# Western Division Housing Court
# *Unofficial Reporter of Decisions*

## Volume 4

Apr. 2, 2020 —Sep. 15, 2020

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**ABOUT**
This is an unofficial reporter for decisions issued by the Western Division Housing Court. The editors collect the decisions on an ongoing basis for publication in sequentially numbered volumes. Presently, this unofficial reporter is known as the "Western Division Housing Court Reporter." Inasmuch as the reader's audience is familiar with this unofficial reporter, the reader is invited to cite from these decisions by using the abbreviated reporter name "W.Div.H.Ct."

**WHO WE ARE**
This is a collaborative effort by and among several individuals representative of the Court, the local landlord bar, and the local tenant bar:

Hon. Jonathan Kane, First Justice, *Western Division Housing Court*
Hon. Robert Fields, Associate Justice, *Western Division Housing Court*
Hon. Michael Doherty, Clerk Magistrate, *Western Division Housing Court*
Aaron Dulles, Esq., *Massachusetts Attorney General's Office*[1]
Peter Vickery, Esq., *Bobrowski & Vickery, LLC*

Messrs. Dulles and Vickery serve as co-editors for coordination and execution of this project.

**OUR PROCESS**
The Court has agreed to set aside copies of all its written decisions. Periodically, the editors collect and scan these decisions, employing commercial-grade "optical character recognition" software to create text-searchable PDF versions. On occasion, the editors also receive copies of decisions directly from advocates, which helps ensure completeness. When the editors have gathered a sufficient quantity of pages to warrant publication, they compile the decisions, review the draft compilation with the Court for approval, and publish the new volume. Within each volume, decisions are assembled in chronological order. The primary index is chronological, and the secondary index is per-judge (or clerk). The editors publish the volumes online and via an e-mail listserv. Additionally, the Social Law Library receives a copy of each volume. The volumes are serially numbered, and they generally correspond to an explicit time period. But, for several reasons, each volume may also include older decisions that had not been available when the prior volume was assembled.

**EDITORIAL STANDARDS**
In General. By default, decisions are *included* unless specific exclusion criteria are met. Exclusion criteria are intentionally limited, and the editors have designed them to minimize any suggestion of bias for or against any particular litigant, type of litigant, attorney, firm, type of case, judge, witness, *etc*. In certain circumstances, redactions may be used in lieu of exclusions.

Exclusion by the Court. The Court intends to provide the editors with all of its decisions except those from impounded cases and those involving highly sensitive issues relating to minors—the latter being a determination made by the Court in its sole discretion. The Court does not provide decisions issued by the Clerk Magistrate or any Assistant Clerk-Magistrate. Additionally, the

[1] Formerly of Community Legal Aid, and historically associated with the local tenant bar.

Court does not ordinarily provide decisions issued as endorsements onto the face of motion papers. The Court retains inherent authority to withhold other decisions without notice.

Exclusion by the Editors. The editors will exclude material if one or more of the following specific criteria are met:

1. Case management and scheduling orders.
2. Terse orders and rulings that, due to a lack of sufficient context or background information, are clearly unhelpful to a person who is not familiar with the specific case.
3. Orders detailing or discussing highly sensitive issues relating to minors, mental health disabilities, specific personal financial information, and/or certain criminal activity. As applied to decisions involving guardians ad litem or the Tenancy Preservation Program, this means those decisions are not automatically excluded by virtue of such references alone, however they are excluded if they reveal or fairly imply specific facts about a party's mental health disability.

The editors make their decisions by consensus, applying their best good faith judgment. In certain circumstances, the editors will employ redactions during this process.

In certain circumstances, the editors may elect to confer further with the Court before deciding whether to exclude a decision based on references to confidential information (*e.g.*, information relating to minors, medical records, domestic-relations matters, substance use, and guardian ad litem reports) that might lead to the public disclosure of private facts. If the editors or the Court chose to exclude a decision after such a review, the editors will revise the exclusion criteria to reflect the principles that led to that determination.

The exclusion criteria and the review criteria will undoubtedly grow, change, and evolve over time. The prefatory text of each volume will reflect the most recent version of the criteria.

Final Review. Prior to publication of any given volume, the editors will submit the draft volume to the Court for a final review to ensure that it meets the editorial standards.

**PUBLICATION**

Volumes are published in PDF format at www.masshousingcourtreports.org. We also have a listserv for anybody who wishes to receive new volumes by e-mail when they are released. Those wishing to sign up for the listserv should e-mail Aaron Dulles, aaron.dulles@mass.gov.

**SECURITY**

The editors use GPG technology to protect against altered copies of the PDF volumes. Alongside each volume is another file with Aaron Dulles's digital signature of authentication. Readers may authenticate each volume using freely available GPG software. In addition to the PDF volume and its accompanying signature file, the reader will need Aaron Dulles's "public key," which can be found by searching his name on keyserver.pgp.com. The key is associated with the e-mail address dulles@jd11.law.harvard.edu, and it has the following "fingerprint" identifier:
`0C7A FBA2 099C 5300 3A25  9754 89A1 4D6A 4C45 AE3D`

**CONTACT US**

Comments, questions, and concerns may be raised to any person involved in this project. Out of respect for the Court's time, please direct such communications at the first instance to Aaron Dulles (aaron.dulles@mass.gov) and/or Peter Vickery (peter@petervickery.com).

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**HOUSING COURT DEPARTMENT**
**WESTERN DIVISION**

**DOCKET NO. 18-SP-5213**

**YELLOWBRICK MANAGEMENT, INC.,**
**Plaintiff**

**v.**

**PATRINA LOCKETT,**
**Defendant**

**ORDER AND MEMORANDUM OF DECISION ON DEFENDANT'S MOTION TO VACATE JUDGMENT AND PLAINTIFF'S MOTION TO SUBSTITUTE PARTIES**

The above-captioned case came before the court for hearing on the defendant's motion to vacate judgment[1] and the plaintiff's motion to substitute parties. Upon consideration of the parties' arguments and written submissions, the motion to vacate judgment is denied, and the motion to substitute parties is allowed in part.

1. **Facts**: YellowBrick Property, LLC (YBP) owns the property located at 11-13 Bristol Street, Springfield, Massachusetts (the property). At all times since YBP assumed ownership, the plaintiff YellowBrick Management, Inc. (YBM), has managed the property pursuant to a management agreement between the corporate entities. The defendant, Patrina Lockett (Lockett) has resided at the property since in or about January 2014, at which time she entered into a residential lease agreement with YBM. Since the inception of the tenancy, Lockett has paid rent to YBM and communicated with YBM about repairs, and YBM has undertaken repairs.[2]

[1] Defendant initially filed a motion for summary judgment under rule 56, but as judgment has already entered in favor of the plaintiff pursuant to agreements dated March 5, 2019, June 25, 2019, and September 17, 2019, the court will treat the motion as a motion to vacate under rule 60(b).

[2] E.g., the parties' agreement dated March 5, 2019 provided that YBM would repair Lockett's toilet.

2. At some point after the inception of her tenancy at the property, Lockett became eligible for a mobile Section 8 voucher through the Massachusetts Rental Voucher Program administered by HAP, now known as Wayfinders. In connection with Lockett's subsidy, Wayfinders sent YBM a Request for Tenancy Approval and an Appointment of Agent form. Pursuant to these documents, which were executed on or about September 3, 2015, YBP appointed YBM to act on its behalf as an agent in relation to the property.

3. On or about December 18, 2015, Kevin Shippee (Shippee), a principal in both YBM and YBP, executed two agreements with Lockett. The first document was the Section 8 Housing Choice Voucher Program Model Dwelling Lease (Section 8 Lease), supplemented by a Tenancy Addendum Section 8 Tenant-Based Assistance Housing Choice Voucher Program (Section 8 Addendum). The Section 8 Lease was substantially completed by Wayfinders before it was sent to Shippee, and identified YBP as the owner of the property. The second document was a Residential Lease Agreement (Residential Lease) signed between Lockett and YBM, which was substantially similar to the original lease signed by Lockett at the inception of her tenancy with YBM in 2014. The Residential Lease contained additional information regarding the tenancy not included in the Section 8 Lease, and was signed by Lockett and YBM as the "landlord" of the property.

4. After executing both documents in December 2015, Lockett continued to interact with YBM for purposes of paying rent and requesting maintenance.

5. **Discussion**: YBP having entered into the Section 8 Lease, Lockett argues that YBM is neither the owner nor the lessor, and therefore does not have standing to bring this summary process case under *Rental Property Management Services v. Hatcher*, 479 Mass. 542 (2018).

The facts in this case are distinguishable from *Hatcher*, however, in which the plaintiff had no connection to the landlord or the tenant other than having been hired by the owners to serve a notice to quit and file a summary process case. The plaintiff therefore had no standing to sue, and the sole proprietor of the plaintiff was engaged in the unauthorized practice of law. In this case, by contrast, YBM was Lockett's landlord at the inception of the tenancy, was designated as YBP's agent in the Wayfinders paperwork, was identified as the landlord in the Residential Lease Lockett signed along with the Section 8 agreement, and has served as Lockett's "landlord" as a practical matter throughout the tenancy.

6. Lockett correctly points out that the Section 8 regulations require that the lease be between the owner and the tenant, and further require as follows: "All provisions in the HUD-required tenancy addendum must be added word-for-word to the owner's standard form lease that is used by the owner for unassisted tenants. The tenant shall have the right to enforce the tenancy addendum against the owner, and the terms of the tenancy addendum shall prevail over any other provisions of the lease." 24 C.F.R., § 982.308(f)(2). I do not regard these requirements as being dispositive, however, on the question of whether YBM has a superior right to possession over that of Lockett, having assumed and undertaken the responsibilities of the landlord throughout the tenancy, including after the Section 8 Lease was executed. Compare *Appleton Corp. v. Tewksbury*, Docket Nos. 19-SP-1829 & 19-SP-2599, at *2–*3 (Mass. Housing Ct., W. Div., October 18, 2019) (Fein, J.) (the named plaintiff, "Appleton Corporation, Managing Agents for Berkshiretown, LLC," had standing to bring summary process case as the functional landlord and agent of the owner of the subject property), citing RESTATEMENT (THIRD) OF AGENCY § 1.01 cmt. g (2006).

7. YBM seeks to substitute YBP as the proper plaintiff under Mass. R. Civ. P. 17(a). I do not read the *Hatcher* decision as divesting this court of the remedies, otherwise available by statute or rule, to amend pleadings and join real parties in interest. See e.g. G.L. c. 231, §51 ; Mass. R. Civ. P., Rule 17(a). See also *Castlegate Prop. Mgt. v. Brenes*, Docket No. 19-SP-976 (Mass. Housing Ct., W. Div., October 18, 2019) (Fein, J.); *Labor v. Sun Hill Indus., Inc.*, 48 Mass. App. Ct. 369, 371 (1999) (the judge "simply permitted the plaintiffs to substitute their individual names in order to describe more accurately who from the outset had been trying to enforce their claim. Neither the original nor the amended judgment is void"); *Rafferty v. Santa Maria Hosp.*, 5 Mass. App. Ct. 624, 626-629 (1977) (in zoning cases brought by plaintiffs who had no standing, no abuse of discretion in allowing amendment adding plaintiffs who did have standing).

8. The factors to be considered by the court in determining whether to substitute a party under Rule 17(a) "include (1) whether an honest mistake had been made in selecting the proper party; (2) whether joinder of the real party in interest had been requested within a reasonable time after the mistake was discovered; (3) whether joinder is necessary to avoid an injustice; and (4) whether joinder would prejudice the nonmoving party." *Berman v. Linnane*, 434 Mass. 301 (2001). These factors mitigate in favor of allowing YBP to be added as a party, rather than substituted. I am mindful of the need to respect the distinct identities among related corporate entities; enjoying as they do the legal benefits of distinct identities, related corporations should not be encouraged to blur the lines when it suits them. Nevertheless, while YBP is the current owner of the property, YBM has at all times operated as Lockett's landlord, such that the court has jurisdiction over this case initiated by YBM. In addition, by adding YBP rather than

substituting YBP, all of the necessary parties are joined, such that there is no prejudice to Lockett occasioned by the case having been brought initially by YBM.[3]

9. **Conclusion and Order**: Based upon the foregoing, the defendant's motion to vacate judgment is denied, and the plaintiff's motion to substitute plaintiffs is allowed in part by adding YellowBrick Property LLC as a plaintiff.

So entered this 2 day of ~~March~~ April, 2020.

/s/ Dina E. Fein
Dina E. Fein
First Justice

KC AM

[3] It is also worth noting that counterclaim are permissive in summary process cases, not compulsory, signifying that Lockett's claims against both corporate entities, if any, are actionable irrespective of whether they have been brought in this case.

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO: 19-SP-736

JAMES RODOLAKIS and KATHERINE RODOLAKIS
Plaintiffs

v.

LEAH LABONTE RODOLAKIS
Defendant / Third Party Plaintiff
Defendant in Third Party Counterclaim

v.

KATHERINE RODOLAKIS,
Third Party Defendant
Plaintiff in Third Party Counterclaim

And

ANDREA MAGUIRE
Third Party Defendant

**ORDER**

After telephonic hearing on April 1, 2020 and April 2, 2020 on the Defendant / Third Party Plaintiff, Leah Labonte Rodolakis' Motion to Amend Agreement and for Protective Order, at which Attorney Landry, James Rodolakis, Attorney Brown, Andrea Maguire (*pro se*) and Katherine Rodolakis (*pro se*) were present, the following order shall enter:

1. The Plaintiff and/or Katherine Rodolakis shall be permitted to schedule a showing of the property for the week of April 6th.

2. Leah shall be permitted to remain in her bedroom during the showing subject to the following conditions:

    a. The bedroom shall be kept in a manner that is appropriate for a showing, meaning that it shall be clean, tidy, and presentable with the bed made;

    b. Leah shall remain in the bedroom for the duration of the showing;

c. Leah shall allow full access to the property and all areas, including but not limited to all rooms including the bedroom she is occupying during the showing, closets, cabinets, the basement, and the garage;

d. Leah shall not communicate with any individuals that attend the showing, other than a general greeting or pleasantries;

e. The individuals attending the showing shall be permitted to stay in the property until they are finished; and

f. Leah shall not interfere with the showing in any way.

3. In the event Leah interferes with the showing in any way, she shall forfeit 10% of the sale proceeds due to her upon sale of the property, resulting in a reduction of her share to 23% of the proceeds.

4. Any individuals that enter the property for a showing shall wear gloves and a mask.

5. The Court has declined to address the portion of the motion seeking amendment of the agreement, without prejudice.

So entered this 3rd day of April, 2020.

Robert G Fields

Robert Fields, Associate Justice

(AM)

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

BERKSHIRE, SS

HOUSING COURT DEPARTMENT
WESTERN DIVISION

DOCKET NO. 19-SP-976

CASTLEGATE PROPERTY MANAGEMENT,
Plaintiff

v.

SARAIL BRENES, et al,
Defendants

**RULING AND MEMORANDUM OF DECISION ON DEFENDANTS' MOTION FOR RECONSIDERATION**

The above-captioned matter is before the court on the defendants' (tenants') motion for reconsideration. For the reasons set forth herein, the motion is denied.

