Western Division Housing Court
Unofficial Reporter of Decisions

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

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

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

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

OUR PROCESS
The Court has agreed to set aside copies of all its written decisions. Periodically, the editors collect and scan these decisions, employing commercial-grade "optical character recognition" software to create text-searchable PDF versions. On occasion, the editors also receive copies of decisions directly from advocates, which helps ensure completeness. When the editors have gathered a sufficient quantity of pages to warrant publication, they compile the decisions, review the draft compilation with the Court for approval, and publish the new volume. Within each volume, decisions are assembled in chronological order. The primary index is chronological, and the secondary index is 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.

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

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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.

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

CONTACT US

Comments, questions, and concerns may be raised to any person involved in this project. 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).

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COMMONWEALTH OF MASSACHUSETTS

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HOUSING COURT DEPARTMENT
WESTERN DIVISION
SUMMARY PROCESS
NO. 19H79SP002008

U.S. BANK NATIONAL ASSOCIATION, NOT IN ITS INDIVIDUAL CAPACITY BUT SOLELY AS TRUSTEE FOR THE RMAC TRUST, SERIES 2016-CTT,

Plaintiff

VS

GISELA GARCIA and MIGUEL A. VARGAS,

Defendants

Memorandum of Decision on the Cross-Motions for Summary Judgment

Introduction

This is a summary process action in which plaintiff U.S. Bank National Association, Not In Its Individual Capacity But Solely As Trustee For The RMAC Trust, Series 2016-CTT (hereinafter "U.S. Bank") is seeking to recover possession of a residential property from defendants Gisela Garcia and Miguel A. Vargas after the plaintiff acquired title to the property upon foreclosure.[1] Defendant Gisela Garcia (hereinafter "Garcia") filed an answer which included defenses and counterclaims challenging the validity of the foreclosure and asserting that U.S. Bank 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.[2]

The parties filed cross-motions for summary judgment together with memoranda, supporting affidavits and documents. This matter is before the court on these cross-motions for summary judgment.

[1] The plaintiff commenced this case in the Orange District Court in May 2017. The plaintiff file a notice of transfer to the Western Division Housing Court Department under the provisions of G.L. c. 185C, § 20.

[2] Miguel A. Vargas a/k/a Miguel A. Vargas, Jr. failed to answer the summary process complaint or otherwise enter an appearance in this action. Vargas was defaulted on June 24, 2019.

U.S. Bank argues that it foreclosed and acquired title to the subject property in strict compliance with the mortgage and statutes. U.S. Bank claims it has terminated Garcia's right to possession and is entitled to judgment on its claim for possession as a matter of law.

Garcia argues that she has a superior right to possession based upon her contention that the foreclosure sale was void *ab initio*. Specifically, Garcia argues that prior commencing the foreclosure process after she fell behind in her FHA insured mortgage loan payment obligations in June 2013, neither the mortgagee at that time, Mortgage Electronic Registration Systems, Inc. (hereinafter "MERS"), nor the loan servicer at that time (JPMorgan Chase) conducted or made a reasonable effort to arrange a "face-to-face" meeting with Garcia as required by 24 C.F.R. § 203.604 (b). U.S. Bank argues that in 2013 neither Garcia's lender nor mortgagee was subject the "face-to-face" meeting provisions of HUD regulation 24 C.F.R. § 203.604 (b). U.S. Bank argues that as a result of a 2012 loan modification Garcia's mortgage loan was converted from an FHA insured loan to a conventional loan and the new mortgage did not incorporate the HUD regulations. U.S. Bank argues, in the alternative, that even if Garcia's modified mortgage loan was subject to the "face-to-face" meeting provisions of 24 C.F.R. § 203.604 (b), JPMorgan Chase complied with the requirements by making reasonable efforts to arrange a face-to-face meeting with Garcia.

Garcia also raised defenses/counterclaims that (1) the foreclosure and events leading up to the foreclosure were so fundamentally unfair that the foreclosure sale should be set aside in equity, (2) U. S. Bank engaged in unfair or deceptive practices by failing to consider any loss mitigation options with Garcia, (3) U.S. Bank did not properly foreclose on the property which was, in whole or in part, registered land and (4) U.S Bank did not make reasonable efforts to sell the property at the foreclosure sale for "the highest price the market would bear."

For the reasons below, U.S. Bank's motion for summary judgment is **ALLOWED** in part and **DENIED** in part, and Garcia's cross-motion for summary judgment is **DENIED**.

Undisputed and Disputed Facts

The following facts based on facts set forth in the record that I conclude are not in dispute.

Garcia (and Vargas) owned and occupied the residential property at 188 Gilbert Avenue, Springfield, Massachusetts (the "property").

On October 16, 2009 Garcia (and Vargas) obtained an FHA-insured loan from Metlife Home Loans, a Division of Metlife Bank N.A. ("Metlife") in the amount of $132,648.00. Garcia

(and Vargas) granted a mortgage on the property to Mortgage Electronic Registration Systems, Inc. ("MERS") as nominee for Metlife to secure the promissory note.

It is undisputed that Garcia's FHA insured loan was subject to the "face-to-face" meeting provisions of 24 C.F.R. § 203.604 (b).

