EXHIBIT 1

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 an Order Directing Defendant CityPartners 5914, LLC, Along with CityPartners, LLC, Geoffrey Griffis, and Greg Faron to Show Cause Why They Should not be Held in Civil Contempt, and the opposition, reply, and supplemental brief thereto. For the reasons stated herein, the court grants the motion.

The court appointed a Receiver over the Congress Heights apartment complex ("the Property") pursuant to the Tenant Receivership Act.[1] On November 9, 2017, the court ordered that 1309 Alabama Avenue, LLC, 3210 13th Street, LLC, Alabama Avenue, LLC, and Sanford Capital, collectively the "Sanford Respondents," "shall have sixty calendar days from the date of this Order to negotiate exclusively with the tenants, or the tenants' representatives regarding the terms of a sale of the Property." November 9, 2017 Order at ¶ 2. During this sixty day period, however, the Sanford Respondents transferred their interest in the Property to CityPartners 5914 through the execution of deeds in lieu of foreclosure.[2]

[1] The Congress Heights apartment complex includes four buildings located at 1309 Alabama Avenue, SE; 1331 Alabama Avenue, SE; 1333 Alabama Avenue, SE; and 3210 13th Street, SE.
[2] *See* January 2, 2018 Praecipe Ex. at 1, 7 (Special Warranty Deeds).

The District argues that CityPartners 5914, LLC, and its parent company CityPartners, LLC, through their principals Geoffrey Griffis and Greg Faron, collectively the "CityPartners Respondents," knowingly violated the November 9, 2017 Order through their participation in the transfer of the Property. The District asserts that the CityPartners Respondents have attempted to purchase the Property since at least June 2017,[3] and had knowledge of the November 9, 2017 Order.[4] Despite knowledge of the Order, the CityPartners Respondents and Sanford Respondents allegedly continued to negotiate the terms of a sale. In fact, Nowell reportedly asked Griffis and Faron for an offer that would "be $500k better than the tenant offer" on November 20, 2017.[5] Ultimately, the parties allegedly entered a "side agreement" concurrent with the December 27, 2017 deed in lieu of foreclosure transaction. The District asks that the court, as a sanction, "order those parties [involved in the transaction] to purge their contempt by undoing the sale/transfer of the Property."

In their opposition, the CityPartners Respondents argue that the District cannot prove five elements necessary for a finding of contempt—"(a) that [the CityPartners Respondents] are subject to the order; (b) that the Order is clear enough in what it prohibits; (c) that [the CityPartners Respondents] knew of the Order; (d) that the Deeds in Lieu Transfer of the Subject Properties violates the Order; or (e) that the relief the District seeks is appropriate as a civil contempt sanction." The CityPartners Respondents contend that only injunctive orders could apply to non-parties and that the November 9, 2017 Order is not an injunction because it is not in response to a motion for preliminary injunction and does not contain findings of fact or

[3] *See, e.g.*, Mot. Ex. 3 (June 8, 2017 CityPartners Letter to Sanford Capital offering to purchase the Property).
[4] *See, e.g.*, Mot. Ex. 7 (November 21, 2017 Email from Geoffrey Griffis to Carter Nowell asking for a "copy of the Judge[']s recent order (requiring the 60 day negotiation) and also when that started and when 60 days expires"); Mot. Ex. 8 (November 28, 2017 Email from Geoffrey Griffis to Carter Nowell asking for "the court order that addresses tenants opportunity to discuss purchasing properties"); and Mot. Ex. 9 (December 7, 2017 Email Chain with Geoffrey Griffis and Greg Faron as recipients that included a copy of the Order as an attachment).
[5] Mot. Ex. 12 (December 20, 2017 Email Chain from Nowell to Griffis and Faron).

conclusions of law. In addition, the CityPartners Respondents assert that, as non-parties to the Order, they must be in legal privity with the Sanford Respondents to be bound by the Order. The CityPartners Respondents further contend that by precluding a "sale" of the Property, the Order did not clearly prohibit a transfer of title through the execution of a deed in lieu of foreclosure. The CityPartners Respondents also state that "there is absolutely no testamentary evidence in the record that the [CityPartners Respondents] knew of the Order." Finally, they argue that the transfer in lieu of foreclosure did not violate the Order because it was not a "sale" even though the parties transferred title for consideration and concurrently executed a side agreement. With respect to Greg Faron, the CityPartners Respondents contend that as a non-principal of CityPartners 5914, he "does not have the requisite authority to commit any act" that could be in contempt of the November 9, 2017 Order. Finally, the CityPartners Respondents assert that purging the sale "smacks of punishment, which the District has already conceded cannot be imposed for a finding of civil contempt."

In reply, the District asserts that "CityPartners offers a scattering of procedural, legal and factual arguments … none of which have merit." The District notes that during his deposition, Griffis affirmed that he was aware of the Order about "a week or 10 days" after the court issued it.[6] In addition, the District argues that the parties acted "in concert" "to violate the Order precisely because they continued to wrangle over the terms of a transfer, even when both the Sanford Respondents and CityPartners knew the Sanford Respondents were supposed to be negotiating exclusively with their tenants." In regard to the allegation that the court's Order was unclear, the District also notes that "the proper response to a seemingly ambiguous court order is not to read it as one wishes," but instead to "apply to the court for construction or modification." Reply (citing *Loewinger v. Stokes*, 977 A.2d 901, 907 (D.C. 2009)). Finally, the District states

[6] Reply Ex. A. (Deposition of Geoffrey Griffis 72:3-5).

that "undoing the deed in lieu transfer" is "the only course of action that can give the [c]ourt's Order its actual effect."

In its Supplemental Brief, the CityPartners Respondents respond to the deposition evidence discussed in the District's reply that the District gathered after it filed the instant motion. The CityPartners Respondents assert that the side agreement was not binding and enforceable because the District has produced no evidence that it was countersigned. The CityPartners Respondents conclude by asserting that "the District continues to fall far short of its burden of proving by clear and convincing evidence that any of the [CityPartners Respondents] should be held in civil contempt."

Recognizing that these allegations are disputed, the court finds it appropriate to hold a Show Cause Hearing, at which the CityPartners Respondents shall appear and show cause as to why they should not be held liable for civil contempt for violating this court's November 9, 2017 Order. "To support a finding of civil contempt, a complainant must prove that … (i) [the alleged contemnor] was subject to the terms of a court order[;] (ii) [the alleged contemnor] violated the order" at issue; and (iii) the language of the order is "clear and unambiguous." *Loewinger*, 977 A.2d at 916. "[O]nly two recognized defenses [exist] in civil contempt proceedings: substantial compliance and inability to do that which the court commanded." *D.D. v. M.T.*, 55 A.2d 37, 44 (D.C. 1988). The facts so far presented to the court arguably suggest that all three elements of contempt are present here and that no defense applies. The court will schedule a Show Cause Hearing, however, at which the District must prove the contempt by "clear and convincing evidence." *Id.*

Accordingly, it is this **19th** day of **June, 2018**, hereby

ORDERED that CityPartners 5914, LLC, CityPartners, LLC, Geoffrey Griffis, and Greg Faron shall appear for a Show Cause Hearing on June 27, 2017 at 10:00 am in courtroom 518 and show cause as to why they should not be held liable for civil contempt for violating this court's November 9, 2017 Order in this matter; and it is further

ORDERED that failure to appear at the Show Cause Hearing may give rise to sanctions.

SO ORDERED.

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

COPIES TO:
Jimmy Rock
Argatonia Weatherington
Benjamin Wiseman
Robyn Bender
Jane Lewis
Stephon Woods
Nicole Hill
Ian Thomas
Amelia Schmidt
Jonathan Jeffress
Abby Franke
Gwynne Booth
Justin Flint
William Casano
Debra Leege
Jeffery Styles
Stephen Hessler
Richard Luchs
Benjamin Gilmore
Earle Horton
Via CaseFileXpress

EXHIBIT 2

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.

COPIES TO:
Jimmy Rock
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Mark Sosnowsky
Benjamin Gilmore
Earle Horton
Via CaseFileXpress

EXHIBIT 3

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

DISTRICT OF COLUMBIA, Petitioner,	:	Docket Number: 2016 CAB 000162
vs.	:	
ALABAMA AVENUE, LLC, ET AL., Respondents.	:	
	:	Wednesday, May 30, 2018
	x	Washington, D.C.

The above-entitled action came on for a hearing before the Honorable JOHN M. MOTT, Associate Judge, in Courtroom Number 518.

APPEARANCES:

On Behalf of the Petitioner:

JIMMY RAY ROCK, Esquire
ARGATONIA DAMONISHA WEATHERINGTON, Esquire
STEPHON D. WOODS, Esquire
Office of the Attorney General
for the District of Columbia

On Behalf of the Respondents:

IAN GILL THOMAS, Esquire
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On Behalf of Respondent CityPartners 5914:

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On Behalf of Receiver:

BENJAMIN S. GILMORE, Esquire
Washington, D.C.

On Behalf of the Tenants:

WILLIAM RUSSELL MERRIFIELD, JR., Esquire
Washington, D.C.

PROCEEDINGS

THE DEPUTY CLERK: Calling the matter of District of Columbia versus 1309 Alabama Avenue, LLC, et al., 2016 CA 162. Parties, please state your names for the record.

THE COURT: Start for the District of Columbia, please.

MR. ROCK: Good afternoon, Judge, Jimmy Rock on behalf of the District.

THE COURT: Good afternoon.

MS. WEATHERINGTON: Good afternoon, Your Honor, Argatonia Weatherington on behalf of the District.

THE COURT: Ms. Weatherington.

MR. WOODS: Good afternoon, Your Honor, Stephon Woods on behalf of the District.

THE COURT: Good afternoon.

MR. THOMAS: Good afternoon, Your Honor, Ian Thomas on behalf of the respondents except for CityPartners 5914, LLC.

THE COURT: Mr. Thomas.

MR. LUCHS: Good afternoon, Your Honor, Richard Luchs and Gywnne Booth on behalf of CityPartners 5914, LLC.

THE COURT: Good afternoon.

MS. BOOTH: Afternoon.

THE COURT: And the back row?

MS. FRANKE: Abby Franke, sorry, on behalf of Carter and Nowell, the Sanford, LLCs.

THE COURT: Good afternoon.

MR. STYLES: Good afternoon, Your Honor, Jeffery Styles on behalf of Mr. Nowell and the LLCs as well.

THE COURT: Mr. Styles.

MR. GILMORE: Good afternoon, Your Honor, Benjamin Gilmore here on behalf of Receiver David Gilmore, who's here to my right.

THE COURT: Good afternoon to both --

MR. D. GILMORE: Afternoon.

THE COURT: -- of the Gilmores so have a seat everybody, please. So let me start with just a report from the receiver or the counsel about the status, what you've been working on. What's happening on the site?

MR. GILMORE: Well what's been happening on the site, Your Honor, is that we've essentially been maintaining and, and really treading water. What, we submitted our six-month report that details the actions that have been taken and it does, in fact, forecast though an issue that of course I think is going to come up as, as part of the, the motions that are before the Court regarding the imminent lack of, of funds to continue our work. But really just the buildings as Your Honor is

aware are just in rough shape so we've been responding to emergencies as they come up as best we can but we've had to make some value judgments as to what repairs to undertake and which ones not to. For example, one I guess somewhat controversial I think among some of the residents was that we have not been repairing air conditioning, central air, and that's in, in 1331 and 1333 Alabama as these units break because the money has to be spent for things like roof leaks, which we've noticed leaking pipes, et cetera, until we're certain of additional funding. So there, there have been some choices that we've had to make on an ongoing basis. The rest of it has essentially been, been maintaining as Your Honor is aware that we've been doing all along.

THE COURT: And, of course, I am aware and that there's a reason there's a receiver in place and that reason is a pattern of neglect and housing code violations. That is clear and here we are but thank you for --

MR. GILMORE: Sure.