1. The tenants ask the court to reconsider its decision denying their motion to vacate judgment under Mass. R. Civ. P. 60(b)(4), and allowing the plaintiff's motion to amend the complaint so as to substitute Alliance Properties, LLC (Alliance). In support of their motion for reconsideration, the tenants argue that the original plaintiff, Castlegate Property Management (Castlegate) is not a legal entity, such that the court lacks jurisdiction to do anything other than dismiss the case. For the reasons set forth in the court's order dated October 18, 2019 and those indicated below, I disagree, and therefore decline to reconsider the ruling.

2. The tenants site the court to its own decision in the case of *Armoury Commons v. Downes*, 15-SP-1437 (May 31, 2017). That decision rested significantly and expressly on the interests of judicial economy and the court's broad case management discretion. While it was well within the court's discretion to dismiss that case for the reasons indicated, it is also within the court's discretion to allow, as I have done here, a motion to amend so as to substitute the alter-ego real party in interest, Alliance. Among the factors appropriately considered by the

court in this case is that the principal in Alliance, Richard Lampoon (who did business as Castlegate) was the individual with whom the tenant dealt historically, for purposes of paying rent and having repairs done, including in this case by virtue of the original agreement entered on March 27, 2019. The court also takes judicial notice of *Castlegate v. Brenes*, 18-SP-3205, in which the tenants, with the assistance of counsel, reached an agreement with Castlegate, compromising the unpaid rent claim and permitting the tenants to retain possession.

3. In addition, the fact that the case was originally filed in the name of Castlegate has not deprived the tenants of the ability to bring claims against the owner. Counterclaims being permissive under USPR 5, the tenants are not prejudiced by the fact that they did not do so herein,

4. Finally, the SJC's decision in *Phone Recovery Services, LLC v. Verizon of New England, Inc*, 480 Mass. 224 (2018) does not require the conclusion advanced by the tenants. Rather, the SJC appeared to contemplate the possibility of a renewed a motion to amend, the first having been denied by the trial court without prejudice. *Id.*, at n.8. The fact that the Superior Court interpreted the decision differently upon remand is not binding on this court.

5. ORDER: Based upon the foregoing, the tenants' motion for reconsideration is denied.

So entered this 7th day of April, 2020.

s/s

Dina E. Fein
First Justice

COMMONWEALTH OF MASSACHSUETTS
THE TRIAL COURT

HAMPDEN, SS

HOUSING COURT DEPARTMENT
WESTERN DIVISION

DOCKET NO. 18-SP-2669

| |
|---|
| WELLS FARGO BANK N.A.,<br>Plaintiff<br>v.<br>JASON SUTTON,<br>Defendant |

**FINDINGS OF FACT, RULINGS OF LAW, AND ORDER FOR ENTRY OF JUDGMENT**

The above-captioned matter is before the court following summary process trial, Wells Fargo Bank N.A. (Wells Fargo) having acquired the subject property and been substituted as the plaintiff. For the reasons set forth herein, judgment is entered in favor of the plaintiff.

1. In support of its motion for summary judgment, the original plaintiff established the prima facie elements of its claim for possession, with one exception. It is undisputed that the subject loan was guaranteed by the United States Department of Veterans Affairs (the VA). In defense to Wells Fargo's case, the defendant (Sutton) argues that he was entitled to and did not receive a face-to-face meeting as required by the VA regulations at 38 C.F.R. § 36.4350, which provide in pertinent part as follows:

> In the event the holder has not established contact with the borrower(s) and has not determined the financial circumstances of the borrower(s) or established a reason for the default or obtained agreement to a repayment plan from the borrower(s), then a face-to-face interview with the borrower(s) or a reasonable effort to arrange such a meeting is required.

2. Sutton testified credibly that he became depressed after the death of his wife, and did not attend sufficiently to financial matters. Following receipt of correspondence indicating that he was facing foreclosure, Sutton contacted Wells Fargo on November 30, 2017, and had a lengthy telephone conversation during which extensive information was exchanged. Specifically, Sutton indicated that he had sufficient funds available to reinstate the loan, and identified sources of monthly income sufficient to sustain the loan. The Wells Fargo agents explained the process for reinstating the loan and identified loan modification as an alternative. I find that Wells Fargo did not reject an express request by Sutton to reinstate his loan, nor preclude him from doing so, nor pressure him into applying for a loan modification.

3. As a result of the conversation, Sutton expressed an intention to pursue loan modification, and Wells Fargo explained the process for submitting a complete loan modification application with documentation as necessary to verify income and expenses. While Sutton testified that he submitted the loan modification materials, the credible testimony at trial established that there was no record of Wells Fargo having received the necessary documents. In addition, the credible evidence established that Wells Fargo sent multiple communications indicating that it had not received the necessary information and would proceed to foreclosure. Wells Fargo attempted to establish contact through phone calls and emails, to which Sutton did not respond. The court finds that Wells Fargo made a reasonable effort after contact to solicit Sutton's complete and verified financial information, and that Sutton did not take the necessary next steps required of him to reinstate his mortgage or enter into a loan modification agreement as discussed on November 30, 2017.

4. The parties dispute whether the November 30 phone call dispensed with the need for a face-to-face meeting. Wells Fargo argues that the phone call, the information gleaned therein, and the follow-up communications obviated the need for the face-to-face. Sutton argues that the substantive information exchanged during the phone call was insufficient to establish his "financial circumstances," such that a face-to-face meeting was required. I conclude on the specific facts of this case that no face-to-face meeting was required.

5. The VA guidelines provide as follows with respect to what is expected of servicers following default:

> VA expects servicers to continue efforts to contact the borrower to reach a plan that will cure the delinquency... Contact with the borrower is critical. When contact is established with the borrower, servicers should evaluate the prospects for curing the delinquency and determine whether any home retention options are feasible. At a minimum, servicers must make a reasonable effort to establish... 1. The reason for the default and whether the reason constitutes a temporary or permanent condition. 2. The borrower's present income and employment. 3. The current monthly expenses of the borrower, including all household and debt obligations. 4. The borrower's current mailing address and telephone number. 5. A realistic and mutually satisfactory arrangement for curing the default, if applicable. 6. The borrower's intent with regards to the property.

United States Department of Veteran's Affairs Servicer Handbook M26-4, Chapter 4 Delinquent Loan Servicing, Section 06 Borrower Contacts (2019).

6. While the court is not aware of any Massachusetts cases directly on point, decisions in other jurisdictions are instructive. Thus, for example, the Ohio Court of Appeals ruled as follows: "The regulation specifically provides that no face-to-face meeting is required under the regulation when there has been effective contact between the parties by other means." *Wells Fargo Bank, N.A. v. Sowell*, Ohio Ct. App., No. 11AP-622 (June 29, 2012). The Court of Appeals of Georgia reached a similar conclusion. "Subsection (g) (1) (iii) specifically provides that a face-to-face meeting is required only when the bank has been unable to effectively

communicate with the borrower or determine the borrower's financial circumstances by other means." *Wells Fargo Bank, N.A. v. Latouche*, 340 Ga. App. 515, 520, 798 S.E.2d 54, 59 (2017). In that case, a letter and a phone conversation regarding loan modification were enough to satisfy the VA regulation requirements. *Id.*

7. In this case, the court concludes that Wells Fargo was not required to convene a face-to-face meeting with Sutton. The phone conversation on November 30, 2020 provided sufficient information for Wells Fargo to determine the reason for Mr. Sutton's default and his intent with regards to the property. It also provided sufficient information regarding his then current financial circumstances, subject to verification, which it was Mr. Sutton's responsibility to provide. The record reflects and the court finds that Wells Fargo's attempts to continue communication with Sutton after the initial contact on November 30, 2017 constituted a reasonable effort to establish a realistic and mutually satisfactory loss mitigation plan. Unfortunately, Sutton did not follow through as required, and Wells Fargo was therefore within its right to proceed with foreclosure.

8. Having established its prima facie case and satisfied the requirements of 38 C.F.R. § 36.4350 without the necessity of a face-to-face meeting, Wells Fargo has met its burden of proving valid title and a superior right to possession.

9. **ORDER:** Based upon the foregoing, judgment for possession shall enter in favor of the plaintiff. In light of emergency conditions associated with COVD-19, there shall be a stay on the

issuance of the execution, pending further order of the court upon motion.

So entered this 7 day of April, 2020.

Dina E. Fein

/s/Dina E. Fein KC/ACM
First Justice

COMMONWEALTH OF MASSACHUSETTS

WESTERN DIVISION, SS.

HOUSING COURT
DEPARTMENT OF
THE TRIAL COURT
CIVIL ACTION
No. 20-CV- 212

CITY OF SPRINGFIELD
CODE ENFORCEMENT DEPARTMENT
HOUSING DIVISION,
Plaintiff

v.

HEIRS AND ASSIGNS OF MINNIE SANDS (owner),
DORETHY SANDS MURRAY (potential heir),
ELOISE SANDS (potential heir),
TONI SANDS (tenant),
CORNELL SANDS (tenant),
Defendants

Re: Premises: 132 King Street, Springfield, Massachusetts

**ORDER**
**(Hampden County Registry of Deeds Book/Page: #4500/89)**

After a hearing on Friday, April 10, 2020 for which a representative of the Plaintiff appeared, Defendants DORETHY SANDS MURRAY, ELOISE SANDS, and TONI SANDS appeared, and after having been given notice of said hearing a representative of the remaining Defendants did not appear, the following order is to enter:

1. Defendant TONI SANDS must vacate the above said premises FORTHWITH, and not re-occupy without either written permission from the City of Springfield or by order of this Court after further hearing.

2. When the utilities have been restored and Defendants are ready to have the property inspected, they should contact Attorney Amber M. Gould at 413-787-7298 to schedule an inspection.

3. No one shall reside at the property until, at a minimum, water and gas service have been restored with proper permitting and licensing. All work at the property shall be done in a workmanlike manner with permits pulled, supervised, inspected, and closed as required by law.

4. The Defendants and their agents may only enter the property during daylight hours to access their belongings and perform work at the property. No one may be at the property from dusk until dawn.

So entered this 10th day of April, 2020.

Robert G. Fields, Associate Justice
Western Division Housing Court

**COMMONWEALTH OF MASSACHUSETTS**
**TRIAL COURT OF THE COMMONWEALTH**

Hampden, ss.

Housing Court Department
Civil Action No. 19-CV-705

CTL REALTY, LLC
Plaintiff

v.

DAISY ARROYO and JELONI TRIPLETT
Defendant

## AGREED-UPON ORDER

After mediation by telephone the parties agree to the following Order:

a. The Defendants agree to prevent or curtail any and all overflow of water from the shower enclosure and/or from any and all sources of water in the apartment.
b. The Defendants agree to use the shower for bathing and agree they shall not use the bathtub for bathing and shall not use a drain stopper/tub stopper when bathing.
c. The Plaintiff reserves its right to serve the Defendants with a Notice to Quit based on the allegations contained in this case and further proceed with a summary process case for possession, if necessary.

Dated: April 13th, 2020

COMMONWEALTH OF MASSACHUSETTS

WESTERN DIVISION, SS.

HOUSING COURT
DEPARTMENT OF
THE TRIAL COURT
CIVIL ACTION
No. 20-CV-94

CITY OF SPRINGFIELD
CODE ENFORCEMENT DEPARTMENT
HOUSING DIVISION,
Plaintiff

v.

MIGUEL M. MENCHU (owner) and
SUSAN BARRIOS (mortgagee)

Defendants

Re: Premises: 60 Byers Street, Springfield, Massachusetts

ORDER

*(Hampden County Registry of Deeds, Book/Page: 22225/1)*

After a hearing on April 13, 2020 for which a representative of the Plaintiff appeared, Defendant owner MIGUEL M. MENCHU appeared, and after having been given notice representative of the remaining Defendants did not appear, the following order is to enter relative to the above referenced property:

1. Defendant MIGUEL M. MENCHU is hereby ordered to board and secure the property in accordance the U.S. Fire Administration National Arson Prevention Initiative standards, FORTHWITH, and in any event no later than April 28, 2020 at 9:00 a.m.

2. If the Defendant fails to comply with Paragraph one (1) of this order, the Plaintiff shall be allowed access to the above mentioned property, in its sole discretion and dependent upon funding, and board and secure the property in accordance the U.S. Fire Administration National Arson Prevention Initiative standards. This order shall remain in effect for the next twelve (12) months. The City can enter and resecure the property as often as necessary to maintain the property boarded and secured in compliance with the U.S. Fire Administration National Arson Prevention Initiative standards

3. The Plaintiff shall be allowed to place a lien against such property, duly recorded in the Hampden County Registry of Deeds, to recover any and all reasonable costs associated with board and secure the property in accordance the U.S. Fire Administration National Arson Prevention Initiative standards, plus the costs of filing such lien.

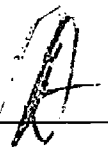
4. A copy of this order shall be filed in the Hampden County Registry of deeds, and shall constitute a lien against the property for payment of such costs incurred pursuant to paragraphs 2 and 3 of this order, together with the filing fee for filing such lien.

5. Defendant MIGUEL M. MENCHU shall continue to maintain the above property as vacant, board and secured in compliance with the U.S. Fire Administration National Arson Prevention Initiative standards and keep the exterior clean of all litter, trash, debris, and overgrowth.

6. **The Defendants shall allow the Plaintiff access to the subject property the purpose of re-inspection on April 28, 2020 between 9:00 a.m. and 4:00 p.m. to verify compliance with this order.**

**SO entered this** 15th **day of April, 2020.**

**Dina E. Fein, First Justice**
**Western Division Housing Court**



**Robert G. Fields, Associate Justice**
**Western Division Housing Court**

**Allowed without opposition**
**Clerk Magistrate / Assistant Clerk Magistrate**
**Western Division Housing Court**

**THE TRIAL COURT**
**COMMONWEALTH OF MASSACHUSETTS**

Hamdpen, ss:

Housing Court Department
Western Division

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**LYDIA MIRINGU,**

**Plaintiff,**

**v.**

**No. 20-SP-711**

**HORAIDA CARDONA,**

**Defendant.**

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**HORAIDA CARDONA,**

**Plaintiff,**

**v.**

**No. 20-CV-210**

**LYDIA MIRINGU,**

**Defendant.**

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After hearing on April 3, 2020, on the tenant's emergency motion (20-CV-210) regarding entry into the subject premises by the landlord in the midst of an ongoing summary process matter (20-SP-711), at which both parties appeared telephonically, the following order shall enter:

1. The tenant has not relinquished possession of the premises and the landlord may not enter

the premises without express permission from the tenant or by leave of a court order to that effect.

2. That said, the tenant is in the process of vacating the premises and anticipates being completely vacated by April 20, 2020.

3. When and if the tenant vacates completely and is prepared to relinquish possession of the premises, she shall text the landlord and leave the keys in the mailbox for the landlord.

4. Both parties retain all of their claims (other than possession if it is relinquished as above) against one another for adjudication in this matter at a later time when the case is moved forward after the COVID19 protocols allow for it. Notice will be sent to the parties by the court when this summary process matter shall proceed. In the meantime, the parties shall update the court with any new mailing address.

So entered this 15th of April 2020.