In 2012 (and Vargas) fell in arrears in their mortgage loan payment obligations. They requested and received a loan modification from Metlife (their lender). The loan modification agreement is set forth as U.S. Bank's Exhibit B to the affidavit of Kerry Walthall. Attached to Garcia's summary judgment motion is a document (Exhibit 1) entitled "Subordinate Mortgage." It is signed by Garcia (and Vargas) and is dated May 29, 2012 and states that it is effective on June 1, 2012. It appears that the "Subordinate Mortgage" document was intended to secure the revised promissory note reflected in the 2012 loan modification agreement and was subordinate to the 2009 mortgage.[3] The "Subordinate Mortgage" includes language that suggests that the Garcia mortgage remained subject to Department of Housing and Urban Development ("HUD") regulation. However, it is unclear whether the "Subordinate Mortgage" incorporated the "face-to-face" meeting provisions of 24 C.F.R. § 203.604 (b).

In June 2013 Garcia (and Vargas) defaulted on their payment obligations under the modified promissory note.

There does not appear to be a dispute that during 2013 JPMorgan Chase and/or Metlife maintained or operated offices within 200 miles of the mortgaged property.

According to U.S. Bank, on June 11, 2013 the loan servicer, JPMorgan Chase, sent Garcia (and Vargas) a letter stating that it would be sending a representative to the Garcia property within the next twenty days to conduct a face-to-face meeting and discuss a possible repayment plan. U.S. Bank states (based upon documents appended to the affidavit of Anthony Younger, dated December 31, 2020, Exhibit P) that the letter was sent by certified mail.[4] Further, U.S. Bank states (again based entirely upon a document appended to Younger's affidavit, Exhibit Q) that on June

[3] In the affidavit of Kerry Walthall, submitted by U.S. Bank, Walthall states that Garcia (and Vargas) entered into the loan modification agreement with Metlife on July 1, 2012. This date is after the date set forth in the "Subordinate Mortgage." Neither U.S. Bank nor Garcia explain this discrepancy.

[4] Younger is employed by Rushmore Loan Management Services, LLC ("Rushmore"). Younger based the averments set forth in his affidavit from his review of Rushmore business records. Rushmore is the current loan servicer in possession of the records of the prior loan servicers who serviced the Garcia (and Vargas) mortgage loan. However,

7, 2013 "a representative of Chase went to the property and found no one present at the property. However, they were able to leave documentation addressed to the Defendants under the door in a blank, sealed confidential envelope. Additionally, face to face meetings were attempted on June 28 and July 2, 2013 but there was no contact with the Defendants." Exhibit Q, appended to Younger's affidavit, appears to be a computer printout of what purports to be JPMorgan Chase's 2013 contact log for the Garcia loan.

Younger is employed by Rushmore, the current custodian of the Garcia mortgage loan file. Younger avers that the documents are what they purport to be, true and accurate JPMorgan Chase business records dating to 2013 maintained by Rushmore. Even if Younger could testify that the documents identified as Exhibits P and Q are true and accurate copies of documents he found in the Garcia mortgage loan file, he has not set forth sufficient facts to testify as to the record creation and mailing business practices of JPMorgan Chase. Accordingly, Younger does not have competence to testify as to whether the June 7, 2013 letter was sent by certified mail, whether JPMorgan Chase's representatives went to Garcia's home on June 28 and July 2, 2013 to arrange a face-to-face meeting, or what was in the blank sealed envelope they purportedly "slid under the door" of Garcia's home.

In her affidavit dated February 7, 2021, Garcia denies receiving the June 7, 2013 letter (which is not dispositive, since U.S. Bank can meet its burden by showing through competent evidence or testimony the JPMorgan mailed the letter by certified mail). Further, Garcia states that she never found a blank envelope slid under her front door. She states "[i]t has always been my practice to lock the screen door any time I was leaving the house empty, whether for travel, to go to work, or any other reason. I certainly did so in June and July 2013." Again this is not dispositive because U.S. Bank can meet its burden through competent evidence or testimony that a JPMorgan Chase representative went to Garcia's home to arrange a face-to-face meeting.

Whether and how JPMorgan Chase attempted to arrange a face-to-face meeting with Garcia (and Vargas) in 2013 are material facts in dispute.

On May 4, 2015 the Garcia (and Vargas) mortgage was assigned to JPMorgan Chase.

On February 5, 2016, JPMorgan Chase sent Garcia (and Vargas) a 150-day default/right to cure notice pursuant to G.L. c. 244, § 35A. Garcia (and Vargas) did not cure their default.

On August 8, 2016 JPMorgan Chase sent Garcia (and Vargas) a mortgage loan acceleration notice.

On April 13, 2017 a land court judgment entered in favor of JPMorgan Chase on its service members civil relief act claim against Garcia (and Vargas). \

On December 14, 2016, JPMorgan Chase assigned the Garcia mortgage to HUD. On October 16, 2017 HUD assigned the mortgage to U.S. Bank.

On November 6, 2018 U.S. Bank registered its affidavit of compliance with G.L. c. 244, §§ 35B and 35C with the Hampden Country Registry of Deeds. The affidavit states that U.S. Bank was the holder of the Garcia promissory note and mortgage.

On December 7, 2018, U.S. Bank sent Garcia (and Vargas) a Notice of Mortgage Foreclosure Sale together with a Notice of Intention to Foreclose Mortgage and of Deficiency after Foreclosure of Mortgage and Certificate pursuant to 209 C.M.R. 18.21(A)(2). The certificate states that U.S. Bank was the record holder and owner of the Garcia mortgage and note. The Notice of Mortgagee's Sale of Real Estate was published on December 13, 20 and 27, 2018 in The Republican, a newspaper of general circulation in Springfield.