THE COURT: -- that report. Well we're not here today for me to hear argument about the underlying issues related to the transfer. There's a request to set this for a show cause hearing on that very point, right?

MR. ROCK: That's, that's, that's correct,

Judge.

THE COURT: And the parties have asked for that to be and we always appreciate it when you can put your heads together at least and at least agree on things like dates so June 27th is the date you requested. I already have a 10:00 a.m. so it would be 2:00 p.m. unless somebody's telling me they can't be present at 2:00?

MR. ROCK: Judge, that's fine. Just to be clear, that date would be for the Sanford defendants to show cause. There is a pending motion before the Court where the District has also asked that respondent CityPartners 5914, LLC, and its parent and it's due principals also be directed to show cause but that's pending before the Court so --

THE COURT: That's pending.

MR. ROCK: So --

THE COURT: That's not even ripe yet --

MR. ROCK: Yes.

THE COURT: -- right?

MR. ROCK: Well it, it is ripe. The, the District filed its reply. CityPartners has told the District that they are planning to seek permission to file a surreply but the, the District has put in its reply brief so technically that, that motion is at this point in time ripe.

THE COURT: Well, Mr. Luchs, you can let me know now if you want to. Do you need time to file a surreply? Do you want to file a surreply?

MR. LUCHS: It, it's more in the nature of supplemental points and authorities but, yes, we do, Your Honor. It's almost done actually.

THE COURT: Good, that's fine. That's fine.

MR. LUCHS: It should be. It will --

THE COURT: You could have till the end of next week. Is that enough time?

MR. LUCHS: We'll, we'll do it by the end of this week, Your Honor.

THE COURT: By the end of this week?

MR. LUCHS: Yes.

THE COURT: All right, that's fine so I might fold that and is the District asking that that be included in that hearing on the 27th?

MR. ROCK: No, the, the District would like this, this issue to be heard as quickly as possible so the District is fine with June 27th with it proceeding and to the extent --

THE COURT: For both?

MR. ROCK: Yes.

THE COURT: I'm asking if the District if you had your wish, you'd have both handled that day?

MR. ROCK: That's correct.

THE COURT: All right, and why not; why don't we set that?

MR. LUCHS: That's fine, Your Honor. I just don't know whether we'll have sufficient time. There's obviously a lot of potential testimony.

THE COURT: There is a lot of material. I mean it's fairly central. It's a big issue. Maybe I could slide it up till 1:00 and have an early lunch break that day. Let's do that, 1 o'clock that day to save a little time in case we --

MR. LUCHS: Very well, Your Honor.

THE COURT: -- need it so you don't need to request formally time for a surreply. It's best practice for me to have as much information in front of me as possible before the hearing, so I want both sides to feel as if they had a chance to put their best food forward. But, yes, the hearing's going to be about the transfer and about whether the 60-day window that period was violated by this transfer to CityPartners and whether it was a way of circumventing process and the very basis for the receivership or not and there's a lot to say about that but today's not the day. I'm going to just comment on. I'm going to hear the parties out on the 27th. Then I'll rule on it. It's a central issue in the case. Certainly

my intent when I appointed the receiver is a receiver would be in place to address these very serious problems that are ongoing until they reserve a mediation plan to complete it. You know, so the last part is not what we're focusing on now for a lot of different reasons but certainly I want the residents to know that I know it's essential that we get the basics taken care of in the meantime so I hear about the lack of addressing the central air. Summer's coming on. It's been cool for the most part but it's not going to stay that way in Washington, D.C., so these are important issues that have to be dealt with and not necessarily wait until the 27th of June for that. So and that brings me to a couple of other points.

Well let me just say first you're going to receive a written order denying the motion for summary judgment, and you'll get that soon. There's absolutely no question that there are issues remaining in dispute about whether the transfer was void and violated the Court's authority, the Court's orders, and TOPA so, you know, that's just that so you'll get that in writing later this week. That doesn't mean that, you know, the fact that there are genuine issues in dispute doesn't mean that one side versus the other will prevail on those genuine issues in dispute but there just are genuine issues in dispute

and that's what we're going to get at when we have the hearing on the 27th. And I think unless I'm missing something that what remains then is the receiver's motion to fund and who's going to pay for it, right?

MR. ROCK: There are a couple of other pending motions that are ripe on the funding issue. There's also the District's motion to, for --

THE COURT: For the Virginia --

MR. ROCK: -- the funding of the implementation of the receiver's plan and that is also fully briefed.

THE COURT: Right.

MR. ROCK: But all of that folds together and I, my count is that there are seven --

THE COURT: Those are all --

MR. ROCK: -- pending motions that deal with the issue of the funding of the receiver, four that the receiver's filed, one that the District has filed asking that the Court order the funding of the receiver's plan. There's also CityPartners' pending and the Sanford defendant separate pending motion to dismiss or stay the receivership, which in some ways touches on this issue of funding as well.

THE COURT: I'm not going to dismiss the receivership today. That's for sure.

MR. LUCHS: Oh, I'm not asking, raising that,

Your Honor, but when counsel says that the motion with respect to the funding the plan is, is ripe is we have suggested my client has been in the process of trying to evaluate what needs to be done at the property. We've had two brief inspections. We have asked the receiver's counsel for the opportunity to conduct a more extensive inspection so that we can perform our own analysis of what the cost will be to address the issues as of a couple days ago and I understand why counsel for the receiver stated he wasn't prepared to allow any more inspections until after this hearing and depending on the outcome of this hearing notwithstanding the, the Court had previously said that we should be entitled to, to fully inspect. But we also don't think that as a consequence that motion is ripe because we have asked for considerable additional information regarding the condition of the property, violations at the property, which we haven't been provided. We've issued discovery after --

THE COURT: Let me pause one second. You know, if the receiver tells me there's an issue, that's it. This is not a process where I mean I'll certainly hear from the parties about, you know, whether there's a more cost-effective way to address certain things and I get it that the receiver's not going to move ahead and through the receiver the Court's not going to order the place to

be remediated, all the mold to be addressed, and so on right now. But just as I told the defendants before you came in the case, this is not, you know, we'll have hearing after hearing just to see whether the receiver really is, there's a basis for what they're requesting. Having the receiver there is like having me there.

MR. LUCHS: I, I, I --

THE COURT: Right?

MR. LUCHS: -- I understand that --

THE COURT: And if they tell --

MR. LUCHS: -- Your Honor, but --

THE COURT: Hold on. If they tell me that there's an issue with the air conditioning or if they tell me there's an issue with a leak, I'm not going to wait to hear from somebody else oh, no, there's not.

MR. LUCHS: I must respectfully disagree --

THE COURT: All right, you --

MR. LUCHS: -- that that's what the law requires, Your Honor.

THE COURT: Well you can weigh in but that doesn't mean I have to hold off when people's I mean this whole issue arose because of housing code issues because a pattern of neglect. I mean you weren't around when that --

MR. LUCHS: Exactly, Your Honor.

THE COURT: -- first started --

MR. LUCHS: Exactly.

THE COURT: -- but you are now and --

MR. LUCHS: And we, and we've been provided almost no information.

THE COURT: So that's separate. All right, so, you know, sure, the current owner should be allowed to inspect and see what's going on.

MR. GILMORE: Oh, that's correct, Your Honor, and, and, and I like to think that we've been very collegial in, in scheduling these things. The real issue is a matter of funding and that is that because we are running out of funds, I didn't think it prudent to waste any more money of the receivership --

THE COURT: Your timing --

MR. GILMORE: Precisely and --

THE COURT: -- showing up --

MR. GILMORE: -- that is where money is needed for repairs, I'd much rather spend the money on that.

THE COURT: Fair enough.

MR. GILMORE: And as soon as more money is made available, we can inspect all day if, if, if --

THE COURT: Okay.

MR. GILMORE: -- Mr. Luchs would like.

THE COURT: So let's talk about the money

because the receiver has to be paid, right? So showing up, taking couple of hours or whatever it would be to get there, to stay there, and to show and that's going to cost some money that better to spend that money for the roof or the air conditioning, right?

MR. GILMORE: That's correct, Your Honor.

THE COURT: That's what you're saying. Sure, that makes sense except that we should be able to do both and so I mean the receivers are in place until they're not and that may not change. And while they're in place, they need to do their job and they need to get paid and the parties on this side of the podium are going to pay in some form or another. Now it'd be great if you all get together and talk about it and decide. You know, even though the previous owners have purportedly sold it to CityPartners or have sold it to CityPartners, they still may be on the hook and so you can just share it and we'll work out the money later but I can't be in a position where --

MR. LUCHS: Okay.

THE COURT: -- previous owners say it's not up to us and CityPartners says it's not up to us and --

MR. LUCHS: Then, then, Your Honor, with all due respect, you have to make a decision as to who the owner is because the statute only applies to the owner. If you

say my client is the owner, we can get past all this and move forward very quickly. My client's prepared to address the conditions of the property but until the Court says that, we cannot concede that point.

MR. THOMAS: Yeah, and, respectfully, Your Honor, that's the Sanford Capital respondent's position as well. They've been divested of ownership over these properties. The statute at issue contemplates funding coming first from the rents collected. Sanford does not have any rights to the rents that are collected. It secondly says that in appropriate circumstances funds, additional funds can be ordered by the Court, but those additional funds must come from the respondent. Respondent is a defined term in the TRA, and it deals with the owners, a lessor, manager, or agent. Sanford fulfills none of those definitions. As a result Sanford falls outside the scope of the TRA presently and shouldn't be held liable to continue to fund the receiver on a property that they have no legal, financial, or equitable interest in at the present.

THE COURT: What's the District's view on this?

MR. ROCK: So the, yeah, the, the, the problem with the respondent's position is the Tenant Receivership Act, which, in fact, does contemplate both sets, the Sanford defendants and the CityPartners defendants being

responsible here. Let's start first with CityPartners because I think that is pretty easy, Judge, under the, the text of the Tenant Receivership Act. When it entered into the December 27th transaction, CityPartners took on the responsibilities of ownership at this property. It is at the Recorder of Deeds the owner at this point in time of the property. Now the District disputes whether that ownership should stick and we've asked the Court to undo that but CityPartners clearly is at least at the Recorder of Deeds right now the owner and is responsible for funding the receiver's plan.

THE COURT: Stop right there. So as to the first part as far as the registry of deeds show, the registry of deeds shows CityPartners as the owner, correct? That's correct.

MR. LUCHS: That's absolutely correct, Your Honor.

THE COURT: Okay. Responsible for funding the receivership, you disagree over there or you don't?

MR. LUCHS: Your Honor, like I said we can get past this if Your Honor declares and the, and the District seems to concede that my client is the owner of the property. Before they were saying the transfer was void, so we're not the owner. They can't have it both ways. If the Court --

THE COURT: Well why can't they --

MR. LUCHS: -- declares we're the owner of the property subject to being divested, okay. But we --

THE COURT: I think that's what the city's --

MR. LUCHS: -- have to be the owner of the property.

THE COURT: Okay. I think that that may be what the city's agreeing with you on. They're currently the owner subject to potentially being divested.

MR. ROCK: That's correct and certainly took on the responsibilities of ownership and, and, and did so with full knowledge of the receivership being in place and the responsibilities of the receiver. You know, Geoff Griffis e-mails Carter Nowell on December 20, 2017, in connection with this transaction and says I'm taking on a lot of unconventional risk in entering into this transaction, Mr. Nowell, and what, what Mr. Griffis was talking about is the receivership, the possibility of its continuation and --

THE COURT: Right.

MR. ROCK: -- the need to fund that. So CityPartners it seems, Judge, is the easier nut to crack here. They've taken on the responsibilities of ownership. They clearly can be ordered by the Court to provide funds in addition to the rent. Now --

THE COURT: Now hold on, hold on. So what you just said about what is it, a e-mail exchange --

MR. ROCK: Yes.