Robert Fields / KC ACM
Robert Fields, Associate Justice

cc: Kara Cunha, Assistant Clerk Magistrate

Tenant's motion to vacate default judgment in 20-SP-711 had been scheduled for 6/8/20 @ 2:00.
ACM 4/15/20

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, SS

HOUSING COURT DEPARTMENT
WESTERN DIVISION

DOCKET NO. 18-CV-1132

| | |
|---|---|
| JENNIFER and ROBERT MCANDREWS,<br><br>Plaintiffs<br><br>v.<br><br>RUSSELL CABLE and RUBY REALTY, LLC,<br><br>Defendants | RULINGS AND MEMORANDUM OF DECISION ON CROSS-MOTIONS FOR SUMMARY JUDGMENT |

1. **Introduction:** The plaintiffs' complaint alleges four causes of action: violation of the Massachusetts Civil Rights Act; unfair and deceptive trade practices in violation of Chapter 93A; interference with quiet enjoyment in violation of G.L. c. 186, § 14; and intentional infliction of emotional distress. For the reasons set forth below, the plaintiffs' motion for partial summary judgment is allowed as to the defendants' liability under Chapter 93A. The defendants' motion for summary judgment is allowed as to the plaintiffs' claims under G.L. c. 186, § 14 and denied as to the plaintiffs' claims for violation of the Massachusetts Civil Rights Act and intentional infliction of emotional distress.

2. **Undisputed facts:** The summary judgment record establishes that the following material facts are undisputed: The plaintiff Jennifer McAndrews (McAndrews) is the former owner of a property located at 16 Evergreen Drive, Holyoke, Massachusetts (the property). On January 3,

2018, Bank of America foreclosed its mortgage on the property by public auction. The defendant Ruby Realty, LLC (Ruby Realty) was the high bidder at the auction, and entered into a memorandum of sale to purchase the property for $57,000. Title to the property transferred on January 11, 2018.

3. On January 5, 2018, the defendant Russell Cable (Cable), a principal in Ruby Realty, contacted McAndrews by phone and subsequently went to the property. Cable inspected the property with McAndrews, and a discussion ensued. While the parties characterize the tone and details of the discussion differently, it is undisputed that Cable informed McAndrews that he had purchased the property at auction, and that they discussed the need for McAndrews to vacate the property. McAndrews asked to remain at the property for 90 days, and Cable offered 30 days, which he then increased to 45 days.

4. The conversation between Cable and McAndrews resulted in the execution of a written agreement. Cable brought the form agreement with him to the meeting. Much of the agreement was pre-printed, and Cable wrote in the remaining terms. In relevant part the agreement included the following provisions:

1. The agreed upon rent for the unit is $1,800 per month only if you don't move by February 15, 2018.
2. The occupant owes $0 in contract rent for the months of: None
3. The Prospective Owner shall make the following repairs to the premises:
4. The parties further agree as follows:
   The occupants will make all repairs to the property. All utilities will be paid by the occupants. This is a use and occupancy agreement only until 2/15/18 with no extensions at all. There will be no use and occupancy cost at all up to the move out date of 2/15/. If the occupant doesn't move out by the agreed date they will be responsible to pay use and occupancy in the amount of $1800.00 per month from the date the new owner takes title. They will also be responsible for all court cost, sheriff's fees and attorney fees. The occupants agree the property is in good condition. The occupant hasn't been pressured in any way to sign this agreement & understands they can have an attorney review said agreement.
5. Failure by the occupant(s) to comply with this agreement will result in the new owner bringing an eviction case in court. (THIS AGREEMENT DOES NOT

WAIVE YOUR RIGHT TO AN EVICTION CASE SHOULD YOU FAIL TO COMPLY WITH THIS AGREEMENT).

6. This is a voluntary agreement between the prospective owner and the current occupant.
7. The current occupant has the right to review this agreement. The current occupant also has the right to have an attorney review this agreement before signing.

5. The agreement was signed by Cable, as "agent of Ruby Realty, LLC," and Jennifer Henrichon aka McAndrews. While it was poorly drafted to the point of being nearly incomprehensible, it is undisputed that Cable and McAndrews both understood the agreement to include the following key provisions: McAndrews could remain at the property until February 15, 2018, but would have to vacate by that date; McAndrews would not have to pay to occupy the property until February 15, but would have to pay $1,800 per month if she stayed beyond February 15; and McAndrews was responsible for making repairs and paying for utilities.

6. On January 26, 2018 Yellowbrick Management, Inc. (Yellowbrick) served a 72 hour notice to quit on McAndrews. The notice to quit was signed by Kevin Shippee (Shippee), who is a principal in both Ruby Realty and Yellowbrick. Yellowbrick handles property management on occasion for Ruby Realty, and was acting on behalf of Ruby Realty in serving the notice to quit. On February 2, 2018, a summary process summons and complaint signed by Shippee on behalf of Yellowbrick was served on the plaintiffs. The summary process case was entered on February 12, 2018, and scheduled for trial on February 22, 2018. On February 13, 2018 Shippee went to the property and spoke with the plaintiffs about their plans to vacate.

7. On February 16, 2018 Ruby Realty transferred the property to AEM Property Investment, LLC for $133,000, and assigned its interest in the pending summary process action against the plaintiffs to the buyer.

8. The plaintiffs were in treatment with therapists prior to the foreclosure and subsequent events. They both testified to increased symptoms as a result of their interactions with Cable and Shippee, and discussed the foreclosure and eviction issues with their therapists.

9. On or about May 31, 2018 the plaintiffs, through counsel, sent a Chapter 93A demand letter to Ruby Realty. Ruby Realty responded on or about June 28, 2018, and did not make a settlement offer.

10. **Interference with Quiet Enjoyment:** The plaintiffs' claims for interference with quiet enjoyment and violation of G.L. c. 186, §14 are predicated on their argument that the agreement dated January 5, 2018 established a tenancy at will. On the undisputed facts before the court, however, I conclude that a tenancy at will was not established by that agreement.

11. As tenants at sufferance after the foreclosure, the plaintiffs were liable for use and occupancy. G.L. c. 186, §3 ("Tenants at sufferance in possession of land or tenements shall be liable to pay rent therefor for such time as they may occupy or detain the same.")[1] The summary judgment record makes clear that McAndrews and Ruby Realty both understood their agreement to be, in essence, one that allowed McAndrews to remain at the property until February 15, 2018 without paying anything for use and occupancy The agreement also arguably contemplated a tenancy at will in the future, if but only if McAndrews remained at the property beyond February 15, 2018 and paid $1,800 per month at that point.[2]

12. A tenancy involves a "meeting of the minds" between the parties thereto. *Cassidy v. Welsh*, 319 Mass. 615, 618-19 (1946). It is clear that Cable did not intend to establish a tenancy with McAndrews prior to February 15. Nor does the record suggest in any way that McAndrews

1 As demonstrated by this language in relation to tenants at sufferance, the use of the term "rent" does not per se signify the existence of a tenancy at will.

2 The agreement provided that the $1800 payment would be retroactive to the date on which Ruby Realty acquired title, further establishing that no tenancy at will was created until the February 15 vacate date had expired and the payment was made.

believed herself to be establishing a tenancy at will with Ruby Realty; rather her testimony is clear that she was negotiating for as much time as possible before vacating. The meeting of the minds between McAndrews and Ruby Realty was that McAndrews would surrender her right to possession as a post-foreclosure tenant a sufferance in exchange for the right to occupy the property without payment until the surrender date.

13. The plaintiffs argue that a tenancy at will arises as a matter of law when the right to possession is exchanged for consideration, typically the payment of rent. *Belizaire v. Furr*, 88 Mass. App. Ct. 299 (2015). It is undisputed that McAndrews never paid anything to Ruby Realty during its ownership of the property. Although her agreement to vacate was sufficient consideration for her right to remain without paying anything until February 15 (see discussion below), as in *Belizaire* the parties hereto at most contemplated the possibility of a tenancy upon the occurrence of conditions precedent thereto, specifically the failure to vacate by February 15, 2018 and payment of $1,800.

14. The plaintiffs argue correctly that the agreement, drafted in large part by Cable, is construed against Ruby Realty given its ambiguity. The law does not imply a contractual relationship, however, including a tenancy at will, where doing so would be contrary to the intentions and expectations of the parties thereto. In this case the summary judgment makes clear that neither party to the January 5, 2018 agreement intended to establish a tenancy at will with the other, and there is therefore no basis for the law to impose that interpretation on the agreement.

15. As the agreement dated January 5, 2018 did not establish a tenancy at will, the plaintiffs' claims for interference with quiet enjoyment and violation of G.L. c. 186, § 14 fail as a matter of law. The defendants are therefore entitled to summary judgment on these claims.

16. **Violation of G.L. c. 93A:** Although the plaintiffs were not tenants at will, they were lawful occupants and entitled, pursuant to their agreement with Ruby Realty, to occupy the property until February 15, 2018. The defendants interfered with the plaintiffs' lawful occupancy, and in so doing they committed unfair and deceptive trade practices in violation of G.L. c. 93A.

17. Specifically, Cable contacted McAndrews on January 5, 2018, before Ruby Realty was the owner of the property, and entered into an agreement with her that purported to establish the terms pursuant to which she was allowed to remain at the property. While aspects of their interactions on that day are disputed, it is undisputed that Cable held himself out as authorized to determine whether and on what terms McAndrews could remain at the property. As Ruby Realty did not yet hold title to the property, Cable's misrepresentations regarding his authority were unfair and deceptive as a matter of law. Identifying Ruby Realty as the "prospective owner" does not imbue Ruby Realty with authority it lacks as a legal matter.

18. In addition, at all times relevant hereto the plaintiffs occupied the property lawfully as tenants at sufferance. See *Bank of New York Mellon v. Morin*, 96 Mass. App. Ct. 503, 514 (2019) ("After an entry to foreclose, a mortgagor becomes a tenant at sufferance.") As such, the defendants were required to use summary process in order to recover possession of the property. *Attorney General v. Dime Savs. Bank of N.Y.*, 413 Mass. 284, 290-91 (1992). While not establishing a tenancy at will, the parties' agreement dated January 5, 2018 was nevertheless legally significant. In light of their respective rights (as tenants at sufferance) and responsibilities (to use summary process to recover possession), McAndrews' agreement to vacate by February 15, 2018 was sufficient consideration for Ruby Reality's agreement to allow her to remain until that date without payment. In serving a 72 hour notice to quit and initiating a

summary process case prior to the agreed-upon vacate date, Ruby Realty took steps through its agent Yellowbrick that violated the very agreement Cable purported to have the authority to make. As a matter of law, taking those steps and invoking a court process to dispossess the plaintiffs in violation of the agreement constituted unfair and deceptive trade practices.[3]

19. As a result of the defendants' unfair and deceptive trade practices, the plaintiffs are entitled to their actual damages or $25, whichever is greater, as well as costs and attorney's fees. G.L. c.93A, §9(3). Actual damages include emotional distress damages. *Haddad v. Gonzalez*, 410 Mass. 855, 870 (1991). The plaintiffs are also entitled to multiple damages (not less than double nor more than treble) if the court finds that the landlord's violation of Chapter 93A was willful or knowing, or if "the refusal to grant relief upon demand was made in bad faith with knowledge or reason to know that the act or practice complained of violated said section two." *Id.* The court may consider the "egregiousness" of the defendants' conduct in determining whether to double or treble damages. *Brown v. LeClair*, 20 Mass. App. Ct. 976, 980 (1985).

20. The complaint and answer in this case establish that a demand was made under G.L. c.93A, §9 and that no settlement offer was forthcoming. Neither the demand nor the response are included in the summary judgment record, however. In the absence of these documents, the court will not speculate as to whether there could conceivably be a good faith basis for the defendants' position that their conduct did not violate Chapter 93A. *Parker v. D'Avolio*, 40 Mass. App. Ct. 394, 395 (1996)("Whether the defendants' settlement proposal was an

3 Having determined that Ruby Realty violated Chapter 93A by serving the notice to quit and initiating a summary process case, the court need not reach the question of whether initiating summary process through its property manager in violation of *Rental Property Management Services v. Hatcher*, 479 Mass. 542 (2018) constituted an additional violation of Chapter 93A. While the plaintiffs submit that these represent widespread business practices of Ruby Realty and Yellowbrick, the specifics of any other cases in which the defendants engaged in similar conduct are not established on the record. In declining to reach these issues, however, the court should not be interpreted as signaling that they are insignificant, and this ruling is without prejudice to injunctive relief in appropriate cases, if any.

unreasonable refusal or made in bad faith was a question of fact.") The damages awarded to the plaintiffs will therefore be determined at trial.

21. **Civil Rights Violation and Intentional Infliction of Emotional Distress:** Resolution of these claims depends, respectively, on whether the defendants' conduct was threatening, intimidating, or coercive; or was "extreme and outrageous" and "beyond all possible bounds decency." These determinations cannot be made of the basis of the parties' subjective impressions of their own and each other's conduct. Rather, it will be necessary to hear directly from the parties and their witnesses and assess their credibility, which is not possible at the summary judgment stage. The defendants' motion for summary judgment is therefore denied as to these claims.

22. **ORDER:** Based upon the foregoing, the parties' motions for summary judgment are allowed in part and denied in part. The Clerk's office is requested to convene a case management conference for the purpose of organizing the balance of this litigation and scheduling trial.

So entered this 21st day of April, 2020.

s/s Dina E. Fein
Dina E. Fein
First Justice

cc: CM Michael Doherty

COMMONWEALTH OF MASSACHUSETTS
Hampden,ss WESTERN DIVISION HOUSING COURT

CIVIL ACTION No. 19-CV-922

CITY OF SPRINGFIELD
CODE ENFORCEMENT DEPARTMENT
HOUSING DIVISION,
Plaintiff
v.
J.P. MORGAN, JR. (owner),
Defendants

Re: Premises: 63 Bay Street, Springfield, Massachusetts

**ORDER**

(Hampden County Registry of Deeds Book/Page: #9728/445)
After a telephonic hearing on Wednesday, April 22, 2020 for which a representative of the Plaintiff and Mr. J.P. MORGAN, JR. appeared, the following order is to enter:

1. Defendant J.P. MORGAN, JR. shall board and secure the subject property in accordance with the standards of the US Fire Administration National Arson Prevention Initiative, FORTHWITH, and in any event no later than May 1, 2020 at 9:00 a.m.

2. Defendant J.P. MORGAN, JR. shall post the subject property with emergency contact information for himself or a property manager, including a telephone number, FORTHWITH, and in any event no later than May 1, 2020 at 9:00 a.m.

3. Defendant J.P. MORGAN, JR. shall clean the property of any trash, litter, debris, and overgrowth, FORTHWITH, and in any event no later than May 1, 2020 at 9:00 a.m., and maintain the property as clean of such thereafter.

4. If the Defendant fails to comply with Paragraph one (1) of this order, the Plaintiff shall be allowed access to the above mentioned property, in its sole discretion and dependent upon funding, and board and secure the premises. This order shall remain in effect for the next twelve (12) months. The City may enter and board and secure as often as is necessary to maintain the property as boarded, vacant, and secure.

5. The Plaintiff shall be allowed to place a lien against such property, duly recorded in the Hampden County Registry of Deeds, to recover any and all reasonable costs associated with the said boarding and securing, plus the costs of filing such lien.

6. A copy of this order may be filed in the Hampden County Registry of Deeds, and shall

constitute a lien against the property for payment of such costs incurred pursuant to Paragraphs 4 and 5 of this order, together with the filing fee for filing such lien.

So entered this 22nd day of April, 2020.

Robert G. Fields,
Associate Justice
Western Division
Housing Court

COMMONWEALTH OF MASSACHUSETTS

WESTERN DIVISION, SS.

HOUSING COURT
DEPARTMENT OF
THE TRIAL COURT
CIVIL ACTION
No. 20-CV-201

CITY OF SPRINGFIELD
CODE ENFORCEMENT DEPARTMENT
HOUSING DIVISION,
Plaintiff

v.

