Western Division Housing Court
Unofficial Reporter of Decisions

Volume 11

Jul. 23, 2021 — Aug. 23, 2021
(*and certain older decisions*)

Released Sep. 20, 2021

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 by judge. 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.

Redaction and Exclusion. The editors will redact or exclude material in certain circumstances. The editors make redaction and exclusion decisions by consensus, applying their best good faith judgment, and taking the Court's views into consideration.

(1) Case management and scheduling orders will generally be excluded. (2) Terse orders and rulings will generally be excluded if they are sufficiently lacking in context or background information as to make them clearly unhelpful to a person who is not familiar with the specific case. (3) Stipulated or agreed-upon orders will generally be excluded. (4) Decisions made as handwritten endorsements to a party's filing will generally be excluded. (5) Orders detailing or discussing highly sensitive issues relating to minors, mental health disabilities, specific personal financial information, and/or certain criminal activity will be redacted if reasonably possible, or excluded if not.[2] (6) Contact information for parties, attorneys, and third-parties are generally redacted.

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:

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0C7A FBA2 099C 5300 3A25  9754 89A1 4D6A 4C45 AE3D
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CONTACT US

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

[2] As applied to orders involving guardians ad litem or the Tenancy Preservation Program, redaction or exclusion is not triggered by virtue of such references alone but rather by language revealing or fairly implying specific facts about a party's mental health disability.

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[3] The 2020 date stated in this decision has been confirmed as a typo.

SECONDARY INDEX — BY JUDGE

Hon. Jonathan Kane, First Justice

Hon. Robert Fields, Associate Justice

[4] The 2020 date stated in this decision has been confirmed as a typo.

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 21H79SP001070

SPECTRA S1, LLC,	)	
	)	
PLAINTIFF	)	
	)	
V.	)	**ORDER ON DEFENDANT'S**
	)	**MOTION TO DISMISS**
ITKA TORRES,	)	
	)	
DEFENDANT	)	

This summary process action based on non-payment of rent came before the Court on June 22, 2021 on Defendant's motion to dismiss Plaintiff's complaint pursuant to Mass. R. Civ. P. 12(b)(1) and 12(b)(6). Both parties appeared by Zoom for the hearing. Defendant contends that the 14-day notice to quit used to terminate her tenancy is defective. First, she claims that the Coronavirus Aid, Relief, and Economic Security Act ("CARES Act") requires Plaintiff to use a 30-day notice in this case; second, she asserts that, because Plaintiff sent conflicting notices to quit, Plaintiff's attempt to terminate the tenancy fails as a matter of law. For the reasons set forth herein, the motion is denied.

Section 4024(b) of the CARES Act imposes certain restrictions on lessors of certain "covered dwellings" as that term is defined in § 4024(a) of the CARES Act.[1] The restrictions were to remain in effect for a 120-day period beginning on the date of enactment of the CARES Act; namely, March 27, 2020 to July 24, 2020. Section 4024(c) requires a lessor of a covered dwelling to use a 30-day, rather than a 14-day, notice to vacate.[2] Plaintiffs contend that, despite expiration of the CARES Act,

[1] (b) Moratorium. During the 120-day period beginning on the date of enactment of this Act, the lessor of a covered dwelling may not –
(1) make, or cause to be made, any filing with the court of jurisdiction to initiate a legal action to recover possession of the covered dwelling from the tenant for nonpayment of rent or other fees or charges; or
(2) charge fees, penalties, or other charges to the tenant related to such nonpayment of rent.

[2] (c) Notice. The lessor of a covered dwelling unit—

the requirement of service of a 30-day notice in non-payment cases remains in effect. The Court disagrees.

Following expiration of the CARES Act, the Centers for Disease Control and Prevention ("CDC") issued an order for a much broader national eviction moratorium in non-payment cases. It is the CDC's order that now protects tenants from eviction in certain circumstances, not the CARES Act. The notice to quit language in § 4024(c) must be read in conjunction with § 4024(b) with respect to the 120-day period of eviction protections. To find otherwise would mean that the CARES Act instituted a permanent prohibition on 14-day notices in non-payment cases for all tenants in covered dwellings, a result that would greatly expand the temporary COVID-19-related eviction protection measures that the CARES Act was designed to address.

With respect to Defendant's contention that the multiple conflicting notices compel dismissal, the Court also disagrees. A legally adequate 30-day notice to quit is a condition precedent to a summary process action, *see Cambridge Street Realty, LLC v. Steward*, 481 Mass. 121, 130-131 (2018), but at this preliminary stage of the proceedings the Court cannot determine as a matter of law that the service of multiple notices to quit renders the termination of the tenancy invalid. The 14-day notice to quit filed with the summons and complaint as part of the entry package is sufficient to defeat a motion to dismiss.

Accordingly, for the foregoing reasons, Defendant's motion to dismiss is denied.

SO ORDERED this 24th day of June 2021.

Jonathan J. Kane

Jonathan J. Kane, First Justice

cc: Court Reporter

(1) may not require the tenant to vacate the covered dwelling unit before the date that is 30 days after the date on which the lessor provides the tenant with a notice to vacate; and
(2) may not issue a notice to vacate under paragraph (1) until after the expiration of the period described in subsection (b).

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

CASE NO. 20-SP-1676

CASSANDRA FERREIRA,

Plaintiff,

v.

LAURAL CHARLAND, JASON CHARLAND, and JAMES VASQUEZ,

Defendants.

ORDER

This matter came before the court for hearing on June 22, 2021, at which the plaintiff landlord appeared with counsel and the defendant tenant Laural Charland appeared with counsel along with co-defendant Jason Charland who appeared pro se. After said hearing, the following order shall enter:

1. **Preliminary Matter: Water Charges under G.L. c.186, s.22:** There is no question that the tenants asserted a claim that the landlord violated G.L. c.186, s.22. and there is also no question that such claim triggers "violation of any other

law" under G. L. c. 239, s.8A. The question posed by this case is whether after the landlord tendered full compensation to the tenant for her claim under G.L. c.186, s.22 can she still assert said claim at trial to trigger the application of G.L c. 239, s.8A as a defense to possession. Given that the landlord tendered all the funds for the damages asserted under that claim and that they were knowingly accepted by the tenants without any reservation of rights, such tender and acceptance satisfied and resolved the tenants' claim under G.L. c.186, s.22 and it can not be used to trigger a defense to possession under G.L. c.239, s.8A.

2. **G.L. c.239, s.9:** The parties were also heard on the tenants' request that judgment be stayed in accordance with G.L. c.239, s.9. Pursuant to that statute, the court is directed to hear from all parties and achieve an order and an extension of time, if warranted, that is "just and reasonable". This is often a difficult task for a court but the facts of this matter make it extremely difficult as both sides present very compelling needs and circumstances.
3. The tenants (Laural Charland and her brother Jason Charland) are both disabled and have limited income from Social Security benefits and food stamps. Ms. Charland testified credibly of her very extensive housing search in all towns around and between Ludlow and Agawam, other than avoiding inner-city locations.
4. The landlord also finds herself in dire straits, mostly residing on a couch in her parents' basement for a very protracted time and with no other options available to her until she can re-possess the subject premises for her own residence. Ms. Ferreira also reported to the court that she has a medical condition that will

require her to have a procedure at the end of August, 2021 and will require a slow recovery thereafter---of course, a recovery hopefully not on her parents' couch.

5. **Order:** In accordance with G.L. c.239, s.9, judgment shall be stayed until September 1, 2021 and the tenants have until August 31, 2021 to vacate the premises and are required to pay use and occupancy through their vacating the unit.

So entered this 25th day of June, 2021.

Robert Fields, Associate Justice

Cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

CASE NO. 21CV92

LEISURE WOODS ESTATES,

Plaintiff,

v.

THE ESTATE OF PHILLIP NORTON,

Defendant.

ORDER

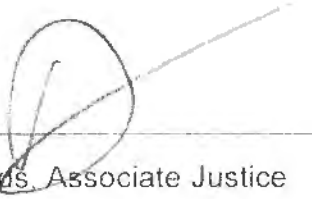
After hearing on June 14, 2021 at which only the plaintiff appeared, the following order shall enter.

1 Though the court can appreciate the intention and basis for this civil action which seeks the court's ruling that the manufactured home in question is abandoned and for an order for its removal, the court is not moved from its position---in accordance with G.L. c 239 and consistent with the ruling in *Attorney General v. Dime Savings Bank*, 413 Mass. 284 (1992)---that Summary Process is the

exclusive means of dispossession of residential property. Further, equitable relief is only appropriate when the remedy at law (in this case the statutory summary process procedure) is inadequate.

2. Accordingly, the motion is denied.

So entered this 9th day of July, 2021.



Robert Fields, Associate Justice

Cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPSHIRE, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 20H79CV00519

DAVID G. MORIN,	)	
	)	
PLAINTIFF	)	
	)	
V.	)	**ORDER**
	)	
UNIVERSITY OF MASSACHUSETTS, AMHERST,	)	
	)	
	)	
DEFENDANT	)	

This matter came before the Court for a video-conference hearing on April 1, 2021 on Defendant's motion to dismiss Plaintiff's amended complaint.[1] Both parties appeared through counsel.

In reviewing the sufficiency of a complaint for purposes of a motion to dismiss, "we accept as true the factual allegations of the complaint and the reasonable inferences that can be drawn from those facts in the plaintiff's favor." *Foster v Commissioner of Correction*, 484 Mass. 1059, 1059 (2020). In certain circumstances, matters outside the four corners of the complaint may be considered without converting the motion to one for summary judgment. *See Golchin v. Liberty Mut. Ins. Co.*, 460 Mass. 222, 223 (2011). Here, the amended complaint upon which Plaintiff seeks relief was filed on December 21, 2020, approximately three months after a

[1] The parties stipulated to the dismissal of Plaintiff's claim for violation of the Massachusetts Civil Rights Act. The parties also agreed to dismissal of Plaintiff's Chapter 93A claim but disagree as to whether the claim should be dismissed with or without prejudice. It is unnecessary for the Court to resolve this dispute in the present circumstances. The Chapter 93A claim is hereby dismissed without prejudice.

hearing on Plaintiff's motion for a temporary restraining order and preliminary injunction.[2] Plaintiff had access to the affidavits and attached documents filed by Defendant in opposition to the motion for injunctive relief and filed his own affidavit in support of his motion. Neither party has challenged the admissibility or authenticity of any of the exhibits to the affidavits. Accordingly, the Court relies on such extrinsic evidence in considering this motion to dismiss. *See Navarro v. Burgess*, 99 Mass. App. Ct. 466, 467 n.4 (2021) (on motion to dismiss, judge considered factual materials, including affidavits, filed by both parties in connection with plaintiff's motion for a writ of attachment).[3]

The Court finds the following facts: The Lincoln Apartments are located at 345 Lincoln Avenue, Amherst, Massachusetts, on the campus of the University of Massachusetts, Amherst (the "University"). The building primarily houses graduate students in single-bedroom, two-bedroom and studio apartments. Graduate student housing is governed by a Residence Hall Contract, Graduate Housing Agreement ("Contract"). Between 2016 and 2020, Plaintiff was assigned to and resided in multiple different units at the Lincoln Apartments.

The Contract permits the student to live in a residence hall based on the academic year calendar. The housing agreement does not permit the student to live in the residence hall over the summer and other designated vacation periods unless the student makes special arrangements through a student services office.[4] Payment is made pursuant to a schedule established by the

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[2] The original complaint was filed by Plaintiff, without counsel, on September 8, 2020, using a short, preprinted Trial Court form, the purpose of which was to bring a motion for a temporary restraining order and preliminary injunction. In response, Defendant filed a memorandum of law and an affidavit with supporting documentation. After retaining counsel, Plaintiff filed his own affidavit attaching additional documents.

[3] Had the Court applied the summary judgment standard, the outcome would be the same. Plaintiff's argument that he should be able to conduct additional discovery under Rule 56(f) is unpersuasive.

[4] The Court acknowledges a disagreement between the parties as to whether Plaintiff actually asked for permission to remain in his unit through the summer before doing so, but the issue is immaterial to the Court's legal analysis.

University's Bursar's Office for each semester.[5] The units are fully furnished by the University. A graduate student's right to housing is subject to standards of conduct prescribed by the University. The Contract terminates upon "graduation, withdrawal, ineligibility to continue enrollment due to a failure to meet academic requirements, complete [sic] of graduate requirements, or failure to enroll second semester." The University reserves the right to refuse admission or readmission to residence halls and to "cancel the contract during the academic year for the resident's failure to meet University requirements, policies or regulations."

In early September 2019, Mr. Morin was informed that the Lincoln Apartments would be demolished. He was told that he had to vacate by May 31, 2020, which date was subsequently extended to August 31, 2020. Plaintiff did not vacate his unit at the Lincoln Apartments by the deadline, and, on September 1, 2020, was given a notice by University staff that he would have to check out by 9:00 a.m. on September 3, 2020 or be removed. In the afternoon of September 3, 2020, a University employee changed the locks over Plaintiff's objection. Plaintiff was permitted to re-enter the unit to retrieve some personal items. He arranged to return the next day to collect the rest of his belongings.[6]

The central issue in this case is whether Plaintiff can pursue claims against Defendant under G.L. c. 186, §§ 14 and 15F. Section 14 of Chapter 186 recites "... any lessor or landlord who directly or indirectly interferes with the quiet enjoyment of any residential premises by the occupant, or who attempts to regain possession of such premises by force without benefit of judicial process, shall be punished ..." Section 15F of Chapter 186 provides for remedies "[i]f a

[5] Payment for summer residency is charged separately and listed as "rent" on the Plaintiff's billing statement. This fact, standing alone, does not prove the existence of a landlord-tenant relationship, particularly given that the term "rent" is often used imprecisely. *See, e.g., Davis v. Comerford*, 483 Mass. 164, 169 (2019).

[6] Although it is not clear to the Court the exact date Plaintiff's status as a graduate student was terminated, it is undisputed that he was not enrolled as a student as of September 16, 2020.

tenant is removed from the premises or excluded therefrom by the landlord or his agent except pursuant to a valid court order."

Plaintiff contends that G.L. c. 186, §§ 14 and 15F apply to any occupant of residential premises and do not require a finding of a landlord-tenant relationship, citing *Serreze v. YWCA of Western Massachusetts, Inc.*, 30 Mass. App. Ct. 639 (1991). The facts of *Serreze* are distinguishable from the circumstances presented here, however.[7] In *Serreze*, the housing provided by the YWCA was part of a transitional living program for battered women and their children. The central purpose of the YWCA program in *Serreze* was to provide housing for its participants. The Court noted that the nature of the transitional living program was to "provide a safe place for participants whose survival depends upon controlling their own habitat," and that "to deny program participants some form of pre-deprivation process would only perpetuate the cycle of temporary shelter and dislocation." *Id.* at 644.

In this case, the fundamental purpose of the University is to provide educational opportunities. The graduate housing provided by the University is incidental to the University's educational mission. Graduate students can elect to live on- or off-campus, but if they elect to live in an on-campus residence hall, they are obligated to comply with the terms of the Contract. They are required to pay a one-time housing fee each semester, a very different arrangement than the one in the *Serreze* case where program participants paid a percentage of their monthly income for rent and the balance was subsidized by outside agencies. *Id.* at 646 n. 13. Simply put, the factors that compelled the *Serreze* court to hold that the YMCA had to use summary process to regain possession of a residential dwelling unit are not present in this case.

[7] The *Serreze* decision should not be read to hold that every occupant is protected by landlord-tenant laws. For example, live-in aids, hotel guests, overnight guests and short-term vacation rental occupants do not get the protections of landlord-tenant laws. *See, e.g., United Co. v. Meehan*, 47 Mass. App. Ct. 315 (1999) (summary process not required to remove guest or visitor).

The Court deems the relationship between the University and Plaintiff in this matter to be that of licensor and licensee. The determination as to whether an occupant is a tenant or a licensee is a question of law, and in determining whether a license or tenancy was created, the fact finder must look at the parties' intentions and their objectives as evidenced by the circumstances and by the parties' conduct. *Willett v. Pilotte*, 329 Mass. 610, 612 (1953). Factors relevant to the legal distinction between a licensee and tenant include: (1) whether consideration – usually the payment of rent – was given for a tenancy;[8] (2) whether the agreement is written or oral;[9] (3) the extent of the parties' control over the premises;[10] (4) the language, if any, of the agreement;[11] and (5) the intention of the parties.[12] *See, generally, Baseball Publishing Co. v Bruton*, 302 Mass. 54, 56 (1939).

Plaintiff rests his argument largely on the question of control over the premises, asserting that Plaintiff had exclusive use of his unit at all relevant times and therefore had control of it. Exclusive use and control are distinct characteristics, however. The University retained control over how and under what conditions he could use his unit: it made the housing assignments, reserved the unilateral right to change assignments, and, if the student failed to meet University requirements, policies or regulations, could cancel the housing contract or refuse to readmit the student to the residence hall between semesters. Plaintiff did not have any property interest in the residence hall or his specific housing assignment. *See City of Worcester v. College Hill Properties, LLC*, 465 Mass. 134, 143 (2013) ("In fraternity houses and school dormitories, students by agreement, and without acquiring any property interest therein, occupy specific

[8] *Siver v. Atlantic Union College*, 338 Mass 212, 216 (1958)
[9] *Id.*
[10] *Assessors of Everett v. Albert N. Parlin House, Inc.*, 331 Mass. 359, 362 (1954)
[11] *Del Bianco v. Boston Edison Co.*, 338 Mass. 657, 659 (1959)
[12] *Commercial Wharf East Condominium Ass'n v. Waterfront Parking Corp.*, 407 Mass. 123, 134 (1990)

rooms with sleeping accommodations, much akin to a lodger in a traditional lodging house; in each instance, someone else has primary possession of, and a property interest in, the premises."). *See also* 33 Mass. Practice Landlord and Tenant Law § 1:11 (3d ed.) ("The student's license is contingent upon maintaining good standards within the college or university; thus the school would be able to remove an expelled student from its dormitory to prevent any disruptive influence … and retain its focus on education.").

Moreover, the Massachusetts legislature has determined that students residing in dormitories are not protected by G.L. c. § 239. G.L. c. 186 § 17 recites that "occupancy in fraternities, sororities and dormitories of educational institutions are not tenancies at will," and permits termination of an occupancy in a fraternity, sorority, or dormitory upon seven days' notice in writing to the occupant. G.L. c. 140 § 22 excludes college dormitories from definition of lodging house. Although Plaintiff argues the Lincoln Apartments are not a "dormitory," he does not cite to any accepted definition of a dormitory nor has he convinced the Court that there is any definitive characteristic of a dormitory that compels a finding that a University "residence hall" is not the functional equivalent of a "dormitory" as that term is used in the statutes cited herein.

To address another argument posited by Plaintiff, the Massachusetts eviction moratorium in effect at the relevant time prohibited an owner or landlord "for the purpose of a non-essential eviction for a residential dwelling unit: [to] (i) terminate a tenancy; or (ii) send any notice, including a note to quit, requesting or demanding that a tenant of a residential dwelling unit vacate the premises." Chapter 65 of the Acts of 2020, Section 3(a). The regulations promulgated by the Department of Housing and Community Development define a tenant as one "in possession of a residential dwelling or small business unit under a lease, sublease or tenancy at

will." *See* 400 CMR § 5.02. Plaintiff did not occupy his unit under a lease, sublease or tenancy at will, but instead a license agreement. Therefore, the eviction moratorium does not apply to Plaintiff and the University did not violate Chapter 65 of the Acts of 2020 when it removed Plaintiff from University housing.

Accordingly, for the foregoing reasons, Defendant's motion to dismiss the Complaint is allowed.

SO ORDERED this 9th day of July 2021.

Jonathan J. Kane

Hon. Jonathan J. Kane
First Justice, Western Division Housing Court

cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS

HAMPDEN, SS:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
SUMMARY PROCESS
NO. **19H79SP002099**

PENNYMAC LOAN SERVICES, LLC,

Plaintiff

VS

TATYANA STETSYUK,[1]

Defendants

Memorandum of Decision on the Cross-Motions for Summary Judgment

This is a summary process action in which plaintiff PennyMac Loan Services, LLC (hereinafter "PennyMac") is seeking to recover possession of the residential premises from the defendant after the plaintiff acquired title to the property upon foreclosure. Defendant Tatyana Stetsyuk (hereinafter "Stetsyuk") filed an answer which included a defense that the foreclosure sale was void, and for that reason PennyMac did not have a superior right to possession of the property prior to or at the time in initiated this eviction action or anytime thereafter. Stetsyuk's answer included two counterclaims asserting that (1) the foreclosure sale and events preceding it were so fundamentally unfair that the sale should be set aside in equity, and (2) PennyMac engaged in unfair conduct by refusing to communicate with her.