THE COURT: -- you talked about, I take it that there's no disagreement that's what it said.

MR. LUCHS: There is, there is a disagreement as to what that meant, Your Honor, and that --

THE COURT: What that meant or what the words? Are the words that Mr. Rock --

MR. LUCHS: Well those aren't even the words. There's a --

THE COURT: They're not the words?

MR. LUCHS: The word risk is used in the e-mail. That's about all and this is an issue to be, to be addressed on June 27th.

THE COURT: Well I'm going to assume that CityPartners knew about the receivership when they purchased the property.

MR. LUCHS: There's, the CityPartners definitely knew about the receivership.

THE COURT: Okay. And that the District doesn't oppose my saying right now that I find at least for technical purposes that CityPartners is the owner of the registered --

MR. ROCK: Certainly --

THE COURT: Yes.

MR. ROCK: -- that's what the Recorder of Deeds shows and --

THE COURT: Recorder --

MR. ROCK: -- and subject to the District's continued position that the Court should --

THE COURT: Okay.

MR. ROCK: -- void that transaction.

THE COURT: I --

MR. LUCHS: Very well, Your Honor. That's --

THE COURT: I so find that that's what. Now that doesn't mean that these other issues about whether the transfer is, you know, fundamental issue about propriety of the transfer, I mean those issues are still front and center and will be.

MR. ROCK: And, and just as a matter of fairness once consistent with the Court's ruling, CityPartners should be, should be providing the additional funds that the receiver needs and if we get down the road and it turns out that Sanford --

THE COURT: No --

MR. ROCK: -- that the, the transaction is --

THE COURT: -- of course.

MR. ROCK: -- is going to be undone and the property goes back to Sanford, at that point in time

CityPartners has a crossclaim against the Sanford defendants and two --

THE COURT: Definitely.

MR. ROCK: -- very sophisticated business entities can work out that, the return of funds among themselves.

THE COURT: Counsel, you both agree with that proposition?

MR. LUCHS: Well it's, it's more complicated than that because CityPartners holds the mortgage against the property as well and we would foreclose but we don't need to get into that.

THE COURT: No.

MR. LUCHS: Thank, Your Honor. You, you have moved this forward significantly because my client is preparing to work with the receiver to fund as soon as you enter an order on the record stating what you just stated and what the District just stated, which is what all we've been trying to get from the beginning.

MR. THOMAS: And respectfully, Your Honor, if that's the case, it --

THE COURT: You would --

MR. THOMAS: -- obviates the needs for the Sanford Capital defendants to fund the receiver. There is --

THE COURT: It definitely does. It means that Sanford Capital would not be responsible at least at this moment in time for funding.

MR. THOMAS: Agreed, Your Honor.

THE COURT: But what it means for the tenants is that it's going to get paid for.

MR. THOMAS: Correct, and, and if --

THE COURT: It just will be a different person paying for it for the time being and if things get changed later on if I decide if I agree with the District's position on the whole transfer, then Sanford has to reimburse I suppose but that's not an issue for now.

MR. THOMAS: It's not before the Court today.

THE COURT: Right.

MR. ROCK: Well --

MR. THOMAS: Correct, Your Honor.

MR. ROCK: -- and, and the District's position certainly is not that the Sanford defendant should be excused if CityPartners doesn't perform. Ultimately the District doesn't, doesn't care where the money comes from as long as the money gets to the receiver.

THE COURT: Right.

MR. ROCK: But, but to the extent CityPartners doesn't come up with the money, the Sanford defendant certainly should still be there. The Tenant Receivership

Act contemplates very specific instances where former owners will be responsible for money and I, I --

THE COURT: Let's talk about that later if we have to. What I want to know is are there any past bills, anything that came due that hasn't been paid yet before the transfer to CityPartners?

MR. ROCK: Well I think the implementation of the funding for the receiver's plan because of what happened in this court back in the fall, still falls on the Sanford defendant's shoulders. Remember we were here on November 2nd, and the Court at that point in time was prepared to walk down the road of entering an order for the implementation of the receiver's plan. The Sanford defendants escape having the Court enter an order while they, before the December 27th transaction, which would have obligated them to pay for their funding of the receiver's plan, because they told the Court we're going to go negotiate exclusively with the tenants. So it's, it's, it's really just a quirk of the Sanford defendant's bad acts that the Court didn't go ahead and order the funding of the implementation before the December 27th transaction and had that order been entered, clearly Sanford defendants would have been responsible for paying for that. So ultimately where, where the case needs to progress to is to where the, the money is there for the

receiver to implement his plan and, and that really is an issue that the District orders the Court to take up and decide because what needs to not happen for much longer is this, is this pattern of, of piecemeal repairs and in order to implement the plan though, the receiver as I understand receiver's report is he needs to have about $2.5 million in funding available so he can really --

THE COURT: For the full plan.

MR. ROCK: -- start implementing that plan. And certainly the Sanford defendant should not be excused from their liability for that because it's really only a quirk of them telling the Court that they were going to negotiate exclusively back, with the tenants back in November that prevented the funding order being entered at that time.

THE COURT: I don't think that that's an issue that needs to be decided today. I'm not saying that I would never find them to be responsible for that. What matters is that the place be maintained in livable condition, which means air conditioning and more, while the rest works itself out. I mean there're minimum standards that have to be met, living conditions related to the standard and, you know, who ends up paying for it is a different matter. We have to have the funds coming in now so that the receiver doesn't have to make decisions

like I'm not going to do the air conditioning. I can only fix the roof. That shouldn't be a triage sort of situation to that degree.

MR. THOMAS: And just --

THE COURT: But, sure, I understand your position is that Sanford Capital --

MR. ROCK: Right, and --

THE COURT: -- may still be on the hook for something.

MR. THOMAS: And --

MR. ROCK: And CityPartners' position that that motion to implement the funding for the implement the receiver's report isn't ripe just isn't true. That motion is fully briefed. The receiver's plan has been outstanding since the fall and the funding for that plan is, is the next big hurdle that, that, that, that needs to be crossed in this case so that the receiver can move beyond the triaging --

THE COURT: Is --

MR. ROCK: -- and move to the --

THE COURT: Right.

MR. ROCK: -- the repair of the building.

THE COURT: I know the other lawyers want to say something about this, but this is not complicated. You know, there's a receiver in place. The intent was to get

this done, right? And unless there's some legal basis for your position that and if I agree with the defense, otherwise, you know, it's going to get done.

MR. THOMAS: I, I --

THE COURT: In the meantime the receivers have to be able to effectuate, you know, the order.

MR. THOMAS: Yeah, the funding of the plan, Your Honor, is I think as Your Honor kind of stated, it's an entirely separate part of what's going on and it, and it sort of is tied in with who eventually owns the property and I think that determination needs to be made before we determine whether a $2.5 million plan is the best cause of action for these properties. I don't think a determination has been made one way or another by CityPartners, by the District, by the receiver that that's necessarily the appropriate way to go and certainly the analysis may change depending on whether the ultimate owner at the end of the day after this Court holds its hearing on the issue is the Sanford defendants or CityPartners. To the extent that there is a owner now that is willing to fund the, in CityPartners that is willing to fund the receiver, that should, that should solve the issue that's presently before the Court, and we can address the issue of funding the whether or not to fund the receiver's plan and who should do it once a

determination is made as to whether the, the transaction is going to be unwound.

THE COURT: I'm going to call this the long-term plan, right? Because there's the short-term need and a very significant need so it'd have to be met regardless of when the long term but we can't be in a position we're here a year from now and talking about well are we going to move ahead on the long-term plan? I mean it can't be that people have to live in that situation. In other words what was contemplated what I had in mind when I signed the order is that we would move ahead with addressing the issues that are of need and a plan with a whole property. Now that plan for the whole property, that long-term plan and by that I don't mean, you know, we're going to deal with it five years from now or something, that long-term plan I think the multimillion-dollar plan is one that I would expect that it require it involves the input of the District, the tenants, and the owner. And so, you know, it may be that there's not a clear direction right now or maybe there is --

MR. ROCK: That well --

THE COURT: -- but I'm not deciding that today and the lawyers you knew that that wasn't on the table today.

MR. ROCK: Well but the District's motion to

fund the receiver's plan is fully ripe. The receiver's plan has been put together. The receiver has said I need approximately $2.3 million to come in so that I could start implementing that plan. Back in, on April of 2018 the receiver submitted to the Court a very-detailed timeline of how the plan would proceed once the $2.3 million is deposited and so it, it, it sounds like CityPartners is here today ready to step up and say we're willing to shoulder the responsibilities of ownership. Well when it stepped into the responsibility of that ownership it, it knew that there was a receiver and it knew that the receiver had a plan; that the --

THE COURT: Okay.

MR. ROCK: -- plan was already on the table at that point in time and so --

THE COURT: Well let me play this out. How much is it going to cost to fix the air conditioning?

MR. GILMORE: That we are not sure about. We had, did have somebody out to look at it and tinker with it a bit, thought it was fixed, it's not, and we think that it's just right now possibly a blower motor in one person's residence, which could cost a few hundred dollars, maybe even just swapping out with a, a vacant unit. But it's one of those things that we are loath to send somebody, even send somebody out to do an estimate

because that costs money that can then be spent. I mean we're, we're right now in a position of if no money's forthcoming --

THE COURT: Well but it is forthcoming. So what has --

MR. GILMORE: Yeah, so --

THE COURT: -- to be done with the air conditioning?

MR. GILMORE: Right, and, David, you know.

MR. D. GILMORE: The big issue, Your Honor, is my unwillingness, not inability, to get the people out necessarily to fix these issues. My unwillingness simply stems from the fact that until I know that the Court has ordered the payment of some operating money that we've requested and the, the respondents come up with this cash, I can't guarantee the payment of that money to the contractors. And so I can't in good conscience --

THE COURT: Right.

MR. D. GILMORE: -- Your Honor, call them out to the property. But I can tell you without any question whatsoever if we walked out of here today and as I, I hope we will with an order from the Court to fund the operating amounts that we've asked for, that's $50,000 to carry us for some indefinite period of time until other issues are, are resolved, we will have no trouble getting our

contractor out to the site so long as I know that I can pay him when he gets, when he presents the bill.

THE COURT: Okay.

MR. D. GILMORE: And right now today I, I'd have to be as, as blunt as I can be, Your Honor, and say to you that if that order isn't forthcoming and the checks or the, the, the money isn't wired into our account, we've got three or four days before I have to shut down the operation and that means not just the issue of the air conditioning, we're talking about some basic services, property management. We're talking about cleanliness of the property, the hallways. We're talking about trash collection. We're talking about rodent control. We're talking about all of these things which affect the daily lives of the residents, and it's unconscionable to me, sir. I didn't take on this responsibility to make their lives worse. I came here to, to make their lives better.

THE COURT: Of course.

MR. D. GILMORE: And, you know, quite frankly, the only way that's going to happen at least in the, in the short term is if, if these guys would simply put aside their objections whatever they may be and stop playing volleyball with the tenants' lives. If they would put aside their objections, come up with the money that it will take to operate the property over the next 30 to 60

days, then we can respond. And, and, and if you don't mind, Your Honor, I'd just like to add one other little piece of business and it's a --

THE COURT: Go ahead.

MR. D. GILMORE: I'm reluctant to, to say this in a self-serving way but the Court has not approved any of my fees for, for March or April so I haven't been paid. I haven't taken any money out of this, out of this receivership for that period of time and I'm about to file a, a, a May, a, a request for fees and, and for expenses and all of that's coming out of my pocket and I don't have deep pockets. You know, I'm not a, a, a, I'm not a receiver from a large law firm or anything like that but that notwithstanding, I have decided and I think I've informed the Court and the counsels know this that until such time as the Court orders and I see the money in the receivership account, I'm not going to pay my fees to myself. I'm not going to even if the Court orders them and as I hope the Court will today, I don't, I intend to defer those fees just to make sure that there's, there's money in the account --

THE COURT: Well you don't need --

MR. D. GILMORE: -- to, to make these payments.