DELUCA DEVELOPMENT
RECO SMITH
MARIO ARROYO
LUIS CABRERA
ALDEN CREDIT UNION
Defendants

Re: Premises: 199 Quincy Street, Springfield, Massachusetts

ORDER

After a hearing on April 23, 2020 for which a representative of the Plaintiff appeared, Defendant DELUCA DEVELOPMENT CORP. via counsel, Defendant RECO SMITH appeared via counsel, LUIS CABRERA appeared, MARIO ARROYO appeared, and after having been given notice representative of the remaining Defendants did not appear, the following ASSENTED order is to enter relative to the above referenced property:

1. Civil actions 20-CV-201and 20-CV-218 are hereby consolidated.

2. Defendant DELUCA DEVELOPMENT CORP. shall place Defendants SMITH, ARROYO, and CABRERA in alternative housing (hotel) and pay for such alternative housing through the morning of Tuesday, April 28, 2020.

3. Defendants SMITH, ARROYO, and CABRERA agree to continue their diligent housing search, and to present any options for permanent re-housing at the review date at 9:00 a.m., Monday April 27, 2020.

1. All substantive claims and defenses are hereby reserved, pending further hearing.

4. This matter shall be up for review on Monday April 27th, 2020 at 9:00 a.m.

SO entered this 23rd day of April, 2020.

**Dina E. Fein, First Justice**
**Western Division Housing Court**

Robert G. Fields

**Robert G. Fields, Associate Justice**
**Western Division Housing Court**

**Allowed without opposition**
**Clerk Magistrate / Assistant Clerk Magistrate**
**Western Division Housing Court**

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, SS

HOUSING COURT DEPARTMENT
WESTERN DIVISION

DOCKET NO. 18-SC-0118

CARMEN GARCIA,
Plaintiff

v.

BEVERLY SAVAGE & GEORGE SAVAGE,
Defendants

ORDER

The above-captioned case came before the court for hearing on the defendants' motion to reconsider. Upon consideration of the parties' arguments, the motion is allowed in part and denied in part.

1. **Background**: After trial in this small claims matter, judgment entered in favor of the plaintiff Carmen Garcia (Garcia) on January 2, 2019 (Castillo, ACM), for unpaid rent in the amount of $3,750.00 by her former tenants, the defendants Beverly and George Savage (Savages). On February 13, 2019, the parties reached a payment agreement to satisfy the judgment. In November 2019, Garcia filed a motion to enforce the payment agreement, and the court ordered the Savages to pay $[redacted] per week beginning on November 29, 2019 until the judgment balance was satisfied.

2. By way of their motion to reconsider, the Savages challenge the court's calculation of their required payments. Under the pains and penalties of perjury, the Savages reported gross weekly income of $[redacted],[1] utility payments of $227 per week,

[1] Ms. Savage's contributions towards her pension are not included in this figure.

and rent of $305 per week. As to these amounts, the Savages argue that the exemptions provided for under G.L. c. 235, § 34 ("Section 34") are cumulative and, in their aggregate, render them judgment proof. Garcia argues that the non-wage exemptions under Section 34 should be applied at the first instance to reduce the gross wage figure as to which the wage exemption applies, resulting in non-exempt wages, and a payment order, in the amount of $[redacted] per week[2].

3. **Discussion**: The Savages' motion arises in the context of a motion to enforce a payment order in a small claims case. Upon review of the small claims rules and related commentary, the court concludes that the Savages are entitled to the exemptions listed in G.L. c. 235, § 34 ("Section 34"). While Section 34 identifies property that is "exempt from seizure on execution," and this case does not involve seizure upon execution, the small claims rules and the court-approved Financial Statement of Judgment Debtor form for use in small claims proceedings, make clear that Section 34 is applicable to payment hearings.

4, Section 34 provides in pertinent part as follows:

> The following property of the debtor shall be exempt from seizure on execution:
>
> > First, ... the amount each month, not exceeding $500, reasonably necessary to pay for fuel, heat, refrigeration, water, hot water and light for the debtor and the debtor's family;...
> >
> > Fourteenth,... the amount of money each rental period, not exceeding $2,500 per month, necessary to pay the rent for the dwelling unit occupied by the debtor and the debtor's family;...
> >
> > Fifteenth, ... wages equal to the greater of 85 per cent of the debtor's gross wages or 50 times the greater of the federal or the

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[2] Although Garcia argues for a slightly different amount, her approach yields this figure as applied to the income and expense figures found by the court.

> Massachusetts hourly minimum wage for each week or portion thereof...

5. The Savages argue that their wage exemption should be calculated first, as follows: $[redacted] x 85% = $[redacted] exempt wages, netting $[redacted] non-exempt wages, from which the additional weekly exemptions of $115.38 (for utilities) and $305 (for rent) would be deducted, netting 0 for purposes of a payment order.

6. Garcia argues that the court should apply the weekly exemption for utilities and rent at the first instance, and deduct those amounts from the Savages' weekly income before applying the 85% exemption. Garcia's approach would be applied to the Savages' income and expenses as follows: The Savages' weekly exemptions of $115.38 (for utilities)[3] and $305 (for rent) would be deducted from their gross income of $[redacted] per week, leaving a difference of $[redacted]. The wage exemption (85%) would be applied to this amount, netting non-exempt wages of $[redacted] available for purposes of a payment order.

7. The statutory language provides some assistance in deciding the question before the court. The exemptions are identified sequentially, implying as a matter of statutory construction that they should be imposed in that order, and thereby supporting Garcia's interpretation and argument. In addition, the exemptions are inherently distinct, meaning that the exemptions for utilities and rent exist irrespective of whether the judgment debtor also has wages subject to the 85% exemption. As a practical matter, however, when the judgment debtor's sole source

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[3] This figure represents the $500 per month exemption, multiple by 12 months, divided by 52 weeks.

of income is wages, the court is left to determine how the various exemptions should be applied in light of that wage income.

8. Two policy outcomes are implicit in the legislative decision to exempt (and thereby protect) the **greater** of 85% of wages or 50 times the state minimum wage. First, the vast majority (85%) of a debtor's gross wages are protected and available for living expenses before being reached to satisfy a judgment debt. Second, the wages of relatively higher wage earners are commensurately protected at the rate of 85%, presumably on the theory that their living expenses are also commensurately higher. Put differently, the Legislature could have decided that the exemption would apply to the **lesser** of 85% of gross wages or 50 times the state minimum wage, thereby exposing a larger portion of high wage-earners' income to debt collection, but elected not to do so.

9. Consideration of the statutory language and policy outcomes leads the court to conclude that Garcia's approach is consistent with the intention of the Legislature, for several reasons. First, the utility and rent exemptions are not inherently linked to the debtor's wages. Second, taking the alternative advanced by the Savages to its logical extreme, a debtor earning up to $240,000 per year, who had the maximum exemptions allowed (annualized) for utilities ($6,000) and rent ($30,000) would be judgment proof per the following calculation: $240,000 x 85% = $204,000 (exempt wages) = $36,000 (non-exempt wages) - $36,000 (utility and rent exemptions) = judgment proof. The notion that a judgment debtor earning $240,000 in gross wages per year would be judgment proof for purposes of a small claims judgment for unpaid rent of $3,750, such as is at issue here, is not consistent with the Legislature's

intention in appropriately protecting the need of judgment debtors to afford essential living expenses. Finally, the presumed purpose of protecting 85% of gross wages, as opposed to some smaller percentage, was to ensure that the debtor had sufficient liquidity to afford necessary living expenses; not to deprive a bona fide judgment creditor of resources available to satisfy that judgment.

10. **Conclusion and Order:** Based upon the foregoing, the defendants' motion to reconsider is allowed in part and denied in part. The payment order is reduced to $[redacted] per week in light of the defendants' current income and expenses, and without prejudice to adjustment upwards or downwards should their income and expenses change.

11. In addition, enforcement of this order must be consistent with the Attorney General's emergency regulation concerning debt collection during the COVID-19 emergency, see Unfair and Deceptive Debt Collection Practices During the State of Emergency Caused by COVID-19, 940 CMR 35.01, to the extent, if at all, that regulation is applicable to the plaintiff.

So entered this 23rd day of April, 2020.

s/s

Dina E. Fein
First Justice

**COMMONWEALTH OF MASSACHUSETTS**
**THE TRIAL COURT**

**HAMPDEN, SS**

**HOUSING COURT DEPARTMENT**
**WESTERN DIVISION**

**DOCKET NO. 19-SP-4428**

**CITY OF SPRINGFIELD,**

**Plaintiff**

**v.**

**CAROL BAILEY, ET AL,**

**Defendants**

**RULING AND MEMORANDUM OF DECISION ON DEFENDANTS' MOTION TO REFORM AGREEMENT AND CROSS MOTIONS FOR SUMMARY JUDGMENT**

After hearing and upon consideration of the parties' written submissions, the defendants' motion for summary judgment is denied, the plaintiff's cross-motion for summary judgment is allowed, and the defendants' motion to reform agreement is allowed in part.

1. **Undisputed facts:** For purposes of the cross-motions for summary judgment, the material facts are few and undisputed, as follows: The subject property at 46 Southern Road, Springfield, Massachusetts (the property) was owned by Arthur R. and Mary C. Gaskins until first Ms. Gaskins and then Mr. Gaskins died in 2019. A Probate Court proceeding following Mr. Gaskins' death determined that his son, Arthur Gaskins, Jr., held an interest in the property, and that his daughter, the defendant Carol Bailey (Bailey), did not. Bailey and her co-defendant Makita Gilliam occupy the property.

2. In April 2017, the City of Springfield (City) conducted a tax taking of the property, for the failure of the Gaskinses to pay municipal taxes. The Instrument of Taking was recorded at the Hampden County Registry of Deeds, Book 21640, Page 182. On May 29, 2918 the City filed suit in the Land Court Department to foreclose the tax lien and extinguish the right of redemption. The Gaskinses did not answer the complaint, and a default judgment ultimately entered in favor of the City on March 15, 2019.

3. At times prior to initiation of this summary process case, the defendants had discussions with the City's agent, Revenue Services, LLP, about paying the past due taxes and redeeming the property.

4. **Discussion:** Defendants in a summary process case may raise the plaintiff's title in defense to the claim for possession. *Bank of New York v. Bailey*, 460 Mass. 327 (2011). Construing the facts in favor of the defendants as is required at the summary judgment phase, however, there is no genuine dispute regarding the City's title to the property. The defendants argue that the City's agent unfairly deprived them of an opportunity to redeem the property, which they seek to do. This argument is unavailing, however, for two reasons. First, this court lacks subject matter jurisdiction to consider the defendants's request to redeem the property. Second, given the Probate Court's determination that Bailey held no interest in the property, the defendants do not have a legal right to redeem the property. Assuming without deciding that the City's agent mislead the defendants regarding their rights in some way giving rise to a claim for damages, that behavior did not vest the defendants with an interest in the property and therefore a right to redeem the property, nor did it implicate the City's title to the property.

5, In light of the foregoing, the defendants' motion for summary judgment is denied, and the City's cross-motion for summary judgment is allowed.

6. **Motion to Reform Agreement:** The defendants' motion to reform the parties' agreement dated October 31, 2019 is allowed in part. On April 20, 2020 the Governor signed emergency legislation placing a moratorium on all non-essential evictions in light of the COVID-19 emergency. See *An Act Providing for a Moratorium on Evictions and Foreclosures during the COVID-19 Emergency*, https://malegislature.gov/Bills/191/H4647. As such, the agreement dated October 31, 2019 is reformed so as to eliminate the provision requiring the parties to negotiate a vacate date until such time as the moratorium is lifted.

7. **ORDER:** The defendants' motion for summary judgment is denied, and the plaintiff's cross-motion for summary judgment is allowed. An order (but not a judgment) shall enter awarding possession to the plaintiff. The defendants' motion to reform the parties' agreement is allowed in part.

So ordered this 24th day of April, 2020.

s/s_____
Dina E. Fein
First Justice

**COMMONWEALTH OF MASSACHUSETTS**
**THE TRIAL COURT**

**HAMPDEN, SS**

**HOUSING COURT DEPARTMENT**
**WESTERN DIVISION**

**DOCKET NO. 20-SP-419**

**COPENGER, LLC,**

**Plaintiff**

**v.**

**JAWANDO,**

**Defendant**

**FINDINGS OF FACT AND RULINGS OF LAW**

The above-captioned matter came before the court for trial on March 11, 2020, after which the following findings of fact and rulings of law shall enter:

1. The plaintiff (landlord) owns and the defendant (tenant) rents the first floor unit at 161 King Street, Springfield, Massachusetts (the premises). The tenancy began in January 2019. The agreed upon rent is $1,350 per month, and rent totaling $4,400 is unpaid through March 2020. On or around December 31, 2019 the landlord served and the tenant received a rental period notice terminating the tenancy.

2. In defense and counterclaim to the landlord's case, the tenant alleges unlawful "cross-metering." Specifically, the tenant testified credibly that the basement lights are on her electric meter and therefore included in the electric bill for her unit, which she is required under the lease to pay.[1] The lease also prohibits the tenant from storing

[1] While the Code Enforcement notice finding cross-metering was not certified and thereby not admissible by statute, it is facially reliable. In addition, the fact that the basement lights are on the tenant's meter is not disputed by the landlord; in fact, it is contemplated by the parties' lease

anything in the basement, and the tenant testified credibly that the basement is locked and she does not have access to it.

3. In response to the tenant's allegations, the landlord points to the lease between the parties, which provides in pertinent part as follows:

> ...19. **UTILITIES:** Paid by Owner: water and sewer, city trash pick-up. Paid by Tenants: heat, hot water, cooking and electric serving the apartment and **some common area lights that they cannot control and may be on all the time for security purposes.**

4. As a general rule, tenants may only be required to pay for utilities that are separately metered to the unit they rent. 105 CMR 410.354(C)("If the owner is not required to pay for the electricity or gas used in a dwelling unit, then the owner shall install and maintain wiring and piping so that any such electricity or gas used in the dwelling unit is metered through meters which serve only such dwelling unit...") A limited exception exists under 105 CMR 410.254(B), which provides in pertinent part as follows:

> [T]he light fixtures used to illuminate a common hallway, passageway, foyer and/or stairway may be wired to the electric service serving an adjacent dwelling unit provided that if the occupant of such dwelling unit is responsible for paying for the electric service to such dwelling unit:
>
> **(1)** a written agreement shall state that the occupant is responsible for paying for light in the common hallway, passageway, foyer and/or stairway...

5. The exception provided for under 105 CMR 410.254(B) does not apply to the scenario at issue in this case, for two reasons. First, the exception applies to specified areas, which are typically adjacent to a given unit, and do not include a basement. Second, the exception applies to specified *common* areas, that is areas used in common by residents of the property. In this case, the basement is not a "common"

area; in fact, the basement is specifically excluded from use by the tenant, contractually by operation of the lease, and practically by virtue of the fact that it is locked.

6. In requiring the tenant to pay for electricity to the basement, the landlord violated G.L. c. 186, section 14, which prohibits a landlord from "transferring the responsibility for payment for any utility services to the occupant without his knowledge or consent." While the tenant signed a lease that obligated her to pay for "some common area lights," I credit her testimony that she did not understand that lease provision to include the basement lights. In addition, for the reasons set forth above, the basement is not a "common area," and the lease therefore neither informed the tenant nor secured her consent to pay for basement lights.