In a memorandum of decision, dated March 25 2020, addressing the plaintiff's first motion for summary judgment, Judge Fein determined that the plaintiff's Affidavit of Sale was sufficient to establish that the February 21, 2019 foreclosure sale of the property was conduct in strict compliance with the statutory power of sale.[2] However, the judge declined to enter summary

[1] The plaintiff's complaint identifies the defendant in the alternative as "Tatyana" Stetsyuk. The defendant in her pleadings identifies herself as "Tatyana" Stetsyuk. I shall use the defendant's preferred spelling of her first name.

[2] In her memorandum of decision on the plaintiff's first motion for summary judgment, dated March 25, 2020, Judge Fein ruled as follows:

"PennyMac's Prima Facie Case: The summary judgment record suffices to satisfy the plaintiff's prima facie case. While the original affidavit filed with the foreclosure deed (Exhibit H to Polansky affidavit) included a published

judgment because the plaintiff had failed to establish an absence disputed issues of fact with respect to whether the plaintiff was required to show compliance with the HUD face-to-face meeting requirements set forth 24 C.F.R. § 203.604(c)(5).

The parties filed cross-motions for summary judgment together with memoranda, supporting affidavits and documents, to address the sole remaining issue on the plaintiff's claim for possession pertaining to the face-to-face meeting regulation.

PennyMac argues that it foreclosed on the subject property in strict compliance the mortgage and holds legal title to the property. PennyMac claims it terminated Stetsyuk's right to possession of the property and is entitled to judgment on its claim for possession as a matter of law. Stetsyuk argues that she has the superior right to possession based upon her contention that the foreclosure sale was void ab initio because PennyMac did not have the authority to exercise the power of sale contained in the mortgage executed by her former husband, Voloydymr Stetsyuk (hereinafter "Volodymyr"). Specifically, Stetsyuk argues that prior to accelerating Volodymyr's mortgage debt after he fell behind in his mortgage loan payment obligations in June 2017, neither the then mortgagee, Mortgage Electronic Registration Systems, Inc. (hereinafter "MERS"), nor the loan servicer at that time, PennyMac, offered Volodymyr a "face-to-face" meeting as required by 24 C.F.R. § 203.604 (b). PennyMac argues that neither MERS nor PennyMac were obligated to comply with the "face-to-face" meeting provisions of the federal regulation based upon an

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notice of sale that scheduled the foreclosure auction for July 11, 2018, a confirmatory affidavit was filed thereafter (Exhibit J to Polansky's affidavit) that included a published notice of sale scheduled for February 21, 2019. The defendant fairly argues that the affidavit in question, as to which the affiant swore or affirmed that the contents were "truthful and accurate to the best of his/her knowledge and belief" does not conform precisely to the statutory form as endorsed in Federal National Mortgage Association v. Hendricks, 463 Mass. 635 (2012). I nevertheless conclude that the summary judgment record as a whole suffices to establish the plaintiff's prima facie case, given the facial reliability of the confirmatory affidavit (the foreclosure deed was executed on March 7, 2019 and recorded on April 9, 2019, consistent with a sale on February 21, 2019, noticed by publication on January 4, 11, and 18, 2019); and the fact that the Probate and Family Court shifted the responsibility for mortgage payments to the defendant by order dated September 21, 2017 and then found her in contempt on July 19, 2018 for her failure to do so, a ruling which she is collaterally estopped to deny. These undisputed facts, in combination with the fact that the defendant does not deny the default, suffice to establish the plaintiff's prima facie case as a matter of law."

I incorporate by reference the findings of fact and rulings of law set forth in Judge Fein's memorandum of decision.

exemption (#1) because Volodymyr had vacated the premises permanently in May 2017 and therefore did not reside at the property (or no later than July 15, 2017 based on Stetsyuk's February 10, 2021 answer to Interrogatory No. 2).

For the reasons below, PennyMac's motion for summary judgment is **ALLOWED** and Stetsyuk's cross motion for summary judgment is **DENIED**.

Undisputed Facts

The following facts necessary to resolve the legal issues raised in the cross-motions for summary judgment are based on facts set forth in the record that I conclude are not in dispute.

In June 2014 Volodymyr owned the residential dwelling at 15 Sunbrier Drive, Westfield, Massachusetts (the "property"). Volydymyr and Stetsyuk, then husband and wife, resided the property as their marital home.

On June 27, 2014, Volodymyr obtained an FHA-insured loan from Academy Mortgage Corporation ("Academy") in the amount of $262,163.00. On June 27, 2014 Volodymyr granted a mortgage on the property to Mortgage Electronic Registration Systems, Inc. ("MERS") as nominee for Academy to secure the promissory note.[3] Stetsyuk is not named on and did not sign the note or the mortgage. That same date Volodymyr recorded a Declaration of Homestead.[4] The declaration states that he is married to Stetsyuk and that she is not a co-owner of the property.

Volodymyr's mortgage was insured by the United States Department of Housing and Urban Development ("HUD") through a program managed by the Federal Housing Administration ("FHA"). The "Acceleration of Debt" clause contained in Johnson's mortgage (Mortg. ¶ 9(a)) provides that "the [l]ender may, except as limited by regulations issued by the Secretary in case of payment defaults, require immediate payment in full of all sums secured by this Security Instrument" (emphasis added). The acceleration clause, ¶ 9(d), further states that "[t]his Security instrument does not authorize acceleration or foreclosure if not permitted by regulations of the Secretary" (emphasis added).

PennyMac was the loan servicer for Volodymyr's mortgage loan in 2017.

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[3] The mortgage was recorded at the Hampden County Registry of Deeds (hereinafter "Registry of Deeds") on June 27, 2014 in Book 20331, Page 460.

[4] The declaration of homestead was recorded at the Registry of Deeds on June 27, 2014 in Book 20331, Page 474.

On April 7, 2017 Volodymyr filed a complaint for divorce against Stetsyuk in the Hampden County Probate Court ("Probate Court").

On May 13, 2017, one month after Volodymyr had commenced the divorce action, PennyMac received a notice from the U.S. Post Office that Voloydymr had changed his address. PennyMac understood this to mean that Volodymyr was no longer residing at the property as of May 13, 2017. PennyMac sent all future correspondence and notices pertaining to Volodymyr's mortgage loan to him at the new address listed in the post office notice. Stetsyuk does not dispute that Volodymyr moved out of the property. She states that Volodymyr moved out of the property on July 15, 2017 and did not reside there at any time after that date. In its summary judgment memorandum PennyMac states that it had good reason to believe that Volodymyr had moved out of the property by May 13, 2017, and that in any event it is undisputed that Volodymyr moved out of the property by July 15, 2017 at the latest.

Volodymyr stopped making his monthly mortgage payments as of June 1, 2017. He was in arrears in his mortgage loan payment obligations continuously since June 2, 2017.

PennyMac did not have a face-to face interview with Volodymyr to discuss his mortgage loan default, or make a reasonable effort to arrange such meeting, between June 2 and September 2, 2017 (the period during which three full monthly installments due on Volodymyr's mortgage loan were unpaid).

On August 14, 2017 PennyMac, through its counsel, sent Volodymyr (1) a 90-day Section 35A right to cure default notice, and (2) a Section 35B notice informing him of his right to seek a mortgage modification.

On September 21, 2017, in the Volodymyr/Setsyuk divorce action, the Probate Court entered a temporary order with respect to the property (where Stetsyuk continued to reside) directing Stetsyuk to make monthly mortgage loan payments commencing in November 2017. [5]

[5] Stetsyuk made two payments to PennyMac subsequent to the September 21, 2017 Probate Court order. She made a $1,900.00 payment on October 30, 2017. In a letter dated November 3, 2017, PennyMac notified Stetsyuk that the payment would be applied to the past due balance on Volodymyr's mortgage loan. That payment did not cure the outstanding amount due. Stetsyuk tendered a second payment of $1,900.00 to PennyMac on November 28, 2017. In a letter dated December 13, 2017 PennyMac returned the November 28 check to Stetsyuk because it was insufficient to make the full payment necessary to cure the mortgage loan default. Stetsyuk did not tender any further payments to PennyMac.

On October 18, 2017 MERS assigned the Volodymyr mortgage PennyMac.[6] The documents in the summary judgment record (allonge to note and post-foreclosure affidavit) establish that Academy transferred the note to PennyMac prior to the foreclosure sale. Accordingly, PennyMac held Volodymyr's mortgage and note prior to and at the time of the February 21, 2019 foreclosure sale.

On October 23, 2018, acting upon Volodymyr's request, PennyMac added Stetsyuk as an authorized user to his mortgage account. On December 14, 2018, PennyMac sent Stetsyuk two letters by certified mail informing her of the foreclosure sale scheduled for February 21, 2019.

On February 21, 2019 PennyMac conducted a foreclose sale on the property. PennyMac submitted the highest bid of $225,000.00.[7] Prior to the foreclosure sale neither Volodymyr nor Stetsyuk tendered payment to PennyMac in the amount necessary to cure the mortgage default.

On March 7, 2019, PennyMac, for consideration paid of $225,00.00, executed and delivered to itself a foreclosure deed to the property.[8]

On March 19, 2019 an authorized representative of PennyMac executed the Post-Foreclosure Affidavit Regarding Note and Affidavit of Compliance with Condition Precedent to Acceleration and Sale of the property.[9]

On May 10, 2019 PennyMac served Stetsyuk with a 72-hour notice to vacate. On May 24, 2017 PennyMac served Stetsyuk with a summary process summons and complaint seeking to recover possession of the property and damages for unpaid use and occupancy.

Stetsyuk has continued to occupy the property as her residence since the date of the foreclosure sale. She has not made any payments to PennyMac for her use and occupancy of the

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Under the terms of the judgment of divorce nisi dated July 18, 2018, Volodymyr was to covey to Stetsyuk title to the property, and Stetsyuk was to pay all expenses associated with the property, including mortgage payments. None of this happened.

[6] The mortgage assignment was recorded at the Registry of Deeds on November 3 2017 in Book 21931, Page 89.

[7] The confirmatory affidavit of sale dated July 11, 2019 was recorded at the Registry of Deeds on July 15, 2019 at Book 22753, Page 264.

[8] The foreclosure deed dated March 7, 2019 was recorded at the Registry of Deeds on April 9, 2019 at Book 22616, Page 284.

[9] The Affidavit was recorded at the Registry of Deeds on April 9, 2019 at Book 22616, Page 290.

property since PennyMac acquired title on March 7, 2019. However, PennyMac has presented no evidence to establish the fair rental value for the use and occupancy of the property.

Discussion

The standard of review on summary judgment "is whether, viewing the evidence in the light most favorable to the non-moving party, all material facts have been established and the moving party is entitled to a judgment as a matter of law." *Augat, Inc. v. Liberty Mut. Ins. Co.*, 410 Mass. 117, 120 (1991). See Mass. R. Civ. P. 56 (c). The moving party must demonstrate with admissible documents, based upon the pleading depositions, answers to interrogatories, admissions documents, and affidavits, that there are no genuine issues as to any material facts, and that the moving party is entitled to a judgment as a matter of law. *Community National Bank v. Dawes*, 369 Mass. 550, 553-56 (1976). All evidentiary inferences must be resolved in favor of the non-moving party. See *Simplex Techs, Inc. v. Liberty Mut. Ins. Co.*, 429 Mass. 196, 197 (1999). Once the moving party meets its initial burden of proof, the burden shifts to the non-moving party "to show with admissible evidence the existence of a dispute as to material facts." *Godbout v. Cousens*, 396 Mass. 254, 261 (1985). The non-moving party cannot meet this burden solely with "vague and general allegations of expected proof." *Community National Bank*, 369 Mass. at 554; *Ng Brothers Construction, Inc. v Cranney*, 436 Mass. 638, 648 (2002) ("[a]n adverse party may not manufacture disputes by conclusory factual assertions; such attempts to establish issues of fact are not sufficient to defeat summary judgment").

To prevail in a summary process action involving foreclosed property (where the validity of the foreclosure is challenged) the plaintiff claiming to be the post-foreclosure owner of the property must prove that it has a superior right of possession to that property over the claimed ownership right asserted by the defendant who was the pre-foreclosure owner/occupant. To prove this element of its claim for possession the post-foreclosure plaintiff must show "that the title was acquired strictly according to the power of sale provided in the mortgage." *Wayne Inv. Corp. v. Abbott*, 350 Mass. 775, 775 (1966). See *Pinti v. Emigrant Mortg. Co., Inc.*, 472 Mass. 226 (2012); *Bank of New York v. Bailey, 460 Mass. 327* (2011).

Face-To-Face Meeting Exemption Under HUD Regulation. Volodymyr's mortgage was insured by the United States Department of Housing and Urban Development ("HUD") through a program managed by the Federal Housing Administration ("FHA"). The "Acceleration of Debt"

clause contained in Volodymyr's mortgage (Mortg. ¶ 9(a)) provides that "the [l]ender may, *except as limited by regulations issued by the Secretary in case of payment defaults*, require immediate payment in full of all sums secured by this Security Instrument" (emphasis added). The acceleration clause, ¶ 9(d), further states that "[t]his Security instrument does not authorize acceleration *or foreclosure* if not permitted by regulations of the Secretary" (emphasis added).

Under the statutory power of sale, G.L. c. 183, § 21, upon default by the mortgagor "*in the performance or observation of the foregoing or other conditions*" the mortgagee may sell the mortgaged premises by public auction after "*first complying with the terms of the mortgage* and with the statutes relating to the foreclosure of mortgages by the exercise of a power of sale . . ." (emphasis added).

The HUD regulations referenced in ¶ 9(d) of the mortgage include those governing a mortgagee's servicing responsibilities with respect to HUD-insured mortgages are codified in Title 24, Part 203 (Single Family Mortgage Insurance), Subpart C (Servicing Responsibilities) of the Code of Federal Regulations, 24 C.F.R. § 203.500-681. Section 203.500 states *"[i]t is the intent of the Department [HUD] that no mortgagee shall commence foreclosure or acquire title to a house until the requirements of this subpart [C] have been followed*" (emphasis added).

One of the Subpart C requirements that a mortgagee of a HUD-insured mortgage must comply with before initiating a foreclosure is the "face-to-face" meeting requirement set forth in 24 C.F.R. § 203.604 (b), which provides in relevant part:

> (b) *The mortgagee must have a face-to face interview with the mortgagor, or make reasonable effort to arrange such meeting*, before three full monthly installments due on the mortgage are unpaid. . . (emphasis added).

There are five exemptions to this meeting requirement. 24 C.F.R. § 203.604 (c) provides:

> (c) *A face-to-face meeting is not required if*:
>
> (1) *The mortgagor does not reside in the mortgaged house*,
>
> (2) The mortgaged house is not within 200 miles of the mortgagee, its servicer, or a branch office of either,
>
> (3) The mortgagor has clearly indicated that he will not cooperate in the interview . . .
>
> (4) A repayment plan . . . is entered into to bring the mortgagor's account current and thus making the meeting unnecessary . . . or
>
> (5) *A reasonable effort to arrange a meeting is unsuccessful*.

(Emphasis added).[10]

24 C.F.R. § 203.604 (d) provides:

> "[a] reasonable effort to arrange a face-to-face meeting with the mortgagor shall consist at a minimum of one letter sent to the mortgagor certified by the Postal Service as having been dispatched. Such a reasonable effort to arrange a face-to-face meeting shall also include at least one trip to see the mortgagor at the mortgaged property, unless the mortgaged property is more than 200 miles from the mortgagee, its servicer, or a branch office of either, or it is known that the mortgagor is not residing in the mortgaged property

I rule as a matter of law that the "face-to-face" meeting provision of Subpart C of the HUD regulations was explicitly incorporated into Volodymyr's mortgage and is a material provision of the mortgage. Specifically, before PennyMac and the mortgagee could accelerate the debt, commence foreclosure or acquire title to the property pursuant to a foreclosure sale it had to show that the mortgagee had complied with the HUD mandated "face-to-face" meeting requirement set forth in 24 C.F.R. § 203.604 (b) ***or*** be prepared to show that all entities that come within the definition of "mortgagee" were exempt from that requirement under one of the five exemption provisions of 24 C.F.R. § 203.604 (c). *Wells Fargo Bank, N.A. v. Cook*, 87 Mass. App. Ct. 382 (2015); *Jose v. Wells Fargo Bank, N.A.*, 89 Mass. App. Ct. 772 (2016).

It is undisputed that neither PennyMac nor MERS conducted a face-to-face meeting with Volodymyr or made any effort to offer Volodymyr a face-to-face meeting before three full monthly installments due on his mortgage were unpaid (between June 2 and September 2, 2017).

PennyMac argues that it (and the mortgagee) was exempt from the face-to-face meeting requirement pursuant to 24 C.F.R. § 203.604 (c) (1) because by July 15, 2017 at the latest (within the three-month nonpayment period) Volodymyr no longer resided in the mortgaged house.

Stetsyuk argues that "[t]he HUD regulation, 24 C.F.R. § 203.604 (b), requires either 'a face-to-face interview with the mortgagor, or . . . a reasonable effort to arrange such a meeting.' Each of these disjuncts has its own exceptions." Based on this interpretation of the HUD regulation Stetsyuk argues that PennyMac cannot show that it was exempt from strictly complying with of 24 C.F.R. § 203.604. With respect to the "face-to-face" meeting requirement, Stetsyuk argues that

[10] Exemptions 2, 3, and 4 of subsection (c) are not at issue in this action.

PennyMac was not exempt from compliance under § 203.604 (c) (1) because Volodymyr was residing in the mortgaged house for at least a portion of the three-month nonpayment period, and the exemption provision should be read to apply only where the mortgagor was not residing in the mortgaged house throughout the three-month nonpayment period. With respect to the "reasonable effort" provision set forth in § 203.604 (b), Stetsyuk argues that § 203.604 (d) applies, and that PennyMac was not exempt from having to make "a reasonable effort" to arrange a meeting with Volodymyr (consisting of at least a certified letter or a trip to the property) because during the three-month nonpayment period PennyMac did not have knowledge that Volodymyr had move out of the mortgaged house.

For purposes of ruling on the cross-motions for summary judgment I will accept as true that Volodymyr was no longer residing in the mortgaged house after July 15, 2017. However, as of May 13, 2017 (when PennyMac received a notice from the U.S. Post Office that Voloydymr had changed his address) PennyMac had ample reason to conclude that Volodymyr was no longer living at the mortgaged house.

Statutory interpretation, including interpretation of regulations, is "guided by the familiar principle that 'a statute must be interpreted according to the intent of the Legislature ascertained from all of its words construed by the ordinary and approved usage of the language, considered in connection with the cause of its enactment, the mischief or imperfection to be remedied and the main object to be accomplished, to the end that the purpose of its framers may be effectuated." *Drummer Boy Home Assoc. v. Britton*, 474 Mass. 17, 23-24 (2016) *quoting Hanlon v. Rollins*, 286 Mass. 444, 447 (1934). "Courts must ascertain the intent of a statute from all its parts and from the subject matter to which it relates, and must interpret the statute so as to render the legislation effective, consonant with sound reason and common sense." *Twomey v. Middleborough*, 468 Mass. 260, 268 (2014). When the meaning of the language is plain and unambiguous, we enforce the statute according to its plain wording "unless a literal construction would yield an absurd or unworkable result." *Adoption of Daisy*, 460 Mass. 72, 76 (2011), quoting *Boston Hous. Auth. v. National Conference of Firemen & Oilers, Local 3*, 458 Mass. 155, 162 (2010). We "endeavor to interpret a statute to give effect 'to all its provisions, so that no part will be inoperative or superfluous.'" *Connors v. Annino*, 460 Mass. 790, 796 (2011), quoting *Wheatley v. Massachusetts Insurers Insolvency Fund*, 456 Mass. 594, 601 (2010).

First, applying these general rules of interpretation, I rule as a matter of law that 24 C.F.R. § 203.604 (b), reasonably construed, affords the mortgagor the right to a face-to-face meeting with the mortgagee or its servicer within the three-month nonpayment period only while the mortgagor is residing in the mortgaged home. The plain intent of the regulation is to require that the mortgagee to make a reasonable effort to preserve the mortgagor's ownership of his home. However, once the mortgagor moves out of the mortgaged house (and is thus no longer residing there as his home) the regulation, reasonably construed, does not impose on the mortgagee any continuing duty or obligation to conduct a face-to-face meeting with the mortgagor. There is nothing in the plain language of the HUD regulation that can be read to limit the exemption provision set forth in Subsection (c) (1) to circumstances where the mortgagee had knowledge that the mortgagor was not residing at the mortgaged house.[11]

The regulation is silent with respect to situation where the mortgagor was residing at the mortgaged house when he failed to make his mortgage payment but vacated the mortgaged house at some point during the three-month nonpayment period addressed in 24 C.F.R. § 203.604 (b). Under these circumstances, and reading the HUD regulation as a whole, I conclude that as of the date the mortgagor vacated the mortgaged house, he was no longer entitled to a face-to-face meeting within the three-month nonpayment period under 24 C.F.R. § 203.604 (b). This is so because the mortgagor's move from the mortgaged house triggered the mortgagee's exemption set forth in § 203.604 (c) (1) [*the mortgagor does not reside in the mortgaged house*].

