ORDERED that failure to comply with this Order may give rise to sanctions.

SO ORDERED.

The Honorable John M. Mott
Associate Judge
(Signed in Chambers)

[7] Notably, this right to negotiate a purchase is the subject of concurrent contempt proceedings in this matter, which carry the possible sanction of voiding the November 27, 2017 transfer from the Sanford Respondents to CityPartners 5914. Insofar as the central purpose of the TRA is to secure the health, safety, and security of the tenants, D.C. Code § 42-3651.01, and the purpose of any contempt sanction would be to vindicate the tenants' right to negotiate a purchase with the property owner as mandated by the November 9, 2017 Order, an agreement that satisfies the tenants and provides them with a healthy, safe, and secure residence may warrant reconsideration of the need to fund the Receiver's Plan and may render the contempt proceedings moot.

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