THE COURT: Excuse me. You don't need to say that --

MR. D. GILMORE: Thank you.

THE COURT: -- because of course your fees are going to get paid and I'm going to order that today through the 27th, which is the next court date. So I'd like to see what that amount is and it will be paid by the end of the week and that's ridiculous but your whole point was that shouldn't come before the tenants and it won't because of what we're --

MR. D. GILMORE: That's right.

THE COURT: -- about to get to and this is, again, not complicated. Receiver's put in place. The receiver's, you know, is there for the Court in the community telling me, letting me know what the issues are. The whole idea is that gets funded. It gets funded by Sanford Capital or it gets by CityPartners, the new owners, gets paid for. So $50,000 why wouldn't I order that that just be paid? We're talking about a multimillion-dollar project. That's a drop in the bucket compared to that.

MR. LUCHS: As long as as you have already stated on the record my client is recognized as the owner of the property, I have assurances from my client --

THE COURT: Okay.

MR. LUCHS: -- that they can do that. My, the only issue and I notify the Court of this is that my

principal is out of town, was scheduled to be out of town when this hearing was scheduled, and so I have to get in touch with him to find out exactly when it can be paid because I need wire instructions from the receiver, which I don't have.

THE COURT: All right.

MR. LUCHS: And then we have to proceed from there but I'm going to try to get it done in the next two days.

THE COURT: All right, let me just say that I expect the $50,000 to be wired by the close of business Friday and that's what I order by CityPartners.

MR. LUCHS: Thank you.

MR. D. GILMORE: Your Honor, may I just add one quick thing --

THE COURT: Yes.

MR. D. GILMORE: -- and that is I want the, everybody to know that in good faith because I'm taking all of this in good faith and the order of the Court is what guides me and if we can be assured that the funds are going to come, I'll get these contractors out tomorrow or the next day --

THE COURT: Well I'm ordering it to happen so you should. You should see it.

MR. D. GILMORE: But, but, but whether the money

is actually in the account tomorrow or the next day as I hope it would be but if it isn't, we'll still order the work to get done.

THE COURT: Good, yes, they should be out. Get them out tomorrow if you can and so my order is that by close of business Friday, the $50,000 is wired into the account. Now your fee is separate from that or included in that?

MR. D. GILMORE: No, it, it is included but we require the approval of the Court so that those fees can be paid.

THE COURT: And I do approve. I do approve that, and you need to pay yourself through the 27th and not wait on that wondering if you're going to get paid again because you're going to continue to get the basic needs are going to be funded and so on.

MR. D. GILMORE: In fairness, Your Honor, we haven't submitted my May's --

THE COURT: No, but when you do, you shouldn't have to wait, come in here, and ask for it, okay? So I get that.

MR. GILMORE: Okay, Your Honor, so we, what we can do is just submit to the Court because I think Your Honor's original order and I do believe that the statute does say this that the, the compensation has to be

approved so we'll just --

THE COURT: Right, I'm not saying right now I'm going to pay you in advance.

MR. GILMORE: Right.

THE COURT: What --

MR. GILMORE: We will submit right away.

THE COURT: -- I'm getting at is that the $50,000 let's be very specific. This will cover the air conditioning, cover the issues that matter involving cleanliness, property management, rodent control, and so on --

MR. D. GILMORE: In other words all the fees that were associated with the operation.

THE COURT: All of those things and others and we will talk about on the 27th of June when we're having the next hearing what the next amount will be and what's needed.

MR. GILMORE: Correct, Your Honor, and if I may, Your Honor, there was another motion. If, if Your Honor recalls, we had talked about doing some additional work beyond the operating funds, and that was for I guess what we called before stabilization plus. These were things that were not just the, the operating sort of ordinary repairs but things that were designed to make the, the tenants' lives better like, for example, fixing the

lighting in the parking lots. I don't know if Your Honor recalls that conversation --

THE COURT: Right.

MR. GILMORE: -- and that we had arrived at the sum of $30,000. We have a motion on it that's ripe for a decision on that as well. It, it's an opposed motion to be fair, but that's also something that we have on the table as well that we would like to get done. There are certain things that well we actually don't know now given the new information if this is something that, that CityPartners is willing to fund?

MR. LUCHS: I have asked my clients, Your Honor, to wire $80,000 as soon as possible --

THE COURT: Okay.

MR. LUCHS: -- to cover that as well. They're aware --

THE COURT: Good.

MR. LUCHS: -- of what --

MR. GILMORE: Wonderful.

MR. LUCHS: -- the receiver was asking for. We would just ask that the Court put in writing that CityPartners is currently recognized as the owner of the property --

THE COURT: We can --

MR. LUCHS: -- when it issues its order. With

respect to the $80,000 --

THE COURT: Okay.

MR. LUCHS: -- I will, I will try to get that by Friday as well.

THE COURT: My clerks are here and we can add that language there and so that it'll be the $80,000 by the close of business Friday.

MR. GILMORE: Thank, Your Honor.

MR. D. GILMORE: May I take 30 seconds of the Court's time, sir?

THE COURT: Yes, and then I'll hear from Mr. Rock.

MR. D. GILMORE: I, I, I, I, because I do need I think in fairness to acknowledge the fact that we had a serious emergency about a week and a half or so ago that cost a lot of money and I do have to say that Mr. Nowell in, as he should be thanked and he's being thanked by me put up $5000 to defer, to defray the cost of the emergency. We did get the work done, and I think Mr. Nowell has to accept our appreciation for that. I hope you do.

THE COURT: Thanks for saying that.

MR. THOMAS: I'll take that to him.

THE COURT: Mr. Rock, you were --

MR. ROCK: Yeah, well I, I just wanted --

THE COURT: -- mentioned something else.

MR. ROCK: -- to add, you know, CityPartners had asked there be certain language put into, into an order recognizing CityPartners as the owner. Of course that's still subject to the District's pending claim to void the transaction whereby it took on the responsibilities of ownership.

THE COURT: Oh, definitely, you don't --

MR. LUCHS: Understood, understood.

MR. ROCK: Yeah.

THE COURT: -- need to keep saying that. Right now I'm recognizing what the reality is in the records, right? That doesn't mean that won't change, might, might not. We'll have a hearing on the 27th about it and I'll issue an order promptly after that but I know the District feels that way.

MR. ROCK: Okay. And then one other piece of housekeeping, Judge, the District has a motion for a commission to take some discovery out of the District --

THE COURT: Right.

MR. ROCK: -- that is ripe and I don't, I don't --

THE COURT: I have --

MR. ROCK: -- believe that it's opposed at this point --

THE COURT: I have that ready to sign off on.

MR. ROCK: Okay.

THE COURT: I have it. I think I have the order right here so I'll sign off on that before I --

MR. ROCK: Okay.

THE COURT: -- leave today.

MR. ROCK: Thank you, Judge.

THE COURT: Okay, good. Is there anything else? Anything else from the District? Anything else from the receivers?

MR. GILMORE: No, Your Honor.

THE COURT: Okay.

MR. LUCHS: Not from us, Your Honor.

MR. THOMAS: Not from us, Your Honor, no.

THE COURT: From --

MR. LUCHS: Thank you very much.

THE COURT: -- anyone else?

MR. ROCK: Oh, one, one other piece of housekeeping, Judge. I mean the, the next big issue is the implementation of the receiver's plan. CityPartners has taken a position today that that is not ripe. The District's, it's, the District's motion is pending. It's fully briefed and so the District would request that the Court to the extent it would like a hearing, go ahead and set a hearing on that so that we can get to the point

where there's a ruling on the implementation of the plan.

MR. LUCHS: Your Honor, the, if I may be heard?

THE COURT: Sure.

MR. LUCHS: The difficulty with that is my client's been in this case for about 60 days. We've had two inspections. We don't, we know for a fact that the receiver did not commission the studies that are in the plan. The District did that. I'm sure the receiver would tell the Court that the receiver could not stand up before the Court today and validate a lot of what is in that plan on his own because he didn't prepare it whether he agrees or not or it was submitted as the receiver's plan. We should have the right and the opportunity, which we've asked for, to develop our own plan so that we can respond to what we think is excessive and inappropriate in terms of two and a half million dollars versus which we think is considerably less to put these properties in habitable condition.

MR. ROCK: Judge, what, what CityPartners just said is so contrary to the facts. CityPartners has known since the very beginning of this case about this case, has known about the conditions of it. Mr. Nowell and Mr. Griffis were e-mailing about the filing of this case back when it was filed in January of 2016 so the idea that CityPartners is only 60 days into the knowledge about the

conditions of this property --

THE COURT: No, I know.

MR. ROCK: -- is just fundamentally --

THE COURT: Right.

MR. ROCK: -- inconsistent with what the actual facts are.

THE COURT: I know. I hear. I understand. What were you going to say?

MR. THOMAS: Your Honor, all, all Sanford would ask is that if we are going to address the motion to fund the receiver's plan, it should be done and we're going to, if we want to set a hearing, it should be done after the Court makes a determination as to whether the transaction is void or not. Obviously there --

THE COURT: Why does that matter?

MR. THOMAS: Well it matters, Your Honor, because there're a lot of stakeholders here and who the stakeholders are is going to, it may ultimately change based on how this Court rules and I think it's only fair that whoever the stakeholders are, are allowed to be involved in decision making of the plan. The stakeholders include the tenants, the receiver, the District, and ultimately the owners and I think it's only fair that whatever question there is on whatever cloud there is over ownership be settled before we sit down and decide how we

are going to fund potentially a $2.5 million plan. Obviously we are scheduled within the next few weeks to start trying to make these determinations and I just think it's only fair that after the determination is made as to whether the transaction is in fact void, that we address the, the funding plan and the Court hold that motion in abeyance until such, until such time.

MR. ROCK: Judge, I, you know, I, I expect, you know, having, having done enforcement cases like this for some time that this, that this case is likely headed for the Court of Appeals; that there are issues here of, of, of meat that are going to be headed that way. And so the idea that, you know, irrespective of what the Court rules on, on or after June 27th was going to be the final word about that I, I suspect one side or the other is going to take that up. So ultimately the, the way for this case to progress is, is I think is for an order that the and several million it will take to fund the property be paid and the defendants who got themselves really into this jam can work out among themselves how they're going to shoulder that while this case progresses on likely after the Court of Appeals and they can crossclaim among themselves. At the end of the day, they can decide and, and they're much more sophisticated business entities. They can decide how they're going to work out among

themselves --

THE COURT: Should I --

MR. ROCK: -- on this funding.

THE COURT: So the District supports the plan.

MR. ROCK: Yes.

THE COURT: When I hear the District supports the plan, does that mean that you are speaking for the tenants?

MR. ROCK: No, no, no, the tenants have their own counsel.

THE COURT: I know they have their own counsel but the plan that the District supports is something that the tenants actually want?

MR. ROCK: Yeah, and their --

THE COURT: That's --

MR. ROCK: -- and their lawyers are here today if, if the Court would like to hear from them on this but as far as the District knows, we have not heard the tenants raise an objection to the implementation of the receiver's plan --

THE COURT: I --

MR. ROCK: -- but obviously their counsel is here.

THE COURT: I mean I know there are aspects to this that certain tenants may or may not like, like moving

out or having to relocate or I'll definitely hear from counsel in a second. And so whatever plan I sign off on, it has to be one that the tenants --

MR. ROCK: Yes, and, and --

THE COURT: -- want and this actually makes sense and benefits them.

MR. ROCK: Yes, and, and, and a corollary to that, Judge, which is is that the funding for the receiver to do the work it has been the District's experience in other cases needs to be in place in order to give the tenants comfort that, in fact, if they're going to have to relocate out of the building that the money is already there so that --

THE COURT: Sure.