The foreclosure auction sale was conducted at the property on January 7, 2019. U.S. Bank was the high bidder, and for consideration paid delivered a foreclosure deed to itself on February 27, 2019. On May 3, 2019 U.S. Bank recorded (registered) the affidavit of sale and post-foreclosure statutory affidavits at the Hampden County registry of deeds.

On May 19, 2019 U.S. Bank served Garcia (and Vargas) with a 72-hour notice to quit. U.S. Bank never entered into a tenancy with Garcia (or Vargas). Garcia (and Vargas) have remained in possession of the property.

U.S. Bank commenced this summary process action in May 2019.

Garcia (and Vargas) has continued to occupy the property as her residence since the date of the foreclosure sale.[5]

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

[5] It is unclear from the summary judgment record whether Vargas continues to reside at the property.

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 Requirement. The Garcia (and Vargas) 2009 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 Garcia's 2009 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 are 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. *If default occurs in a repayment plan arranged other than during a personal interview, the mortgagee must have a face-to-face meeting with the mortgagor,* or make a reasonable attempt to arrange such meeting within 30 days after such default and *at least 30 days before foreclosure is commenced* . . . (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).[6]

[6] Exemptions 1, 2, 3 and 4 are not at issue in this action. Only exemption 5 is at issue.

24 C.F.R. § 203.604 (d) provides that:

> "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 . . ."

The regulations do not require that the mortgagee deliver any papers to the mortgagor if the "trip" does not result in a meeting with the mortgagor.

The failure of the mortgagee or loan servicer to comply with the face-to-face meeting requirements set forth in 24 C.F.R. § 203.604 (b) – if under an obligation do so - would render the foreclosure of the property void *ab initio*, and judgment would enter in favor of Garcia on U.S. Bank's claim for possession.

Garcia, citing to *Pinti v. Emigrant Mortg. Co., Inc.*, supra., argues that she is entitled to summary judgment on the possession claim because JPMorgan Chase failed to conduct or make a reasonable effort to arrange a face-to-face meeting with Garcia prior to commencing the foreclosure process. U.S. Bank asserts in response that the 2012 loan modification resulted in the execution of a new conventional mortgage loan, and that the mortgage securing the conventional loan no longer incorporated the "face-to-face" meeting provision of Subpart C of the HUD regulations. U.S. Bank contends that when JPMorgan Chase accelerated Garcia's mortgage and thereafter commenced the foreclosure process it did so in strict compliance with the mortgage and statutory power of sale.

U.S. Bank argues, in the alternative, that even if the mortgage that secured the modified Garcia mortgage loan continued to incorporate the HUD face-to-face meeting regulations, it made a reasonable effort to arrange a face-to-face meeting with Garcia June and July in 2013.

The "face-to-face" meeting provision of Subpart C of the HUD regulations was explicitly incorporated into Garcia's (and Vargas') original 2009 mortgage and is a material provision of the mortgage. Specifically, before it could accelerate the debt and commence the foreclosure process JPMorgan Chase (or its successor) would have had to comply with (or show that the "mortgagee" at the time 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 it was exempt from that requirement under

one or more of the 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).

However, it is unclear from the facts set forth in the summary judgment record whether as a result if the 2012 loan modification Garcia's modified mortgage loan became a conventional loan or, even if it did, whether the mortgage securing the modified loan continued to incorporate the HUD regulation "face-to-face" meeting requirement. The fact that (1) the 2012 "Subordinate Mortgage" was granted to HUD, and (2) the Garcia mortgage was assigned to HUD in 2016, is evidence that suggests the Garcia loan remained FHA insured after the 2012 loan modification. However, the 2012 Loan Modification Agreement (and contemporaneous Mortgagee Acknowledgement) could be construed to support U.S. Bank's position that the original loan had been converted to a conventional loan. This is the position set forth in the affidavit of Kerry Walthall, ¶ 7 (albeit without reference to any documents, regulations or other guidance that supports that position). I have not identified any other evidence in the summary judgment record to clarify whether or not the HUD face-to-face regulatory requirements remained a part of the modified Garcia mortgage loan where the mortgage was subordinated to the existing 2009 mortgage.

I conclude that the summary judgment record does not contain sufficient evidence to allow the court to rule on these issues as a matter of law, and that there exist disputed material issues of fact as to whether the 2012 loan modification converted Garcia's mortgage loan from an FHA insured loan into a conventional loan and whether the HUD face-to-face regulatory requirements remained a part of the modified Garcia mortgage loan. These factual issues must be determined by the fact finder (judge or jury) at trial.

U.S. Bank presents an alternative argument. U.S. bank argues that even if Garcia's modified mortgage loan remained subject to the HUD face-to-face meeting regulatory requirements, JPMorgan made reasonable efforts to arrange a face-to-face meeting with Garcia prior to commencing the foreclosure process.

I acknowledge and accept the holdings in two recent federal decisions relied upon by U.S. Bank: *Donahue v. Federal National Mortgage Association, et. al.*, 2019 WL 2176939 (D.Mass. May 20, 2019), affirmed on appeal, 980 F. 3d 204 (1st Cir. 2020); *Padula v. Freedom Mortgage Corporation*, 2020 WL 4040725 (D.Mass. July 17, 2020). First, the sufficiency of the letter does

not depend on whether Garcia received it. Instead the issue is whether the JPMorgan Chase sent the letter to Garcia by certified mail. Second, whether the representatives who purportedly went to Garcia's home had the authority to conduct a face-to-face meeting is not the issue. The issue is whether U.S. Bank can rely without authentication (or explanation) solely on JPMorgan Chase's business record (the agent contact log) in the custody of Rushmore to establish that representatives actually went to Garcia's home in an effort to arrange a face-to-face meeting.