Accordingly, I rule as a matter of law that because Volodymyr was no longer residing at the mortgaged house during the three-month nonpayment period PennyMac was exempt under § 203.604 (c) (1) from having to conduct a face-to-face meeting with Volodymyr under 24 C.F.R. § 203.604 (b).

Second, under the general rules of statutory construction the provisions of § 203.604 (b), (c) and (d) must be read as a whole to render the regulation effective, consonant with sound reason and common sense. Under Subsection (b) the mortgagee must make reasonable efforts to offer the mortgagor a face-to-face meeting so long as the mortgagor is residing in the mortgaged house. The regulation does not include any language that, reasonably construed, makes the mortgagee's

[11] In any event, based upon its communication from the Post Office, in May 2017 PennyMac had a reasonable basis to conclude that Volodymyr was no longer residing at the mortgaged house as of May 13, 2021.

right to an exemption from its face-to-face meeting obligations dependent on the mortgagee's prior knowledge that the mortgagor is no longer residing in the mortgaged house. The regulation connects the right to a face-to face meeting to the mortgagor's continued residence in the mortgaged house. If the mortgagee is no longer living in the mortgaged home the regulation does not impose any continuing duty or obligation on the mortgagee to conduct a face-to-face meeting with the mortgagor or make a reasonable effort to conduct such a meeting.

Subsection (d) does not set forth exemption requirements that a mortgagee must meet separate and distinct from Subsection (c). The relevant clause of Subsection (d) ("*it is known that the mortgagor is not residing in the mortgaged property*") simply sets forth what is required of the mortgagee seeking an exemption under Subsection (c) (5) [*a reasonable effort to arrange a meeting is unsuccessful*]. However, a mortgagee is entitled to an exemption from compliance with the face-to-face meeting requirement if it can establish its entitlement under any one of the five Subsection (c) exemptions. Each provision of Subsection (c) provides a separate and distinct ground for an exemption.

PennyMac stipulated that it did not make any effort to arrange a face-to-face meeting with Stetsyuk during the three-month nonpayment period.[12] And PennyMac is not asserting a right to an exemption under Subsection (c) (5). PennyMac is relying solely on the exemption set forth in Subsection (c) (1). Once the mortgagor moves out of the mortgaged house the mortgagor is no longer entitled to a face-to-face meeting with the mortgagee, and it follows, a fortiori, that the mortgagee is no longer under any obligation to make a reasonable effort to arrange such a meeting. Stetsyuk's strained argument that the mortgagee is relieved of its obligation to make a reasonable effort to arrange a face-to-face meeting only if the mortgagee knew that the mortgagor had vacated the mortgaged home is without support in the plain language of the HUD regulation. The regulation does not impose any continuing obligation or duty on the mortgagee to make any effort to arrange a face-to-face meeting where the mortgagor no longer resides in the mortgaged home. Simply stated, under the HUD regulation the mortgagee's lack of knowledge that the mortgagor is no longer living in the mortgaged home does not impose any continuing duty or obligation upon

[12] PennyMac's position is that it made no effort to contact Volodymyr to arrange a face-to-face meeting after Volodymyr stopped making his monthly mortgage payments (beginning in June 2017) because based upon the May 13, 2017 mail-forwarding communication from the Post Office PennyMac reasonably believed that Volodymyr had vacated the mortgaged house prior to June 2017.

the mortgagee to make reasonable efforts to arrange a face-to-face meeting. The mortgagee's knowledge (or lack of knowledge) of where the mortgagor resides is irrelevant.

PennyMac is not required to show that it had knowledge that Volodymyr had vacated the mortgaged house to be relieved of its obligation to make a reasonable effort to conduct a face-to-face meeting. It was relieved of that obligation as of the date Volodymyr vacated the mortgaged house. Volodymyr had vacated the mortgaged house by July 15, 2017 at the latest (which was within the three-month nonpayment period). Accordingly, I rule as a matter of law that because Volodymyr had vacated the mortgaged house before or during the three-month nonpayment period set forth in 24 C.F.R. § 203.604 (b) PennyMac was not required to make a reasonable effort to arrange a face-to-face meeting with Volodymyr.

Claim for Possession and Use and Occupancy Damages. The undisputed facts in the summary judgment record (and the prior findings and legal rulings set forth in Judge Fein's summary judgment order) establish that the February 21, 2019 foreclosure sale of the property was conducted in strict compliance with Volodymyr's mortgage and the statutory power of sale. PennyMac was the high bidder at the foreclosure sale, and as of March 7, 2019 PennyMac acquired title to the property.

On May 10, 2019 PennyMac served Stetsyuk with a legally sufficient 48-hour notice to vacate. Stetsyuk has failed to vacate the property.

I rule as a matter of law that PennyMac's right to possession of the property is superior to the right asserted by Stetsyuk. Accordingly, PennyMac is entitled to recover possession of the property from Stetsyuk.

PennyMac has not presented any evidence to establish the fair rental value of the property since May 10, 2019. Accordingly, I shall deem waived its claim for use and occupancy damages, and its claim shall be dismissed.

Stetsyuk's Counterclaims. Stetsyuk asserted two counterclaims in her answer. I shall address each.

First, Stetsyuk has not presented any competent evidence in the summary judgment record sufficient to raise a disputed issue of material fact pertaining to her counterclaim that the foreclosure process was fundamentally unfair (Counterclaim No. 1). Specifically, there is no evidence that PennyMac, MERS or the mortgage lender engaged in any unfair or deceptive

practices with respect to the administration of Volodymyr's mortgage loan secured by the first mortgage on the property, any loan modification applications that Volodymyr may have filed, or the foreclosure process generally, that rendered the February 21, 2021 foreclosure sale so fundamentally unfair that Stetsyuk (who prior to the foreclosure sale did not have an ownership interest in the property, and was not an obligor on the promissory note or mortgage) would be entitled to affirmative equitable relief against PennyMac, specifically the setting aside of the foreclosure sale "for reasons other than failure to comply strictly with the power of sale provided in the mortgage." *U.S. Bank Nat'l Ass'n v. Schumacher*, 467 Mass. 421, 430, 432-433 (2014).

Second, Stetsyuk has not presented any competent evidence in the summary judgment record sufficient to raise a disputed issue of material fact pertaining to her G.L. c. 93A counterclaim (Counterclaim No. 2). Specifically, there is no evidence that PennyMac had any contractual or commercial relationship with Stetsyuk, and there is no evidence that PennyMac owed Stetsyuk any contractual or common law duty pertaining to the property prior to the foreclosure sale. There is no evidence that PennyMac engaged in unfair or deceptive practice involving Stetsyuk that would affect PennyMac's title to the property.

Accordingly, I rule as a matter of law that PennyMac is entitled to summary judgment on Stetsyuk's counterclaims.

ORDER FOR ENTRY OF JUDGMENT CONSISTENT WITH HOUSING COURT DEPARTMENT STANDING ORDER 5-20

Based upon all the credible evidence submitted as part of the summary judgment record in light of the governing law, it is **ORDERED** that:

1. Judgment shall enter for plaintiff PennyMac Loan Services, LLC against defendant Tatyana Stetsyuk on the plaintiff's claim for possession.
2. Judgments shall enter dismissing plaintiff PennyMac Loan Services, LLC's claim for use and occupancy damages.
3. Execution for possession shall issue on August 15, 2021; however, the plaintiff shall not levy on the execution for possession prior to September 15, 2021 or on the day next after the date on which any applicable eviction moratorium order/regulation expires or is rescinded, **WHICHEVER IS LATER**.

4. Judgment shall enter for plaintiff PennyMac Loan Services, LLC on defendant Tatyana Stetsyuk's fundamental unfairness counterclaim (Counterclaim No. 1) and G.L. c. 93A counterclam (Counterclam No. 2).

JEFFREY M. WINIK
ASSOCIATE JUSTICE (Recall Appt.)

July 13, 2021

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 21 SP 1075

EMTAY, INC,

PLAINTIFF

v.

MEMORANDUM OF DECISION

JOSEPHINE RAIMER,

DEFENDANT

This no-fault summary process action was before the Court for trial on July 14, 2021. Plaintiff seeks to recover possession of 2 Harvest Circle, East Longmeadow, Massachusetts (the "Premises") from Defendant. Plaintiff appeared for trial with counsel. Defendant appeared and represented herself.

Based on the evidence and testimony presented, and the reasonable inferences that can be drawn therefrom, the Court finds that Plaintiff is a bona fide third-party purchaser of the Premises following foreclosure. It acquired the property on January 20, 2021 from Wilmington Savings Bank at auction. The deed was introduced as an exhibit. Plaintiff served Defendant with a legally adequate notice to vacate, which Defendant acknowledges receiving. The Court finds that Plaintiff satisfied its prima facie case for possession.

Defendant, the former homeowner, did not file an answer. She contends that, because she tendered payment to cure the mortgage default in 2016, the mortgagee had no basis to foreclose. Defendant is estopped from challenging the foreclosure, however, because the issue was fully

and finally adjudicated in a previous case in this court. *See Wilmington Savings Fund Society FSB v. Raimer*, Docket No. 19H79SP3600 (judgment for possession entered in favor of the mortgagee on a motion for summary judgment). Defendant did not appeal the Court's decision, which entered on February 28, 2020, and she cannot relitigate the issue in this case. Accordingly, give Defendant's lack of any legal defenses, judgment for possession shall enter in favor of Plaintiff.[1]

The tenancy having been terminated without fault, Defendant is entitled to seek a stay on the use of the eviction order pursuant to G.L. c. 239, §§ 9, et seq. Execution shall issue at the next court date, at which time the Court will consider any request Defendant makes for additional time to vacate the Premises. The hearing shall be held by Zoom on **July 30, 2021 at 2:00 p.m.**

SO ORDERED this 16th day of July 2021.

Jonathan J. Kane
Hon. Jonathan J. Kane, First Justice

[1] As this is not an eviction for non-payment of rent and does not otherwise involve a claim for unpaid rent or use and occupancy, neither Chapter 257 of the Acts of 2020 nor the CDC eviction moratorium apply.

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

CASE NO. 20-CV-566

TOWN OF LANESBOROUGH, Plaintiff, v. MICHELLE BEAUDOIN and PETER BEAUDOIN, Defendant.	ORDER

This matter came before the court on July 7, 2021 for a contempt trial. The plaintiff appeared through counsel and the defendant, Peter Beaudoin appeared *pro se* and the co-defendant Michelle Beaudoin did not appear. After hearing, the following order shall enter:

1. There is no question that the defendants knowingly violated the clear and unequivocal language of the October 16, 2020 Order of the court (hereinafter, "Order")

2. Specifically, the Order states at paragraph (a):

> The Defendants shall forthwith cease the operation and storage of construction and logging equipment on their property at 918 North Main Street, Lanesborough, MA (the "Property") and remove any storage of related equipment and/or vehicles.

3 Mr. Beaudoin admitted that he has parked vehicles on occasion which violate this order as well as a woodchipper and a furnace Though the court understands the circumstances explained by Mr. Beaudoin which has led him to these violations, they clearly support a finding and ruling of contempt.

4. **Conclusion and Order:** Accordingly, the defendants are in contempt of the court's Order and shall be responsible to pay the plaintiff for reasonable attorneys' fees and costs The plaintiff has 20 days from the date of this order noted below to file and serve its petition for attorneys' fees and costs. The defendants shall have 20 days thereafter to file and serve their written opposition to said petition, if any. Thereafter, the court will issue a ruling on the petition for fees and costs and enter a final judgment of contempt at that time.

5. Additionally, the defendant shall be required to pay $100 per day to the plaintiff beginning July 15, 2021 for each and every day that they violate the Order of the court thereafter.

So entered this 14th day of July, 2021.

Robert Fields, Associate Justice

cc. Court Reporter

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

CASE NO. 21-CV-364

MASON SQUARE APARTMENTS,

Plaintiff,

v.

ANGELA GARCIA PIZARRO,

Defendant.

ORDER

After hearing on July 6, 2021 on the defendant tenant's motion to dismiss, at which each party was represented by counsel, and representatives from BCRHA's Tenancy Preservation Program appeared, the following order shall enter:

1. **Standard of Review and Statutory Authority:** It has been held that a motion to dismiss for failure to state a claim should only be allowed where it is certain that the plaintiff is not entitled to relief under any combination of facts that could be drawn or reasonably inferred from the allegations set forth in the complaint.

Eigerman v. Putnam Investments, Inc., 450 Mass. 281, 286 (2007). Accordingly, what is required for a complaint to survive motion to dismiss for failure to state a claim at the pleading stage are "factual allegations plausibly suggesting (not merely consistent with) an entitlement to relief, in order to reflect[] the threshold requirement of [Fed. R. Civ. P.] 8(a)(2) that the plain statement possess enough heft to sho[w] that the pleader is entitled to relief (quotations omitted)." *Innacchino v. Ford Motor Co.*, 451 Mass. 623, 636 (2008) quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 557 (2007).

2. The statute at issue, G.L. c. 139, § 19, states in pertinent part:

> If a tenant or occupant of a building or tenement, under a lawful title, uses such premises or any part thereof for the purposes of . . . . possession or use of an explosive or incendiary device or other violations of section one hundred and one, one hundred and two, one hundred and two A or one hundred and two B of chapter two hundred and sixty-six . . . . such use or conduct shall, at the election of the lessor or owner, annul and make void the lease or other title under which such tenant or occupant holds possession and, without any act of the lessor or owner shall cause the right of possession to revert and vest in him, and the lessor or owner may seek an order requiring the tenant to vacate the premises or may avail himself of the remedy provided in chapter two hundred and thirty-nine.

3. **Incendiary Device:** A "destructive or incendiary device" under M.G.L. c. 266, §101 is defined as "an explosive, article or device designed or adapted to cause physical harm to persons or property by means of fire, explosion, deflagration or detonation and consisting of substance capable of being ignited, whether or not contrived to ignite or explode automatically." Some examples of objects found to be incendiary devices under the section 101 in a criminal context include "consumer fireworks," *Commonwealth v. Regan*, Essex Superior Court No. 1877CR00682, (Dec. 16, 2020, Karp, J.); "a device that consisted of multiple

components, contained an increased volume of the potassium nitrate-sugar mixture as compared to previous devices he had built, and could be activated remotely," *Com. v. Griege*, 86 Mass. App. Ct. 1125 (2014); and a "Molotov cocktail." *Com. v. DeCicco*, 44 Mass. App. Ct. 111, 112 (1998). *Contrast Com. v. Carter*, 442 Mass. 822, 824, 817 N.E.2d 768, 770 (2004) ("defendant possessed both C–4 and blasting caps; however, the evidence shows that there was no assembly of the materials, but rather that they were stored separately"); *Commonwealth v. Aldana*, 477 Mass. 790, 791–92, 81 N.E.3d 763, 765 (2017) ("evidence introduced at trial was not sufficient to establish that the defendant was without lawful authority to possess the powders themselves or the incendiary substance, thermite, that the Commonwealth asserted he intended to make").

4. In the Housing Court, incendiary devices for the purposes of an action pursuant to G.L. c. 139, § 19, have included "six rounds of live .357-caliber ammunition," *Boston Housing Authority v. Sanders*, Boston Housing Court No. 99-CV-00710 (September 3, 1999, Daher, C.J.); "four rounds of .22-caliber ammunition," *Boston Housing Authority v. Mongo*, Boston Housing Court No. 99-CV-01258 (November 29, 1999, Daher, C.J.); and a "shirt which the defendant . . . . lit on fire and threw onto the suitcases on the porch of the premises is an infernal device within the meaning of G.L. c. 266, s.102A." *Santos v. Riveira*, Southeastern Housing Court No. 12-SP-05208 (January 14, 2013, Chaplin, F.J.). The Plaintiff highlights *Santos* as an example of how the Court may find that the burning of a pile of clothes and mattress satisfies the statute. That example appears to be an outlier among the other situations discussed above and

perhaps is further distinguishable because it does not apply the current definitions in the pertinent section of G.L. c.266.

5. While the court certainly does not condone the tenant's alleged act of setting fires in her apartment, the court finds and so rules that the assertions underlying the landlord's complaint herein, that the tenant used a lighter to light clothing and a mattress aflame, do not entitle the landlord to the relief of G.L. c.139, §19 as the lighter nor the lit items---separately or combined---are "incendiary devices" under the applicable statute.

6. **Crime Involving the Use of Force or Violence Against the Person Legally Present:** G.L. c. 139, § 19 also provides for remedy "if a tenant or household member of . . . . federal or state assisted housing commits an act or acts which would constitute a crime involving the use or threatened use of force or violence against the person of . . . . any person while such person is legally present on the premises. . . ." A copy of the occupancy agreement attached to the complaint shows the tenant receives a rental subsidy in the amount of $955.00 from "MOD Rehab." If the use of force provision is applicable to the tenant as a tenant of federal or state assisted housing, this provision may also apply to the G.L. c. 139, §19 complaint which states that "PIZARRO's actions greatly put in danger the lives of all other residents in the building."

7. The tenant argues in her motion to dismiss that "[i]n this context, the word "against" must involve an intended target," and that "[a]lthough this court may infer from the complaint that the fires were set intentionally, it may not speculate that there was intentional directing of the fire, or that the fire was intended to

harm a particular target." Citing *Borden v. United States*, No. 19-5410, 2021 WL 2367312 (June 10, 2021).

8. In *Borden*, the Supreme Court of the United States ("SCOTUS") considered "whether a criminal offense can count as a 'violent felony' if it requires only a *mens rea* of recklessness—a less culpable mental state than purpose or knowledge" and held "that a reckless offense cannot so qualify." *Borden v. United States*, No. 19-5410, 2021 WL 2367312 (U.S. June 10, 2021). SCOTUS described the harsher penalties under 18 U.S.C. § 922(g) as "closely confined" to the statute. Id. Therefore, SCOTUS held that "[t]he treatment of reckless offenses as 'violent felonies' would impose large sentencing enhancements on individuals (for example, reckless drivers) far afield from the 'armed career criminals' ACCA addresses—the kind of offenders who, when armed, could well 'use [the] gun deliberately to harm a victim.'" Id.
9. Again, though the court does not condone the tenant's alleged act of setting fires, the court is persuaded by this argument and finds and so rules that G.L. c. 139, §19 is inapplicable in the instant matter where there is no averment that the defendant intended to harm a particular target.
10. **Injunctive Relief:** Based on the foregoing, G.L. c.139, §19 is inapplicable based on the landlord's complaint and, as such, the court finds and so rules that the remedies under that statute, to "annul and make void the lease" not available in these proceedings. The court does, however, find and so rule that the plaintiff has met its burden in its complaint for injunctive relief under the standards articulated in *Packaging Indus. Grp., Inc. v. Cheney*, 380 Mass. 609, 622 (1980).

11. Accordingly, the current order that the landlord change the locks on the tenant's unit and that the tenant be prohibited from being present at the premises without the landlord's express permission, shall remain in full force and effect until further order of the court.

12. Additionally, the tenant has agreed that the landlord may access her unit through July 9, 2021 to make repairs of damage caused by the fire(s) without further notice. If access is required thereafter, the landlord shall send notice to both the tenant's counsel, Uri Strauss, Esq., and [redacted] of the Tenancy Preservation Program. Access upon such request shall not be unreasonably denied.

13. Further hearing in this matter shall be scheduled for **July 26 , 2021 at 12:00 p.m. by Zoom.** The Clerk's Office shall provide written instruction on how to participate by Zoom. If any party or witness is unable to appear visually by Zoom on their own, they may come to the courthouse at 37 Elm Street in Springfield and use the court's Zoom Room. The Clerk's Office can be reached by phone at 413-748-7838. A Spanish language interpreter shall be available for said hearing.

So entered this 20th day of July, 2021.

Robert Fields, Associate Justice

Cc: Jake Hougue, Tenancy Preservation Program
Court Reporter

COMMONWEALTH OF MASSACHUSETTS

BERKSHIRE, ss.

WESTERN DIVISION HOUSING COURT
Civil Action. No. 19 CV 0289

ATTORNEY GENERAL for the
COMMONWEALTH OF MASSACHUSETTS,

Petitioner,

v.

ESTATE OF EDWARD E. MANGE, et al,

Respondents.

INTERIM ORDER

At a hearing on July 21, 2021, counsel for the Office of the Attorney General appeared. Receiver, Construct, Inc. DID appear. Respondents the Estate of Edward E. Mange DID NOT appear, Melissa Martinetto DID NOT appear, Nicholas E. Mange DID NOT appear, Berkshire Bank DID NOT appear, Norfolk Financial Corp. DID NOT appear, the Western Massachusetts Electric Company DID NOT appear, Zachary T. Lawrence DID NOT appear; Guardian ad Litem for The Minor Child DID appear and Lisa Pierre as Guardian of The Minor Child DID appear. Accordingly, the following Order is to enter:

1. ***Appointment:*** The Receiver **Construct, Inc.** was appointed by this Court after a hearing on May 3, 2019.