MR. ROCK: -- they can be assured that the work will be done and they'll have an opportunity to move back in and, you know, this is an issue that, that is playing out right now in, in another Tenant Receivership Act in this case --

THE COURT: Right, I understand.

MR. ROCK: -- and, and that has been a big hurdle for the tenants because they're, like here there's a mold issue that's going to require likely relocation that the tenants need to know that the money is there so that that can give them some comfort that they're not just

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moving out --

THE COURT: It's going to get taken care of one way or another.

MR. ROCK: -- to a building that's never going to be repaired.

THE COURT: Just bear with me one second, please.

(Pause.)

All right, so I'm going to hear from Mr. Gilmore. You have something you want to say, counsel for the tenants as well, and but what I just checked on and what I want to do is this. The 27th of June, which is less than a month from now, will be a date where I'd like to have a hearing on both, all right? That doesn't mean I'm going to order one thing or another as far as the plan, but I'm going to set aside as much of the day as we need starting at 10 o'clock in the morning.

MR. LUCHS: And, Your Honor, we're, we strenuously object because we have issued discovery regarding what is needed at the property. We've issued discovery as to what the tenants have said they want --

THE COURT: You can talk about that.

MR. LUCHS: -- with respect to their developer.

THE COURT: You can talk about that in a month.

MR. LUCHS: We, we, we won't have responses by

then, Your Honor.

THE COURT: You know, I'm going to get back to that in just a second, yes?

MR. GILMORE: Thank, Your Honor. I just, I just think that there's something that, that Mr. Luchs said that needs a bit of clarification that was about the, the sources of our report. The fact is is that there's one aspect of the report that, that we did not commission and that was the, the mold report. And the fact is is that the way the mold statute is written that there is a, a, a mold assessor and that once an assessor finds that an area is contaminated with, with mold, we are at least by my reading of it and the, and, and others that we are required to follow remediation plan that is approved by that mold assessor because the mold assessor has to approve the work after it's done. So by at least in, in my opinion it doesn't matter that we didn't commission it. It is the only existing opinion and, you know, the statute it might not be the best-written statute in the world as it does not contemplate several competing opinions from mold assessors and if there are any, then we'll just deal with it as it comes I guess but that is the only aspect of it. The rest of it the, the visual inspections, the other housing code inspections, those were all done under our auspices with us actually on site

as it happened and I just think that that's important to make that clear and that, that really we are bound by the mold assessment, the only one that exists really by the statute and by the accompanying regulations.

THE COURT: You mention inspections. Mr. Luchs mentioned that they want to come --

MR. GILMORE: Mm-hmm.

THE COURT: -- and look and so make yourselves available either later this week or no later than Wednesday of next week for that. Take the time that's needed. I do want to have a hearing on this. We will have a hearing on this on the 27th. That doesn't mean I'll make a final decision on that day and if on that day you come in and say, you know, we can address this but we still would like to do, you know, we can address (a) and (b) but we still want to do (c), I'll hear you on it but I do think the basic, you know, that the picture here is clear and it's not as if CityPartners started 60 days ago. You know, there is lots of time upfront to know what was coming to read reports --

MR. LUCHS: That's, that's --

THE COURT: -- to know there was a receiver, to know there was a big issues, to know there's huge issue with mold, et cetera. You might want to do specific tests and other things that I'll hear from you about but in

terms of knowing what was coming at you, you certainly knew what was coming at you.

MR. LUCHS: I strenuously disagree because my client was not permitted on the property --

THE COURT: Noted.

MR. LUCHS: -- even beforehand --

THE COURT: Okay.

MS. LUCHS: -- to conduct those inspections.

THE COURT: Noted and you're going to get on at least in the next week and then we'll go from there. But --

MR. GILMORE: Absolutely.

THE COURT: -- we'll start at 10 o'clock on the 27th. I'll let you know before that whether we're going to address the substantive issues first. Probably we will and then it's not as if I'm necessarily going to rule right then and there but I can have a hearing on both that day, all right.

MR. ROCK: And, and, and one other bit of housekeeping, Judge, the consumer claims in this case have been stayed while there were some settlement discussions that were ongoing between the District and the Sanford defendants. At this point in time, the District would like to go ahead and get a scheduling order in place on the consumer claims and have conferred with counsel on the

consumer claims with the Sanford defendants and we have agreement on a track three scheduling order on those claims.

THE COURT: So you'd like me to sign off on that today?

MR. ROCK: Yes, yes.

MS. FRANKE: Yes, Your Honor.

THE COURT: Why not? At least we get that on track --

MR. ROCK: Yes.

THE COURT: -- as well. So, counsel?

MR. MERRIFIELD: Your Honor, I would just --

THE COURT: Just your name for the record again, please.

MR. MERRIFIELD: Sure.

THE COURT: I know you've introduced yourself before.

MR. MERRIFIELD: Sure, William Merrifield from the Washington Legal Clinic for the Homeless and counsel for the tenants. Just to, to your point we've had extensive discussions with the tenants about the possibility that they would have to move in order for a remediation plan for the mold to be enacted. We are prepared as a tenants association to make that happen, and the tenants are absolutely aware of that and absolutely in

favor of that in order to make that happen. You've heard the tenants sort of while these discussions were going on. These properties are at a critical point. There is mold in the properties. We know that because we have a report that says there's mold in the properties. It's the tenant association's position that the mold needs to be remediated as soon as possible and that that long-term plan become a short-term plan. The idea that CityPartners and the Sanford Capital are arguing about this back and forth like you said, Your Honor, they knew what they were getting into. They should work that out amongst themselves through crossclaims, and it should not fall on the backs of the tenants to live in these unhealthy, unsafe conditions. We are, we strenuously would ask the Court that that implementation plan be implemented as soon as possible. And also just for the record, Your Honor, I'm not sure that the Court's aware, we as the Washington Legal Clinic on behalf of the tenants with Arnold & Porter have also filed a lawsuit with respect to the land transfer.

THE COURT: Very well, okay. So when I use the term long-term plan, I mean as opposed to going up on the roof and putting a patch to stop --

MR. MERRIFIELD: Right.

THE COURT: -- a specific leak at that moment.

I mean that it's going to take longer to remediate the mold.

MR. MERRIFIELD: Yeah.

THE COURT: It's a longer-term project than it is but I don't mean that we wait for months and months and months and then finally start it next year or something like that.

MR. MERRIFIELD: Right.

THE COURT: That's not what's coming here. I do, yes, your basic point is clear as day, and I understand, you know, there's a need. Just because the property was transferred from one company to another doesn't mean that we just kick things down the road for a year because of that. That's not fair, and I get that. I hear what the defendants are saying in terms of wanting to have time to inspect. You're going to get that wanting to have time to come up with alternatives. Behind the scenes, you know, anyone can talk about alternatives. I get it. The plan that the District supports and that the tenants support is the one that's going to be proposed and may well be the one that I sign off on soon but I'm going to hear everybody and then I'm going to make a decision. In the meantime folks can talk behind the scenes. They can say we have a better idea, how about this, and if you feel that is a better idea if you feel it is, then of

course I want to hear from you on that but otherwise I got the plan and that's what I'm going to consider ordering. It's as simple as that. So when I say it's not complicated, it's not to minimize. It's very serious but what I mean to say it that the discussion up here about one defendant or another and who's responsible for this and what exactly to order, that shouldn't complicate things. The issues are important, and they're straightforward.

MR. MERRIFIELD: Could I say one, one thing more?

THE COURT: Sure, sure.

MR. MERRIFIELD: Your Honor, the idea that, that Mr. Griffis didn't know about these problems, Mr. Griffis stood in the basement of these properties in May of 2014. He represented the defendants both Sanford and CityPartners in their joint venture company at the zoning commission and heard from the tenants about all these issues that we're still talking about right now.

THE COURT: So --

MR. MERRIFIELD: So Mr. Griffis is well-aware and has been well-aware of all these issues and this is nothing more, this, this, these hoops that are being jumped through right now is nothing more than a continuation of what has happened for the last five years

at this property, delays, delays, delays in order to make these people so miserable that they leave without being able to exercise their, their statutory right to engage in the TOPA process. They are trying to force these tenants by jeopardizing their health to make them negotiate directly with them and not engage in --

THE COURT: All right.

MR. MERRIFIELD: -- a process that the District has laid out --

THE COURT: So let me --

MR. MERRIFIELD: -- to protect people in this situation.

THE COURT: Let me respond to that. We've got a receiver in place. I've got reports. We have a hearing in less than a month. Decisions will be made. People haven't been driven out. I'm glad they're there --

MR. MERRIFIELD: They have.

THE COURT: Well but that I mean --

MR. MERRIFIELD: These are past routines --

THE COURT: What I mean to say is that they're tenants who are there --

MR. MERRIFIELD: I agree.

THE COURT: -- who aren't about to leave I hope and expect and this is going to get dealt with right away. I see a hand in the back and I can't take, you know, it's

not a community forum. I appreciate how important it is to people if you want to let counsel know. As far as what counsel just said, you know, maybe there's a comeback from the defendants about that. Mr. Griffis really didn't know and so on. You know, if that becomes an issue, the District can decide whether to call counsel who was present or anyone else who was a witness to things about the awareness way back when so that we don't have this issue about I just learned about it and so I don't have time to --

MR. ROCK: Right, yeah, I mean the documents speak for themselves, Judge.

THE COURT: -- have a several-month study of --

MR. ROCK: Yeah.

THE COURT: -- what the real issue is with the mold.

MR. ROCK: Yeah, I mean the document --

THE COURT: You know, I mean --

MR. ROCK: I mean we don't even need to do that. We'll just, you know, we'll, I mean obviously the record will be what the record is.

THE COURT: Okay.

MR. ROCK: Yeah.

THE COURT: All right

MR. STYLES: Your Honor --

THE COURT: Mr. Styles?

MR. STYLES: Yeah, Your Honor, the only thing I'd like to add to the, to the conversation briefly is that and we certainly understand the tenants' frustration but I think the rights being presented by, by our side of the table both as legal entities and then at least in the case of my client in a individual capacity are also valid legal, legal rights in which the Court has to decide. Mr. Rock also points out the fact that he believes regardless of I don't know how he had, would know how the Court would ultimately rule on this yet but he believes that this is ripe and subject probably to appeal. Well if that's, if that's the assumption, Your Honor, then we are, we are in a long progress. That's, I certainly can represent from this side of the table we, we hope this is a issue that we can resolve either through reasonably quick litigation or, or a dialog and conversation with, with the, all of the parties to resolve it and move forward but you can't be on both sides of that that this is of such great urgency only so that we all can begin an appeal, which we certainly will be asking that certain things be stayed pending the Court of Appeals final ruling on it. So ultimately, Your Honor, we don't have an objection. I think Mr. Luchs was, has presented a, a, a position in which the short-term items will be addressed forthwith, and Your Honor has

presented a plan that says that the Court is going to rule on this forthwith. To try to, to accelerate that even farther, I don't know what the point of it so I just, I just want to present that, our position for the record at least as it relates to what I've been observing that basically I believe I'm in concurrence with the Court. I think the Court is moving forward as rapidly and quickly as possible understanding that everyone has rights.

THE COURT: You know, people have different points of view about how fast things are moving but I understand that fundamentally this is a lot more than just fixing these short-term concerns and if the mold is as bad as reported, people shouldn't have to live in those conditions over the summer for example. It should be that the argument is that we should get going on that process, should have gotten going on that process, needs to be done. And so as the parties your discussing things behind the scenes is always a good idea because the parties, the tenants are represented, right? The District represents, you know, the community and everybody has their point of view that's represented by counsel and so of course I want there to be discussions behind the scenes if those could benefit everyone. Now I'm going to hear from the receiver, my representative there. If there's another plan that everyone thinks is a good idea, the receiver

says this is in the best interest of the residents, of course I'm going to hear about that. Of course I want you to talk about that otherwise we have a plan already proposed and that's the one I'll be ruling on.