7. Pursuant to G.L. c. 186, section 14, the tenant is entitled to the greater of three months' rent or her actual damages. The tenant did not establish actual damages in excess of three months' rent. Although she introduced into evidence various records from Eversource, those records are not self-explanatory, and do not prove the total of the electric bills charged and paid by the tenant over the course of her tenancy, assuming without deciding that the total of those bills represent her actual damages. The tenant is therefore awarded $4,050 (3 x $1,350) for the landlord's violation of G.L. c. 186, section 14.

8. **ORDER**: In light of the foregoing, and pursuant to G.L. c. 238, section 8A, the tenant is entitled to a judgment for possession if she pays the difference between the unpaid rent ($4,400) and the amount awarded to her ($4,050), plus interest and costs. Pursuant to COVID-19 emergency legislation signed by the Governor on April 20, 2020, however, there is a moratorium on all "non-essential" evictions, including this case, as to

which all deadlines are tolled and no judgments may enter. As required by that legislation, therefore, the deadline for the tenant to pay the difference is tolled, and the question of whether judgment enters in her favor (if she makes the payment) or in favor of the landlord (if the tenant does not make the payment) is also tolled until the moratorium is lifted.

9. The moratorium is in place for 120 days from April 20, 2020, or 45 days after the Governor lifts his COVID-19 emergency order, whichever is sooner. When the moratorium is lifted, the court will issue a further order with respect to payment under G.L. c. 239, section 8A. The Clerk's office is requested to bring this case to the attention of the undersigned judge immediately upon the lifting of the moratorium.

So entered this 28th day of April, 2020.

/s/
Dina E. Fein
First Justice

cc: CM Michael Doherty

**THE TRIAL COURT**
**COMMONWEALTH OF MASSACHUSETTS**

Hampshire, ss:

Housing Court Department
Western Division
**No. 20-CV-252**

**MELISSA STANDLEY,**

**Plaintiff,**

**v.**

**EMILY KREMS, JAIME CACHIGUANGO, and MALIK HUSSEIN,**

**Defendants.**

**ORDER**

After a telephonic hearing on May 19, 2020, at which all the parties appeared, the following order entered on the record and is memorialized herein:

1. Malik Hussein, who also resides at the subject premises located at 28 S. Silver Lane in Sunderland, Massachusetts, and who attended the hearing, is added as a party defendant in this matter.
2. Ms. Standley's request that the court order that Mr. Cachiguando not return to the premises upon his return from Equador is denied. That said, upon Mr. Cachiguando's return home, he shall strictly comply with COVID-19 protocols regarding quarantine.
3. Ms. Krems' request that the court order that Ms. Standley be summarily removed from the premises as a remedy in this civil matter is denied, as are here requests that Ms. Standley not have visitors and to stay 10 feet away from other household residents.

4. Ms. Standley and Mr. Hussein shall not communicate with one another directly other than what is necessary to peacefully share the common areas of the premises. Any and all communications between them shall be in writing.

5. Ms. Krems and Mr. Cachiguando, as co-owners of the premises, shall FORTHWITH have a licensed electrician inspect and make necessary repairs to the provision of electrical service to the Ms. Standley's room. They shall also hire a professional to inspect and make necessary repairs to the ventilation system for the washer and dryer at the premises.

6. This matter is referred to the Town of Sunderland Board of Health. Given the description of the living arrangement at the premises, which currently has three residents but will soon have five residents (once Mr. Cachiguando and his son return), and given the allegations that Ms. Standley is using an extension cord from another room for the entirety of her electricity in her room, the court is concerned that this premises are being used as an illegal rooming house. A Court Housing Specialist shall contact, and share a copy of this order with, the Town of Sunderland Board of Health.

So entered this 19th of March 2020.

Robert Fields, Associate Justice

cc: Laura Fenn, Esq., Assistant Clerk Magistrate (to add Mr. Hussein as a party defendant)
Michael Roche, Esq., Deputy Chief Housing Specialist (for referral to Board of Health)

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT DEPARTMENT

BERKSHIRE, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 20-CV-240

RUBY REALTY, LLC
YELLOWBRICK MANAGEMENT, INC.
*Plaintiffs*

v.

REBECCA STANARD
*Defendant*

**ORDER**

After a hearing on Tuesday, May 19, 2020, for which Counsel for all Parties were present but for which the Defendant did not appear, the following Order is to enter:

1. The Tri-Town Board of Health is hereby ordered to inspect the subject property, located at 180 Forest Street, Lee, Massachusetts, as soon as possible but no earlier than Wednesday, May 27, 2020, for any and all emergency conditions that may exist at the property.

2. The Defendant shall provide the Board of Health Inspectors access to the interior and exterior of the property for this inspection.

3. If the Defendant is not present for the inspection, the Plaintiffs may provide the Board of Health Inspectors access for inspection but shall not act in an unreasonable manner to aggravate the Defendant.

4. The Plaintiffs are allowed one agent to be present for the inspection by the Board of Health so long as the agent remains on the exterior of the property.

5. The Defendant shall contact YellowBrick Management, Inc. immediately should any emergency occur or repair be needed, including but not limited to a fire, water leak, flooding, and/or damage to or collapse of a structural element of the property. In the event of an emergency, the Defendant shall also immediately call the corresponding emergency assistance for aid, including the fire department or police department.

6. If the Board of Health determines an emergency condition exists, counsel for the respective parties shall confer in an attempt to reach agreement on what safety measures will be followed in order for necessary repair work to proceed, including but not limited to the minimum number of workers required to effect the repair, the wearing of masks and gloves, and any potential disinfecting of the area to be repaired.

7. The Defendant shall restrain or otherwise remove or restrain any animals in the property during the entire period of inspection or repairs.

8. [redacted]

9. Either party may request a hearing as needed.

So entered this 20th day of May 2020.

Dina E. Fein, First Justice
Western Division Housing Court

w/ pen

COMMONWEALTH OF MASSACHUSETTS

WESTERN DIVISION, SS.

HOUSING COURT
DEPARTMENT OF
THE TRIAL COURT
CIVIL ACTION
No. 20-CV-179

CITY OF SPRINGFIELD
CODE ENFORCEMENT DEPARTMENT
HOUSING DIVISION,
Plaintiff

v.

HSB INVESTMENTS, LLC (owner),
IRIS SANTOS (tenant),
KAISHLA LUGO (tenant),
FIRST FRANKLIN FINANCIAL CORP. (mortgagee),
FREEDOM CREDIT UNION (mortgagee),
Defendants

Re: Premises: 212-216 White Street, 2nd Floor, Springfield, Massachusetts

**ORDER**
**(Hampden County Registry of Deeds Book/Page #19052/406)**

After a telephonic hearing on June 8th, 2020 for which a representative of the Plaintiff and HSB INVESTMENTS, LLC appeared with counsel, and after having been given notice of said hearing a representative of the remaining Defendants did not appear, the following order is to enter:

1. Defendants IRIS SANTOS and KAISHLA LUGO and their respective household members must vacate their dwelling unit at the above said premises, FORTHWITH, and not re-occupy until such time as the unsanitary conditions have been corrected, all egress obstructions have been resolved, and the condemnation has been lifted by the Plaintiff, or by leave of Court.

2. Defendants IRIS SANTOS and KAISHLA LUGO shall correct all State Sanitary Code emergency violations cited in Plaintiff's original petition as listed in Exhibit A, under tenant violations, FORTHWITH. The cited emergency tenant violations include but are not limited to unsanitary conditions throughout the interior, blocked egress/exits, and lack of gas service.

3. This Court shall make referrals to [redacted] and Community Legal Aid (CLA) for Defendants IRIS SANTOS and KAISHLA LUGO, referencing this Court's order and the next review date on June 26, 2020 at 11:30 a.m.

4. Defendant KAISHLA LUGO shall be added sua sponte to this instant action.

5. **Defendants IRIS SANTOS and KAISHLA LUGO shall both appear on the next review date, June 26, 2020 at 11:30 a.m. via Zoom Video Conference.**

6. **This matter shall be up for review with the court on Friday, June 26, 2020 at 11:30 a.m. via Zoom Video Conference. <u>Please see attached Zoom Video Conference instructions attached to this order.</u> Failure of the Defendants to appear on said date may result in the filing of a complaint for contempt or the issuance of a capias for their arrest.**

**So entered this** 9th **day of** June **, 2020.**

**Dina E. Fein, First Justice**
**Western Division Housing Court**

w/poom.

**COMMONWEALTH OF MASSACHUSETTS**
**TRIAL COURT OF THE COMMONWEALTH**

Hampden, ss:

Housing Court Department
Western Division
Docket No.: 19-CV-1109

FLORENCE ELDRIDGE )
Plaintiff )
)
v. )
)
JUDY FIERRO, RICHARD ROY, )
and ALLEN PARK APARTMENTS )
Defendants )

**ORDER**

After hearing on June 19, 2020 on Defendant Allen Park Apartments' Motion to Prohibit Plaintiff from Contacting Defendant Allen Park Apartments about Alleged Smell of Smoke Without Documented Evidence of Smoking by Persons on the Property, at which the Plaintiff appeared, Defendant Fierro appeared, Defendant Roy appeared and Defendant Allen Park Apartments appeared with counsel, the following Order shall enter:

1. The terms of the Court's Order dated February 26, 2020 remain in full force and effect.
2. There shall be no smoking at the property including but not limited to cigarette smoking or marijuana smoking.
3. The smoke detectors in the building shall remain in place and the parties are ordered not to disable or tamper with the smoke detectors. Allen Park shall instruct all other occupants at the property not to disable or tamper with the smoke detectors.
4. Defendant Allen Park Apartments is not required or obligated to respond to or investigate any calls and/or communication from the Plaintiff concerning the smell of smoke unless the smoke detectors in the building are alarmed and/or sounding.
5. Defendant Allen Park Apartments may post a copy of this Order in the building.

Dated: June 22, 2020

/s/ Dina E. Fein (recall)
Dina E. Fein
First Justice

**THE TRIAL COURT**
**COMMONWEALTH OF MASSACHUSETTS**

**Hampshire, ss**

**Housing Court Department**
**Western Division**
**No. 20 SP 1086**

**POAH COMMUNITIES, LLC AS LESSOR, AND MEADOWBROOK PRESERVATION ASSOCIATES, LP, AS OWNER,**
**Plaintiffs**

**v.**

**ORDER**

**ALEXANDER PATTERSON,**
**Defendant**

After a Zoom hearing held before the undersigned on June 22, 2020, at which the plaintiff appeared through counsel, and the defendant failed to appear despite having received notice to do so, the following order does hereby issue:

1. The court credits the testimony from the plaintiff's witnesses that there are ongoing significant disturbances and lease violations by the defendant.

2. The court has not determined whether the behavior of the defendant rises to the level of warranting an essential eviction, but has found that the behavior warrants injunctive relief.

3. Accordingly, the defendant, Alexander Patterson, is hereby prohibited from having any unauthorized occupants at the subject premises, is prohibited from smoking at the subject premises, is prohibited from conducting any criminal activity at the subject premises, and shall not cause or permit any of his guests to cause any disturbances.

4. A further Zoom hearing shall be held on **July 15, 2020 at 2:00 p.m. (see attached zoom instruction sheet).** Patterson is ordered to appear at the next hearing. If, prior to the next scheduled hearing, there is an alleged imminent threat to the health and safety of other residents, the plaintiff may schedule this matter for further hearing.

5. Prior to the next hearing, the defendant may contact Community Legal Aid (855) 252-5342 for legal assistance.

So entered this 23rd day of June 2020.

Dina E. Fein / KC ACM
upermission

Dina E. Fein
First Justice (Recall)

**THE TRIAL COURT**
**COMMONWEALTH OF MASSACHUSETTS**

Hamdpen, ss:

Housing Court Department
Western Division
**No. 20-CV-270**

**WEST SPRINGFIELD HOUSING AUTHORITY,**

**Plaintiff,**

**v.**

**RAFAEL and JENNIFER RIOS,**

**Defendants.**

**JUDGMENT IN CONTEMPT**

**En Spanish: IMPORTANTE: Este documento contiene informacion importante sobre sus derechos, responsabilidads y/o beneficios. Es importante que usted entienda la informacion en este documento.**

**In English: IMPORTANT: This document contains important information about your rights, responsibilities and/or benefits. It is critical that you understand the information in this document.**

This matter came before the court on June 25, 2020 for a contempt trial, at which only the plaintiff appeared after proper notice was served on the defendants. After hearing, the following order shall enter:

**1.** The plaintiff, Westfield Housing Authority (hereinafter "plaintiff" or "landlord"), filed this contempt complaint alleging that the defendants, Rafael Rios and Jennifer Rios (hereinafter "defendants" or "tenants"), failed to comply with the June 8, 2020 Agreement of the Parties (hereinafter, "Agreement"), which states:

> The defendant agrees that he and Jennifer Rios shall be the only adult occupants of his unit, per the agreement filed in 19-SP-4817.

Additionally, an Agreement of the Parties in the summary process action (19-SP-4817) between these same parties and dated December 6, 2019 which is referred to in the Agreement in this instant civil matter states:

> Tenant agrees that within 30 days from today only Rafael Rios and Jennifer Rios will reside in the unit.

**2.** Based on the testimony of the upstairs and next door neighbors, Rafael Rios is found to have violated the terms of both agreements by allowing his other adult daughter to reside at the premises with her children since June 8, 2020 when the agreement was signed.

**3. Regarding Defendant Jennifer Rios:** Ms. Rios is named, along with her father Rafael, in the complaint underlying this civil action. On the occasion that the Agreement was filed (June 8, 2020) Ms. Rios was not present and only Rafael Rios signed the Agreement. As such, the contempt finding that the terms of the June 8, 2020 Agreement noted above only holds to Rafael Rios and not Jennifer Rios.[1]

**4. Context of this action within the statewide Eviction Moratorium and Housing Court Department Standing Order 5-20:** As part of the governor's emergency declaration in response to the COVID-19 pandemic, the Commonwealth of Massachusetts enacted an eviction moratorium (hereinafter, "Moratorium"). Chapter 65 of the Acts of 2020. Thereafter, on May 1, 2020, the Housing Court Department issued Standing Order 5-20 and then updated same on May

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[1]Additionally, but not necessary to adjudicate for the purposes of the contempt proceedings, the court takes notice that Jennifer Rios' status as a party to the Summary Process matter (19-SP-4817) stems solely from an agreement in that matter which added her as a defendant but was negotiated and signed solely by Rafael Rios.

27, 2020. The effect of these laws and orders is that the only type of eviction cases that can be advanced in the court are ones based on:

> "(a) criminal activity that may impact the health or safety of other residents, health care workers, emergency personnel, persons lawfully on the subject property or the general public; or (b) lease violations that may impact the health or safety of other residents, health care workers, emergency personnel, person lawfully on the subject property or the general public;"

Additionally, Standing Order 5-20 establishes how such evictions may be newly filed or, for those cases filed prior to the pandemic, advanced in the court. The plaintiff in this action chose to file a new complaint for injunctive relief in this matter, and did not move to advance the existing summary process action (19-SP-4817) or seek to file a new eviction matter within the current protocols. Instead, the plaintiff filed this civil action seeking injunctive relief on May 26, 2020 and on June 8, 2020 the parties entered into the agreement described above.