2. ***Subject Property:*** The subject property at **2442 Main Street, Becket** is a vacant single-family dwelling.

3. ***Service:*** The Respondent the Estate of Edward E. Mange was served in accordance with the Court's allowance of Petitioner's Motion for Alternative Service of Process by publication and by posting at the subject property. Respondents Melissa Martinetto and Nicholas E. Mange were served via special process server on April 4, 2019 at their last and usual addresses. Respondent Berkshire Bank was served via special process server on April 4, 2019 at its headquarters. Respondents Norfolk Financial Corp. and Western Massachusetts Electric Company were served via special process server on April 9, 2019 at their respective headquarters.

4. ***Insurance:*** The Receiver filed proof of insurance with the Court on June 3, 2019.

5. ***Rehabilitation Plan:*** The Receiver has filed a Motion to Approve the Rehabilitation Plan which was approved on **June 26, 2019**. The total cost of the rehabilitation, as set out in the proposed plan is estimated to be about **$242,443.77** including legal costs and overhead.

6. ***Receiver's Reports:*** The Receiver's most recent report was filed with the court and served upon all parties and lienholders on **July 15, 2021**. The report covers the time period of **March 31, 2021** to **June 30, 2021**. Receiver filed an Amended Report on July 20, 2021, because it appeared that some invoices were inadvertently omitted. During that time, the Receiver reports expenses in the amount of **$82,575.42**. The total amount of the Receiver's asserted lien to date is **$209,890.31**. The report and its receipts have been reviewed for accuracy by the Petitioner and found to be acceptable. The Receiver's anticipated date of completion is **August 31, 2021**.

7. ***Motion to Add Potential Heirs:*** On December 21, 2020, the Petitioner filed a Motion to Add Potential Heirs, Zachary T. Lawrence, A Minor Child and Lisa Pierre as Guardian of The Minor Child, as Respondents. The motion was allowed by the court on February 1, 2021.

8. ***Appointment of Guardian Ad Litem:*** After a hearing on May 24, 2021, the Court ordered that a Guardian Ad Litem be appointed for the Minor Child in this matter. Attorney Dennis F. Desmarais has been appointed as Guardian Ad Litem.

9. ***Inspection:*** The Town has no issues to report. The Town shall conduct an inspection of the property prior to the next hearing and report on its findings.

10. ***Next Reports and Appraisal:***

The following shall be filed with the Court no later than **September 13, 2021**:

a. The Receiver shall file with the Court and serve upon all parties and lienholders a copy of the **Receiver's Report** with a detailed account of funds received and funds expended. If the Receiver has completed the rehabilitation of the Property before the next hearing, Receiver shall file a **Final Accounting**. Copies shall be sent to all parties to this action and shall be accompanied by a certificate of service documenting that the reports have been forwarded as called for in the order appointing the receiver to this property;

b. The Receiver shall file any **Motions regarding the Enforcement of Receiver's Lien, Sale of the Property or Affordable Housing Specifications**. Copies shall also be sent to all parties to this action and shall be accompanied by a certificate of service documenting that the motions have been forwarded as called for in the order appointing the receiver to this property;

c. After a hearing on July 21, 2021, the Court ordered that an **Appraisal** be completed on the Property. The **Appraisal** shall be completed by a licensed appraiser who is pre-approved by the Department of Housing and Community Development. Copies of the completed **Appraisal** shall be served on all parties and may be attached to the Receiver's Report or Final Accounting and;

d. The Guardian Ad Litem (GAL) shall file an updated **Report** that shall be served on all parties. The GAL shall investigate the status of the Probate Court proceedings relative to the Estate of Edward E. Mange and whether and how his ward should be engaged into those proceedings to protect his interests relative to the subject premises. Also, the GAL shall

investigate the possibility of his ward being in a position to purchase the property with and without any affordability restrictions which may or may not be imposed.

11. ***Additionally:*** _____

12. ***Review:*** A review of the receivership, and hearing on any properly marked motions, shall be heard on **September 28, 2021 at 11 a.m. via Zoom hearing.**

So Ordered:

_____
Justice - Western Division Housing Court

Dated: 7/23/21 4th hearing

ASSENTED TO BY:

_____
Assistant Attorney General
Maja M. Kazmierczak BBO# 671512

_____
Receiver's Attorney
Brian Shea BBO# 636029

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

BERKSHIRE, ss

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 20-SP-1608 and
21-CV-0084

BERKSHIRE FUND, INC.,	)	
	)	
PLAINTIFF	)	FINDINGS OF FACT, RULINGS
	)	OF LAW AND ORDER ON
v.	)	COMPLAINT FOR CONTEMPT
	)	
CHRISTOPHER DYE,	)	
	)	
DEFENDANT	)	

This matter came before the Court by Zoom on July 12, 2021 on Plaintiff's complaint for civil contempt. Both parties appeared through counsel. Plaintiff alleges that Defendant violated a Court order entered on May 21, 2021 (the "May Order") prohibiting Defendant from (a) communicating with or have any contact with another tenant, Walter Bradley III ("Mr. Bradley"), and (b) interfering with or acting in a way reasonably likely to interfere with Mr. Bradley's right to the peaceful enjoyment of his home.

In order to enter a judgment of contempt against Defendant in this case, the Court must find clear and convincing evidence of disobedience of a clear and unequivocal demand. *See In re Birchall*, 454 Mass. 827, 838-39 (2009). The aim of civil contempt is to coerce performance of a required act for the benefit of the aggrieved complainant. *Id.* at 848. "Civil contempt is a means

of securing for the aggrieved party the benefit of the court's order." *See Demoulas v Demoulas Super Markets*, Inc., 424 Mass. 501, 565 (1997) (citation omitted).

Mr. Bradley testified that, on July 7, 2021, Defendant confronted and threatened him with violence. On several occasions since the May Order, Mr. Bradley claims Defendant caused significant disturbances that seriously interfered with his right to the peaceful enjoyment of his home by slamming and banging the common wall between their units, smashing glass and yelling loudly.[1] The Court credits Mr. Bradley's testimony. His credibility is bolstered by the testimony of Plaintiff's property manager who, upon entering Defendant's unit on June 23, 2021 for an annual inspection, observed numerous holes in the walls, including in the common wall between Defendant's and Mr. Bradley's apartments. Based on the foregoing, the Court finds clear and convincing evidence of disobedience of a clear and unequivocal Court order.

Because the purpose of civil contempt is to coerce compliance with the Court's order, prior to a contempt judgment entering, the Court will allow Defendant an opportunity to purge the contempt finding by demonstrating substantial compliance with the May Order from the date he receives this order until the next Court date. If, prior to the next Court date, Defendant submits to Plaintiff a request for a reasonable accommodation based on documented disabilities, the Court may take such disabilities into consideration in determining whether a judgment for contempt should enter and to what extent sanctions should be imposed.

[1] Defendant's explanations for some of the disturbances – that the smashing glass was the result of a cup being knocked off a table and the yelling was a result of him trying to be heard by his hearing-impaired girlfriend -- are not credible

A hearing to review the status of this case based on the terms of this order shall be held on **August 23, 2021 at 9:00 a.m.** by Zoom.

SO ORDERED this 23rd day of July 2021.

Jonathan J. Kane

Hon. Jonathan J. Kane, First Justice

cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 21-SP-0624

SPECTRA S1 LLC,	)	
	)	
PLAINTIFFS	)	
	)	
V.	)	**ORDER ON DEFENDANT'S**
	)	**MOTION TO DISMISS**
OLGA FELICIANO,	)	
	)	
DEFENDANT	)	

This matter came before the Court on July 13, 2021 on motion to dismiss. Both parties appeared through counsel.

Defendant seeks dismissal of the complaint because Plaintiff failed to properly terminate Defendant's tenancy by sending multiple inconsistent notices to quit.[1] In commencing this summary process action, Plaintiff relies on a 14-day notice to quit for non-payment of rent dated November 21, 2020 and served, according to the deputy sheriff's return, on November 30, 2020. Plaintiff had previously sent a 30-day notice to vacate dated November 12, 2020 that did not claim non-payment of rent and that contained an "effective date" of November 30, 2020.[2] It also appears that Plaintiff sent a third 30-day notice to vacate dated November 30, 2020, which notice did not claim non-payment of rent.

A landlord's termination of a tenancy must be unequivocal. *Maguire v Haddad*, 325 Mass. 590, 593 (1950). Because a tenant may reasonably misunderstand the legal force of a notice to quit,

[1] Defendant also seeks dismissal on a second ground, namely failure to comply with the Federal CARES Act. The Court does not need to reach this argument in this case.
[2] The Court is not clear what the "effective date" means in this context. If it is the date the tenancy will be terminated, the date is less than 30 days from the notice date. If it is a deadline for some other action, it is not clear what the tenant is required to do by that date.

see Adjartey v. Central Div. Housing Court Dep't, 481 Mass. 830, 850 (2019), a tenant is entitled to a clear, unequivocal and unambiguous termination notice. By providing Defendant with multiple notices to vacate in the same month citing different reasons for termination, Plaintiff sent Defendant a mixed message regarding the actual timing of the termination and created confusion around Defendant's right to cure and reinstate the tenancy. The Court deems the sending of multiple inconsistent notices to quit in this case to be a substantive error with a meaningful practical effect, thereby rendering the notice relied upon by Defendant defective. *See Cambridge Street Realty, LLC v. Stewart*, 481 Mass. 121, 131 (2018) (minor errors or omissions will not render a notice to quit defective).

Accordingly, Defendant's motion to dismiss is ALLOWED.

SO ORDERED this 23rd day of July 2021.

Jonathan J. Kane

Jonathan J. Kane, First Justice

cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

CASE NO. 19-SP-2782

HAROLD GIBBER,

Plaintiff,

v.

HILA CUMMINS,

Defendant.

ORDER

After hearing on July 23, 2021, on the tenant's motion to stay use of the execution, at which both parties appeared with counsel and at which Attorney Michael Hooker also appeared, the following order shall enter:

1. For the reasons stated on the record, the court is compelled to allow the motion but in a limited manner. As such, there will be a stay on the physical eviction until October 1, 2021.
2. The landlord may have the physical eviction scheduled in advance and provide notice to the tenant in advance, but the actual eviction can not take place until October 1, 2021.

3. To the extent that the landlord argued that the court lacka jurisdiction to modify the Agreement of the Parties (which had an earlier move out date), he is incorrect in his understanding of the case he cited, *Thibbitts v. Crowley*, 405 Mass. 222 (1989). *Thibbits*' holding is that the judge in that matter abused his discretion in modifying an agreement in the manner in which he did, including upon an *ex parte* hearing without finding that newly emergent issues had arisen. *Thibbits* reflects that there are circumstances when amendment of a consent judgment may be appropriate, including when there are reasons justifying relief from the operation of the judgment.
4. The circumstances in this instant matter, as discussed on the record, which include the impact of the global COVID-19 pandemic on the tenant's capacity to effectively engage in a housing search (and which were not foreseeable at the time the parties entered into the Agreement) are reasons justifying relief from the vacate terms of the Agreement and demand the provision of a reasonable extension of time.

So entered this 27th day of July, 2021.

Robert Fields, Associate Justice

Cc: Michael Hooker, Esq.
Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

BERKSHIRE, ss

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 21-SP-0838

JUDITH JARRETT LAMKE,	)	
	)	
PLAINTIFF	)	
	)	
v.	)	FINDINGS OF FACT, RULINGS OF LAW AND ORDER
	)	
GAIL BYRNE,	)	
	)	
DEFENDANT	)	

This no-fault summary process action was before the Court for a two-day Zoom trial on June 29, 2021 and July 2, 2021. Plaintiff seeks to recover possession of 198 Dublin Road, Richmond, Massachusetts (the "Premises") from Defendant. Both parties appeared for trial with counsel. This case not having been filed for non-payment of rent, and unpaid rent not being any part of Plaintiff's claim, neither the *Temporary Halt in Residential Evictions to Prevent the Further Spread of COVID-19*, issued by the Centers for Disease Control and Prevention nor the provisions of Stat. 2020, c. 257, as amended by Stat. 2021, c. 20, apply. Defendant filed an answer containing affirmative defenses and counterclaims.

Based on all the credible testimony and evidence presented at trial, and the reasonable inferences drawn therefrom, and in light of the governing law, the Court finds and rules as follows:

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Plaintiff owns the Premises. Defendant has resided in the Premises for approximately five years. Monthly rent is $900.00 pursuant to an oral tenancy at will. No rent is owed through the date of trial. Plaintiff pays all utilities other than the cost propane used to heat the Premises. Although after commencement of the tenancy the parties exchanged texts about Defendant's need to pay the bill, and although Defendant paid willingly and only for her personal usage, the Court finds that there was no written agreement between the parties at the outset of the tenancy making Defendant responsible for this obligation.

On October 30, 2020, Defendant received a rental period notice of termination. She failed to vacate at the expiration of the next rental period, and Plaintiff commenced a summary process action in District Court. The case was transferred to this Court prior to trial. The Court finds that Plaintiff established its prima facie claim for possession. The Court will next address Defendant's claims that Plaintiff created a new month-to-month tenancy, committed a breach of warranty, interfered with her quiet enjoyment and violated G.L. c. 93A ("Chapter 93A").

1. Waiver by Payment and Acceptance of Rent

Defendant contends that because Plaintiff accepted rent payments without a reservation of rights after termination of the tenancy, a new month-to-month tenancy was created. Under Massachusetts law, if a tenant tenders, and the landlord accepts, a payment for rent for a period after termination of the tenancy, such payment and acceptance or prima facie evidence of the landlord's waiver of its right to recover possession until it gives new notice. *Corcoran Mgt. Co. v. Withers*, 24 Mass. App. Ct. 736, 744 (1987). Certain acts or conduct by the landlord may prevent or negate the inference or presumption of such a waiver. *Id.* This is generally accomplished by reserving rights to accept future use and occupancy payments in the notice to

quit itself, or by giving timely written notice upon the receipt of payment, or by giving some other notice of the landlord's intent not to reinstate the tenancy.

Here, although Plaintiff did not provide any written notice reserving her right to accept use and occupancy payments after termination of the tenancy in October 2020, the Court finds that Plaintiff never intended to waive her rights to possession and did not in fact waive the right to possession by accepting payments after the tenancy was terminated. Defendant herself concedes that she understood that Plaintiff intended to sell the Premises and that she was expected to vacate. The Court rejects Plaintiff's contention that a new tenancy was formed following receipt of the notice to quit.

2. Breach of Implied Warranty of Habitability

Implied in every residential lease is a warranty that the leased premises are fit for human occupation. *Jablonski v. Clemons*, 60 Mass. App. Ct. 473, 475 (2004); *see Boston Housing Auth. v. Hemingway*, 363 Mass. 184 (1973). Pursuant to G.L. c. 111, § 127A, the Department of Public Health has promulgated the State Sanitary Code to assure, among other things, that any premises rented for dwelling purposes are fit for human habitation. Substantial violations of the State Sanitary Code generally make a dwelling uninhabitable. The appropriate measure of damages in a warranty of habitability case is the difference between the rental value of the premises as warranted less the fair value of the premises in their defective condition. *See Hemingway,* 363 Mass. at 203.

Defendant concedes that her only warranty claim is the failure of Plaintiff to transfer the responsibility to pay for heating fuel to her without a written agreement. *See* State Sanitary Code, 105 C.M.R. § 410.201 ("The owner shall supply heat . . . except and to the extent the occupant is

required to provide the fuel under a written letting agreement."); *see also* 105 C.M.R. § 410.354 ("The owner shall provide the electricity and gas used in each dwelling unit unless … a written letting agreement provides for payment by the occupant."). Defendant does not claim that the Premises were defective in any way; therefore, the typical measure of damages for a warranty claim is inappropriate. The failure to reduce the oral agreement to writing at the outset of the tenancy is a technical violation of the State Sanitary Code and does not rise to the level of a breach of warranty of habitability.

3. G.L. c. 186, § 14 – Transfer of Utilities

Under Massachusetts quiet enjoyment statute, any lessor or landlord of residential property "who transfers the responsibility for payment for any utility services to the occupant without his knowledge or consent … shall be liable for actual and consequential damages, or three months' rent, whichever is greater, and the costs of the action, including a reasonable attorney's fee." G.L. c. 186, § 14. The Court finds that the transfer of responsibility for heating fuel was not part of a written lease nor documented in any other writing at the outset of the tenancy, and because violations of the State Sanitary Code cannot be waived by the subsequent consent of a tenant, the Court finds that Plaintiff violated G.L. c. 186, § 14. However, there is no evidence that Plaintiff failed to provide adequate facilities for heating, or that the arrangement had a negative impact on Defendant's use and enjoyment of the Premises, or that Defendant objected to the arrangement, or that the rent and the cost of the utilities together were more than the fair rental value of the Premises. *See Poncz v. Loftin*, 34 Mass. App. Ct. 909, 911 (1993). Accordingly, Defendant is not entitled to an award of damages under G.L. c. 186, § 14 on the

basis of Plaintiff's transfer of responsibility for payment of propane to Defendant without Defendant's written agreement.

4. G.L. c. 186, § 14 – Direct or Indirect Interference with Quiet Enjoyment

Defendant contends that Plaintiff violated the "catch-all" provision of the quiet enjoyment statute, which recites that conduct by a landlord "that directly or indirectly interferes with the quiet enjoyment of any residential premises by the occupant" is a violation of G.L. c. 186, § 14. The covenant protects a tenant from "serious interference with his tenancy -- acts or omissions that impair the character and value of the leasehold." *See Youghal, LLC v. Entwistle*, 484 Mass. 1019, 1023 (2020), *quoting Doe v. New Bedford Housing Auth.*, 417 Mass. 273, 285 (1994).

Defendant claims that Plaintiff interfered with her quiet enjoyment by removing her garden, installing security cameras, allowing potential buyers to tour the Premises without accompaniment by a real estate agent, interrupting wireless internet service and failing to restart a water spigot after the winter. The Court is not convinced that a number of the claims asserted by Defendant violate G.L. c. 186, § 14. Plaintiff testified credibly that the installation of cameras facing away from the Premises was done for legitimate purposes and did not invade Defendant's legitimate expectation of privacy. The loss of the wireless internet connection for three days after her neighbor moved out (the wireless router was located in the neighbor's unit) does not constitute a serious interference with her tenancy, nor does the delay in restoring a water spigot. Likewise, Plaintiff's decision to allow prospective purchasers to enter the home (after adequate

notice) not accompanied by a real estate agent[1] does not rise to the level of a serious interference warranting the imposition of damages.

Plaintiff's unilateral removal of the garden, however, does violate G.L. c. 186, § 14. Defendant testimony credibly about the importance of the garden to her enjoyment of the Premises and her extensive use of the garden in previous years as a source of food. It is undisputed that Plaintiff eliminated the garden in November 2020, shortly after Plaintiff served Defendant with a notice of termination of the tenancy. Plaintiff testified that she was justified in removing the garden because she did not expect Defendant to be residing in the Premises at harvest time the following Fall. She did not provide a credible explanation of why it was necessary to remove the garden prior to selling the home, especially in light of Defendant's credible testimony that Plaintiff had previously told her that, even if she vacated, she could return to harvest the vegetables. Even if the Court accepts Plaintiff's testimony that the removal of the garden was not done in bad faith, the simple fact is that the garden was an essential feature of Defendant's tenancy, a fact of which Plaintiff was aware, and Defendant eliminated it without cause. Plaintiff's actions in removing the garden constitute a breach of the convent of quiet enjoyment, entitling Defendant to damages equal to three months' rent or actual and consequential damages, whichever is greater. The evidence shows that an award of three months' rent, or $2,700.00, exceeds Defendant's actual and consequential damages. The violation of G.L. c. 186, § 14 also entitles Defendant to a reasonable attorney's fee.

[1] Defendant does not complain that Plaintiff conducted showings at the Premises with prospective buyers; instead, she asserts that Plaintiff should have hired a real estate agent who, presumably, would have supervised the visits better. The Court does not find this assumption to necessarily be true, nor does the Court find Defendant's testimony that she "had to answer" prospective buyer's questions to be actionable.

5. Chapter 93A – Unfair or Deceptive Business Practices

The Court finds that, because Plaintiff rented three units in a non-owner-occupied residential building, she is in business of renting residential property and is subject to Chapter 93A. The lack of a written agreement concerning payment of utilities violates the State Sanitary Code and, therefore, Chapter 93A. *See* 940 C.M.R. § 3.17; *see also Poncz*, 34 Mass. App. Ct. at 910-911. The Court awards statutory damages of $25.00, plus a reasonable attorney's fee. *See Knott v. Laythe*, 42 Mass. App. Ct. 908, 910 (1997); *see also Poncz*, 34 Mass. App. Ct. at 910-911.