I conclude that U.S. Bank cannot rely solely on Younger's interpretation of the JPMorgan Chase business records (the 2013 letter and the agent contact records) regarding whether or not JPMorgan Chase made reasonable efforts to arrange a face-to-face meeting with Garcia (and Vargas) in compliance with 24 C.F.R. § 203.604 (c) (5). While Younger is competent to identify documents created by JPMorgan Chase that were kept as business records in the Garcia mortgage loan file maintained by Rushmore, I am not satisfied that Younger is competent to testify as to facts or offer an opinion that JPMorgan Chase sent the letter to Garcia by certified mail, nor is he competent to testify as to the adequacy or sufficiency of the efforts purportedly made by representatives of JPMorgan Chase to make at least one trip to visit Garcia at the mortgaged property for purposes of holding or arranging a face-to-face meeting. These factual issues must be determined at trial through the testimony of witnesses competent to explain how in 2013 JPMorgan Chase handled face-to-face meeting obligations generally, what documents it maintained to record face-to-face meeting information, how entries in the contact logs were made and by whom. whether it was JPMorgan Chase's regular business practice to send face-to-face meeting letters by certified mail, whether JPMorgan Chase maintained a certified mail log, and what stamps affixed to documents maintained in the busines record file represented.

Garcia's Other Defenses/Counterclaims. There is no competent evidence in the summary judgment sufficient to establish or raise material issues of fact with respect Garcia's defenses/counterclaims that (1) the foreclosure and events leading up to the foreclosure were so fundamentally unfair that the foreclosure sale should be set aside in equity, (2) U. S. Bank engaged in unfair or deceptive practices by failing to consider any loss mitigation options with Garcia, (3) U.S. Bank did not properly foreclose on the property which was, in whole or in part, registered land and (4) U.S Bank did not make reasonable efforts to sell the property at the foreclosure sale for "the highest price the market would bear." Garcia cannot meet her burden of proof solely with

"vague and general allegations of expected proof" such as she has set forth in this summary judgment record.

Accordingly, U.S. Bank is entitled to summary judgment on these four defenses/counterclaims.

Validity of Foreclosure Sale (*Only if U.S. Bank prevails at trial on the "face-to face" meeting defenses raised by Garcia*). Acting pursuant to M.R.Civ. P. 56 (d) and based on the undisputed facts set forth in the summary judgment record, *and only if U.S. Bank prevails at trial on the "face-to face" meeting defenses raised by Garcia*, I find and rule as a matter of law that then U.S. Bank foreclosed on Garcia's property on January 7, 2019, in strict compliance with Garcia's mortgage and the requirements set forth in G.L. c. 244. Further, I find that U.S. Bank served Garcia with a legally sufficient notice to quit and that its right to possession of the property is superior to the right asserted by Garcia.

Judgment shall not enter until after all remaining claims/defenses are adjudicated at trial.

Conclusion

Accordingly, based upon the undisputed facts set forth in the summary judgment record and the reasonable inferences that can be drawn from those facts:

1. U.S. Bank's Motion for summary judgment is **ALLOWED** with respect only to Garcia's defenses/counterclaims that (1) the foreclosure and events leading up to the foreclosure were so fundamentally unfair that the foreclosure sale should be set aside in equity, (2) U. S. Bank engaged in unfair or deceptive practices by failing to consider any loss mitigation options with Garcia, (3) U.S. Bank did not properly foreclose on the property which was, in whole or in part, registered land and (4) U.S Bank did not make reasonable efforts to sell the property at the foreclosure sale for "the highest price the market would bear." Otherwise, the motion is **DENIED** subject to the court's contingent M.R.Civ.P. 56 (d) findings and rulings.
2. Garcia's Cross Motion for Summary Judgment is **DENIED.**
3. The clerk shall schedule this case for trial.

SO ORDERED.

JEFFREY M. WINIK
Associate Justice (on recall)

March 22, 2021

SP trial 4/26/21 @ 9:00 via video

COMMONWEALTH OF MASSACHUSETTS

HAMPDEN, SS

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 20-SP-591

CITY VIEW COMMONS I,

PLAINTIFF

v.

ORDER FOR ISSUANCE OF EXECUTION
(*EVICTION ORDER*)

JUAN E. APONTE,

DEFENDANT

1. This is a summary process action in which the Plaintiff seeks re-issuance of an execution to recover possession of the subject premises.
2. The Plaintiff appeared through counsel at the hearing held on March 18, 2021. Defendant did not appear after notice.
3. Plaintiff's counsel reported that Plaintiff has no knowledge of a pending application for short term rental assistance; accordingly, Defendant is not protected by Stat. 2020, c. 257.
4. Defendant has not provided Plaintiff with a declaration pursuant to the CDC eviction moratorium. Plaintiff filed an affidavit to this effect.
5. Execution (eviction order) shall issue forthwith for possession, rent in the amount of $522.00 in damages and costs in the amount of $184.01 in court costs.
6. Because Defendant was not present today, Plaintiff should instruct the sheriff or constable to provide Defendant with at least seven (7) days' advance notice of the levy in lieu of the minimum 48-hours' notice set forth in G.L. c. 239, § 3.

SO ORDERED
DATE: 3/24/21

By: Jonathan J. Kane
Jonathan J. Kane, First Justice

COMMONWEALTH OF MASSACHUSETTS

HAMPDEN, SS

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 20-SP-1292

GARAND COURT ASSOC., LP,
Plaintiff

v.