**5. Discussion:** As stated above, the defendants did not appear for the contempt trial and the court finds that the plaintiff met its burden of proof that the defendant, Rafael Rios, has violated the terms of the June 8 2020 Agreement by allowing another adult and her children to reside at the premises. The contempt complaint seeks only one prayer for relief which is that the defendants be held in contempt. Thus, within the context of the Moratorium and Housing Court Department Standing Order 5-20, the following below order shall enter:

**6. Order:** Based on the foregoing, the following order shall enter:

A. Mr. Rafael Rios is found to be in contempt of the June 8, 2020 Agreement.

B. Mr. Rafael Rios, and the co-defendant in the underlying civil action Jennifer Rios, shall immediately cease allowing any person from residing

at their home other then themselves, Rafael and Jennifer Rios.[2]

B. The court is aware, given the global pandemic of COVID-19, that these are extraordinary times and if the defendants wish to request any type of amendment to this order they must coordinate the filing and service of a Motion to Amend with the Clerks Office (which can be reached at 413-748-7838).

So entered this 1st day of July, 2020.

Robert Fields

Robert Fields, Associate Justice

cc: Laura Fenn, Esq., Assistant Clerk Magistrate

[2]Given the court's order today, it need not reach the legal question of whether it can order dispossession of the defendant tenants during the time that the Moratorium and Standing Order 5-20 are in full force effect as part of a contempt order in a non-summary process action.

**THE TRIAL COURT**
**COMMONWEALTH OF MASSACHUSETTS**

Hampshire, ss:

Housing Court Department
Western Division
**No. 20-CV-274**

**EDWARD BROWN,**

**Plaintiff,**

**v.**

**GEORGE DEMSICK and EVANS HOUSE,**

**Defendant.**

**ORDER**

After a Zoom hearing on June 24, 2020 on the parties' cross-motions for injunctive relief, at which both parties appeared with counsel, the following order shall enter:

1. The court continues to find and so rule that Edward Brown (hereinafter, "Brown") is a tenant and not a licensee of George Demsick (hereinafter, "Demsick") and that Demsick is a landlord that must comply with G.L. c.186 and c.239.

2. Brown met his burden of persuasion that Demsick has failed to sufficiently restore Brown's tenancy by, among other things, failing to allow Brown to return to the room he was residing in when he was summarily ejected from the premises in March, 2020.

3. The court is also persuaded that Demsick has further failed to restore Brown to his tenancy by, among things, unilaterally denying Brown (and the other residents) the ability to smoke his cigarettes on the porch (which had previously been allowed) and further

prohibiting Brown from smoking cigarettes in the newly created smoking area.

4. Further, Demsick has acted inappropriately when he required him to stay away from the premises—including the outside yard areas—for hours at a time on the occasions that plumbers were there to make repairs. It is noteworthy, too, that this action and Demsick's denying Brown the use of showers in other parts of Evans House when he had no hot water and suggesting that Brown shower at the YMCA, display behavior that thoroughly undermines Demsick's professed concerns about Brown posing a health risk to others due to his alleged failures to comply with COVID-19 safeguards. By requiring Brown to stay away from the property and not even be allowed to remain on the yard of the property for hours at a time—unnecessarily, as the plumbers were at the premises for short periods of time on those occasions—Demsick caused Brown to be in public areas where he would likely come into contact with others instead of remaining safely at the premises.

5. Additionally, Demsick's locking the back door—the only door for which Brown has a key—when Brown left the premises to run an errand was inappropriate and a further indication of failing to fully restore Brown to his former tenancy.

6. Demsick failed to meet his burden of persuasion that any injunctive order is necessary to issue against Brown. That said, the parties stipulated during the hearing that there are rules regarding sobriety at the premises and Demsick has remedy at law to enforce those rules, including by terminating the tenancy and bringing an eviction action or vis-a-vis a civil injunctive claim and sufficiently proving violation of these rules.

7. Accordingly, Demsick is hereby ordered to perform the following:

    a. Immediately, or as soon as is practicable, make Room 1 in Unit 10

habitable and return Brown to his tenancy therein with the same or similar furniture that was present at the time of his ouster.

b. Immediately restore Brown's right to smoke his cigarettes on the porch until such right is properly extinguished in accordance with the law.

c. Cease direct in-person communication with Brown, and communicate only in written/texted form and remain 10 feet away from Brown, other than in a *bona fide* emergency.

d. Immediately cease preventing Brown from leaving from and returning to the premises.

**8.** The Clerks Office shall schedule a Case Management Conference regarding the scheduling of the remainder of this litigation.

So entered this 13th of July, 2020.

Robert Fields / KE acm w/permission
Robert Fields, Associate Justice

cc: Kara Cunha, Esq., Assistant Clerk Magistrate for scheduling of CMC

COMMONWEALTH OF MASSACHUSETTS

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET 20H79CV000222

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**32 BYERS, INC.** (Plaintiff)

**V.**

**IDALIZ MALDONADO** (Defendant)

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**TEMPORARY COURT ORDER**

This matter came before the Court for a video conference hearing on July 27, 2020 on Plaintiff's motion for a temporary restraining order. Plaintiff appeared through counsel and Defendant did not appear after notice. Based on the testimony of Plaintiff's witness, Nilsa Cruz, the Court finds that Plaintiff has a good faith belief that Defendant is no longer occupying apartment 205 at 32 Byers Street, Springfield, Massachusetts (the "Premises") and that other individual have access to the Premises and may be using it for illegal activities. Accordingly, the following Order shall enter:

1. Plaintiff may change the locks to the Premises and deactivate Defendant's fob used to enter the building in which the Premises are located.
2. Prior to the next hearing, Defendant may file a motion with the Court seeking an order allowing her to re-enter the Premises, which motion shall be heard on short notice.
3. This matter shall be scheduled for further hearing on **August 3, 2020 at 9:00 a.m.**

SO ORDERED.
July 27, 2020

Jonathan J. Kane
Associate Justice

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 20H79CV000399

**GAIL MANCHINO,**
)
**PLAINTIFF**
)
**V.**
)
**DANIELLE DERNAGO,**
)
**DEFENDANT**
)

**ORDER ON MOTION FOR TEMPORARY RESTRAINING ORDER**

This matter came before the Court by video-conference technology on July 28, 2020 on Plaintiff's emergency motion for a temporary restraining order. Plaintiff appeared and represented herself. Defendant did not appear. Because Defendant did not appear, the Court considers Plaintiff's motion ex parte.

Defendant resides in a single family home at 44 Littleton Street, Springfield, Massachusetts (the "Property") with two daughters, one of whom is the Defendant. Plaintiff alleges that Defendant has been physically abusive and has repeatedly stolen Plaintiff's [redacted] medication and money, and has caused property damage, including smashing Plaintiff's television. Defendant has not been on the Property for five days and, according to Plaintiff, often stays with friends [redacted]

The Court finds that Defendant's behavior places Plaintiff's health and safety in significant danger and is likely to cause irreparable harm. The Court further finds that the risk of

irreparable harm to Plaintiff outweighs the potential harm to Defendant who appears to often reside in locations other than the Property. Accordingly, the following Order shall enter.[1]

1. Defendant is enjoined from entering or remaining at the Property until further order of this Court.[2]

2. Defendant may ask this Court to modify or terminate this Order upon written notice to Plaintiff.

3. This is a temporary Order will shall expire at 11:59 p.m. on August 6, 2020 (ten days from today) unless extended by this Court.

4. The Court will hold a further hearing on this matter by Zoom at **2 p.m. on August 6, 2020**. The instructions for attending the hearing are the same as for the hearing held today.

5. The legislative fee described in G.L. c. 262, § 4 is hereby waived.

SO ORDERED.
July 28, 2020

Jonathan J. Kane
Associate Justice

[1] Plaintiff is advised that this Court cannot issue abuse prevention orders and violation of this Order is not a criminal offense. She can get an abuse prevention order from District Court.
[2] To the extent that the Massachusetts Eviction Moratorium Law, Chapter 65 of the Acts of 2020, applies, the Court determines that this case is not a "non-essential eviction" as that term is defined therein

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 20H79CV000323

| | | |
|---|---|---|
| **VILLA NUEVA VISTA ASSOCIATION,** | ) | |
| | ) | |
| **PLAINTIFF** | ) | |
| | ) | **ORDER** |
| **v.** | ) | |
| | ) | |
| **MILAGROS AGRAMONTE,** | ) | |
| | ) | |
| **DEFENDANT** | ) | |

On June 26, 2020, Plaintiff filed a verified complaint and application for a temporary restraining order alleging, in part, that Defendant poses a threat to the safety of other residents in the housing complex where she lives[1] as a result of a kitchen fire that occurred on April 14, 2020 and the erratic and hostile behavior displayed by Defendant toward management on June 18, 2020. In its request for injunctive relief, Plaintiff requests authorization to disconnect the stove in Defendant's apartment at 6 Harriet Street, #5, Springfield, Massachusetts (the "Premises"), among other relief.

On July 6, 2020, the parties, both of whom were represented by counsel,[2] entered into an interim agreement (the "Agreement') as a temporary measure [redacted]. The parties agreed that the matter would return to the Court for review on July 21, 2020 and that, during the interim period, Defendant's stove would be disconnected. At the hearing on July 21, 2020, this Court extended the terms of the Agreement for one week to allow Plaintiff the opportunity to investigate the cost and complexity of installing a

[1] The housing complex in question has over 100 units and has a project-based Section 8 contract with HUD.
[2] Defendant's counsel has appeared on a limited assistance representation basis at each court event to date.

kitchen fire prevention device such as CookStop[3] on Defendant's stove. Upon returning to the Court for further video-conference review on July 27, 2020, Plaintiff's counsel represented that his client investigated CookStop technology but was opposed to installing it because it could be difficult to use properly and, in any event, Defendant could override its safety features. Plaintiff contends that Defendant may not be able to live independently or operate the stove safely under any circumstances.

Defendant's counsel argued that the temporary agreement to disconnect the stove should be lifted because it was causing an undue burden on Defendant and because Plaintiff was unlikely to prevail on its underlying claims. He represented to the Court, and Defendant confirmed,[4] that Defendant has a medical appointment on August 6, 2020, the purpose of which is, at least in part, to assess her ability to live independently. [redacted].

The Court is appreciates the significance of the risk posed to a sizable housing complex with elderly tenants if Defendant is unable to operate her stove safely. The Court must, however, balance the risk with the hardship on Defendant in light of all of the circumstances. She testified that she spends (by her estimate) $125.00 each week on food. She denies that she has family members who can prepare meals for her regularly. Most important, based on Defendant's responses to questions posed by counsel and the Court, the Court did not perceive any obvious indication of confusion or diminished cognitive abilities and concludes that Defendant understands the gravity of the situation and the importance of complying with court orders.

[3] Throughout this Order, for convenience, the Court will refer to the technology by the brand name "CookStop" as a stand-in for any substantially similar technology that might be sold under a different name.
[4] At each stage of the litigation process, Defendant has had the services of a Spanish language interpreter.

Based on the limited information available to it (and acknowledging that it has yet to take evidence on the underlying allegations in this case), the Court concludes that Defendant will be able to use CookStop technology as intended and that the technology will effectively prevent additional stove fires.[5] The Court is aware that it is placing a burden on Plaintiff to incur the expense of purchasing the technology and installing it, but the Court expects the technology will be able to be used elsewhere on the property if it is no longer being used by Defendant. In reaching its decision, the Court is influenced by the likely extended nature of the proceedings given the time it can take for results from appropriate health care professionals, especially if follow-up appointments are necessary.

Accordingly, the following Order shall enter:

1. Plaintiff shall install CookStop technology in the Premises as soon as possible, but in no event later than August 3, 2020. After installation, Plaintiff shall instruct Defendant on its proper use. Thereafter, Defendant may use the stove but must use the CookStop technology and must operate the stove safely. Prior to installation, Defendant shall not be permitted to use the stove.
2. If Defendant fails to use the stove safely after installation of the CookStop technology, Plaintiff may mark up an emergency motion for relief.
3. Defendant shall attend her scheduled medical appointment on August 6, 2020 and promptly schedule and attend any follow-up appointments that may be recommended by health care professionals.
4. Defendant shall cooperate with TPP following the August 6, 2020 medical appointment.

[5] It is worth nothing that the fire in question occurred on or about April 14, 2020 and that Defendant apparently continued to use the stove without incident (other than Defendant's complaint about the functioning of the stove) prior to it being disconnected by agreement in July.

5. A hearing on the motion for preliminary injunction will take place on Tuesday, August 25, 2020 at 2 p.m.[6]

6. The legislative fee set forth in G.L. c. 262, § 4 is waived.

SO ORDERED.
July 28, 2020

Jonathan J. Kane
Associate Justice

[6] Following the medical evaluation and consultation by TPP, the parties are encouraged to schedule mediation with a Housing Specialist to attempt to resolve the case prior to the hearing.

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 20H79CV000241

**STACIE MORRIS,**

**PLAINTIFF**

**V.**

**GREYSBELL DAVID AND DAHAVIAN DAVID,**

**DEFENDANTS**

## ORDER ON MOTION FOR ACCESS

This matter came before the Court by video-conference technology on July 29, 2020 on Plaintiff's emergency motion for access to make repairs. Plaintiff appeared and represented herself. Defendant Greysbell David appeared with counsel through the Lawyer for a Day program and had the assistance of a Spanish language interpreter.

Plaintiff is an owner of and resides in a duplex on Central Street, Springfield, Massachusetts. Defendants live in the second unit in the duplex with an address of 91 Central Street (the "Premises"). Plaintiff seeks a court order allowing access to make repairs with respect to leak, a hole in an exterior wall and to conduct an extermination. After hearing, the following Order shall enter:

1. Plaintiff and her husband may enter the Premises between the hours of 11 a.m. and 6 p.m. on weekdays to make the necessary repairs of the leak and areas affected by the leak, to repair the exterior wall, and to conduct the extermination.

2. Plaintiff must provide Defendants with no less than 24 hours' advance notice each time they must enter. Plaintiff and her husband may enter one time to inspect and determine the scope of work and as often as reasonably necessary to complete the work and extermination (provided that separate 24 hours' notice is given each time unless otherwise agreed by Defendants).

3. Plaintiff's husband may not enter or remain in the Premises alone; he must be accompanied by Plaintiff at all times.

4. All work shall be performed as promptly as possible to limit the number of times and length of time Plaintiff and her husband are in the Premises. Materials and equipment reasonably necessary for the work may be temporarily left in or around the Premises while the work is in progress, so long as nothing interferes with Defendants' ability to enter and leave the Premises.

5. Plaintiff's husband and Defendants shall have no communication other than that which is directly related to the work being performed (for example, there shall be no discussions about previous incidents or payment of rent, etc.).

6. Everyone who enters the Premises in accordance with this Order shall observe COVID-19 safety protocols which include wearing masks and gloves and remaining socially distant from one another (at least 6 feet apart).

7. If either party alleges a material violation of this Order, they may schedule a motion with the Court.

8. The legislative fee described in G.L. c. 262, § 4 is hereby waived.

SO ORDERED.
July 29, 2020

Jonathan J. Kane
Associate Justice

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 20H79CV000391

| | | |
|---|---|---|
| **PHEASANT HILL VILLAGE ASSOC.,** | ) | |
| | ) | |
| **PLAINTIFF** | ) | |
| | ) | **INTERIM ORDER** |
| **V.** | ) | |
| | ) | |
| **ANTHONY LOPEZ-EATON** | ) | |
| | ) | |
| **DEFENDANT** | ) | |

This matter came before the Court for a video conference hearing on July 31, 2020 on Plaintiff's motion for preliminary injunction. Both parties appeared through counsel.