MR. D. GILMORE: We, we, we do, Your Honor, but all things are possible in this world, in this realm.

THE COURT: Right, sure.

MR. D. GILMORE: If somebody comes up with a better idea, we're not going to be foolish enough to turn our backs on it, a better or even a cheaper idea, but the fact is that this entire plan is based upon delivering at the hand of the process a compliant, mold-free property and that's what this plan would deliver and it is, it is based upon the city's in-depth inspections and a consultant, the mold consultant's inspections on these properties and I, I, I know that, that CityPartners has a mold consultant. We're happy to have a conversation with that individual but the law is clear about what is required here and we intend to follow the law.

THE COURT: You can have --

MR. D. GILMORE: That's what you appointed us to do.

THE COURT: Of course, of course, you can have a conversation with that person. That person can go out there, can inspect. We've got till the 27th of June and

then I'm going to have a hearing on this but there's an issue and it has to be dealt with.

MR. D. GILMORE: And I think as it's been said already, we will do everything we can to facilitate these inspections that Mr. Luchs has pointed out that his client would like to have completed --

THE COURT: Good.

MR. D. GILMORE: -- as quickly as we can --

THE COURT: Good.

MR. D. GILMORE: -- within the next few days I hope.

THE COURT: All right, we have our date and time. I'll see you then. Parties, are excused.

MR. LUCHS: Thank, Your Honor.

MR. THOMAS: Thank, Your Honor.

MR. ROCK: Thank you, Judge.

MR. D. GILMORE: Thank, Your Honor.

(Thereupon, the proceedings were concluded.)

√ Digitally signed by Lauren Witkowski,

ELECTRONIC CERTIFICATE

I, Lauren Witkowski, transcriber, do hereby certify that I have transcribed the proceedings had and the testimony adduced in the case of DISTRICT OF COLUMBIA V. ALBAMA AVENUE, LLC, ET AL., Case No. 2016 CAB 000162, in said Court, on the 30th day of May 2018.

I further certify that the foregoing 57 pages constitute the official transcript of said proceedings as transcribed from audio recording to the best of my ability.

In witness whereof, I have hereto subscribed my name, this 4th day of June 2018.

Lauren M. Witkowski

Transcriber

EXHIBIT 4

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 Kelly A. Higashi
	*	
1309 ALABAMA AVENUE, LLC, *et al.*,	*	
	*	
Respondents.	*	

ORDER GRANTING MOTION FOR LEAVE TO FILE OUT OF TIME AND SETTING MOTION HEARING ON MOTION TO STAY AND RECONSIDER THE PLAN OF REMEDIATION AND MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION AND DENYING REQUEST FOR A TEMPORARY RESTRAINING ORDER

This matter is before the court on CityPartners 5914 LLC, CityPartners LLC, and Geoffrey Griffis' (collectively, the CityPartners Respondents) Motion for Temporary Restraining Order and Preliminary Injunction and the CityPartners Respondents' Motion for Leave to File Out of Time, and the oppositions and replies thereto. The CityPartners Respondents ask the court to grant a "Temporary Restraining Order and Preliminary Injunction pending a hearing on the CityPartners Respondents' outstanding Motion to Stay and Reconsider the Plan of Remediation in Light of Changed Circumstances and Remove Receiver David Gilmore Due to Negligence."

As a preliminary matter, the court notes that no such Motion to Stay and Reconsider is yet on the docket. The CityPartners Respondents previously moved for leave to file an outsized Motion to Stay and Reconsider, and included the proposed brief as an exhibit. The court granted "leave to file the proposed [thirty five page motion for reconsideration] within fourteen days of"

March 25, 2019.[1] The CityPartners Respondents failed to comply with the court's directive within the deadline, but they now move for leave to file their motion past the time limit. In the interest of resolving this dispute on its merits, the court grants the requested leave and deems the Motion to Stay and Reconsider to be filed.

Background

On September 26, 2017, the court appointed David Gilmore as Receiver over the Congress Heights apartment complex (the "Property")[2] pursuant to the Tenant Receivership Act ("TRA"). *See* September 26, 2017 Appointment Order. At that time, the owners of the Property were 1309 Alabama Avenue LLC, Alabama Avenue LLC, 3210 13th Street SE LLC, and Sanford Capital (collectively, the "Sanford Respondents"). Pursuant to the TRA, a Receiver shall provide to the court "within 30 days following the issuance of the order of appointment, … a plan for the rehabilitation of" the Property. D.C. Code § 42-3651.06 (a)(4); *see also* September 26, 2017 Appointment Order at ¶ 11 (within thirty days, the "Reciever shall provide the Court and the Parties an Initial Assessment and Plan for fully addressing code violations and health and safety issues at the Property").

In this case, the Receiver filed their proposal for remediating the Property on November 10, 2017. The court's September 26, 2017 Appointment Order gave the Sanford Respondents five days after the filing of such a plan to then "file any objections to the Initial Assessment and Plan." September 26, 2017 Order at ¶ 12. However, because the parties represented to the court at a November 2, 2017 Status Hearing that they had reached an agreement to give the Sanford Respondents additional time to file their objections, the court ordered that the "Respondents shall

[1] *See* March 25, 2019 Order Deeming Withdrawn Respondents' First Consent Motion for Leave to File Pleading in Excess of Twenty Pages and Granting Respondents' Second Consent Motion for Leave to File Pleading in Excess of Twenty Pages.

[2] The Congress Heights apartment complex includes four buildings located at 1309 Alabama Avenue, SE; 1331 Alabama Avenue, SE; 1333 Alabama Avenue, SE; and 3210 13th Street, SE.

have sixty calendar days from the date of this Order to negotiate exclusively with the tenants, or the tenants' representatives, regarding the terms of a sale of the Property." November 9, 2017 Order at 2. Pursuant to the Order, if the parties did not reach agreement, then the "sixtieth calendar day following the date of this Order … shall be considered day one of the five-day objection period" for the owners to object to the Receiver's plan. *Id.*

However, the Sanford Respondents neither reached agreement with the tenants nor filed objections following the expiration of the sixty day period. Instead, during this sixty day period, the Sanford Respondents transferred the Property, not to the tenants or their representative, but to CityPartners 5914. The Sanford Respondents transferred the Property to CityPartners 5914 through a multi-step "deed in lieu" transaction on December 27, 2017.[3,4] The parties apparently structured the sale in this way to avoid their obligations under the Tenant Opportunity to Purchase Act "TOPA", because the statutory definition of "sale" as that term is used in TOPA excludes "deed in lieu" transfers. The court initiated contempt proceedings against the Sanford Respondents, and the CityPartners Respondents for the apparent violation of the November 9, 2017 Order, which did not reference TOPA's specialized definition of the term "sale."[5,6] This

[3] On that day, Geoffrey Griffis, as the manager of CityPartners 5914, purchased the loans on the Property previously owned by Eagle Bank and Revere Bank. January 2, 2018 Praecipe Ex. 1 at 32 (assuming loans with original value of $1,695,000), 39 (assuming loan with original value of $376,000). Concurrently, Aubrey Carter Nowell, as the manager of the Sanford Respondents, executed three special warranty deeds to transfer title of the Property to CityPartners 5914 "in consideration of the sum of $10.00 and other good and valuable consideration." *Id.* at 1, 7, and 13. On the same day that CityPartners 5914 purchased these banks' debt in the Property and gained title to the Property, Eagle Bank loaned CityPartners 5914 $1,944,830 in a transaction secured by the Property. *Id.* at 20.
[4] Although the court held a Show Cause Hearing on December 27, 2017, regarding the Sanford Respondents' alleged contempt of another order, no parties raised this issue with the court at that time.
[5] *See* February 8, 2018 Order (addressing the Sanford Respondents' potential contempt and setting a February 16, 2018 Status Hearing); May 30, 2018 Order (setting June 27, 2018 Show Cause Hearing for Sanford Respondents), June 19, 2018 Order (setting June 27, 2018 Show Cause Hearing for the CityPartners Respondents).
[6] Although the CityPartners Respondents were not parties to this action at the time of the November 9, 2017 Order, the District of Columbia later provided evidence to suggest that the CityPartners Respondents had knowledge of the Order and acted in concert with the Sanford Respondents, against whom the Order was directed. *See* The District of Columbia's April 20, 2018 Opposed Motion for Respondents to Fund the Implementation of the Receiver's Plan (April 20, 2018 Mot.) Ex. 7 (Geoffrey Griffis of the CityPartners Respondents emailed Carter Nowell of the Sanford Respondents to ask for a "copy of the Judges recent order (requiring 60 day negotiation)" and asking "when [does

transfer delayed remediation of the property and created some uncertainty as to whether the old or new owners (Sanford Respondents or CityPartners Respondents) should be responsible for funding the plan, especially because the validity of the sale was called into question.

The court resumed the question of whether to make any alterations to the Receiver's abatement plan, first proposed in November 2017, in response to the District of Columbia's April 20, 2018 Motion for Respondents to Fund the Implementation of the Receiver's Plan. The Sanford Respondents and CityPartners Respondents each submitted several lengthy submissions on this question to the court. *See* July 13, 2018 Order (referencing the Sanford Respondents' June 20, 2018 Supplemental Briefing, CityPartners 5914's June 20, 2018 Submission, and CityPartners 5914's June 25, 2018 Supplemental Submission). In addition, the court held a Motion Hearing on June 27, 2018, at which the court heard several hours of argument and evidence from the District of Columbia and the CityPartners Respondents. The court also held a short June 29, 2018 hearing to discuss certain follow up questions. *See* July 13, 2018 Order at 7. The District of Columbia asked the court to implement the Receiver's Plan to remediate the Property, which called for a base estimate of $848,202 for repair work, while CityPartners 5914 asked the court to adopt its "alternative plan" that called for $661,378.84 in repair work. In addition, the Sanford Respondents and CityPartners Respondents argued over who would be responsible for funding the plan.

The court issued an order regarding the implementation of the Receiver's plan on July 13, 2018. The court considered the Receiver's proposed abatement subject to certain adjustments proposed by the CityPartners Respondents "to arrive at a *first installment* of funding for the Receiver's plan." July 13, 2018 Order at 8 (emphasis added). The court adopted some line items

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the] 60 days expire[]?"); April 20, 2018 Mot. Ex. 8 (email from Geoffrey Griffis to Carter Nowell asking for "the court order that addresses tenants opportunity to discuss purchasing properties").

of the Receiver's proposal and some line items of the CityPartners Respondent's proposal. *See* July 13, 2018 Order at 8-10. For example, the court accepted CityPartners' proposed $267,271 estimate for repair work to seven mold affected units instead of the Receiver's $304,690 estimate for the same repairs, because the Receiver accepted "in open court" that this would be "a reasonable *initial* amount." *Id.* at 9-10 (emphasis added). The court ultimately approved of a plan calling for $702,633 in remediation costs, and, "because both experts testified [at the June 26, 2017 hearing] 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 added a 20% contingency. *Id.* at 10. The court also ordered $52,000 for "initial relocation costs" to arrive at "a total of $895,159.60." The court "order[ed] 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." *Id.* at 10. The court ordered that CityPartners 5914 would be responsible for funding the plan.

When ordering the funding, the court recognized that "CityPartners 5914 would rather demolish the buildings than remediate them" and was negotiating 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." *Id.* at 12. The court therefore held in abeyance the question of whether to hold CityPartners 5914 in contempt for violating the November 9, 2017 Order because "[i]nsofar as the central purpose of the TRA is to secure the health, safety, and security of the tenants … 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." *Id.* Apparently in recognition of the history of this matter, the court ordered that CityPartners 5914 shall pay the receiver $895,159.60 "within thirty days" and specified that "failure to comply with this Order may give rise to sanctions." *Id.*

Indeed, CityPartners 5914 did fail to comply with the July 13, 2018 Order and did not timely pay the Receiver, further delaying remediation of the Property. *See* September 18, 2018 Order (ordering CityPartners 5914 to appear for a Show Cause hearing). CityPartners 5914 asserted an inability to pay as defense to contempt. *Id.* On the day of the September 27 Show Cause hearing, CityPartners reported to the court that it had found funding for the plan. *See* October 4, 2018 Order (discussing these proceedings). As a result, the District agreed that the payment of the remaining balance by CityPartners 5914 would render its motion requesting a finding of contempt for the violation of the July 13, 2018 Order moot. *See id.* at 2.