ILEINY RODRIGUEZ,
Defendant

ORDER FOR ENTRY OF JUDGMENT
AND ISSUANCE OF EXECUTION

1. This is a summary process action in which the Plaintiffs seek to recover possession of the subject premises from the Defendant.

2. The Plaintiffs were represented by counsel at the Zoom hearing held on March 23, 2021. The Defendant did not appear after notice.

3. The Plaintiff represents that the Defendant's RAFT application was approved and paid a portion of her rental arrears and that it is unaware of any other pending application for short term rental assistance. Accordingly, the eviction protections in Stat. 2020, c. 257 no longer apply.

4. The Court finds that the Defendant has substantially violated one or more material terms of the Court agreement entered on January 13, 2021 by failing to make payments for rent in February and March 2021 as required. Judgment shall enter for the Plaintiff, retroactive to January 13, 2021 for possession and damages in the amount of $532.93, plus court costs of $206.30.

5. Execution shall issue forthwith given that the Plaintiff has filed a First Amended Affidavit Concerning CDC Order.

6. The Plaintiffs shall request that the sheriff or constable provide the Defendant with at least five (5) days' advance notice of the levy in lieu of the minimum 48-hours' notice set forth in G.L. c. 239, § 3 in order to give the Defendant a further opportunity to engage in the process before non-refundable eviction cancellation charges apply.

SO ORDERED

DATE: 3/24/21

By: Jonathan J. Kane
Jonathan J. Kane, First Justice

aCOMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

CASE NO. 20-SP-1216

NANCY HENDERSON,

Plaintiff,

v.

CATHERINE HAFEY,

Defendant.

ORDER

After hearing on March 15, 2021, on the landlord's motion for use and occupancy payments going forward pending trial, at which the landlord appeared through counsel and the tenant appeared through Lawyer for the Day counsel, Uri Strauss, the following order shall enter:

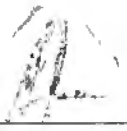
1. **Propane Tank:** As a preliminary matter, the court inquired as to the status of the propane tank at the premises. The court determined that the landlord has complied with her responsibilities required under the terms of the February 10,

2021 order of the court and that the tenant has not yet complied with her responsibilities to contact a propane vendor and have a tank installed at the premises. Accordingly, the tenant must FORTHWITH reach out to a vendor to make this arrangement, and if said vendor requires permission from the landlord the tenant shall relay that information to the landlord or to Attorney Farber.

2. **Use and Occupancy Payments:** Based on the record currently before the court and in consideration of the factors highlighted by *Davis v. Comerford*, 483 Mss. 164 (2019), and in further consideration of the factors required in determining whether to issue an injunctive order, the motion for payment of use and occupancy is denied, without prejudice.
3. More specifically, the court engaged in a process of balancing the relevant factors and equities between the parties, among them the tenant's defenses and counterclaims regarding, among other things, warranty of habitability and breach of the quiet enjoyment, and that the tenant has a pending motion to compel discovery (potentially designed to verify such counterclaims) and also the assertion made by the tenant that she plans on vacating the premises in May, 2021. Additionally, the landlord has not indicated that she faces substantial threat of foreclosure or any details as to her monthly obligations for the premises.
4. This matter is scheduled for hearing on the tenant's motion to compel and any other motions that are properly marked up for **April 8, 2021 at 10:00 a.m. by Zoom.** The Clerk's Office shall provide written instructions on how to participate in this hearing by Zoom. That office can be reached at 413-748-7838. The court

asks that the parties take the steps necessary to ensure that each will be able to participate by Zoom, visually.

So entered this 25th day of March, 2021.



Robert Fields, Associate Justice

COMMONWEALTH OF MASSACHUSETTS

HAMPDEN, SS

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 16-SP-3896

DEUTSCHE BANK NATIONAL TRUST COMPANY, AS TRUSTEE OF THE HOME EQUITY MORTGAGE LOAN ASSET-BACKED TRUST SERIES INABS 2006-E UNDER THE POOLING AND SERVICING AGREEMENT DATED DECEMBER 1, 2006,
Plaintiff

v.

ADRIAN JOHNSON,
Defendant

ORDER FOR FURTHER STAY ON USE OF THE EXECUTION

This post-foreclosure eviction matter came before the Court by Zoom on March 24, 2021 to determine whether the Court would lift the stay on the execution which issued on March 8, 2021. After hearing, the following order shall enter:

1. The parties shall have sixty (60) days to negotiate in good faith for a purchase of the subject premises by Defendant's daughter, Christina Huff.
2. If no binding purchase and sale agreement has been signed by the next Court date, the Court shall consider lifting the stay on the use of the execution.
3. The time between March 8, 2021, when the execution for possession issued, and June 1, 2021, shall not be counted toward the three-month limitation on use of the execution as set forth in G.L. c. 235, § 23.
4. The parties shall return to Court by Zoom for status review on **June 1, 2021 at 2 p.m.**

SO ORDERED
DATE: 3/26/21

By: Jonathan J. Kane
Jonathan J. Kane, First Justice

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 20-SP-1244

WANDA FIGUEROA,	)	
	)	
PLAINTIFFS	)	
	)	
V.	)	**INTERIM ORDER**
	)	
RENEE DOW,	)	
	)	
DEFENDANT	)	

This matter came before the Court by Zoom on March 25, 2021 for a summary process trial based on non-payment of rent. Plaintiff appeared with counsel. Counsel from Community Legal Aid appeared as part of the Lawyer for the Day program to assist Defendant and requested a continuance. After hearing, the Court enters the following order:

1. Community Legal Aid will enter a limited or full appearance on behalf of Defendant by end of business on March 26, 2021. If the appearance is limited, it should continue through the status conference scheduled pursuant to this Interim Order.
2. Defendant shall complete her application with Way Finders, Inc. no later than April 1, 2021. Plaintiff shall promptly reply with any requests made of her by Way Finders.
3. The parties shall return for a status review on **April 15, 2021 at 3:30 p.m.** by Zoom. If any issues remain unresolved as of this date, the Court shall conduct a

case management conference which may include the selection of a trial date if appropriate.