The basic relevant facts, all of which appear to be undisputed, are as follows:

1. Alicia Eaton ("Ms. Eaton") was a tenant residing at 40 Paul Revere Drive, Feeding Hills, Massachusetts (the "Premises") pursuant to a written lease dated January 1, 2010. The lease lists Defendant (Ms. Eaton's son) and Ms. Eaton's daughter [redacted] as authorized occupants.

2. Defendant moved out of the Premises in October 2012 and was removed from the lease.

3. Ms. Eaton passed away on or about June 30, 2020. The only remaining authorized occupant of the Premises at the time of Ms. Eaton's death was her 13-year old daughter [redacted].

4. Following Ms. Eaton's death, [redacted] was placed in foster care and is not living at the Premises.

5. The property of which the Premises are part is subsidized by the U.S. Department of Housing and Urban Development ("HUD") through the project-based Section 8 program.

6. Defendant moved into the Premises at some time prior to Ms. Eaton's death to assist in caring for his mother and sister [redacted]. He was not added to the lease or disclosed to Plaintiff during the recertification process.

7. Defendant has continued to reside in the Premises following Ms. Eaton's death.

8. Plaintiff sent Defendant a notice of trespass dated July 17, 2020 forbidding him to enter or remain in the Premises.

Plaintiff now seeks to enjoin Defendant from occupying the Premises and to authorize it to change the locks. Defendant's opposition to the motion is based in significant part on the rights of [redacted] to succeed to her mother's subsidy. [redacted], however, is not a party in this case, nor is she competent to participate as a party in the case due to her age.

Given that [redacted] may have a property interest in the rental subsidy, and given that she would likely lose the subsidy if the Court allows Plaintiff's motion, the Court wants to ensure that it has considered any potential irreparable harm to [redacted] if it issues an injunction against Defendant.[1] Accordingly, the Court orders that a further hearing be scheduled to address the following issues:

1. Does the Department of Children and Families represent [redacted] with respect to her potential interest in the subsidy? If so, should they be added as an indispensable party in this case?[2] If not, should the Court appoint a guardian ad litem to represent [redacted] 's interest in this

[1] To be clear, the Court has not yet concluded that [redacted] has successor rights to the subsidy even if she does make a claim to them. Moreover, the Court has not determined that Defendant has any continuing right to occupy the Premises if [redacted] has successor rights.

[2] The Court can order a person joined as a party in the action if she "claims an interest relating to the subject of the action and is so situated that the disposition of the action in [her] absence may … as a practical matter impair or impede [her] ability to protect that interest. *See* Mass. R. Civ. P. 19(a).

proceeding?

2. Is there currently a Juvenile Court proceeding involving custody of [redacted]? If so, what is the status of the proceeding and who is representing [redacted]'s interests in the proceeding?

3. Are there any additional facts for the Court to consider regarding [redacted]'s living arrangements, both presently and in the future?

To the extent that either party wishes to submit any additional evidence bearing on the issue of [redacted]'s interest in this proceeding, it shall contact the Clerk's Office to ensure it is filed and served in advance of the hearing date.

SO ORDERED.

Jonathan J. Kane
Associate Justice

cc:
Department of Children and Families
Clerk's Office (for scheduling)

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 20H79CV000391

| | | |
|---|---|---|
| **PHEASANT HILL VILLAGE ASSOC.,** | ) | |
| | ) | |
| **PLAINTIFF** | ) | |
| | ) | **ORDER ON PLAINTIFF'S** |
| **V.** | ) | **MOTION FOR PRELIMINARY** |
| | ) | **INJUNCTION** |
| **ANTHONY LOPEZ-EATON** | ) | |
| | ) | |
| **DEFENDANT** | ) | |

On August 27, 2020, this matter came before the Court for further video conference hearing on Plaintiff's motion for preliminary injunction. Both parties appeared through counsel. Ingrid Richard, who represents Defendant's minor sister, [redacted], in her care and protection case pending in Juvenile Court, also appeared. The hearing was requested in the Court's August 17, 2020 Interim Order. The basic relevant facts set forth in the Interim Order are repeated here for context:

1. Alicia Eaton ("Ms. Eaton") was a tenant residing at 40 Paul Revere Drive, Feeding Hills, Massachusetts (the "Premises") pursuant to a written lease dated January 1, 2010. The lease lists Defendant (Ms. Eaton's son) and Ms. Eaton's daughter [redacted] as authorized occupants.

2. Defendant moved out of the Premises in October 2012 and was removed from the lease.

3. Ms. Eaton passed away on or about June 30, 2020. The only remaining authorized occupant of the Premises at the time of Ms. Eaton's death was her 13-year old daughter [redacted].

4. Following Ms. Eaton's death, [redacted] was placed in foster care and is not living at the Premises.

5. The property of which the Premises are part is subsidized by the U.S. Department of Housing and Urban Development ("HUD") through the project-based Section 8 program.

6. Defendant moved into the Premises at some time prior to Ms. Eaton's death to assist in caring for his mother and sister [redacted]. He was not added to the lease or disclosed to Plaintiff during the recertification process.[1]

7. Defendant has continued to reside in the Premises following Ms. Eaton's death.

8. Plaintiff sent Defendant a notice of trespass dated July 17, 2020 forbidding him to enter or remain in the Premises.

Plaintiff alleges Defendant is a trespasser, not a tenant, and seeks to enjoin Defendant from occupying the Premises. The Court, *sua sponte*, ordered further hearing to obtain additional information regarding [redacted]'s housing situation and prospects for returning to the Premises in order to consider possible equitable remedies. Having now had the benefit of hearing from [redacted]'s legal counsel in her Juvenile Court care and protection case, the Court concludes that [redacted] does not wish to join in this action, does not intend to return to the Premises, and is not taking steps to have Defendant be appointed as her legal guardian. Given this information, the Court is satisfied that allowing Plaintiff's motion for preliminary injunction would not result in irreparable harm to [redacted].

[1] At the August 27, 2020 hearing, Defendant's counsel argued that he had reason to believe that Ms. Eaton may have attempted to add Defendant to the lease prior to her death, but exhibits filed with Plaintiff's motion show that Ms. Eaton certified to Plaintiff on December 30, 2019 that the only other occupant of the Premises was [redacted]. Moreover, on December 23, 2019, Ms. Eaton identified Defendant as her emergency contact and provided an address for him in Wilbraham, Massachusetts.

In order to obtain a preliminary injunction, Plaintiff must show: (1) a likelihood of success on the merits; (2) that there is no adequate remedy at law; (3) that irreparable harm will result from the denial of the injunction; and (4) that, in light of Plaintiffs' likelihood of success on the merits, the risk of irreparable harm to Plaintiff outweighs the potential harm to Defendant in granting the injunction. Packaging Industries Group, Inc. v. Cheney, 380 Mass. 609, 617 (1980).

The Court finds that Plaintiff is likely to establish at trial that: (a) Defendant was not an authorized occupant at the Premises and was not listed on the lease as an authorized occupant at the time of Ms. Eaton's death; (b) his occupancy at the Premises (after being taken off the lease in 2012) did not create any tenancy rights; (c) after Ms. Eaton died, whatever rights Plaintiff had to occupy the Premises ended; and (d) Defendant's occupancy after Ms. Eaton's death constituted a continuing trespass. Plaintiff has no adequate remedy at law, and Defendant's continued occupancy has prevented Plaintiff from recovering physical possession of the Premises for two months since Ms. Eaton passed away, thereby precluding Plaintiff from offering the Premises to a deserving applicant on the waiting list in need of subsidized housing. In light of Plaintiffs' likelihood of success on the merits, the balance of the relative harms favors Plaintiff.[2]

An intentional and continuing trespass to real estate may be enjoined because to do otherwise enables the trespasser to deprive the owner of property rights. *See* Anntco Corp. v. Shrewsbury Bank & Trust, Co., 353 Mass. 250, 254 (1967). Nonetheless, given the fact that Defendant entered onto the Premises in apparent good faith, and given his lengthy occupancy at the Premises, the Court will allow him a brief period of time to remove his belongings and

[2] The Court acknowledges that Defendant is likely to suffer harm from losing his housing; however, he elected to move into a subsidized unit without first obtaining Plaintiff's permission or applying to be added to the lease.

relocate before permitting Plaintiff to recover physical possession. Accordingly, the following Order shall enter:

1. Plaintiff's motion for preliminary injunction is ALLOWED pursuant to Mass. R. Civ. P. 65(b) and pursuant to the Court's equitable powers. *See* G.L. c. 185C, § 3, pursuant to the terms set forth herein.

2. The Court finds that, because no tenancy has been created between the parties, this case is not subject to the Massachusetts eviction moratorium. *See* Chapter 65 of the Acts of 2020.

3. The Court hereby preliminarily enjoins and restrains Defendant from entering onto or continuing to occupy the Premises (40 Paul Revere Drive, Feeding Hills, Massachusetts) on or after September 14, 2020. If he remains at the Premises on or after this date, Plaintiff may treat Defendant as a trespasser in accordance with G.L. c. 266, § 120 and have him removed from the Premises. Upon Defendant vacating the Premises, or if Defendant fails to vacate and is removed as a trespasser, Plaintiff may change the locks and store any personal belongings found within the Premises in a manner consistent with the requirements of G.L. c. 239, § 4.

4. For so long as Defendant continues to occupy the Premises pursuant to this Order, he shall not create any disturbances and shall not cause any damage to Plaintiff's property.

5. Plaintiff, for good cause shown, is not required to post bond or any other form of security pursuant to Mass. R. Civ. P. 65(c). Plaintiff shall be assessed the $90.00 injunction fee described in G.L. c. 262, § 4 which shall be paid into the clerk's office within fourteen (14) days.

SO ORDERED.

Jonathan J. Kane 8/31/2020
Jonathan J. Kane
Associate Justice

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT
HOUSING COURT DEPARTMENT
WESTERN DIVISION

HAMPDEN, ss. DOCKET NO: 20H79CV000425

POAH COMMUNITIES, as lessor, )
and )
DOM NARODOWY POLSKI, )
as owner )
Plaintiffs, )
)
v. )
)
TERESA SANTIAGO, )
JUAN BISONO, & INES BISONO )
Defendants )

Findings and Order on Defendant's Motion for Accommodations for Hearing

Whereas this Court finds that:

1. The ongoing Covid-19 crisis requires that individuals follow certain protocols to limit the spread of disease.
2. The Court has an obligation to provide accommodations to allow meaningful participation in a hearing for all parties.
3. Teresa Santiago's unique circumstances -- including her difficulty hearing and speaking; her need for an interpreter; and the nature of the allegations in the underlying complaint – necessitate accommodations to allow this case to proceed.

It is ordered that:

1. A hearing is to take place in this Court on September 16 2020 at 10 AM
2. A microphone with voice amplification shall be provided.
3. Ms. Santiago shall be provided with an assistive hearing device.
4. A Spanish interpreter shall be present in the courtroom.
5. Counsel and witnesses shall be present in the courtroom, if available. *
6. Ms. Santiago shall be provided with a clear view of the interpreter's mouth.
7. Ms. Santiago shall be provided with and permitted to wear a face shield in lieu of a mask, if available.

* Plaintiff's Counsel may appear by Zoom, as can TPP representative.

8. Juan Bisono and Jose Bisono could not appear but shall bring Mr. Santiago to Court if necessary.

It is so ordered.

9/9/20
Date

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, SS

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 20H79CV000044

**WILMA VAZQUEZ,**

**PLAINTIFF**

**v.**

**SALAZAR DOS SANTOS, ET AL,**

**DEFENDANTS**

**ORDER ON DEFENDANT'S MOTION FOR PROTECTIVE ORDER**

This matter came before the Court by video-conference on September 11, 2020 on a motion for protective order filed by America Dos Santos ("Ms. Dos Santos"), the trustee of Defendant Revocable Indenture of Trust of America Dos Santos.[1] The parties appeared through counsel.

Ms. Dos Santos, who is 83 years old and suffering from multiple health conditions, seeks a protective order precluding her deposition. She is the wife of Defendant Salazar Dos Santos ("Mr. Dos Santos") and believes that, based on the questions that were asked of Mr. Dos Santos at his deposition, Plaintiff intends to ask salacious questions at the deposition in an attempt to embarrass and harass her. Plaintiff contends that because the case involves allegations of sexual assault by Mr. Dos Santos, questions posed to Ms. Dos Santos of a sexual nature are appropriate and permissible under the circumstances. Plaintiff also argues that, as the trustee of the trust that owns the property, Ms. Dos Santos might have relevant information relating to the ownership and management of the property.

[1] In the motion for protective order, Defendants erroneously refer to the trust as the "America Dos Santos Realty Trust."



4 W.Div.H.Ct. 80

Pursuant to the Massachusetts Rules of Civil Procedure, Plaintiff "may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party.... It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence." Mass. R. Civ. P. 26(b)(1). Notwithstanding the liberal scope of discovery, upon motion, the Court can enter an order protecting a deponent from annoyance or embarrassment if justice so requires. Mass R. Civ. P. 26(c).

After hearing, the Court finds that some of the information sought by deposing Ms. Dos Santos may reasonably lead to the discovery of admissible evidence and, therefore, the Court is unwilling to preclude the deposition altogether.[2] In the interests of justice, the Court will limit the scope of the questions asked of Ms. Dos Santos at her depositions to certain specific questions clearly relevant to the allegations made by Plaintiff about Mr. Dos Santos.

Accordingly, the following Order shall enter:

1. Defendant's motion for a protective order is DENIED without prejudice.

2. Prior to re-noticing Ms. Dos Santos' deposition, Plaintiff shall submit to Defendants' counsel, in writing, all questions of a personal nature that she intends to ask Ms. Dos Santos at her deposition.[3] For each question, Plaintiff shall briefly explain the relevance to this litigation.

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[2] The Court acknowledges her age and medical conditions, but these factors alone do not warrant cancellation of the deposition, particularly as the deposition will be conducted virtually and Ms. Dos Santos will be able to testify from her home.

[3] To be clear, the only questions that need to be submitted are those of a personal nature; by way of example, questions about her or her husband's sexual performance, sexual history, sexual acts, sexual activity inside or outside the marriage, sexual advances, physical attributes, medical conditions or medical diagnoses and medications taken or prescribed). Questions relating to the business of owning and managing residential property do not need to be submitted.

3. If Defendants' counsel objects to any of the questions, he shall file and serve a renewed motion for a protective order (attaching to the motion the questions and explanations submitted by Plaintiff, along with an explanation of the basis for each objection) within two weeks of receiving the questions from Plaintiff.[4] The Court will consider the motion on the papers without hearing, unless after reviewing the questions and explanations, the Court determines that further hearing is necessary, in which case the Court will send notice of hearing date and time.

4. If Defendants' counsel does not file a motion for protective order in the time frame allowed, he shall be deemed to have assented to Plaintiff asking the submitted questions at the deposition of Ms. Dos Santos.

5. If Defendants' counsel files a motion for a protective order within the allotted time, the Court will determine which of the submitted questions may be asked at the deposition. Other than the assented-to or approved questions, Plaintiff may not ask other questions of a personal nature. During the deposition, any disputes that arise as to the nature of the questions being asked may be brought to the Court's attention for a ruling.