Standard

Injunctive relief is an "extraordinary remedy." *Turner v. Fraternal Order of Police*, 500 A.2d 1005, 1007 (D.C. 1985). The court should only grant relief when the movant "has clearly demonstrated":

> (1) a substantial likelihood of success on the merits; (2) irreparable harm that would likely befall him during the pendency of the action; (3) that the denial will cause him more harm than the grant would the defendant; and, in appropriate cases, (4) that the public interest would not be disserved by the issuance of the requested order.

Id.

Rule 65 (b) allows the court to "issue a temporary restraining order" enjoining a party "without written or oral notice to the adverse party or its attorney" when "specific facts in an

affidavit or a verified complaint clearly show that immediate and irreparable injury, loss, or damage will result to the movant before the adverse party can be heard in opposition." To issue a temporary restraining order, the court must also find "that the movant has made reasonable efforts under the circumstances to furnish to the adverse party or its attorney, at the earliest practicable time prior to the hearing on the motion for such order, actual notice of the hearing and copies of all pleadings and other papers filed in the action or to be presented to the court at the hearing." Super. Ct. Civ. R. 65 (b)(1)(B).

Analysis

The CityPartners Respondents' Motion to Stay and Reconsider argues that the court should reconsider the remediation plan on the basis of changed circumstances, namely: (1) because of a fire at the Property, only one household is eligible to return to 1333 Alabama Avenue, "questioning the wisdom of compelling the renovation of an entire building for benefit of only one apartment"; (2) because of the fire damage, the court should "determine what modifications are needed"; and (3) "the Receiver reports that asbestos has been discovered which he plans to immediately remediate without prior court approval." Mot. to Stay at 23. The Motion to Stay and Reconsider also asks that the court remove the Receiver on the grounds that he has failed to fulfill his duties to ensure compliance with the housing code, make repairs as necessary to abate threats to life, health, safety, and security, and has failed to properly manage the Property, which, the CityPartners Respondents contend led to the fire. (None of the eight pages of the motion's legal argument are specifically directed at staying remediation, although this request for a stay is framed as part of the broader request to modify the abatement plan. *See* Mot. to Stay at 22-24.)

In their Motion for Temporary Restraining Order and Preliminary Injunction, the CityPartners Respondents assert that they will suffer "substantial and irreparable [injury]" if the court does not grant a temporary restraining order "because remediation will destroy evidence from the fire, will alter the condition of the premises, will prevent the CityPartners Respondents from having their own experts assess the asbestos situation, and will expend funds, which if misspent, the CityPartners Respondents will have little chance of recovering from the Receiver in light of the 'gross negligence' statutory standard of liability" for a Receiver. As they state, "after the destruction caused by the fire, it is essential that the Court hear evidence … before additional resources are put into the Property." The CityPartners Respondents therefore ask that the court "issue a temporary restraining order pending a hearing on the preliminary injunction."

The District of Columbia argues that removal of the Receiver is unnecessary, especially because the recent fire was caused by an act of arson and domestic violence,[7] and that changed circumstances do not warrant adopting the CityPartners Resopndent's competing abatement plan. In particular, the District argues that "much of the fire damaged areas were slated for demolition and removal," and that, therefore, this changed circumstance does not warrant full-scale adoption of the CityPartners Respondents' plan, although it does "necessitate[] modifying the Receiver's Plan." With regard to 1333 Alabama Avenue, the District argues that the "demise of one tenant" does not obviate the need to repair the building because "other surviving tenants should be allowed to return to their homes." In addition, the District contends that "the discovery of asbestos in the buildings was a foreseeable development that the Receiver's Plan explicitly contemplated as part of an ongoing remediation." In regards to the request for injunctive relief, the District argues that the CityPartners Respondents will not suffer irreparable injury. In

[7] The District notes that this incident is now the subject of a criminal case, No. 2018 CF2 017235, *United States v. Stalin Bryant*.

particular, the District notes that since the fire occurred on November 2, 2018, the CityPartners Respondents' "agents inspected the Property" and the Receiver has already demolished much of the fire damaged area. In addition, the CityPartners Respondents never requested an inspection of the property since the discovery of asbestos in February 2019. Finally, the District argues that the CityPartners' respondents potential economic loss is not the type of irreparable harm for which courts grant injunctive relief, and that "[a]ll of the Receiver's repairs will ultimately inure to the benefit of the CityPartners Defendants and the tenants."

The Receiver has submitted two praecipes relevant to this dispute. First, the Receiver's November 7, 2018 Praecipe disclosed that a "devastating fire" occurred "during the overnight hours of November 1-2, 2018," which impacted the 1331 and 1333 Alabama Avenue SE buildings. "The extensive damage to the 1331 side of the building has rendered those units uninhabitable, while the two [at that time] occupied units in the 1333 side are also forced to remain vacant due to the building's electrical supply." November 7, 2018 Praecipe at 2. At that time, the Receiver was working to expedite relocation of tenants affected by the fire. Second, on March 14, 2019, the Receiver submitted a praecipe to identify certain issues for the court, without taking a position on the request to remove him as Receiver. The Receiver noted that he notified the parties on February 19, 2019 that the Receiver would commence remediation work on March 4, 2019. The Receiver state s that the "abatement has in fact commenced and that interior demolition of 1331 Alabama Avenue SE is nearly complete," such that a stay "would not achieve the objective of preserving the site of the fire." February 19, 2019 Praecipe at 2. In addition, the Receiver reports that roof replacement will begin on March 25, 2019, and that staying remediation after roof replacement begins "has the potential to cause serious damage to the buildings, as any temporary coverings in place at the time will be left in place for an

extended period of time." *Id.* Furthermore, the Receiver notes that a stay of remediation would cause a delay of the tenants' return to their homes, and could increase the possibility of break-ins and further property damage.

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In this case, the court declines to grant the emergency relief of a temporary restraining order. While the court recognizes some chance of success with regard to the CityPartners Respondents' request to modify the plan in light of changed circumstances, the other factors relevant to injunctive relief have not yet been clearly established—that the city Partners Respondents would suffer irreparable harm during the pendency of the action; that the denial will cause the CityPartners Respondents more harm than the grant would cause the non-movant; and that the public interest would not be disserved by the issuance of the requested order. *See Turner v. Fraternal Order of Police*, 500 A.2d 1005, 1007 (D.C. 1985).

The court finds that the current situation does not pose a significant threat that the CityPartners Respondents will suffer irreparable harm, and any such possible harm is greatly outweighed by the potential harm that could result to the public if the court were to halt remediation of the Property. Insofar as the court can tell, the supposed possible irreparable harm is that remediation will destroy evidence the CityPartners Respondents would use to seek removal of the Receiver, and that the Receiver will spend funds to remediate the property in a way that is wasteful, thus necessitating a greater second appropriation of funds from the CityPartners Respondents than would otherwise be required. However, the CityPartners Respondents have not yet shown that the Receiver's remediation of the fire or asbestos is unnecessary, wasteful, or can be achieved in a more cost-effective way. As the District notes, any benefit from the remediation will ultimately inure to the CityPartners Respondents, and

therefore the fact of remediation by itself does not suggest any harm at all, unless the remediation is shown to be wasteful. Furthermore, the threat of any alleged potential destruction of evidence relevant to the Receiver's negligence is insignificant in comparison to the potential harm arising from halting remediation, especially as the CityPartners Respondent's negligence arguments relate to the Receiver's failure to evict a tenant, *see* Mot. to Stay and Reconsider at 29, which can be developed without preserving any remaining fire damage. In concluding that injunctive relief is not yet warranted, the court places great weight on the potential harm to the public interest in unnecessarily delaying remediation. The purpose of the Receivership in this case is to secure the health and safety of the tenants through remediation of serious housing code violations. *See* D.C. Code § 42-3651.01. In addition, the court recognizes the potential harms that may result from such a delay as enunciated by the Receiver in his February 19, 2019 Praecipe—especially the potential that a stay of remediation could subject the Property to vandalism or other property damage when construction crews are removed from the Property, or that delay in replacing the roof could cause further water damage. This remediation has been delayed significantly by both the previous and current owners, sometimes as a result of their failure to comply with court orders, and a further delay of remediation would be contrary to the interests of the public, and simply unwarranted in the absence of a clear showing of need, which the CityPartners Respondents have not yet established.

Therefore, while the court does not foreclose the possibility of granting some relief in terms of modifying the remediation plan, the court declines to enjoin the Receiver from fulfilling his court-ordered responsibility to remediate the Property at this time. The court will hold a hearing on the Motion to Stay and Reconsider, during which the court will also consider the request for a Preliminary Injunction, on Tuesday, May 7, 2019 at 1:30 pm. The District and the

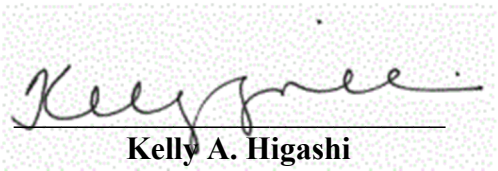
CityPartners Respondents will each have one and one-half hours to present evidence and argument. The parties are each invited to submit a brief of no more than ten pages outlining with specificity proposed changes to the Receiver's remediation plan necessitated by the discovery of asbestos and the recent fire; the parties may also address whether additional funds will be necessary to make these changes. *See, e.g.*, July 13, 2018 Order at 10 ("if this [initial amount of funds] is insufficient to cover remediation costs, the Receiver is free to apply for additional funds."). The parties have leave to submit such briefs by April 26, 2019. Accordingly, it is this **15th** day of **April, 2019**, hereby

ORDERED that the CityPartners Respondents' Motion for Leave to File Out of Time is **GRANTED**; and it is further

ORDERED that the CityPartners Respondents' Motion to Stay and Reconsider the Plan of Remediation in Light of Changed Circumstances, and to Remove Receiver Due to Negligence, submitted as Exhibit 1 to the CityPartners' Respondents' Motion for Leave to File is deemed filed; and it is further

ORDERED that the request for a Temporary Restraining Order is **DENIED**; and it is further

ORDERED that the parties shall appear for a Motion Hearing on the CityPartners' Respondents' Motion for Temporary Restraining Order and Preliminary Injunction and the CityPartners Respondents' Motion to Stay and Reconsider the Plan of Remediation in Light of Changed Circumstances and Remove Receiver David Gilmore Due to Negligence on May 7, 2019 at 1:30 pm in Courtroom A47.



Kelly A. Higashi
Associate Judge
(Signed in Chambers)

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EXHIBIT 5

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

1309 ALABAMA AVENUE CONGRESS HEIGHTS TENANTS ASSOCATION, ET AL., *Plaintiffs*, v. **1309 ALABAMA AVENUE, LLC, ET AL.,** *Defendants.*	**Case No.: 2018 CA 3477 B** **Judge Michael L. Rankin**

ORDER

This matter comes before the court upon consideration of (1) defendants City Partners 5914, LLC and CityPartners, LLC's motion to dismiss plaintiffs' amended complaint for declaratory and injunctive relief, filed on August 1, 2018; (2) defendants 1309 Alabama Avenue, LLC, Alabama Avenue, LLC, 3210 13th Street, LLC, and Sanford Capital, LLC's motion to dismiss, filed on August 1, 2018;[1] and (3) defendants CityPartners 5914, LLC and CityPartners, LLC's renewed motion to strike plaintiffs' jury demand, filed on August 1, 2018. For the following reasons, defendants' motions to dismiss are granted as to plaintiffs' retaliation claim and plaintiffs' jury demand is stricken.