SO ORDERED this 26 day of March 2021.

Jonathan J. Kane
Jonathan J. Kane, First Justice

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

CASE NO. 19-SP-3924

PHEASANT HILL VILLAGE ASSOCIATES, L.P.,

Plaintiff,

v.

MARIA LABASCO a/k/a MARIA LABOSCO and THOMAS TROUGHTON,

Defendant.

ORDER

After hearing on March 25, 2021, at which the landlord appeared through counsel and the defendant tenant Maria Labasco appeared with LAR counsel and the co-defendant Troughton appeared *pro se*, the following order shall enter:

1. The landlord's motion is continued for further hearing on the date noted below.
2. In the meantime, LAR counsel for defendant Labasco shall reach out to Labasco's defense counsel in the Westfield District Court criminal manner and to her former defense counsel in the Federal Court criminal manner and otherwise

investigate the status of each proceeding and determine if either or both proceedings are or can be disposed of in a manner that they can not be re-filed for criminal prosecution.

3. The court appreciates that it was reported during the hearing that the criminal proceedings in Westfield District Court have a nolle prosequi entered but it is not sufficiently clear to this judge if that means that the charges are dismissed with prejudice.
4. LAR counsel for Labasco shall report the status of these issues at the next hearing. The court would greatly appreciate any efforts he can make towards coordinating either or both criminal defense counsel joining the hearing; aware that Zoom makes such appearances easier.
5. This matter shall be heard further on **April 29, 2021 at 10:00 a.m. by Zoom.** The Clerk's Office shall provide written instructions on how to participate in said hearing by Zoom. The Clerk's Office can be reached at 413-748-7838.

So entered this 26 day of March, 2021.

Robert Fields, Associate Justice

Cc: Court Reporter
Alexander Cerbo, Law Clerk
Uri Strauss, Esq., LAR counsel
Maria Barroso, Esq., Labasco's Criminal Defense Counsel

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 20H79SP001134

WILLIAM TEJADA,

PLAINTIFF

V.

DAVID MOODY AND TONYA PERRY,

DEFENDANTS

ORDER FOR STAY ON USE OF EXECUTION

This matter came before the Court by Zoom for issuance of an execution (eviction order). All parties appeared and represented themselves. After hearing, the following order shall issue:

1. No execution shall issue at this time in order to allow Defendants the opportunity to apply for the Federal Emergency Rental Assistance Program. Defendants must apply for such funds through Way Finders no later than April 5, 2021.
2. A referral shall be made to the Tenancy Preservation Program to assist Defendants in completing their application.
3. The parties shall return for status on the application on April 6, 2021 at 9:00 a.m. by Zoom using the same instructions as used to participate in the hearing today.
4. At the hearing, Defendants must demonstrate that they have a pending application for emergency rental assistance; otherwise, Plaintiff may ask that the Court lift the stay on use of the execution.

5. Plaintiff and Defendants shall have no contact with one another (in person, by telephone, email, text or otherwise) except for urgent landlord-tenant matters (such as necessary repairs, not unpaid rent).

SO ORDERED, this 26 day of March 2021.

By: Jonathan J. Kane
Jonathan J. Kane, First Justice

COMMONWEALTH OF MASSACHUSETTS

HAMPDEN, SS.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 21-CV-117

CITY VIEW COMMONS I, PLAINTIFF/LANDLORD v. HERMINIO J. GONZALEZ, DEFENDANT/TENANT	ORDER

This case was filed as a for-cause eviction based on material lease violations. On March 12, 2021, Plaintiff came before the Court by Zoom for a temporary restraining order against Defendant prohibiting Defendant and those under his control from threatening, harassing or disturbing other residents and Plaintiff's employees. Defendant did not appear for that hearing after notice. The case was scheduled for a preliminary injunction hearing on March 22, 2021. Defendant did not appear again, despite notice.

At the March 22, 2021 motion for preliminary injunction (conducted over Zoom), Plaintiff sought relief under G.L. c. 139, § 19, the so-called "common nuisance" statute. Pursuant to this statute, an owner or lessor of a building may "annul and make void the lease" and regain possession of the premises in an expedited manner if a resident commits one of several enumerated acts on the premises, including, among other things, illegally keeping, selling or manufacturing controlled substances. *See* G.L. c. 139, § 19. The owner or lessor has the burden of proving, by a preponderance of the evidence, that the resident has violated the provisions of the statute. *Id.*

Because a request for relief under G.L. c. 139, § 19 was not plead in the complaint, the Court entered an order for Defendant to appear by Zoom on March 26, 2021 to answer to Plaintiff's request for a permanent injunction annulling and making void Defendant's lease and returning possession to Plaintiff. The Court required Plaintiff to hand deliver a copy of the Order at Defendant's apartment. Once again, Defendant did not appear.