SO ORDERED.
September 11, 2020

Jonathan J. Kane, First Justice

cc: Court Reporter

[4] This period can be extended by leave of Court (or with Plaintiff's assent) if the circumstances warrant an extension.

COMMONWEALTH OF MASSACHUSETTS

WESTERN DIVISION, ss

HOUSING COURT DEPARTMENT OF
THE TRIAL COURT
CIVIL ACTION No. 19-CV-243

CITY OF SPRINGFIELD
CODE ENFORCEMENT DEPARTMENT
HOUSING DIVISION,
Plaintiff

v.

JOSE L. SERRANO (owner), et al
Defendants

RE: 80 Silver Street, 1st Floor, Springfield, Massachusetts

**ORDER AUTHORIZING ENFORCEMENT OF RECEIVER'S PRIORITY LIEN AND AUTHORIZING THE RECEIVER TO SELL THE PROPERTY LOCATED AT 80-82 SILVER STREET, SPRINGFIELD, MA TO SATISFY ITS PRIORITY LIEN**

This matter coming to be heard on the Receiver's Motion to Enforce Priority Lien and Obtain Order Authorizing Sale of Property located at 80-82 Silver Street, Springfield, Hampden County, Massachusetts (hereinafter the "Receivership Property") to Satisfy Receiver's Priority Lien (hereinafter the "Receiver's Motion"); and it appearing that notice of the Receiver's Motion was appropriately provided and that no other or further notice is necessary; and after final hearing before this court on September 15, 2020; and upon the entire record of these proceedings; and the Court being sufficiently advised and after due deliberation thereon; and good and sufficient cause appearing therefore:

THE COURT HEREBY FINDS, ORDERS, ADJUDGES AND DECREES THAT:

1. This Court has personal and subject matter jurisdiction over this proceeding and the Receivership Property affected thereby.

2. Ming Tsang (the "Receiver") acknowledges and the Court finds that Nancy Serrano and Jose L. Serrano (the "Owner") are the owners of the Receivership Property by virtue of a deed which is recorded in the Hampden County Registry of Deeds in Book 14824, Page 397.

3. Ming Tsang (the "Receiver") acknowledges and the Court finds that Wilmington Trust, National Association not in its individual capacity but solely as Trustee of MFRA Trust 2014-2 (the "Mortgagee") is the purported current holder of a mortgage on the Receivership Property by virtue of a mortgage which is recorded in the Hampden County Registry of Deeds in Book 16671, Page 501, as assigned by assignment recorded as aforesaid in Book 17545, Page 1, as further assigned by assignment recorded as aforesaid in Book 22394, Page 527; as further assigned by assignment recorded as aforesaid in Book 21645, Page 507, as further assigned by assignment recorded as aforesaid in Book 22551, Page 528; as further assigned by assignment recorded as aforesaid in Book 22702, Page 512.

4. There exists insufficient income potential, including revenue from rents, to repay the Receiver in a reasonable period of time for the cost of rehabilitating the Receivership Property. The Receiver's Lien stands at $87,227.13 through August 21, 2020. Accordingly, an immediate need exists for the Receiver to sell the Receivership Property to satisfy its priority lien.

5. The Receiver is hereby authorized to sell the Receivership Property to satisfy its priority lien, subject to the following procedure:

   A. The Receiver shall prepare a Notice of Sale which shall indicate the following:

      a. the street address and legal description of the property to be offered for sale by public auction;

      b. the name of the titled owner(s) of the property;

      c. the date, time and place of the sale; and

      d. that the Western Division Housing Court has granted the Receiver authorization to sell the property to satisfy its priority lien under M.G.L. c. 111, §127l.

B. The Receiver shall serve the Notice of Sale on all owners and/or holder(s) of equity of redemption and all other parties having an interest in the real estate, including lenders, mortgagees and lien holders, as of thirty (30) days prior to the date of sale by certified mail, return receipt requested, at least fourteen (14) days prior to the date of sale.

C. The Receiver shall engage a duly licensed auctioneer to conduct the public auction. The property shall be sold to the highest bidder. The Receiver reserves the right to reject all bids.

D. The Receiver shall arrange for publication of the Notice of Sale. The Notice must be published once a week for three (3) successive weeks in a newspaper of general circulation in the City of Springfield, the first publication being no later than twenty-one (21) days prior to the sale. The Receiver shall collect tear sheets of the newspaper advertisements to be filed with the Court.

E. The Receiver shall prepare a Memorandum of Sale.

F. The Receiver shall execute the Memorandum of Sale with the prospective purchaser after completion of public auction sale.

G. The sale shall be subject to approval by the Court.

H. The sale shall be subject to the receivership and the prospective new owner shall be subject to approval by the Court under the terms of the receivership order.

6. The Receiver, nor any principal, officer or owner thereof, shall not be prohibited from purchasing the Receivership Property, provided they are the high bidder at public auction.

7. The matter shall be marked for review on _____, 2020 at _____.M.

So entered this 15th day of September, 2020.

Hon. JONATHAN KANE, FIRST JUDGE

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

CASE NO. 19-CV-212

TIMOTHY SCOTT and SYLVIA SCOTT,

Plaintiffs,

v.

RACE STREET PROPERTIES, LLC, and DAVID P. WHITE,

Defendants.

ORDER

After hearing on July 20, 2020, at which all parties appeared, the following order shall enter:

1. **Background:** The plaintiff, Timothy Scott (hereinafter, "Scott"), has motioned the court for an order of judgment against the defendants and for sanctions against the defendants and their attorney under Mass. R. Civ. P. 27(b)(2)(B) & (C). Further, Scott seeks that Attorney Wilson be removed from any further proceedings in this matter. For the reasons stated herein, said motion is denied.

2. **Discussion: Perjury:** Scott states that the defendant, David White (hereinafter, "White"), "has made false statements willfully and has made statements under oath that he knew was false when he made it." Further, Scott states that White has been "evasive, provided incomplete answers, and cannot recall any important information requested from him" that, in conjunction with "his attorney showing total disrespect towards the Plaintiff," shows that a "pattern of lies told under oath" has occurred.
3. The crime of perjury is the taking of a willful false oath by one who, being lawfully required to depose the truth in any judicial proceeding, swears absolutely in a matter material to the point in question. *Commonwealth v. Pollard*, 53 Mass. 225, 228–29 (1847). The elements of the crime of perjury are that (1) the defendant was "lawfully required to depose the truth in a judicial proceeding"; (2) the defendant willfully made a false statement in the proceeding; and (3) the false statement was "material to the issue or point in question." G.L. c. 268, § 1.
4. "The crime of perjury in a judicial proceeding occurs whenever one 'willfully swears or affirms falsely in a matter material to the issue or point in question.'" *Commonwealth v. Geromini*, 357 Mass. 61, 63 (1970), quoting G.L. c. 268, § 1. The question whether a statement is false is subjective, that is, "what the defendant in good faith and in fact did mean," and it is up to the jury to determine what the defendant meant when a statement alleged to be false is open to multiple interpretations. *Geromini*, 357 Mass. at 64. A false statement is material where it "tend[s] in reasonable degree to affect some aspect or result of the inquiry." *Commonwealth v. D'Amour*, 428 Mass. 725, 744 (1999) (citations

omitted). Materiality is a question of fact for the fact finder to decide. *Commonwealth v. McDuffee*, 379 Mass. 353 (1979).

5. Exhibit 1 (Deposition). Scott argues that White lied during his deposition when stating he did not own various properties located in Holyoke, Massachusetts. White claims that the exhibited questions asked whether White owned the buildings individually and not as the manager of Race Street Properties, LLC, and therefore not perjury. Frankly, the section of the deposition provided does not provide enough information to even see whether Scott was clearly asking White questions as an individual or in his capacity as manager to answer questions (as he is named individually in the suit). Further, although it is material who owns the subject property where Scott's property was stored, it is indisputable that Race Street Properties owns the property. It is ambiguous whether there was confusion on Scott's end that he made it clear he was asking White in his capacity as the manager of Race Street Properties, or if White believed he was being deposed for answering individually as he is a named defendant in the matter.
6. Exhibit 2 (Deposition). Scott alleges that White lied "regarding the location of the Plaintiff['s] property at his warehouse." White brings to light that the building asked about in this portion of the deposition has multiple addresses. Scott asked whether his property was stored at 420 Race Street. White answered "unknown." Then, in the supported documents in Exhibit 2, Scott provides a letter stating his property was being stored at 460 Race Street, signed by White. This is another claim where too much ambiguity lies to support an allegation of

perjury as (1) Scott himself asked about the incorrect address; and (2) the addresses made in said allegation and the letter are different.

7. Exhibit 3 (Deposition). Scott also alleges that White lied regarding the issue whether "the Plaintiff sent [White] a letter providing him with a change of address," to which the stated answer was no. White, when answering in deposition, stated he never had a letter sent to him about Scott's change of address. Then it was clarified by Scott whether Race Street received the letter, but Mr. White stated that it was not brought to his attention. Plaintiff not receiving mail from Race Street is pertinent to his claims as laid out in the Complaint, but the manager of a company not being informed of a change-of-address letter is plausible, and without any evidence to negate Mr. White's lack of knowledge of said letter, does not constitute perjury with the record currently before the court.
8. Exhibit 4 (Interrogatories/Deposition). Scott alleges that Mr. White lied, in statements related to Scott's property being stored at different locations than reported. White cedes that the interrogatory answer was brief, but it was elaborated on during the deposition. The initial answer of "some of it" was expanded to include the some of the property travel from 5 Appleton Street to 6 Appleton Street. The next question asked whether Scott was given notice of his property being in two locations, White answered: "I don't remember." The subject matter of the perjury allegation is relating to the location of the stored property and the elaboration in deposition from the subject interrogatories may have been an unnecessary step needed to be taken to provide the necessary clarity, but it does not constitute perjury.

9. Exhibit 5 (Interrogatories/Deposition): Scott alleges that White lied regarding "regarding whether or not he was ever investigated by a state or federal agency." White states how the litigation timeframe (Feb.-Oct. 2018) is well after the 2015 cease and desist order. Additionally, the fire department investigation was for a tenant—Ana Vega—not obtaining city permits to paint cars (and therefore not related to Race Street Properties directly). The questions asked in the interrogatories that the investigations are "regarding [Mr. White's] warehouse business as it relates to storing and maintaining evicted tenants' property." Although Attorney Wilson believes that the 2015 cease and desist order was not relevant, White states that the business had never been investigated before was untruthful. However, the lie is not material as it has no weight on the merits of the case. The Defendant-Race Street Properties sold Plaintiff's property at auction, and past investigations to the cleanliness of the storage containers is irrelevant to the underlying claims. Though Exhibit 5 may be used for impeachment purposes, it is not a basis for finding perjury.
10. Exhibit 9 (Deposition). Scott alleges that White lied regarding admission answer to question 2. Although it is found within the fraud section of the Scott's motion, he is alleging perjury regarding this admission response. The admission states that the White sent advance written notice with proof of delivery regarding the date and location of the auction. In the deposition, White stated that "[he does]n't think we sent any proof of delivery." Though these are contradictory statements, and same may be used at trial to challenge White's credibility, it is not a basis for a finding of perjury.

11. **Discussion: Fraud:** Scott alleges that White submitted fraudulent documents. "Fraud on the court implies corrupt conduct and embraces 'only that species of fraud which does, or attempts to, defile the court itself.'" *Winthrop Corp. v. Lowenthal*, 29 Mass. App. Ct. 180, 184 (1990), quoting *Pina v. McGill Dev. Corp.*, 388 Mass. 159, 165 (1983). Fraud on the court involves the most egregious misconduct, *Lowenthal*, 29 Mass. App. Ct. at 180, which may be conducted by parties as well as by their attorneys. See *MacDonald v. MacDonald*, 407 Mass. 196, 201 n.9 (1990). In *Rockdale Management Co. v. Shawmut Bank, N.A.*, the court adopted the definition of fraud on the court as detailed by the United States Court of Appeals for the First Circuit in stating: "A 'fraud on the court' occurs where it can be demonstrated, clearly and convincingly, that a party has sentiently set in motion some unconscionable scheme calculated to interfere with the judicial system's ability impartially to adjudicate a matter by improperly influencing the trier or unfairly hampering the presentation of the opposing party's claim or defense." *Rockdale Mgmt. Co. v. Shawmut Bank, N.A.*, 418 Mass. 598, 598 (1994), quoting *Aoude v. Mobil Oil Corp.*, 892 F.2d 1115, 1118 (1st Cir.1989). The court in Rockdale also stated:

> When a fraud on the court is shown through clear and convincing evidence to have been committed in an ongoing case, the trial judge has the inherent power to take action in response to the fraudulent conduct. The judge has broad discretion to fashion a judicial response warranted by the fraudulent conduct. Dismissal of claims or of an entire action may be warranted ... as may be the entry of a default judgment. We examine judicial responses to findings of fraud on the court for an abuse of discretion (at 598).

12. Exhibit 6 (Notice of Sale Document). A Notice of Sale document was provided by White's attorney during discovery. Scott alleges that the supporting documents to prove the certification of posting is false and that no auction ever occurred. The Notice of Sale lists six businesses where Race Street Properties posted their Notice of Sale document. However, when getting permission from the Court to subpoena documents from these non-party businesses, four of them stated they either (1) do not have records that go that far back or (2) never posted anything for Race Street Properties. This does bring a lack of credibility to the document, but I am unsure whether the businesses stating they did not post the Notice of Sale equates to the auction not occurring. Given the current record before the court, and without testimony at trial of the owners or managers of these businesses, it is unknown whether they had sufficient knowledge of the matter and there is insufficient basis for the court to find fraud.
13. Exhibit 7 (Non-Party Responses). The Court permitted Scott's Motion to Compel six nonparty-responses. Attorney Wilson delivered four of the six statements to Scott, while the other two were mailed directly to him. Scott questions the authenticity of four responses, believing the "signatures and statements w[ere] provided by the Defendant Race Street Properties and typed by Defendant David P. White." This is because the four responses were given to Scott by Attorney Wilson and not individually submitted to him without letterhead like two submitted by mail. This argument sounds rather speculative, but it is worth noting that the Al's Diner, Chicopee Willamansett Flee Market, and Lawler Insurance have the same following language at the end of their responses: "Please do not bother us

with your frivolous cases which appear to be an abuse of the court system and a great cost to me and our company." This identical language raises speculation, but it does not elevate to the level of fraud.

14. Exhibit 8 (Supporting Discovery Documents). Scott requested White to produce insurance coverage documents, in which White stated he had no such records. Scott then provided said insurance documents. Affirmative actions and omissions can constitute misrepresentations and fraud. See *Stolzoff v. Waste Sys. Intern., Inc.*, 58 Mass. App. Ct. 747, 749 n.6 & 765 (200). Here, the court does find that White withheld relevant information and told a non-truth in his discovery response.

15. **Conclusion:** Based on the foregoing, the motion for entry of judgment and/or sanctions is denied other than then the following. Having found that White lied under oath when he stated that there were no insurance, if White is found by this court to have committed fraud in another instance hereafter, the court would entertain a renewed motion by the plaintiffs for the entry of judgment for liability against the defendants. The Clerks Office shall schedule this matter for a Case Management Conference to determine a schedule for pre-trial matters and for trial.

So entered this 15th day of September, 2020.

Robert Fields, Associate Justice

Cc: Michael Doherty, Clerk Magistrate