Based on the foregoing, the following order shall enter:

1. Defendant is entitled to a judgment for possession pursuant to G.L. c. 239, § 8A.
2. On her counterclaims, Defendant is entitled to an award of damages in the amount of $2,725.00.
3. Within two weeks, Defendant's counsel may file and serve a petition for attorney's fees and costs. Plaintiff shall have one week after receipt of said petition to file and serve any opposition thereto.
4. After considering the petition for attorney's fees and any opposition, the Court shall enter final judgment for Defendant, inclusive of attorney's fees and costs.

SO ORDERED this 29th day of July 2021.

Jonathan J. Kane

Hon. Jonathan J. Kane, First Justice

cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 21-CV-0468

RACHEL DROSSEL,	)	
	)	
PLAINTIFF	)	
	)	
V.	)	
	)	**ORDER**
HOLYOKE PROPERTY MANAGEMENT, LLC, ET AL.,	)	
	)	
	)	
DEFENDANTS	)	

This case came before the Court on July 27, 2021 on Plaintiff's petition for enforcement of the State Sanitary Code. All parties appeared with counsel and reported that the matter had been continued to August 4, 2021, but that Plaintiff sought an order from this Court regarding environmental testing at their residence at 495 Appleton Street, Apt. 1R, Holyoke, Massachusetts (the "Premises").

After hearing, the following order shall enter:

1. Plaintiff may arrange for an air quality test, at Plaintiff's expense, at the Premises and in the basement area. Plaintiff may also conduct mold testing in the Premises, provided that such testing will not cause any damage (de minimis wall scrapings and pin holes in the wall will not be considered damage). Plaintiff shall share any reports it receives with Defendants' counsel.

2. Defendants may conduct similar tests at their expense, with reasonable access to be provided by Plaintiff (no less than 48 hours' advance notice coordinated between counsel). Defendants shall share any reports they receive with Plaintiff's counsel.

SO ORDERED.

DATE: 11/29/2021

Jonathan J. Kane
Hon. Jonathan J. Kane, First Justice

cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

FRANKLIN, ss

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. ~~**19-SP-4906**~~ 21SP1175

GARY NOGA,	)	
	)	
PLAINTIFF	)	
	)	**FINDINGS OF FACT, RULINGS**
v.	)	**OF LAW AND ORDER**
	)	
EARL WALDRON AND	)	
TYLER WALDRON,	)	
	)	
DEFENDANTS	)	

This summary process action was before the Court for trial on July 27, 2021. Plaintiff Gary Noga ("Plaintiff") seeks to recover possession of 103A James Street Greenfield, Massachusetts (the "Premises") from Earl and Tyler Waldron ("Defendants"), who are father and son, based on a no-fault termination of a tenancy at will. Defendants appeared at trial and represented themselves. Plaintiff was represented by counsel. The tenancy having been terminated without fault of Defendant, the Court accepted Defendants' testimony as an oral petition for a stay pursuant to G.L. c. 239, §§9-13. The hearing on the stay was consolidated with the trial on the merits.

Based on all the credible testimony, the other evidence presented at trial and the reasonable inferences drawn therefrom, in light of the governing law the Court finds as follows:

Plaintiff owns the Premises where Defendants live. They are current with their rent and use and occupancy payments. A deputy sheriff served a legally sufficient notice to quit on Defendants, which they acknowledge receiving, terminating the tenancy as of the April 1, 2021.

Defendants have not vacated. The Court finds that Plaintiff introduced sufficient evidence to satisfy his prima facie case for possession.

Defendants filed an answer that asserted no defenses or counterclaims. It did assert that they need additional time to move, and that one of the tenants is disabled. Because Defendants failed to present any legally cognizable defenses, Plaintiff is entitled to a judgment for possession.

With respect to Defendants' request for a stay pursuant to G.L. c. 239, §§9-13, the Court finds that (i) the Premises are used for dwelling purposes, (ii) Defendants have been unable to secure suitable housing within the Greenfield, Massachusetts area, (iii) Defendants have used due and reasonable effort to secure other housing, and (iv) Defendants' application for stay is made in good faith and that they will abide by and comply with such terms and provisions as the Court may prescribe. *See* G.L. c. 239, §10. On the basis of Defendants' testimony and the housing search log they provided to the Court, the Court finds sufficient facts to warrant a stay of execution pursuant to G.L. c. 239, §§9-13 on the terms outlined below.

Based upon all of the credible testimony and evidence presented at trial in light of the governing law, it is ORDERED that:

1. Judgment shall enter for Plaintiff for possession.

2. Defendants shall continue to pay use and occupancy in the same amount as their rent each month that they occupy the Premises.

3. Defendants shall continue to make reasonable efforts to locate and secure replacement housing and shall document those efforts by keeping a log of such efforts.

Defendants shall submit the housing search log to Plaintiff's attorney on or before August 23, 2021.

4. Plaintiff shall not be issued an execution without further Court order.

5. If Defendants have not yet vacated, the parties shall return for a further hearing on September 22, 2021 at 11:00 a.m. by Zoom, at which time the Court will review their housing log (current through the Court date) and decide whether the stay shall on use of the execution will remain in place beyond October 1, 2021.

SO ORDERED.

DATE: 7/29/2021

Jonathan J. Kane, First Justice

cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

BERKSHIRE, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 21-CV-356

PAUL TRZCINSKI,	)	
	)	
PLAINTIFF	)	
	)	
V.	)	**ORDER**
	)	
LAYCE BATOR,	)	
	)	
DEFENDANT	)	

This civil case was commenced on Plaintiff's motion for injunctive relief under G.L. c. 139, § 19. Defendant did not appear at the initial hearing on June 18, 2021 and the Court treated Plaintiff's motion as one seeking a temporary restraining order. At the next court date on June 28, 2021, at which Defendant did not appear, the Court expressed skepticism about whether Plaintiff's pleadings were sufficient for the Court to enter a finding under G.L. c. 139, § 19 given the strict construction of that statute. *See Roseman v. Day*, 345 Mass. 93, 94 (1962); *see also New Bedford Housing Auth. v. Olan*, 435 Mass 364, 369 (2001). In lieu of applying the standards of G.L. c. 139, § 19, the Court applied the familiar injunctive relief standard set forth in *Packaging Industries Group, Inc. v. Cheney*, 380 Mass. 609, 617 (1980) in issuing the injunction enjoining Defendant from engaging in certain conduct on the premises.

The parties appeared today for an evidentiary hearing under G.L. c. 139, § 19. Defendant, though counsel appearing on a limited representation basis, argued that Plaintiff is not entitled to relief under G.L. c. 139, s 19. The Court agrees, and rules that Plaintiff may not seek a judgment

or order for possession under G.L. c. 139, § 19 due to lack of pleading sufficient facts to find that Defendant engaged in any of the specific acts enumerated in the statute. To regain possession of the subject premises, Plaintiff must pursue its remedies at law under the summary process statute, G.L. c. 239. Because the Court from the outset has treated Plaintiff's motion as one for injunctive relief to enjoin certain conduct of Defendant, not as a motion to recover possession under G.L. c. 139, § 19, the Court's previous orders in this matter remain in effect.

SO ORDERED this 20th day of July 2021.

Jonathan J. Kane

Hon. Jonathan J. Kane, First Justice

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

BERKSHIRE, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 21-SP-0146

APPLETON CORPORATION,

PLAINTIFF

V.

RICHARD LANGLOIS, ET AL.,

DEFENDANTS

ORDER

This case came before the Court on July 28, 2021 for status of Defendant's pending application for rental assistance following a July 7, 2021 order allowing Defendants' emergency motion to stay issuance of the execution. The parties appeared through counsel.

Defendants seek a further stay of issuance of the execution based on their receipt of confirmation that their Emergency Rental Assistance Program ("ERAP") application has been approved in the full amount due Plaintiff in this case. The funds have not been delivered to Plaintiff yet because Plaintiff has not submitted the necessary paperwork for the funds to be deposited in its account.

Plaintiff posits that it should not be required to accept the ERAP funds based on the language in G.L. c. 239, § 3, sixth paragraph ("the plaintiff shall not be required to accept full satisfaction of the money judgment"). The Court interprets Stat. 2020, c. 257 as amended by Stat. 2021, c. 20 (the "Act") to override the provision cited by Plaintiff. Section 2(b) of the Act recites, "*Notwithstanding chapter 239 of the General Laws or any other general or special law* …, the Court shall issue a stay of execution on a judgment for possession if the requirements in

clauses (i) to (iii), inclusive, are met." (emphasis added). Here, clause (i) is met because the tenancy was terminated solely for non-payment of rent; clause (ii), which requires that the non-payment be related to COVID-19, is met based on Defendants' eligibility for ERAP funds, and clause (iii) is met based on the Court's finding that Defendants' ERAP application remains pending until Plaintiff completes the necessary paperwork to receive the funds.[1]

Accordingly, the stay on issuance of the execution shall remain in place until further Court order; provided, however, that if Plaintiff accepts the ERAP payment and the funds reduce Defendants' outstanding balance to zero (with respect to the unpaid rent and court costs sought in the complaint), Plaintiff shall file a satisfaction of judgment and dismiss this case.

SO ORDERED this 30th day of July 2021.

Jonathan J. Kane

Hon. Jonathan J. Kane, First Justice

cc: Court Reporter

[1] With respect to Plaintiff's contention that the Act requires Defendants to have an application pending at the time the answer is timely filed or on the date the trial is scheduled to commence, the Court construes that requirement to be applicable only to the Court's obligation to grant a continuance, which is not relevant in this case.

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 21-SP-0837

KARRISA MACMASTER,	)	
	)	
PLAINTIFF	)	
	)	
V.	)	
	)	ORDER
KIMBERLY BRITCH, ET AL.,	)	
	)	
DEFENDANTS	)	

This case came before the Court on July 26, 2021 for a Zoom hearing. The parties were represented by counsel. In essence, Plaintiff and Defendants each seek to enforce the terms of a "Settlement and General Release Agreement" (the "Agreement") they executed in May 2021. The Agreement was executed in order to resolve this summary process matter without trial.

Under principles of contract interpretation in Massachusetts, "[t]he objective is to construe the contract as a whole, in a reasonable and practical way, consistent with its language, background, and purpose." *Sullivan v. Southland Life Ins. Co.*, 67 Mass. App. Ct. 439, 442 (2006) (citations omitted). "A contract is to be construed to give reasonable effect to each of its provisions." *J.A. Sullivan Corp. v. Commonwealth*, 397 Mass. 789, 795, (1986).

In this case, Plaintiff (the "Landlord") agreed to pay Defendants (the "Tenants") $10,000.00 in settlement of all claims arising out of their landlord-tenant relationship. *Agreement at ¶ 1.* Of the total amount of $10,000.00, the sum of $7,500.00 was to be paid within ten days of execution of the Agreement (and there is no dispute that this payment was made). The Agreement called for the Landlord to "hold back $2,500.00 to cover any move out expenses should the

Tenants fail to vacate as set forth in this Agreement by the Vacate Date set below." *Id.* at ¶ 2. The Landlord agreed to pay the entire $2,500.00 to the Tenants within three business days if they "vacate[d] as set forth in this Agreement on or before the 'Vacate Date'." *Id.* As used in the Agreement, the "Vacate Date" was defined as 8:00 p.m. on May 31, 2021. The Tenants agreed to move out by that date and "leave the apartment and storage area within the building 'broom clean' and remove all of their possessions," and to return all keys at the time of vacating. *Id. at* ¶ 6.

The parties agree on the basic facts: namely, that on May 30, 2021, the Tenants dropped off the keys at the Landlord's house and notified the Landlord that they had moved out of the Premises. Upon inspecting the premises the next day, the Landlord's husband found certain of the Tenants' possessions still in the apartment and storage area, as well as items such as food and medication.[1] The Tenants retrieved the remaining items in the storage area on or about June 4, 2021. Because the Tenants removed the belongings themselves, the Landlord does not make a claim for any expenses incurred to remove the Tenants' items.

The Landlord's position is that she is entitled to retain the entire $2,500.00 because the Tenants failed to vacate in accordance with the terms of the Agreement. The Tenants contend that they should receive the $2,500.00 balance (as well as a $25.00 daily fine and attorneys' fees as provided in the Agreement for the Landlord's non-compliance) because the Landlord did not incur any expenses in removing the items left in the unit after May 31, 2021. They argue that the purpose of holding back money was to reimburse the Landlord only if she had to remove items or to clean the apartment.

[1] There is no material dispute about whether the Tenants did in fact vacate and remove all possessions by May 31, 2021. Defendant Kimberly Britch filed an affidavit acknowledging that "we did leave furniture outside the back door of the building that another tenant in the building said he would take then remove," that "we also left some items in the storage area, like a vacuum cleaner and a box of trash," and that she "accidently left some medication at the building." She attests that they returned a few days later to remove the remaining items

The Court construes the Agreement as a whole in a reasonable and practical way. A common reason for settlement agreements in summary process cases, which are plentiful in this Court, is to provide a mechanism for a landlord to regain possession at a specified time in exchange for payment or other consideration. The landlord may agree to make a payment only upon the return of keys (a "cash-for-keys" arrangement). In cases in which the landlord agrees to make payment before getting the keys in return, the landlord wants to ensure that the tenant vacates when promised, because if the tenant does not vacate, the landlord cannot resort to self-help removal but must instead return to court to obtain an execution for possession, thereby losing the benefit of its bargain. Likewise, tenants may protect themselves against a landlord failing to pay as promised by including a penalty clause if they do receive the consideration they bargained for as an inducement to vacate.

This Agreement protected both parties by having the Landlord hold $2,500.00 until after the Tenants vacated. She would keep the money if the Tenants didn't honor their promise to depart by the Vacate Date. She would also have the right to file the Agreement as an Agreement for Judgment for possession with execution to issue forthwith. These provisions were clearly designed to ensure legal possession reverted to the Landlord as set forth in the Agreement. If the Tenants performed according to the terms of the Agreement and the Landlord didn't make the agreed-upon payment, the Tenants would be entitled to collect a daily fine of $25.00 along with attorneys' fees and costs incurred in collecting the payment due.

The Court concludes that the Agreement was intended to be a vacate agreement and not simply an agreement to reimburse the Landlord for move out expenses it incurred after the Tenants left. The latter reading would allow the Tenants to stay beyond the Vacate Date with impunity so long as they vacated and removed their possessions before the Landlord incurred

out-of-pocket costs to remove them herself. This interpretation makes the hold-back provision equivalent to a security deposit from which the Landlord could draw to make repairs or remove left-behind items. If that was the intention of the parties, the Agreement would have provisions for the Landlord to itemize the work done and produce receipts showing the out-of-pocket expenses, similar to the requirements of G.L. c. 186, § 15B, and it would have required remittance of the $2,500.00 *or any balance thereof* to the Tenants after they vacated.

Because the Agreement is clear and unambiguous, the Court does not need to take testimony about the intentions of the parties. By their own admission, the Tenants left certain of their possessions in the apartment and storage area after the Vacate Date, and the Landlord reasonably decided not to dispose of them without ascertaining if the Tenants were still in the process of moving out. The Tenants did not finally remove their items for several days beyond May 31, 2021. Accordingly, they failed to return possession to the Landlord by the Vacate Date and the Landlord had the right to withhold the $2,500.00 balance of the settlement proceeds.[2]

SO ORDERED this 30th day of July.

Jonathan J. Kane
Hon. Jonathan J. Kane, First Justice

cc: Court Reporter

[2] No judgment will enter as the issue of possession is moot.

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Berkshire, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

CASE NO. 20-SP-1939

NORTH ADAMS APARTMENTS, L.P., Plaintiff, v. WILLIAM TANGUAY, Defendant.	ORDER

After hearing on July 20, 2021 on the defendant tenant's motion entitled Motion to Dismiss or for Summary Judgment, at which both parties appeared through counsel, the following order shall enter:

1. **Motion for Summary Judgment: Failure to Comply with the CARES Act:** The plaintiff landlord stipulated that the subject premises is a "covered dwelling unit" under the CARES Act which requires a 30-day notice to terminate a tenancy. See, CARES Act, §4024(c)(1). Though much of the CARES Act

expired in March 2021, this section requiring 30 days' notice for termination has remained in effect.

2. Given the use by the landlord of a 14-day termination notice this case is dismissed, without prejudice.
3. **Motion to Dismiss: Defective Summons:** In addition to the above issue regarding the CARES Act, the tenant is seeking dismissal on a separate claim; that the summons and complaint is defective for its inconsistency with the termination notice and its non-compliance with U.S.P.R 2(d).
4. Because the termination notice is for non-payment of rent and the summons is for lease violations, the complaint is defective for its failure to comport with the termination notice. See, *Cha-Kat Really, LLC v. Rene Jacques*, Western Housing Court No. 11SP5009 (Fields, J. December 28, 2011); *John dike v. Kyra Zehelski*, Western Housing Court No. 10SP3617 (Fields, J September 22, 2010); *Jose Medina v. Francisco Cumba*, Western Housing Court no. 11SP4465 (Fields, J. November 14, 20211).
5 The summons is also defective due to its failure to comply with U.S.P.R. 2(d) which requires the following:

> On the appropriate portion of the Summary Process Summons and Complaint the reason(s) for eviction shall be indicated by the plaintiff(s) in concise, untechnical form and with sufficient particularity and completeness to enable a defendant to understand the reason for the requested eviction and the facts underlying those reasons.

6. The summons and complaint utilized herein simply states "Lease Violations" making it defective. See, *CMC/Brockton Commons v Shayla Ruffin*, Metro-South Housing Court No. 19SP2769 (Sherring, J January 15, 2020); *Curtis Perry*

v. Sandra Mello, Southeast Housing Court No. 18SP4956 (Sherring, J. March 18, 2019); *New Bedford Housing Authority v. DaCosta*, Southeast Housing Court No. 10SP5431 (Chaplin, J. January 2011). Accordingly, the case is dismissed, without prejudice, for these reasons, as well.

7. **Conclusion and Order:** Based on the foregoing, this summary process matter is dismissed, without prejudice.

So entered this 30th day of July, 2021.

Robert Fields, Associate Justice

Cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 20-SP-1096

RESIDENTIAL MANAGEMENT CORP.,	)	
	)	
PLAINTIFF	)	
	)	**ORDER**
V.	)	
	)	
ROBERT KENNEDY,	)	
	)	
DEFENDANT	)	

This case came before the Court by Zoom for a hearing on Plaintiff's motion for entry of judgment and issuance of an execution. Plaintiff appeared with counsel. Defendant appeared and represented himself.

By way of background, Plaintiff gave notice of termination of Defendant's tenancy by letter dated June 4, 2020. After initiating a summary process case, Plaintiff agreed to enter into an agreement with Defendant in lieu of trial. In that agreement dated October 2, 2020, at which time Defendant had counsel from Community Legal Aid on a limited representation basis, Defendant did not admit any wrongdoing but agreed, among other things, not to "create disturbances or noise that disrupts the livability of the surrounding apartments including, but not limited to, during the hours of 10:00 p.m. and 7:00 a.m."

Plaintiff presented five witnesses in support of its motion for judgment. The property manager testified that despite numerous notices to Defendant about his behavior, and repeated offers to come speak to her about complaints she received and the possibility of transferring him

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to a new unit (which is no longer available), he never did so. The couple who reside below Defendant testified about several instances in which Defendant disturbed them during the hours of 10:00 p.m. to 7:00 a.m. Each spoke of Defendant blasting music in his car loudly enough to be heard in their unit with the windows closed, and of instances late at night when Defendant banged loudly on this girlfriend's door across the hall from his own door while shouting excessively and profanely. They called the police on at least one occasion following this conduct. They also testified about being awakened by loud noises (described as someone falling down or dropping things) coming from Defendant's unit in the middle of the night.

A resident who has lived next door to Defendant for approximately seven years testified about Defendant creating disturbances by stomping, hollering, banging on doors and using foul language. Another long-time tenant who lives on the floor below Defendant but not directly below his unit testified that, although he had no complaints about Defendant in the past, has recently heard loud music and stomping noises that he attributes to Defendant.

Defendant is 63 years old and has lived at the property for twenty years. He benefits from a project-based rental subsidy administered by the USDA Rural Development program and he pays 30% of his income for rent. He claims not to have changed his lifestyle in the past decade or so. In response to the witness testimony, Defendant cited [redacted], and he testified that, in those instances, he has banged loudly on the floor to get attention. He denied receiving notices that other tenants have been complaining about him. He admitted to banging on his girlfriend's door on one occasion when he could not get in and testified that, although he does sit in his car to smoke, he does not recall playing his music at excessive levels.

Based on all of the evidence, which consisted solely of witness testimony, and the reasonable inferences drawn therefrom, the Court finds that Defendant substantially violated a material term of the Court agreement; namely, not to create disturbances or noise that disrupts the livability of the surrounding apartments. The testimony of the other tenants was credible with respect to disturbances caused by Defendant, and Defendant did not provide credible testimony that would allow the Court to attribute the disturbances to any other resident or cause.