Based on all of the credible testimony and evidence presented at the hearings in this matter, and the reasonable inferences drawn therefrom, the Court finds as follows:

Defendant's unit at 63 Federal Street, Apt. 4B, Springfield, Massachusetts (the "Premises") is part of a four-floor building with two units on each floor. Regular and on-going illegal drug use occurs in the hallways of the building, and in the Premises. Defendant is the cause of the drug use in the hallways as has repeatedly allowed non-tenants to enter the building and has allowed non-tenants to use his keys. Non-tenants regularly enter the building and proceed directly to the Premises. These individuals knock on the door of the Premises, enter and then exit shortly thereafter. The same individual may return multiple times a day. A tenant of the building often witnesses drug transactions and drug use occurring in the hallways. The Court finds that the illegal drug activity occurring in the building is directly connected to Defendant and the Premises.

The finding is bolstered by the testimony of three Springfield police officers, each of whom testified to the high volume of calls for drug use in the hallways of the building. Officer Normoyle personally witnessed someone smoking crack on the fourth floor of the building on March 10, 2021. Officer Falcon testified that calls for drug abuse at the building started only when Defendant moved in, and that he never had such calls previously. During the hearing on March 26, 2021, the property manager displayed live video of the doorway to the Premises to

demonstrate how the camera system in the building operates, and at the very moment he displayed the video, a non-tenant who the property manager recognized as a regular visitor to the Premises knocked on the door and was allowed in. The property manager testified that he has reviewed camera footage and has not seen non-tenants regularly coming and going from any of the other seven apartments in the building besides the Premises.

Because this action is in the nature of injunctive relief, the Court evaluates in combination the moving party's claim of injury and chance of success on the merits. If the Court is convinced that failure to issue the injunction would subject the moving party to a substantial risk of irreparable harm, the Court must then balance this risk against any similar risk of irreparable harm which granting the injunction would create for the opposing party. *See* Packaging Industries Group, Inc. v. Cheney, 380 Mass. 609, 617 (1980). Here, the Court finds that failure to issue the injunction would subject Plaintiff to a substantial risk of irreparable harm, and Defendant has failed on three separate occasions to appear and present a defense.

The Court finds that the Plaintiff has established by a preponderance of the evidence that the that Defendant is illegally keeping, selling or manufacturing controlled substances at the Premises. Accordingly, the following Order shall enter:

1. Pursuant to G.L. c. 139, § 19, the Court declares Defendant's lease null and void and hereby restrains Defendant from entering or occupying the Premises for any reason after April 8, 2021.[1]
2. If Defendant remains in the premises after April 8, 2021, Plaintiff may treat him as a trespasser in accordance with G.L. c. 266, § 120 and have him removed with the assistance of the Springfield police or the deputy sheriff's office. Plaintiff shall make

[1] The Court has selected a vacate date approximately one week from the date Defendant is likely to receive this Order in order to allow Defendant a reasonable amount of notice and time to remove his belongings.

arrangements to store any personal belongings found within the premises in a manner consistent with the requirements of G.L. c. 239, § 4. After Defendant and the belongings have been removed from the premises, Plaintiff may change the locks.

3. This Order constitutes sufficient notice to Defendant and Plaintiff is not obligated to provide any further notice of the time and date of the vacate order.

SO ORDERED this 30th day of March 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. 20-SP-1103

LUMBER YARD NORTHAMPTON LIMITED PARTNERSHIP,

Plaintiff,

v.

KELLI HUDSON,

Defendant.

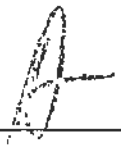
ORDER FOR ISSUANCE OF THE EXECUTION

After hearing on February 18, 2021 on review of this matter, at which the landlord appeared through counsel and the tenant appeared *pro se*, the following order shall enter:

1. The landlord's motion for issuance of the execution for possession is allowed, consistent with the terms of this order.

2. The landlord shall not levy on said execution for possession until July 1, 2021, so long as the tenant continues to pay her portion of her rent timely for each month through June, 2021. The landlord may serve a 48-hour notice in accordance with G.L. c.239 prior to July 1, 2021 but may not schedule the actual physical eviction for a date prior July 1, 2021.
3. The tenant shall continue to diligently search for alternate housing, but the requirement to update the landlord on her search is no longer an order of the court; though she may choose to do so as she works with Ms. Carr in her continued search.
4. Accordingly, the landlord shall continue to provide assistance to the tenant with her search for housing, as they have done so since the entry of judgment.
5. The decision to issue the execution is not based on the court's finding of any wrongdoing by the tenant since the entry of judgment in this matter, but because given the history of this case and the post judgment stay on issuance of the execution having been in place since November, 2020 the court deems it equitable to provide an end date to the occupancy—by which time the tenant will have, hopefully, secured alternate housing.
6. Because July 1, 2021 is more than ninety (90) days from the date of this order, the landlord may obtain an execution by filing and serving a written request in accordance with Rule 13 of the Uniform Summary Process Rules at any time prior to July 1, 2021 and the Clerk's Office shall issue the execution (for possession only) at that time.

So entered this 30th day of March, 2021.



Robert Fields, Associate Justice (Ret.)

Cc: Michael Doherty, Clerk Magistrate

Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

BERKSHIRE, ss

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 20-SP-684

SAWYER PROPERTY MANAGEMENT OF MASSACHUSETTS, LLC, AND MAPLE RIDGE APARTMENTS, LLC,

PLAINTIFFS

v.