FACTUAL BACKGROUND

Plaintiffs' complaint arises from the transfer of the properties located at 1309 Alabama Avenue SE, 1331-1333 Alabama Avenue SE, and 3210 13th Street SE, Washington, DC (hereinafter "subject properties") through deeds in lieu of foreclosure, which occurred on

[1] Defendants 1309 Alabama Avenue, LLC, Alabama Avenue, LLC, 3210 13th Street, LLC, and Sanford Capital, LLC adopt the statement of facts and arguments set forth in defendant CityPartners, LLC and CityPartners 5914, LLC's motion to dismiss. The court will therefore only cite to the latter motion.

December 27, 2017. *See generally* Am. Compl. Plaintiffs are individual tenants and tenant associations of the subject properties. *Id.* ¶ 1. Defendants are the prior or current owners of the subject properties. *Id.* ¶ 2. Prior to the transfer on December 27, 2017, the subject properties were owned by defendants (1) 1309 Alabama Avenue NW, LLC; (2) Alabama Avenue, LLC; and (3) 3210 13th Street, LLC (hereinafter "former owners"). *Id.*; Def. Mot. at 4. Defendant Sanford Capital, LLC is the managing member of the former owners. Def. Mot. at 4. Plaintiff alleges that, around May of 2013, defendant Sanford Capital entered into a joint venture with defendant CityPartners, LLC (hereinafter "CityPartners") to acquire and merge the subject properties with four other parcels of land to build a 445,000 square-foot mixed-use project. Am. Compl. ¶ 7. Plaintiff further alleges that another limited-liability company, City Partners 5914, LLC (hereinafter " CityPartners 5914"), was created to facilitate this venture. *Id.* The sole managing member of CityPartners 5914 is CityPartners. Def. Mot. at 4.

On December 27, 2017, CityPartners purchased the mortgages secured by the subject properties—thereby becoming the new lender to the former owners, which had taken out the initial mortgages. *Id.*; Am. Compl. ¶ 108. The subject properties were then transferred from the former owners to CityPartners 5914 through deeds in lieu of foreclosure. Am. Compl. ¶ 107; Def. Mot. at 4. No offer of sale was provided to plaintiffs before this transfer. Am. Compl. ¶ 106.

In their complaint, plaintiffs allege that the transfer of the subject properties violated the Tenant Opportunity to Purchase Act ("TOPA") because the owners of the properties failed to provide an offer of sale prior to the transfer of ownership. *Id.* ¶ 2. Defendants, on the other hand, assert that they were not required to provide an offer of sale because deeds in lieu of

foreclosure are exempt from TOPA. *See* Def. Mot. at 14. Before the court are defendants' motions to dismiss and to strike plaintiffs' jury demand.

APPLICABLE LEGAL STANDARD

A complaint should be dismissed for failure to state a claim upon which relief can be granted only if "it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *See Fingerhut v. Children's Nat'l Med. Ctr.*, 738 A.2d 799, 803 (D.C. 1999); D.C. Super. Ct. Civ. R. 12(b)(6). When considering a motion to dismiss a complaint for failure to state a claim, the Court must "construe the facts on the face of the complaint in the light most favorable to the non-moving party, and accept as true the allegations in the complaint." *See Fred Ezra Co. v. Pedas*, 682 A.2d 173, 174 (D.C. 1996). A court should not dismiss a complaint merely because it "doubts that a plaintiff will prevail on a claim." *See Duncan v. Children's Nat'l Med. Ctr.*, 702 A.2d 207, 210 (D.C. 1997).

A pleading must contain a "short and plain statement of the claim showing that the pleading is entitled to relief." *See* D.C. Super. Ct. Civ. R. 8(a); *Ashcroft v. Iqbal*, 556 U.S. 662, 677-78 (2009). Plaintiffs who wish to survive a motion to dismiss under D.C. Super. Ct. Civ. R. 12(b)(6) must provide "enough facts to state a claim to relief that is plausible on its face." *See Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007) (plaintiffs must "[nudge] their claims across the line from conceivable to plausible"); *Mazza v. Housecraft LLC*, 18 A.3d 786, 791 (D.C. 2011) (holding that *Twombly* and *Iqbal* apply in our jurisdiction because D.C. Super. Ct. Civ. R. 8(a) is identical to its federal counterpart). The "plausibility" pleading standard does not require "detailed factual allegations" at the initial litigation stage of filing the complaint, but "it demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation." *See Iqbal*, 556 U.S. at 678. A claim is plausible on its face "when the plaintiff pleads factual content that

allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *See id.*

ANALYSIS

I. Defendants' Motions to Dismiss

A. Standing

As an initial matter, defendants argue that the individual tenant plaintiffs lack standing to bring the instant action because the tenants formed tenant associations, and therefore only the tenant associations have standing to bring the action. Def. Mot. at 9. The court agrees. *See Richman Towers Tenants' Ass'n v. Richman Towers LLC*, 17 A.3d 590, 601 (D.C. 2011) (explaining that the court has "explicitly held that once a tenants' association has been registered as the representative of the tenants, individual tenants lack standing to sue on their own behalf"). However, because both the individual tenants and the tenant associations are joined in this action, the claims under TOPA remain.[2]

B. Violation of the Tenant Opportunity to Purchase Act

At the heart of their complaint, plaintiffs seek declaratory judgment that defendants violated plaintiffs' right to an offer of purchase under TOPA. *See generally* Am. Compl. at 29-31. TOPA provides, in pertinent part, that "before the owner of a housing accommodation may sell the accommodation, he or she is required to give the tenant an opportunity to purchase the accommodation at a price and on terms which represent a bona fide offer of sale." *Richman Towers LLC*, 17 A.3d at 601 (citing D.C. Code § 42-3404.02(a)). The statute further states that

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[2] Because the merits of the case remain unchanged—even though the individual tenant plaintiffs lack standing—the court is not required to dismiss the individual tenants. However, as explained *ante*, because plaintiffs fail to state a claim for retaliation, the individual tenant plaintiffs will be dismissed. *In re Idaho Conservation League*, 811 F.3d 502, 509, 421 (D.C. 2016) ("So long as one petitioner has standing, that suffices for the court to evaluate the merits of the order on consent: if one party has standing in an action, a court need not reach the issue of the standing of other parties when it makes no difference to the merits of the case[.]") (internal citation omitted).

"the term 'sell' or 'sale' shall not include . . . [a] transfer of legal title or an interest in an entity holding legal title to a housing accommodation pursuant to a bona fide deed of trust or mortgage, and thereafter any transfer by foreclosure sale or deed in lieu of foreclosure pursuant to a bona fide deed of trust or mortgage[.]" D.C. Code § 42-3404.02(c)(2)(C). In other words, if title to a housing accommodation is transferred through a deed in lieu of foreclosure, the owner is *not* required to give the tenant an opportunity to purchase. *Id.* At issue in this case is whether the transfer of the subject properties through deeds in lieu of foreclosure constitutes a "sale" within the meaning of that provision. *Compare* Def. Mot. at 14, *with* Pl. Opp. at 7-8.

Although deeds in lieu of foreclosure are usually exempt from TOPA, case law explains that "TOPA is a remedial statute, and it is to be generously construed toward the end of strengthening the legal rights of tenants or tenant organization to the maximum extent permitted under law." *Richman Towers LLC*, 17 A.3d at 601. Further, when determining whether a certain transaction is a "sale" under TOPA, courts "deal with the substance rather than the form of transactions and will not permit important legislative policies to be defeated by artifices affecting legal title but not the practical consequences of the existing situation." *Id.* at 601-602.

Construing the factual allegations in the light most favorable to plaintiffs, the transaction at issue in this case more resembles a traditional sale, rather than a transfer through a deed in lieu of foreclosure. Here, CityPartners purchased the mortgages secured by the subject properties, and at the same time, the former owners transferred the properties to CityPartners 5914—a limited-liability company whose sole member is CityPartners. *See* Am. Compl. ¶¶ 105-108. CityPartners 5914 then took out almost identical loans from the previous lenders. *Id.* The transaction, in effect, transferred ownership of the subject properties from the former owners to CityPartners via CityPartners 5914 without actually "selling" the property. Thus, the nature of

the transaction more closely resembles a sale under TOPA as opposed to a transfer via a deed in lieu of foreclosure. Because plaintiffs' claims under TOPA are colorable, it would be premature to dismiss them at this stage.

Lastly, the notice to purchase that was issued on June 11, 2018 does not cure any violation of TOPA. *See* Def. Mot. at 20. If the court ultimately determines that plaintiffs were entitled to an offer to purchase in December of 2017, plaintiffs would have been entitled to the price sought in December of 2017 – not the price now listed in the June 11, 2018 notice.

C. Retaliation

Plaintiffs also allege that defendants unlawfully retaliated against them when defendants issued subpoenas to the individual tenant plaintiffs in the related receivership case. *See* Am. Compl. at 36. But defendants contend that (1) TOPA does not provide a cause of action for retaliation; and (2) issuing subpoenas to individuals with factual knowledge of the receivership case is permitted by law. Def. Mot. at 11, 13.

As a basis for their claim, plaintiffs cite to D.C. Code § 42-3505.02, which provides that:

> No housing provider shall take any retaliatory action against any tenant who exercises any right conferred upon the tenant by this chapter, by any rule or order issued pursuant to this chapter, or by any other provision of law. Retaliatory action may include any action or proceeding not otherwise permitted by law which seeks to recover possession of a rental unit, action which would unlawfully increase rent, decrease services, increase the obligation of a tenant, or constitute undue or unavoidable inconvenience, violate the privacy of the tenant, harass, reduce the quality or quantity of service, any refusal to honor a lease or rental agreement or any provision of a lease or rental agreement, refusal to renew a lease or rental agreement, termination of a tenancy without cause, or any other form of threat or coercion.

D.C. Code § 42-3505.02(a). A subpoena does not appear to be the sort of "retaliatory action" contemplated by the statute, as most of the listed actions relate to conditions of rental housing.

See id. Moreover, the statute explicitly excludes actions "permitted by law." *Id.* But even if a subpoena could serve as a "retaliatory action", plaintiffs concede that defendants' request to take those tenants' depositions was denied by Judge Mott. Pl. Opp. at 6. Thus, the very action plaintiffs argue is retaliatory never came to pass. Their retaliation claim is therefore dismissed.[3]

II. Defendants' Motion To Strike

Defendants move the court to strike plaintiffs' jury demand given that the complaint "requests exclusively equitable relief." Def. Mot. II at 4. Although the complaint asserts a claim for retaliation, which could have provided a basis for plaintiffs' jury demand, the court dismissed that claim.[4] Given that the remaining claims only request injunctive relief, the court grants the motion to strike. *See Troshinisky v. Rosin*, 428 A.2d 847 (D.C. 1981).

Accordingly, it is this 30th day of October, 2018 hereby:

ORDERED, that defendants' motion to dismiss is **GRANTED** as to plaintiffs' retaliation claim; and it is further

ORDERED, that defendants' motion to dismiss is **DENIED** as to plaintiffs' remaining claims under the Tenant Opportunity to Purchase Act; and it is further

ORDERED, that defendants' renewed motion to strike plaintiffs' jury demand is **GRANTED**; and it is further

ORDERED, that plaintiffs' jury demand is **STRICKEN**.

SO ORDERED.

Associate Judge Michael L. Rankin

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[3] As stated *supra* note 1, only the tenant associations have standing to assert their claims under TOPA. Given that the court dismissed the remaining retaliation claim, the individual tenant plaintiffs are hereby dismissed.

[4] Moreover, plaintiffs appear to concede that retaliation would be the only basis for their jury demand. *See* Pl. Opp. at 20 ("Plaintiffs have asserted a cognizable claim for damages based on retaliation and thus are entitled to a trial by jury.").

Copies to:
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Via CaseFileXpress