Entry of judgment, however, will be deferred until the next Court date. Given the circumstances of Defendant's tenancy, including its duration and the attached subsidy, and in light of the provision in the earlier Court agreement that Defendant be referred to Tenancy Preservation Program ("TPP"), the Court orders that Defendant engage with TPP (or, if he previously worked with the agency, re-engage with TPP) to determine his eligibility for services. If he is eligible, he shall work with TPP diligently and follow its recommendations. The parties shall return (by Zoom) on **September 22, 2021** at **11:00 p.m.** for status on Defendant's work with TPP. The Court will determine at that time if judgment should enter or if sufficient progress is being made to warrant a further stay on entry of judgment.

SO ORDERED this 30th day of July 2021.

Jonathan J. Kane
Hon. Jonathan J. Kane, First Justice

cc: Court Reporter
HSD (for referral to the Tenancy Preservation Program)

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

CASE NO. 21-CV-441

CITY OF PITTSFIELD,

Plaintiff,

v.

TANYA EDWARDS,

Defendant.

ORDER

After hearing on July 22, 2021 on the plaintiff city's motion for injunctive relief, at which the city appeared through counsel and one of the tenants, Bailee Pierce, and the landlord both appeared *pro se*, the following order shall enter:

1. The landlord shall provide hotel accommodations for the tenants of the condemned premises until the condemnation is lifted.
2. Such accommodations shall be for two rooms and the landlord shall notify the tenants by 6:00 p.m. today (July 22, 2021) of the name and location of same.

3. The landlord shall make repairs at the premises using a licensed plumber and with proper permits from the city. Any and all repairs required by the city to be performed by a licensed person shall be effectuated by a licensed person with proper permits.
4. The city shall investigate if there are recourses available for the tenants' hotel stay due to the condemnation of the premises.
5. The landlord may text the tenants for access for repairs at the premises.
6. The tenants may not reside at the premises until the condemnation is lifted but they are not restricted from accessing the premises freely during daylight hours.
7. This matter shall be scheduled for further hearing on **August 3, 2021 at 2:00 p.m. by Zoom.** The Clerk's Office shall provide instructions on how to participate in said hearing by Zoom. If the tenant is not able to attend by Zoom on her own, she shall utilize the Zoom Room at the courthouse at 37 Elm Street in Springfield.

So entered this 2nd day of August, 2021.

Robert Fields, Associate Justice

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 21 SP 1075

EMTAY, INC,

PLAINTIFF

v.

ORDER TO APPOINT GAL

JOSEPHINE RAIMER,

DEFENDANT

In this no-fault summary process action brought by a post-foreclosure third-party purchaser to evict the former homeowner, the Court entered judgment in favor of Plaintiff on July 16, 2021. Even though Defendant did not make a request for a stay of execution pursuant to G.L. c. 239, §§ 9, et seq., the Court scheduled a hearing for July 30, 2021 to allow Defendant an opportunity to seek a stay prior to service of the eviction order. At the July 30, 2021 hearing, Defendant refused to seek a stay because she claimed that she still owed the home and intended to live there the rest of her life.[1]

Despite numerous efforts to get Defendant to understand that Plaintiff had a judgment for possession and thus the legal right to remove her from her home, Defendant refused to accept this reality. Given the Defendant's [redacted], the Court has determined that the appropriate course of action is to appoint a

[1] Plaintiff purchased the home following foreclosure. Judgment for possession had been awarded to the former mortgagee following foreclosure in the matter of *Wilmington Savings Fund Society FSB v. Raimer*, Docket No. 19H79SP3600 on February 28, 2020, and a timely appeal was not filed.

guardian ad litem ("GAL") for Defendant for the limited purposes of assisting her in vacating and relocating to other housing, and to inform Defendant of the consequences if she fails to vacate voluntarily.[2] Absent the assistance of a GAL, Defendant is likely to take no action to prepare for the eviction.

Specifically, the Court appoints Attorney Ed Bryant to serve as Defendant's GAL. The Court is appointing Attorney Bryant based on his past experience in similar cases involving elderly homeowners who require relocation, for example in the recent case in this Court captioned *City of Holyoke v. Pagan, et al.* The Clerk's office is requested to notify Attorney Bryant of this appointment. He is, of course, free to decline appointment, in which case the Court will review its GAL list to locate another attorney with experience in similar matters.

The parties shall return for review by Zoom at **12:00 p.m. on August 20, 2021**. At this time, the GAL is requested to provide an update regarding Defendant's willingness and financial ability to relocate, and the prospects of Defendant being able to move voluntarily in the near term.

SO ORDERED this 2nd day of August 2021.

Jonathan J. Kane

Hon. Jonathan J. Kane, First Justice

cc: Kara Cunha, ACM
Court Reporter

[2] The GAL should note that Defendant's family (Laurie and Mark) appeared with her at recent hearings and are aware of the urgency of relocation.

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 21-SP-0304

CITY VIEW COMMONS I,	)	
	)	
PLAINTIFF	)	
	)	
V.	)	**ORDER ON MOTION**
	)	**TO CONTINUE**
KEITH PETERS,	)	
	)	
DEFENDANT	)	

This for-cause summary process action brough pursuant to G.L. c. 239 was before the Court on July 30, 2021 on Defendant's motion to continue the trial until the pending criminal charges against Defendant are resolved.[1] Both parties appeared through counsel.

By way of background, Defendant's counsel represents that Defendant is elderly, disabled and the beneficiary of a federally subsidized tenancy. Plaintiff alleges that Defendant violated a material term of his lease as a result of violent conduct in October 2020 that resulted in criminal charges being brought against him. Defendant is presently out on bail and residing in this unit. He contends that he would not be able to testify in his own behalf in this case waiving his privilege and protection against self-incrimination set forth under the Fifth Amendment to the Constitution and the Massachusetts Declaration of Rights.

[1] The parties did not know if a trial date had been set in Defendant's criminal case.

The decision of whether to grant a continuance lies within the sound discretion of the judge. *See Commonwealth v. Super*, 431 Mass. 492, 496 (2000), *quoting Commonwealth v. Miles*, 420 Mass. 67, 85 (1995). The judge should, however, "balance any prejudice to the other litigants which might result from granting a stay against the potential harm to the party claiming the privilege if he is compelled to choose between defending the action and protecting himself from criminal prosecution. *See U.S. Trust Co. v. Herriott*, 10 Mass. App. Ct. 313, 317 (1980).[2]

In this case, Defendant seeks a continuance for an indefinite period. A lengthy delay of this summary process trial would cause undue prejudice to Plaintiff. The allegations against Defendant involve a stabbing in a 152-unit housing development. Plaintiff has an obligation to take reasonable steps to preserve the quiet enjoyment of its other residents, and Defendant's actions, if proven at trial to have occurred, jeopardizes the safety and welfare of many others who live in the complex. Defendant's interest in preserving his rental subsidy, although undeniably important for his housing stability, does not outweigh the rights of the other occupants to live free from the risk of violence. Moreover, permitting an indefinite continuance would clearly frustrate the purpose of eviction proceedings; namely, "to provide 'just, speedy, and inexpensive' resolution of summary process cases," *Adjartey v. Central Div. of the Hous. Court Dep't*, 481 Mass. 830, 837 (2019) (citation omitted).

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[2] Burdening Defendant with the difficult choice of testifying in this case or exercising his privilege against self-incrimination does not alone constitute a denial of due process under the United States Constitution. *Soe v. Sex Offender Registry Bd.*, 466 Mass. 381, 388 (2013) (noting that numerous Federal courts have recognized that there is some unfairness in requiring a civil hearing to proceed while criminal charges relevant to that civil proceeding are pending, but have nonetheless held that the decision whether to continue such a civil hearing is in the discretion of the judge, and that the United States Constitution "rarely, if ever," requires a stay of civil proceedings pending the outcome of criminal proceedings) (citations omitted); *see also Herriott*, 10 Mass. App. Ct. at 316 (there is no "constitutional requirement that the civil proceeding must yield to the criminal one").

For the forgoing reasons, Defendants' motion to continue is DENIED.

SO ORDERED this 3rd day of August 2021.

Jonathan J. Kane

Jonathan J. Kane, First Justice

cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

CASE NO. 21-CV-339

BEACON RESIDENTIAL MANAGEMENT,

Plaintiff,

v.

MARCUS EBERHART, BARBARA EBERHART, and UMEIKA BAWUAH ,

Defendants.

ORDER

After hearing on June 24, 2021, on the landlord's motion for further injunctive relief, at which the plaintiff appeared through counsel and the defendants all appeared *pro se*, the following order shall enter:

1. **Background:** The defendants Barbara Eberhart and Umeika Bawuah are tenants of the plaintiff landlord at Baystate Place located at 414 Chestnut Street in Springfield, Massachusetts (hereinafter, "landlord"). The defendant Marcus Eberhart (hereinafter "Eberhart") is the son of Barbara Eberhart and the brother

of Umeika Bawuah. Eberhart reports that he does not reside at the premise and has been the longtime caretaker for his mother and sister, for many years.

2. The landlord filed this civil action on June 1, 2021 seeking injunctive relief:

> ...pursuant to G.L. c.121B, s.32C et seq. prohibiting the Defendant [Marcus Eberhart] from entering onto tor remaining in and/or upon any portion of Baystate Place in Springfield, Massachusetts, including the building, sidewalks, roadways and other common areas adjacent to those buildings; and
>
> ...otherwise prohibit[] the Defendant from entering onto or remaining in and/or upon any portion of Baystate Place in Springfield, Massachusetts, including the buildings, sidewalks, roadways and other common areas adjacent to those buildings.

3. The landlord asserts that Eberhart violated section (f) of G.L. c.121B, s.32C on February 3, 2021 when he had an altercation with two of the landlord's staff, Jessica Bertothy and Michael Wood.

4. **G.L. c.121B, s.32C(f):** The statute. G.L. c.121B, s.32C states as follows:

> Section 32C. Whenever a person who is not a member of a tenant household has, on or near a public housing development or subsidized housing development: (f) committed or repeatedly threatened to commit a battery upon a person or damaged or repeatedly threaten to commit damage to the property of another for the purpose of intimidation because of the person's race, color, religion, or national origin or on account of the person's participation in an eviction proceeding.

5. **The Incident:** On February 3, 2021 the Property Manager, Jessica Bertothy (hereinafter, "Bertothy"), approached Eberhart when he was inside the store which is located in Baystate Place located at 414 Chestnut Street in Springfield, MA (hereinafter, "premises"). Eberhart's mask was down below his mouth and Bertothy instructed him that he was in violation of the COVID-19 mask policy and must have the mask placed correctly on his face. Eberhart testified that he was

drinking from a bottle he had purchased at the store and speaking with the store owner at that moment. He credibly testified that he felt verbally attacked by Bertothy and that he felt that Bertothy had invaded his "six foot space rule" which was implemented at the time under the state's emergency COVID-19 protocols. The store owner, James Lauzon, testified credibly that Bertothy approached Eberhart in a very "demanding" manner.

6. Eberhart and Bertothy have differing takes on the interaction but what is clear is that it escalated, verbally, quickly and Eberhart felt concerned enough that he called 911. Bertothy testified that she heard Eberhart tell the police dispatcher over the phone that "some white lady" was threatening him. Eberhart was very upset when speaking with the police and he raised his voice and was yelling to the police over the telephone and also when speaking to Bertothy.
7. Bertothy called her colleague Michael Wood, (hereinafter, "Wood") Regional V.P. for the landlord as he was at the premises for a meeting. Wood attempted to de-escalate the situation and calm Eberhart down, but to no avail. As Mr. Lauzon, the store owner, put it during his testimony "it got out of hand". Though he does not think that Eberhart did anything wrong, Lauzon described Eberhart as being "a bit out of control". Eberhart himself admitted, regretfully, the same at the hearing.
8. **The Aftermath:** The landlord had Eberhart served with a No Trespass notice which the court, after a hearing on June 9, 2021, quashed and issued an order allowing Eberhart to be in areas such as where the mailboxes are located, and the store, and the path needed to go to and from his family's apartment and to

essentially not to "loiter" in the common areas. Since the February 3, 2021 incident, Eberhart has taken to the internet to repeatedly post information about the event and making it clear that he believes that Bertothy is a racist. Eberhart has also made calls to the headquarters of the landlord company to voice his complaints about the incident and to seek redress. These activities and postings by Eberhart have clearly made Bertothy feel fearful for her safety and at the time of the hearing on June 24, 2021, Bertothy was working exclusively in a remote manner and not coming to the premises.

9. At the end of the hearing, the judge invited the parties to engage in a mediation with the court's Housing Specialist Department. The judge has been updated by the Clerk's Office that no mediation has been scheduled and, thus, issues this order to address the merits of the landlord's complaint and request for injunctive relief.

10. **Discussion:** The landlord commenced this action seeking injunctive relief pursuant to G.L. c.121B, s.32C(f) and failed to meet its burden of proof that Eberhart's behavior on February 3, 2021 was a "a battery" upon Bertothy or that he "repeatedly threatened to commit a battery" upon Bertothy "for the purpose of intimidation because of the person's (Bertothy's) race, color, religion, or national origin". See, G.L. c.121, s.32C(f).

11. Though the court hereby rules that the landlord failed to meet its burden of proof under the statute under which it commenced this court action, the court appreciates that the event on February 3, 2021 and the aftermath is very

upsetting to both Bertothy and Eberhart and the parties are urged to engage in a mediation with one of the area's mediation services.

12. **Conclusion and Order:** Based on the foregoing, the landlord's motion for injunctive relief pursuant to G.L. c.121B, s.32C(f) is denied and the matter is hereby dismissed.

So entered this 4th day of August, 2021.

Robert Fields, Associate Justice

Cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

CASE NO. 21-CV-130

CITY OF SPRINGFIELD CODE ENFORCEMENT DEPARTMENT HOUSING DIVISION,

Plaintiff,

v.

CARMEN DIAZ, et al.,

Defendants.

ORDER IN THE CONTEMPT TRIAL

This matter came before the court for a CONTEMPT TRIAL June 4, 2021, and after consideration of the evidence admitted therein, the following finding of facts, rulings of law, and order for judgment shall enter:

1. **Background:** After the defendant Magdalena's Santiago's apartment was condemned by the plaintiff city, the court entered the following order on March 22, 2021 which stated:

> Defendant CARMEN DIAZ shall provide temporary alternative housing to MAGDALENA SANTIAGO and ANY AND ALL OCCUPANTS and their

respective household members living at 126-128 Lowell Street, Second Floor FORTHWITH, and until such time as all emergency violations have been corrected or by leave of Court.

2. Thereafter, following a motion hearing held on April 16, 2021 the Court issued an Order dated April 21, 2021, which stated the following:

> Defendant CRMEN DIAZ shall continue to provide temporary alternative housing to MAGDALENA SANTIAGO and her respective household members living at 126-128 Lowell Street, Second Floor, FORTHWITH, until such time as all emergency violations have been corrected or by leave of Court. Said alternative housing will have cooking facilities or Defendant CARMEN DIAZ shall provide DEFENDANT MAGDALENA SANTIAGO with a $100.00 (one hundred dollars and 00/100) daily stipend for food.

3. On various dates in April and May, 2021 Ms. Diaz gave Ms. Santiago a total of $815 her family's hotel costs. Otherwise, Ms. Diaz did not provide Ms. Santiago with any other funds towards her hotel or food stipend nor made any arrangements for alternate housing or food stipend for Ms. Santiago.
4. On May 11, 2021 the Court appointed Patriot Property Management Group, Inc. as a limited receiver to address the emergency conditions at the premises in order to have the condemnation lifted. Additionally, the Receiver was ordered to provide alternate accommodations and a food stipend for Ms. Santiago and her family, which began on May 11, 2021.
5. **Discussion:** At the contempt trial, Ms. Diaz stipulated to having failed to provide alternate housing accommodations and a food stipend for the entire time she was under Court orders to do so, other than the payments noted above totaling $815.
6. Though Ms. Diaz' defense is that she did not have the finances to otherwise comply with the court's orders, she failed to persuade the court that she was

financially unable to make any payments towards her obligation beyond the $815 and she did not provide the court with any record upon which it could excuse her failure to abide by the clear and unequivocal orders of the court requiring her to provide alternate housing with a food stipend to Ms. Santiago and her family.

7. **Out-of-Pocket Costs Paid for by Ms. Santiago:** Ms. Santiago provided clear proof that her out-of-pocket expenses for hotel accommodations and for daily food (capped at $100 per day per order of the court) from March 3, 2021 (date of the condemnation) through May 10, 2021 (when the Receiver began to pay for these expenses) totaled $16,579. This sum represents 78 days of a food stipend @$100 plus hotel costs of $9,594.23, minus the $815 paid by Ms. Diaz.
8. Where a fine is imposed in a civil contempt proceeding it must not exceed the actual loss to the complainant caused by the contemnor's violation of the order in the main case, plus the complainant's reasonable expenses in enforcing his rights. See *Town of Manchester v. Department of Environmental Quality Engineering*, 381 Mass. 208 (1980), citing: *United States v. United Mine Workers*, 330 U.S. 258, 303-304 (1947); *Gompers v. Bucks Stove & Range Co.*, 221 U.S. 418, 444 (1911); *School Comm. of New Bedford v. Dlouhy*, 360 Mass. 109, 114 (1971); *Lyon v. Bloomfield*, 355 Mass. 738, 744 (1969); *Root v. MacDonald*, 260 Mass. 344, 362 (1927).
9. **Conclusion and Order:** Based on the foregoing, a contempt judgment shall enter for Ms. Santiago against Ms. Diaz for **$16,579.23** plus reasonable attorney's fees.

10. Counsel for Ms. Santiago shall have 20 days to file and serve a petition for reasonable attorney's fees and costs. Ms. Diaz shall have 20 days after receipt of said petition to file and serve her opposition, if any. Thereafter the court shall enter a final contempt judgment without need for further hearing in these contempt proceedings.

11. **Transfer to the Civil Docket:** After hearing on August 2, 2021 on the code enforcement matter it appears that the emergency conditions have been remedied by the receiver and the matter is likely to be dismissed by the plaintiff City at the next review date now scheduled for August 31, 2021 at 12:00 p.m. by Zoom. Though the code enforcement action is winding down, the claims between Ms. Santiago and Ms. Diaz, including these contempt proceedings, shall be transferred to the regular civil docket to ***Magdalena Santiago v. Carmen Diaz*, Case No. 21-CV-499**. Ms. Santiago is directed to file her petition for attorney's fees and costs to this new civil docket and Ms. Diaz is directed to do the same with her opposition. A Case Management Conference in the new civil action, 21-CV-499 shall be held on **October 5, 2021 at 10:30 a.m. by Zoom.** The meeting ID for Zoom for the Housing Court is **161 638-3742** and the Password is **1234**.

So entered this 6th day of August, 2021.

Robert Fields, Associate Justice

Cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

CASE NO. 18-SP-5447

PHOENIX DEVELOPMENT, INC. ,

Plaintiff,

v.

PRINCE GOLPHIN, JR. et al.,

Defendants.

ORDER

After hearing on July 13, 2021, on the plaintiff's motion for reconsideration of its motion for summary judgment, the following order shall enter:

1. The court's March 9, 2021 written decision denying the plaintiff's motion for summary judgment concluded that there remain material issues of fact to be determined at trial.

2. After consideration of the motion to reconsider, with an attached affidavit of Attorney Jennifer E. Rachele, the court reaches the same conclusion that there remain material issues of fact.

3. **Discussion:** In support of its motion for reconsideration, the plaintiff attached an affidavit of Attorney Rachele, who argues that the confirmatory deed was invalid because MERS[1] no longer had any interest to assign and "was a complete nullity and had no legal effect whatsoever." Importantly, Attorney Rachele glosses over the relevant factual dispute by stating her opinion on the matter is "notwithstanding any of the language in that Second Assignment document." If the second assignment, from MERS to HSI[2], was in the same form as the first assignment from MERS to HASCO[3], Attorney Rachele's point would likely be controlling. However, the assignment to HSI was a "confirmatory assignment" to "correct the assignee of the assignment of mortgage recorded on June 23, 2009 as book 17853 and page 167." This creates a question in the chain of title whether HASCO ever actually held title to transfer to Mortgage Pass-Through[4], the eventual foreclosing entity. In other words, MERS assigned the mortgage to A, before correcting an admitted error in that assignment and confirming the intended assignee was B. Despite MERS claiming the assignment to A was in error, A purported to assign the mortgage to C. If A never had title to the

[1] Mortgage Electronic Registration Systems as nominee for WMC Mortgage Corp.
[2] Deutsche Bank National Trust Company, as Trustee for HSI Asset Securitization Corporation Trust Series 2006-HE2.
[3] Deutsche Bank National Trust Company, as Trustee for HASCO Mortgage Pass Through Certificates, Series 2006-HE2.
[4] Deutsche Bank National Trust Company, as Trustee for HIS Asset Securitization Corporation Trust 2006-HE2, Mortgage Pass-Through Certificates, Series 2006-HE2.

premises, then it had nothing to pass to C, and C had no right to foreclose on the premises.

4. Plaintiff's motion for reconsideration and supporting affidavit suggest this is a question of law. It asks the Court to find the second assignment was a nullity where MERS had nothing left to assign. However, the confirmatory assignment did not purport to make a new assignment but rather correct an error in the assignee. A "confirmatory deed 'creates no title' but 'takes the place of the original deed, and is evidence of the making of the former conveyance as of the time when it was made.'" *U.S. Bank Nat. Ass'n v. Ibanez*, 458 Mass. 637, 654, 941 N.E.2d 40, 55 (2011), quoting *Scaplen v. Blanchard*, 187 Mass. 73, 76, 72 N.E. 346 (1904). The question remaining is not one of law: whether the assignment to HSI was valid; but rather one of fact whether HASCO actually received title in order to pass to the foreclosing mortgagee. Attorney Rachele's supporting affidavit does not address the question of fact but rather presents her opinion on the state of the law as it relates specifically to this chain of title.
5. Though one can argue that the Court could or should conclude that HASCO did not have title when it made an assignment to the plaintiff and enter summary judgment on the record before it in favor of the defendant, the chain of title is muddy enough to warrant providing the plaintiff with an opportunity at trial to provide sufficient evidence to support a finding that HASCO actually obtained title and was able, therefore, to pass same on to the plaintiff.
6. This matter shall be scheduled by the Clerk's Office for a Case Management Conference. Given the plaintiff's comments at the conclusion of the earlier

summary judgment hearing, the parties may wish to re-engage in discovery.

That, and all other scheduling matters, shall be the subject of the Conference.

So entered this 9th day of August, 2021.

Robert Fields, Associate Justice

Cc: Court Reporter

Michael Doherty, Clerk Magistrate

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 21-SP-0935

NORRIS RABB,	)	
	)	
PLAINTIFF	)	
	)	
V.	)	**ORDER FOR STAY OF EXECUTION**
	)	
GREGORY RABB AND ANTHONY RAWLINS,	)	
	)	
DEFENDANTS	)	

In this no-fault summary process action, judgment entered in favor of Plaintiff following trial. Defendants now come before the Court seeking a stay of execution pursuant to G.L. c. 239, §§ 9, et seq. All parties appeared with counsel.

In order to qualify for a statutory stay, Defendants must demonstrate that their application for stay is made in good faith and that they will abide by and comply with such terms and provisions as the Court may prescribe. *See* G.L. c. 239, § 10. The Court must also find that "the applicant cannot secure suitable premises for himself and his family elsewhere within the city or town in a neighborhood similar to that in which the premises occupied by him are situated" and "that he has used due and reasonable effort to secure such other premises." *Id.* If allowed, the stay period cannot exceed six months or, if the premises are occupied by a "handicapped person" (as defined in the statute) or an individual sixty years of age or older, twelve months. *See* G.L. c. 239, § 9.[1]

[1] [redacted]

Defendants currently reside in residential property located at 26 Crawford Circle, Springfield, Massachusetts (the "Property"). The home was formerly owned by Defendants' mother (who was also Plaintiff's aunt) prior to Plaintiff's purchase following foreclosure. Defendants have resided in the home for years, and they assert that they have nowhere to go if they are evicted from the Property. They want to purchase the home from Plaintiff (which was the original intent when Plaintiff purchased the home at the foreclosure sale) but need additional time to obtain the necessary financing. The Court is not willing to order a stay based on Defendants' desire to purchase the Property, however, given the lack of an agreement with Plaintiff as to the essential terms of the transaction, including the price to be paid. Instead, the stay will require Defendants to use "due and reasonable effort" to locate replacement housing as required under G.L. c. 239, § 10.[2]

The stay on execution also requires Defendants to pay a reasonable sum for their use and occupation of the Property. The understanding when Plaintiff purchased the Property in 2017 was that Defendants would pay his carrying costs until they were able to buy it. Initially, the agreed-upon use and occupancy amount was $1,200.00 to cover Plaintiff's mortgage payment, with Defendants paying all expenses, such as taxes and utilities. This agreement was not reduced to writing, but Defendants do not contest their agreement to pay Plaintiff $1,200.00 monthly. Plaintiff attests that, because Defendants failed to pay real estate taxes and water bills, the City of Springfield commenced foreclosure proceedings and that he is now required to pay $895.00 each month toward the outstanding bills pursuant to a forbearance agreement. He further attests that

[redacted]

[2] Defendants are not precluded from continuing efforts to purchase the Property while at the same time seeking alternative housing.

he pays $425.00 per month for real estate taxes. In sum, Plaintiff pays approximately $2,500.00 each month for the Property.

Defendants' affidavits show a combined monthly income of approximately $5,000.00, the majority of which comes from unemployment benefits. HUD generally requires Section 8 subsidy participants to pay 30% of their income toward rent, which, if applied in this case for purposes of illustration, amounts to approximately $1,500.00. Balancing the Defendants' ability to pay against the monthly expenses incurred by Plaintiff, the Court deems that a fair monthly use and occupancy payment is $2,000.00.[3]

Based on the foregoing, the following order shall enter:

1. Defendants' motion for stay of execution is allowed pursuant to the terms and conditions set forth in this order.
2. Issuance of the execution shall be stayed through September 30, 2021.
3. Defendants shall pay use and occupancy of $2,000.00 each month by the 20th of the month, commencing in August 2021.
4. Defendants shall make due and reasonable efforts to locate and secure replacement housing and shall document those efforts by keeping a log of all locations as to which they have visited or made inquiry, including the address, date and time of contact, method of contact, name of contact person and result of contact.
5. A hearing on the status of Defendant's efforts to find replacement housing shall be held by Zoom at 11:00 a.m. on September 29, 2021. At that time, the Court will review Defendants' housing search log and their compliance with the payment terms.

[3] Defendants' counsel suggested this figure as a reasonable use and occupancy payment.

SO ORDERED this 9th day of August 2021.

Jonathan J. Kane

Hon. Jonathan J. Kane, First Justice

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

QIONG WANG and MICHAEL WANG, Plaintiffs, v. MONICA S. ANDRE, Defendant. --AND— QIONG WANG,, Plaintiff, v. MONICA ST. RENARE, Defendant. --AND— MICHAEL WANG, Plaintiff, v. MONICA ST. ANDRE, Defendant.	20-SP-1408 20-SP-1652 20-CV-647

After hearing on July 26, 2021 at which the landlords appeared through counsel and the tenant appeared *pro se*, the following order shall enter:

1. **Dismissal:** The summary process action of *Qiong Wang v. Monica St. Renare*, 20-SP-1652 is hereby DISMISSED. That matter is an eviction case based on the non-payment of the same rent that is the subject of the instant and on-going matter (*Qiong Wang and Michael Wang v. Moncia St. Andre*, 20-SP-1408) and, as such, is duplicative and must be dismissed.
2. **Minor Child:** [redacted], the tenant's minor child shall be dismissed from 20-SP-1408 and 20-CV-647.
3. **Related Civil Matter:** The motion hearing in *Michael Wang v. Monica St. Andre*, 20-CV-647 scheduled for July 27, 2021 at 2:00 p.m. is cancelled, as it was filed by Qiong Wang who is not a party in that matter. Her brother Michael Wang is the plaintiff and is represented by counsel. That matter shall be scheduled for a Status Hearing with the judge as noted below.
4. **Representation by Counsel in all Cases:** Qiong Wang commenced a second summary process eviction action (20-SP-1652) for non-payment of rent for the apartment and for the same alleged outstanding use and occupancy as she was claiming in 20-SP-1408, in which she was co-plaintiff with her brother, Michael, and represented by an attorney. As she was appearing multiple times in 20-SP-1408 with counsel, and the tenant was appearing with counsel, as well, Ms. Wang was pursuing a default judgment, then applying for issuance of the execution, and ultimately scheduled a physical eviction with a moving company in the second matter (20-SP-1652).

5. Her attorney in 20-SP-1408, Thomas Wilson, the tenant's then attorney, and the tenant were not aware of the second filed action (20-SP-1652) and were very engaged with multiple hearings in their action, (20-SP-1408). Though the tenant appeared at each and every hearing in 20-SP-1408, she never appeared in the other improperly filed action (20-SP-1652) and, thus, was never present to percolate the issue of the misspelling of her name in that action; a misspelling that continued throughout those proceedings including on the paperwork from the constables who were hired to physically evict the tenant.
6. The fact of the second improperly filed action (20-SP1652), and Ms. Wang's aggressive pursuit of entry of judgment and issuance of the execution, only came to light when she received a 48-hour notice from the constables hired by Ms. Wang to physically evict her from the premises. After the tenant received said notice, she filed an emergency motion in that case (20-SP-1652) to stop the physical eviction then scheduled for June 30, 2021. Due to the late hour of the hearing on June 29, 2021, Ms. Wang was instructed at the hearing to contact the moving company directly to cancel the eviction. Despite this direct instruction, the moving company appeared with their trucks to physically evict the tenant on June 30, 2021 but was turned away after knocking on the tenant's door by Attorney Wilson who could observe their arrival at the tenant's unit on Zoom while waiting for a hearing in 20-SP-1408 to commence.
7. Ms. Wang also pursued entry of a judgment and issuance of an execution in a third matter involving this tenancy, *Michael Wang v. Monica St. Andre*, 20-CV-647, even though she is not a party to that case. She did so on July 14, 2021,

two weeks after a hearing directly from the judge in the second eviction matter (20-SP-1652) that her filing of a second eviction was wholly inappropriate and for which she was reprimanded by the judge on the record.

8. Based on these actions, Ms. Qiong Wang is prohibited from appearing in this court without counsel representation in any and all matters, including initial filings such as Summary Process complaints. If Ms. Wang wishes to be heard in any given matter for relief from this term of this Order, she must first hire counsel for representation in that matter and said counsel may file a motion for relief from this Order.
9. **Claims Other Than Non-payment of Rent:** For the reasons stated on the record, all claims in 20-SP-1408 regarding the landlords' seeking of clean-up orders for the basement, orders for access to show the premises to perspective purchasers, and orders for other access are dismissed from the summary process action (20-SP-1408) without prejudice. Such matters may be brought in a civil action.
10. **Attorney Wilson's Motion to Withdraw As Counsel:** Attorney Wilson may file and serve to both the tenant and both his clients his motion to withdraw as counsel by no later than August 10, 2021. As was discussed on the record, Ms. Wang shall come prepared to have subsequent counsel file an appearance should Attorney Wilson's motion be allowed.
11. This matter, 20-SP-1408, shall be scheduled for further hearing on Attorney Wilson's motion to withdraw and the civil matter, 20-CV-647, shall be scheduled for a Status Hearing, on **August 24, 2021 at 9:00 a.m. by Zoom.** The Clerk's

Office shall provide instructions on how to participate in said hearing by Zoom. If the tenant is not able to attend by Zoom on her own, she shall utilize the Zoom Room at the courthouse at 37 Elm Street in Springfield. A Mandarin language interpreter shall be required for Ms. Wang.

So entered this 9th day of August, 2021.

Robert Fields, Associate Justice

Cc: Michael Doherty, Clerk Magistrate
Court Reporter

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COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

Hampden ss: HOUSING COURT DEPARTMENT
WESTERN DIVISION

AGUASVIVAS REALTY, LLC,	)	
Plaintiff,	)	
-v.-	)	DOCKET NO. 21-SP-01426
BRANDON COLLINS,	)	
Defendant.	)	

FINDINGS, RULINGS AND ORDER FOR ENTRY OF JUDGMENT

This matter came before the court on August 10, 2021 for trial. The case is a summary process (eviction) action brought to recover possession of the subject rental premises based on a no fault notice to quit. Carlos Aguasvivas testified on behalf of the plaintiff (landlord). The defendant (tenant) Brandon Collins did not file an answer but testified at trial without objection. The plaintiff was represented by an attorney; the tenant was self-represented. Based on the credible testimony and other evidence presented at trial and the reasonable inferences drawn therefrom, in light of the governing law, the following findings, rulings and orders are to enter:

The plaintiff, Aguasvivas Realty LLC, is the owner of the subject rental premises, located at 28 Alderman Street, 2nd floor in Springfield, Massachusetts. The company bought the two-unit property as an investment in August 2020. Brandon Collins was already a tenant at the premises when Aguasvivas Realty, LLC bought the property. Mr. Collins has lived there for

about four years, one with his mother and, after she passed away three years ago, as the head of household. His twelve-year old daughter lives with him. The monthly rent is $950. Mr. Aguasvivas testified that he has a potential buyer for the property, but the buyer requires that the property be vacant before they can enter into negotiations. The landlord served a thirty day notice to quit without fault dated March 30, 2021 terminating the tenancy at will on April 30, 2021 (Exh 1).

The court rules that the plaintiff established its *prima facie* case for eviction.

Mr. Collins testified that he has "no problem" moving so that his investor-landlord can sell the property. However, to date he has not found a new apartment for himself and his daughter. He has applied for apartments, but he cannot commit to a time for them to move out. He had been applying only for apartments in the neighborhood because his daughter goes to school down the street, but now he has expanded his housing search to a wider area.

The court finds that the defendant did not present a valid defense to the eviction. However, because the tenancy was terminated without fault of the tenant, the court finds that he is eligible for a stay of the execution pursuant to G.L. c. 239 s. 9. The statute provides a maximum stay of six months for tenant households who do not have a member of the household who has a disability or who is sixty years of age or older. Mr. Collins estimated that he would be able to find a new apartment in four and one-half months. At this time, the court grants a stay of the execution through October 31, 2021 on condition that Mr. Collins pay use and occupancy of $950 for September on September 1, 2021 and $950 for October on October 1, 2021. If Mr. Collins wishes to request any further extension, he must file a motion with the court and serve it on the landlord's attorney, accompanied by detailed written records showing a diligent and good faith housing search.

Entry of Judgment

For the above-stated reasons, Judgment shall enter for the plaintiff for possession of the premises with costs and interest. Execution is stayed through October 31, 2021 on condition that the defendant pay use and occupancy of $950 for September on September 1, 2021 and use and occupancy of $950 for October on October 1, 2021.

So entered: August 10, 2020

Fairlie A. Dalton

Fairlie A. Dalton, J. (Recall)

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

CASE NO. 20-CV-158

CITY OF HOLYOKE,

Plaintiff,

v.

REYSELY and ESTABAN RODRIGUEZ, et al.,

Defendant.

ORDER

After hearings on July 27 and August 2, 2021, at which all parties appeared, the following order shall enter:

1. **Property Owner's Motion to Dissolve the Receivership and to Allow the Property Owner to Rehabilitate the Subject Property:** Given the history of the property owner's repeated failures to make appropriate repairs at the premises over more than an 18-month period, much of which was covered on the record at earlier hearings leading up to the necessary appointment of a Receiver and included in the Appointment of the Receiver Order, in addition to the deficiencies of his proposed rehabilitation plan which continues to ignore the city's assessment that the back porch/stair system requires a complete removal and

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rebuild, and finally due to the lack of transparency and apparent inconsistencies and discrepancies in the property owner's financial wherewithal, his motion to dissolve the Receivership and be afforded the opportunity to bring the property up to code himself is DENIED, without prejudice.

2. This denial is without prejudice, enabling the property owner to put himself in a better position---if possible---to seek leave of the court at a later time to dissolve the Receivership and assume responsibility for rehabilitation.
3. **Receiver's Motion for Approval of its Rehabilitation Plan:** The Receiver's motion for approval of its rehabilitation plan is ALLOWED. Said plan, as submitted to the court, estimates the total costs---including overhead costs and expenses---to be between $257,800 and $285,900.
4. The Receiver shall submit proof of insurance by September 1, 2021.
5. The Receiver's most recent report, in which it reports incurring expenses in the amount of $3,062.50 during the period of June 17, 2021 through July 6, 2021. The City of Holyoke reviewed the report and is satisfied with the accuracy of the reporting and documentation.
6. The Receiver shall file with the court and sere upon all parties and lienholders a copy of the next Receiver's report no later than September 23, 2021.
7. The City of Holyoke shall coordinate an inspection of the subject property during the week of September 27, 2021 to verify the Receiver's report.
8. A review of the Receivership shall be scheduled for hearing on October 7, 2021 at 10:00 a.m. by Zoom.

9. The property owner indicated at the hearing that if the Receiver's rehabilitation plan was approved by the court, he would bring a motion to challenge the plan--- as being well beyond the repair work required by the code violations issued by the City. Should the property owner file such a motion, he shall identify any experts who will testify at the hearing on said motion and include in the body of his motion the specific challenges to the rehabilitation plan and which expert will address which challenge.

10. **MERS' Motion for Relief from Obligation to Pay for Alternate Housing for the Tenants:** MERS' motion to be relieved of the obligation of housing the 2nd and 3rd floor tenant families in a hotel is hereby ALLOWED, as the property owner is in a position, and will be under a court order, to assume this responsibility. Counsel for MERS reported to the court that it has paid for said hotel accommodations up to August 23, 2021. Thereafter, as is explained below, the property owner will resume this responsibly under the City determines it safe for the tenants to reoccupy the premises.

11. **The Property Owner Shall Provide Hotel Accommodations with Kitchen Facilities for the Tenants:** The property owner, Reysely Adon Rodriguez, shall beginning on August 23, 2021 provide hotel accommodations with kitchens to the 2nd and 3rd floor tenants until the City lifts the condemnation. Counsel for the property owner, Andrew Bass, who currently holds $40,000 of the property owner's funds in his Client Escrow account shall only use such for funds for said hotel accommodations. If the property owner wishes to utilize any of said funds in Attorney Bass' escrow account for any other purpose he may only do so with

leave of court. This shall be the case even in an event that the property owner instructs release of any of these funds from his attorney or in an event that he terminates his contract with Attorney Bass. The only way funds can be release from said escrow account other than for the hotel costs is by leave of court.

12. **Tenants' Motion for Longer Term Hotel Reservations:** Due to the stress caused by uncertainty and the significant inconvenience befalling the tenants when they must move from one hotel to another, their motion to require the property owner to make reservations for 90-days is allowed. It is anticipated that it will be that amount of time before the tenants will be able to re-occupy the premises. If that time is shortened however, there is no obligation for the property owner to pay for hotel accommodations for the tenants once the condemnation is lifted.

13. This matter shall be scheduled for further hearing on **October 7, 2021 at 10:00 a.m. by Zoom.** The Clerk's Office shall provide instructions on how to participate in said hearing by Zoom. If the tenant is not able to attend by Zoom on her own, she shall utilize the Zoom Room at the courthouse at 37 Elm Street in Springfield.

So entered this 10th day of August, 2021.

Robert Fields, Associate Justice

CC: Caitlin Castillo, Esq, First Assistant Clerk Magistrate
Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

FRANKLIN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 20-SP-0189

WAYNE WHITMORE,	)	
	)	
PLAINTIFF	)	
	)	**ORDER TO ISSUE EXECUTION**
V.	)	
	)	
LISA HATCH AND ALAN HATCH,	)	
	)	
DEFENDANTS	)	

After a review on compliance with a July 7, 2021 Agreement of the Parties, at which Plaintiff appeared through counsel and Defendants appeared and represented themselves, the following order shall enter:

1. The execution (eviction order) shall issue forthwith for possession and unpaid rent in the amount of $6,600.00 (court costs have been satisfied).
2. Use of the execution is stayed through August 31, 2021.
3. If, by 4 p.m. on August 31, 2021, Defendants have provided Plaintiff's counsel with written confirmation (an email is sufficient) from the Franklin County Regional Housing and Redevelopment Authority that they have a pending application for rental assistance, the stay on use of the execution shall be extended until the application is approved or denied. Otherwise, the stay will be lifted without further hearing.[1]

[1] If a move-out is scheduled despite Defendants' compliance with this provision of the order, they should file a motion to stop the move-out and they will not be charged any of the fees associated with scheduling or canceling the move-out.

4. Defendants shall take the necessary steps to replace the money order for July 2021 rent that Plaintiff claims was not received.[2]

5. Defendants are referred to the Tenancy Preservation Program (TPP) to assist with the completion of their application for rental assistance.

SO ORDERED this 12th day of August 2021.

Jonathan J. Kane
Hon. Jonathan J. Kane, First Justice

cc: Court Reporter

[2] Plaintiff acknowledges that the rent payment for August 2021 was received.

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

BERKSHIRE, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 21-CV-356

PAUL TRZCINSKI,

PLAINTIFF

v.

LAYCE BATOR,

DEFENDANT

ORDER ON COMPLAINT FOR CONTEMPT

The parties appeared by Zoom on August 9, 2021 for an evidentiary hearing on Plaintiff's complaint for contempt. Both parties appeared through counsel. Plaintiff alleges that Defendant violated a clear and unequivocal Court order by allowing Kevin Sadlow into her rental unit at 25 Pleasant Street, Apt. D, Adams, Massachusetts (the "Premises"). On June 28, 2021, the Court entered a preliminary injunction ordering that Defendant not "permit any other person to enter the Premises" nor "invite any other person to the Property" (defined as 25 Pleasant Street, Adams, MA). The preliminary injunction incorporated by reference terms of a temporary restraining order issued on June 18, 2021 that precluded Defendant from allowing Samantha Clifford or Mr. Sadlow into the Premises.

In order to enter a judgment of contempt against Defendant in this case, the Court must find clear and convincing evidence of disobedience of a clear and unequivocal demand. *See In re Birchall*, 454 Mass. 827, 838-39 (2009). The aim of civil contempt is to coerce performance of a required act for the benefit of the aggrieved complainant. *Id.* at 848. "Civil contempt is a means

of securing for the aggrieved party the benefit of the court's order." *See Demoulas v Demoulas Super Markets, Inc.*, 424 Mass. 501, 565 (1997) (citation omitted).

At the contempt trial, Plaintiff offered the testimony of Defendant's neighbor who saw Mr. Sadlow on the Property on July 21, 2021 and Ms. Clifford "every day" since July 22, 2021. A different witness testified that Ms. Clifford has been on the Property "multiple times, often spending the night."[1] Defendant did not deny that she allowed Ms. Clifford and Mr. Sadlow to enter the Premises after she was prohibited by the Court from doing so. She explained that Mr. Sadlow, who is her brother, came to the Premises only once and it was because she was at risk of having the Premises condemned by the Town of Adams health department if she did not repair the door jambs, and she had no one else to ask to do the work. With respect to Ms. Clifford, she testified that due to certain physical disabilities, she requires Ms. Clifford's regular assistance with daily activities. Despite not asking the Court to amend its order prior to violating it, Defendant asked at trial that the Court to modify its order to allow Ms. Clifford to be in the Premises.

Based on Defendant's admissions regarding her violation of the preliminary injunction, the Court finds that Plaintiff has shown by clear and convincing evidence that Defendant disobeyed a clear and unequivocal Court order and that Plaintiff is entitled to entry of judgment for contempt. Because civil contempt is intended to be remedial in nature, however, and based on Defendant's clear request for a reasonable accommodation based on disability, the Court enters the following interim order:

---

[1] Defendant objected to testimony about Ms. Clifford's presence at the Premises because the contempt complaint makes no reference to her. The Court allowed the testimony to avoid multiple trials about similar violations of the same provision of the Court's order, and because Defendant would not suffer any prejudice as she was present to testify on her own behalf regarding the allegations that Ms. Clifford had been allowed into the Premises.

1. Entry of judgment for contempt will be stayed for a period of sixty (60) days (the "Stay Period").
2. The numbered paragraphs of the preliminary injunction entered on June 28, 2021 and the numbered paragraphs of the modified preliminary injunction entered on July 2, 2021 are hereby vacated and replaced with numbered paragraphs 1 through 12 of the temporary restraining order dated June 28, 2021 (the new preliminary injunction shall be referred to herein as the "August 2021 Preliminary Injunction").
3. The August 2021 Preliminary Injunction is further amended by striking the reference to Ms. Clifford in paragraph 1. As an accommodation to Defendant, she may invite Ms. Clifford to the Property and into the Premises to assist with her daily activities; provided, however, that Defendant shall be responsible for Ms. Clifford's conduct when she is on the Property.
4. The August 2021 Preliminary Injunction will remain in effect until further order of this Court.
5. If during the Stay Period, Defendant does not violate the terms of the August 2021 Preliminary Injunction, the contempt complaint will be dismissed.
6. If Plaintiff alleges that, during the Stay Period, Defendant has violated the terms of the August 2021 Preliminary Injunction, it may file a motion for entry of judgment for contempt, with notice provided to Defendant's LAR counsel, including with the motion a description of the alleged violation(s), including dates and times, and a list of witnesses who will testify.[2]

[2] Plaintiff's counsel is advised to avoid seeking entry of judgment based on conduct that is not a material violation of the August 2021 Preliminary Injunction or which has no demonstrable adverse impact on other residents of the Property or on the operation of the Property.

SO ORDERED this 16th day of August 2021.

Jonathan J. Kane

Hon. Jonathan J. Kane, First Justice

cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.	HOUSING COURT DEPARTMENT WESTERN DIVISION DOCKET NO. 21-CV-0508
WINN MANAGED PROPERTIES, PLAINTIFF v. CARLOS CASILLAS, DEFENDANT	PRELIMINARY INJUNCTION

This case came before the Court on August 13, 2021 for a Zoom hearing on Plaintiff's verified complaint for a temporary restraining order. After a hearing, at which Plaintiff appeared through counsel and Defendant appeared without counsel, it clearly appears from the specific facts set out in the verified complaint that immediate and irreparable injury, loss or damage will result to Plaintiff if a temporary restraining order is not granted. Moreover, because Defendant appeared at the hearing after notice and because Plaintiff demonstrated that a preliminary injunction should issue,[1] the following order in the nature of a preliminary injunction shall enter:

1. Defendant shall allow Plaintiff's employees and agents access to his unit for inspection and repairs upon 24 hours' advance notice given in writing and slid underneath the door of Defendant's unit.

[1] The Court finds that failure to issue the injunction would subject Plaintiff to a substantial risk of irreparable harm and that the risk outweighs any similar risk to Defendant if the injunctive relief is granted. *See Packaging Industries Group, Inc. v. Cheney*, 380 Mass. 609, 617 (1980).

2. Defendant shall not interfere with or obstruct the inspection or repairs, including not physically or verbally abusing, threatening, harassing or intimidating Plaintiff's employees and agents.

3. A referral will be made to the Tenancy Preservation Program ("TPP") to assess Defendant's eligibility for services, and Defendant will cooperate with such assessment. If TPP agrees to assist Defendant, he shall cooperate with TPP and follow its recommendations.

For good cause shown, Plaintiff shall not be required to give security for the issuance of this Order, and the $90.00 fee set forth in G.L. c. 262, § 4 for the issuance of an injunction or restraining order is waived.

SO ORDERED.

DATE: 8/16/21

Jonathan J. Kane

Hon. Jonathan J. Kane, First Justice

cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 21-SP-1300

JOSE RODRIGUEZ, JR.,	)	
	)	
PLAINTIFF	)	
	)	
v.	)	**ORDER ON DEFENDANT'S**
	)	**MOTION TO DISMISS**
ANTHONY GLAZE AND	)	
KARLA RODRIGUEZ,	)	
	)	
DEFENDANTS	)	

This matter came before the Court on August 13, 2021 on Defendant Karla Rodriguez's motion to dismiss. The parties appeared through counsel. The parties agree that the notice to quit was served on April 2, 2021 and that the complaint was served on May 3, 2021. The complaint was filed with the Court on May 4, 2021, and the entry date specified on the front of the complaint was May 10, 2021.

The motion is denied for the reasons set forth on the record. In brief, the Court finds that the entry date was May 10, 2021, not the date of filing of the complaint, and that service of the notice of termination and filing of the complaint were both timely. The Court further finds that, in a tenancy under a written lease being terminated for cause, the termination date does not need to be a rent day. Lastly, the Court finds that the notice to quit provided sufficient notice to Defendants of the reasons for the termination. Although the better practice is for the landlord to include in the termination notice a description of the acts or omissions that caused the landlord to terminate the tenancy, the Court is satisfied that, in this case, due to the relatively simple nature of the lease, by citing to

11 W.Div.H.Ct. 119

specific clauses of the lease, Plaintiff provided sufficient notice of his claims to allow Defendants to prepare a defense.[1]

Accordingly, Defendant's motion to dismiss is DENIED.

SO ORDERED this 17th day of August 2021.

Jonathan J. Kane

Jonathan J. Kane, First Justice

cc: Court Reporter

[1] In fact, prior to filing this motion, Plaintiff agreed to allow Defendants to file a late answer and discovery, so Defendants will be fully prepared for trial, which is scheduled for September 13, 2021.

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

Hampshire ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION

TODD RUSSO,

Plaintiff,

v.

DOCKET NO. 20SP01512

LEYNA BOUCHER,

Defendant.

ORDER

This matter came before the court on August 17, 2021 on the plaintiff's motion to reopen the above-captioned eviction case and to issue execution. Both parties appeared and were self-represented. After hearing and a review of the record, both parts of the plaintiff's motion are **DENIED** for the following reasons:

The parties agree about certain material facts in this case. This eviction case is based on non-payment of rent. The tenant was approved for and the landlord received $4,000 in funding through the RAFT program. This paid the existing arrearage through May 2021 in full. As part of the RAFT program established in response to the coronavirus pandemic, the tenant also was approved for a $500 monthly stipend toward the $900 rent for four months. RAFT paid this stipend for June, July and August. It is anticipated that it will be paid for September also.

A review of the docket shows that the tenant did not file an answer at any time in this case. The case was scheduled for a status conference with the housing specialist for February 16, 2021. It was continued to April 28, 2021 at the request of both parties. On April 28 no one appeared and trial was scheduled for May 20, 2021. The case was dismissed that day. The landlord reported that he understood that the parties did not need to do anything because everything was being paid by RAFT, the $500 stipend would be paid for four months beginning

in June and the tenant agreed to pay the $400 balance each month. Any such agreement was not put into writing and nothing was filed with the court.

This case should have ended when the arrearage was paid in full. The docket shows that almost two months after the dismissal the landlord attempted to file something in the case on July 14, 2021 and then filed this motion to reopen the case and to issue execution on July 21, 2021. The tenant agrees that she did not pay the $400 balance for June, July or August, leaving an unpaid amount of $1,200. She reported that she notified the landlord on June 19, 2021 that she was withholding the rent because he did not provide a lead certificate. The Ware Board of Health inspected the premises and issued a report and order to correct Sanitary Code violations on July 14, 2021. A lead paint determination was issued on August 4, 2021.

No execution can issue in this case because there is no judgment upon which an execution could be based. The disposition of the case was a dismissal. Nor can the court reopen the case. The testimony of both parties shows that the landlord is claiming there is a new rental arrearage which accrued after RAFT paid the existing arrearage in full. Likewise, the tenant did not raise any of the issues in the case that she is now claiming exist, so that there is no tenant portion of the original case that could have been preserved.

The court notes that there may be additional financial assistance available through the RAFT/ERAP program, as well as other funding resources in the area. The parties are urged to consult with the housing specialist department of the court to determine all such available resources. This order does not impact the landlord's ability to pursue his claim for unpaid rent in a new action. Both parties are urged to consult an attorney about each of their rights and responsibilities in this matter.

Order

After hearing and a review of the record, the following order will enter:

The plaintiff's motion to reopen the case and to issue execution is DENIED.

So entered: 17 August 2021

Fairlie A. Dalton
Fairlie A. Dalton, J. (Recall)

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 20-SP-1813

FRANCISCO CLAUDINO,	)	
	)	
PLAINTIFF	)	
	)	
v.	)	**ORDER TO STAY USE OF EXECUTION**
	)	
KRYSTAL GAMELLI AND JOHN VANCINI,	)	
	)	
DEFENDANTS	)	

This case came before the Court on August 16, 2021 on Defendants motion to stop a physical eviction. Plaintiff appeared through counsel and Defendants represented themselves.

Defendants agreed to vacate by June 30, 2021 as part of an Agreement of the Parties dated April 16, 2021. They claim that they have been doing a diligent housing search and have been unable to locate replacement housing. This residential summary process case having been commenced as a no-fault eviction, Defendants are entitled to a statutory stay on use of the execution if they satisfy certain conditions. Although Defendants did not provide a log of their housing search, they testified credibly about their efforts to secure other housing and offered to show their housing log to the Court and Plaintiff's counsel. They have no balance due of rent or use and occupancy other than for the month of August 2021. Defendants assert that they did not pay for the month of August because Plaintiff is holding a last months' rent deposit. Accordingly, the Court finds that Defendants are entitled to a stay pursuant to G.L. c. 239, § 9 et seq.

After hearing, the Court enters the following order:

1. The execution may issue to Plaintiff if it has not already issued, but it shall not be used to conduct a physical move-out before October 1, 2021.
2. Defendants shall pay $850.00, representing one month's use and occupancy, by August 20, 2021. The last month's rent deposit shall be applied to the use and occupancy due for September 2021.
3. Defendants shall provide a copy of their housing search log to the Court and Plaintiff's counsel no later than August 31, 2021 and shall continue to maintain and update the log until they have secured replacement housing.

SO ORDERED this 18th day of August 2021.

Jonathan J. Kane

Jonathan J. Kane, First Justice

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 20H79CV000287

DONNA SABELLA,

PLAINTIFF

v.

MARIO S. DEPILLIS, SR., TRUSTEE, MARIO S. DEPILLIS, SR., REVOCABLE TRUST, AND HAMPSHIRE PROPERTY MANAGEMENT GROUP, INC.,

DEFENDANTS

ORDER ON MOTION FOR SUMMARY JUDGMENT

This personal injury case was before the Court by Zoom on July 7, 2021 on Defendants' motions for summary judgment pursuant to Mass. R. Civ. P. 56(b). Plaintiff, who rented and resided in a residential unit owned by the Defendant trust located at 3 Emerson Court, Amherst, Massachusetts (the "Premises"), alleges that injuries she suffered in a fall within the Premises in 2017 arose out of the owner's negligence in failing to provide a safe interior stairway. Plaintiff further claims that Defendant Hampshire Property Management Group, Inc., was the property manager for the Premises and acted as the owner's agent. Defendants contend that the Premises were built prior to the adoption of the State Building Code and, consequently, the absence of a traditional handrail from the third floor to the landing is not a violation of either the State Building Code or State Sanitary Code. They also contend that the absence of the railing did not render the Premises uninhabitable and, further, Plaintiff cannot prove that the lack of the railing was a proximate cause of her injuries. They seek summary judgment on Plaintiff's claims for negligence, breach of warranty of habitability and Massachusetts General Laws chapter 93A.

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The standard of review on summary judgment "is whether, viewing the evidence in the light most favorable to the non-moving party, all material facts have been established and the moving party is entitled to a judgment as a matter of law." *Augat, Inc. v. Liberty Mut. Ins. Co.*, 410 Mass. 117, 120 (1991). *See* Mass. R. Civ. P. 56 (c). The moving party must demonstrate with admissible documents, based upon the pleading depositions, answers to interrogatories, admissions documents, and affidavits, that there are no genuine issues as to any material facts, and that the moving party is entitled to a judgment as a matter of law. *Community National Bank v. Dawes*, 369 Mass. 550, 553-56 (1976). All evidentiary inferences must be resolved in favor of the non-moving party. *See Simplex Techs, Inc. v. Liberty Mut. Ins. Co.*, 429 Mass. 196, 197 (1999).

After reviewing the memoranda of law together with the supporting affidavits and documentation, the Court concludes that there exists a genuine issue of material facts pertaining to Defendants' liability that must be decided on the merits at trial. For example, even if the lack of a handrail is not a violation of Massachusetts law or regulation, the facts could support a finding of negligence as well as a violation of the implied warranty of habitability. Further, the question of whether Plaintiff can demonstrate a causal connection between the absence of a railing and Plaintiff's injury must be left to the jury.

Accordingly, Defendants' motions for summary judgment are denied.

SO ORDERED, this 16th day of August 2021.

Jonathan J. Kane

Hon. Jonathan J. Kane
First Justice, Western Division Housing Court

cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 21-SP-1335

BRADY APPOLON,

PLAINTIFF

v.

JESSICA REYES,

DEFENDANT

FINDINGS OF FACT, RULINGS OF LAW AND ORDER

This summary process action was before the Court by Zoom for trial on August 19, 2021. Plaintiff seeks to recover possession of a residential rental unit from Defendant as a result of Defendant's failure to vacate after expiration of the lease term. Plaintiff appeared with counsel; Defendant appeared and represented herself.

Based on all the credible testimony and evidence presented at trial and the reasonable inferences drawn therefrom, the Court finds as follows: Plaintiff owns and occupies the first floor of a house located at 123 Massachusetts Avenue, Springfield, Massachusetts (the "Property"). Defendant occupies the second floor (the "Premises") as a tenant. The parties executed a written lease dated April 13, 2020 with an expiration date of April 30, 2021.

Plaintiff served Defendant with a notice dated March 1, 2021, which Defendant received under her door, informing her that the lease would not be renewed upon expiration. Defendant did not vacate after the lease expired and Plaintiff filed this summary process action. Although

Plaintiff claims (and Defendant acknowledges) that Defendant has not paid rent since receiving the notice of nonrenewal in March 2021, Plaintiff does not claim any monetary damages in his complaint.[1]

Defendant did not file an answer with the Court. She testified that Plaintiff turned off her water without notice and plays his television loudly out of spite. She also claims that there are there are numerous defects in the Premises, including missing smoke detectors.[2] She claims that the Premises have been infested with mice and rodents, causing her to delay moving in for a month and a half. She mentioned in passing that she once left the Premises and stayed in a hotel at her own expense due to bad conditions. She did not describe these conditions in any detail, nor did she offer any pictures, receipts, correspondence or other documentary evidence to support her claims. The Court did not find her testimony credible.

In rebuttal to Defendant's allegations, Plaintiff pointed out that Defendant was part of the Home Base program through approximately March 2021, and that the Premises had to pass inspection before Defendant took possession. Moreover, Plaintiff denied receiving notice that repairs were needed in the Premises except for one issue last year regarding a sink, which he promptly fixed. Defendant admitted that she has not communicated with Plaintiff for many months. In light of the foregoing, even if certain bad conditions exist in the Premises, the Court finds that Plaintiff was not given notice or an opportunity to make repairs.

---

[1] The fact that Plaintiff did not seek monetary damages in this case does not preclude him from seeking damages in the future.

[2] In order to ensure that the Premises have appropriate smoke and carbon dioxide detectors, if Defendant has not yet vacated the Premises, Defendant shall allow access to the Springfield Fire Department for inspection on August 31, 2021 at or about 1:30 p.m.

Accordingly, based upon the Court's findings, in light of the governing law, the following order shall enter:

1. Judgment for possession shall enter forthwith in favor of Plaintiff.
2. Plaintiff may apply for the execution (the eviction order) after expiration of the statutory 10-day period, provided that he has filed the required affidavit under the *Temporary Halt in Residential Evictions to Prevent the Further Spread of COVID-19* issued by the Centers for Disease Control and Prevention.[3]
3. Use of the execution to conduct a physical eviction shall be stayed through August 31, 2021.

SO ORDERED this 23rd day of August 2021.

Jonathan J. Kane

Jonathan J. Kane, First Justice

cc: Court Reporter

[3] The Massachusetts eviction moratorium codified in Stat. 2020, c. 257 as amended by Stat. 2021, c. 20 is not applicable because this case is not brought for non-payment of rent and because Defendant does not have a pending application for emergency rental assistance.

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 21 SP 1075

EMTAY, INC,

PLAINTIFF

v.

ORDER TO STAY USE OF EXECUTION

JOSEPHINE RAIMER,

DEFENDANT

In this no-fault summary process action brought by a third-party purchaser to evict the former homeowner, the Court appointed a guardian ad litem ("GAL") and ordered a status hearing on August 20, 2021. After hearing, at which Plaintiff appeared through counsel, Defendant appeared self-represented, and GAL Edward Bryant, Esq. appeared, along with members of Ms. Raimer's family and a case worker from Greater Springfield Senior Services, the Court shall use its equitable authority to stay use of the execution despite Ms. Raimer not making a request for additional time to relocate on July 30, 2021 at a hearing scheduled for that purpose.

The Court does not believe that Ms. Raimer is able to make decisions in her own best interest. At trial and at each of the post-trial Court events, she asserts that she is the owner of the house and that she intends to remain there for the rest of her life. She refuses to accept that judgment entered on February 28, 2020 in favor of the mortgagee in the matter of *Wilmington Savings Fund Society FSB v Raimer*, Western Div. Housing Court Docket No. 19SP3600), a

decision that she did not appeal.[1]

Because she refuses to accept that she is on the verge of being evicted from the home she has owed since 1965, she has taken no steps to arrange to move or to remove her possessions. The Court adopts the GAL's recommendation that a family member petition the Probate and Family Court for a guardianship over Ms. Raimer. If no family member is willing to petition for the appointment of a guardian, the GAL has offered to file such a petition. In order to maintain a tight timeframe over the process, the Court requires that any such petition be filed no later than September 3, 2021. The parties shall return for review by Zoom at **10:30 a.m. on September 7, 2021**, at which time the GAL shall report on the status of any guardianship proceeding and to provide an update regarding Ms. Raimer's willingness to relocate voluntarily. Use of the execution shall be stayed until further Court order.

SO ORDERED this 23rd day of August 2021.

Jonathan J. Kane
Hon. Jonathan J. Kane, First Justice

[1] In the 19SP3600 matter, Defendant (who was at the time represented by counsel) sought to set aside the foreclosure. The Court ruled that the foreclosure would not be set aside and was not fundamentally unfair because, even if Ms. Raimer did cure one mortgage default by tendering the missed mortgage payments, she did not cure a second default, namely the failure to pay property taxes.