DANNY MANCINI,

DEFENDANT

ORDER ON PLAINTIFFS' MOTION FOR ENTRY OF JUDGMENT AND ISSUANCE OF EXECUTION

This parties in this matter appeared before the Court by Zoom on March 23, 2021 on Plaintiffs' motion for entry of judgment and for issuance of execution based on a violation of an Agreement of the Parties executed on November 5, 2020 (the "Agreement"). Plaintiffs appeared with counsel and Defendant appeared without counsel. After an evidentiary hearing, the Court finds and rules as follows:

Defendant resides at 37 Theroux Drive, #5N, Chicopee, Massachusetts (the "Premises"). The Premises are located in a 7-unit building (the "Building") owned and managed by Plaintiffs (collectively referenced herein as "Management"). In January 2020, Plaintiffs terminated Defendant's tenancy based on alleged lease violations for excessive noise and disturbances brought to their attention other residents of the Building. In lieu of trial, and without admission of wrongdoing, Defendant entered into the Agreement pursuant to which he agreed not to make excessive noise, engage in unlawful activity or engage in any other activity which disturbs the peace and quiet of other residents of the Building. In the

same Agreement, Management agreed to check the apartment door to see if it could be adjusted to minimize noise when closing.

At the hearing, a tenant who lives one floor above Defendant on the other end of the Building ("Mr. LeBlanc") testified that Defendant regularly makes loud banging noises that can be heard in his apartment and which prevent him from getting the rest he needs for his chronic pain. When asked how he knows the noise is being made by Defendant, he testified that other tenants told him that Defendant was the source of the noise and that, on one occasion when Mr. LeBlanc confronted him "in anger", Defendant acknowledged fault. It was not clear to the Court, however, what Defendant allegedly admitted to Mr. LeBlanc.

A tenant who resides two floors above Defendant ("Mr. Velez") testified that he has repeatedly heard a loud banging sound that has disturbed his quiet enjoyment. He attributes the noise to Defendant because, on numerous occasions, he has witnessed Defendant exiting the Building shortly after hearing the banging sound. He also believes Defendant slams the walls in his apartment with his hand, but he offered little explanation of how he developed this belief. Notably, the tenant in the unit between the Premises and Mr. Velez's apartment did not participate in this hearing to corroborate the claim that Defendant slams his hands on the walls of his apartment.

In his defense, Defendant denies striking walls and attributes the noise about which the witnesses complain to doors that close loudly. He testified that the door to the Premises, which was mentioned in the Agreement as needing adjustment, may be one source of the noise, and that the exterior doors (front and back) to the Building slam shut due to the way they operate. He claims that, after Management modified the closing mechanism on the rear entry door (the one he regularly uses to go outside to smoke) in mid-January 2021, the

banging noise has been reduced. Mr. Velez acknowledged that the amount of noise made by the door has diminished since mid-January. With respect to the noise that has disturbed Mr. LeBlanc's peaceful enjoyment, Defendant blames the water pipes that run through the basement under Mr. LeBlanc's apartment. Defendant claims that open windows in the basement cause the water pipes to be cold when the temperature drops, and that when hot water runs through the pipes, they make a loud knocking sound.

The Court credits the testimony of both witnesses, Mr. LeBlanc and Mr. Velez, that they are being disturbed by loud noises. The issue for the Court, however, is whether Plaintiff has satisfied its burden of demonstrating that Defendant is the cause of these disturbances. In order for judgment to enter, Plaintiff must prove that Defendant is in substantial breach of a material term of the Agreement. *See* G.L. c. 239, § 10. The Court finds that Plaintiff has not met its burden of proof.

Based on the evidence before it at this hearing, the Court cannot conclude that Defendant is the sole or even the primary cause of the noise that has led to the disturbances reported by the witnesses. He has proffered other plausible causes of the noise (doors and pipes) that are under the control of Management.[1] Moreover, if Defendant were in fact striking the walls of the Premises, the tenants in adjoining apartments would be more likely to complain than those tenants who are non-adjacent, as is the case with both witnesses. Conversely, it is easy to imagine that tenants living anywhere in the Building could be disturbed by exterior doors that slam shut when closed and by banging water pipes.

[1] Management should take steps to minimize the noise made by closing doors and to investigate Defendant's claim as to the water pipes, and to keep records of their efforts.

Accordingly, the Court finds insufficient evidence to conclude that Defendant is in substantial breach of the Agreement.[2]

Based on the foregoing, the motion to enter judgment and issue execution is DENIED.

SO ORDERED, this 30th day of March 2021.

Jonathan J. Kane
First Justice

cc: Court Reporter

[2] The denial of Plaintiff's motion does not excuse Defendant from being courteous to his neighbors, and he should make all reasonable efforts not to allow doors in the Building to slam shut.

COMMONWEALTH OF MASSACHUSETTS

HAMPSHIRE, SS:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
SUMMARY PROCESS
NO. 19H79SP004544 (Unit 10A)
NO. 19H79SP004537 (Unit 12A)

DEUTSCHE BANK NATIONAL TRUST COMPANY, AS TRUSTEE OF AMERIQUEST MORTGAGE SECURITIES INC., ASSET-BACKED PASS-THROUGH CERTIFICATES SERIES 2005-R1,

Plaintiff

VS.

THOMAS T. SUCHODOLSKI and BEATA W. SUCHODOLSKI,

Defendants

ORDER ON DEFENDANTS' MOTION FOR RECONSIDERATION

On March 11, 2021 the defendants filed a motion for reconsideration of a March 1, 2021 order (that I delivered from the bench) in which I allowed the plaintiff's motion to strike a portion of Thomas Suchodolski's January 5, 2021 summary judgment affidavit submitted with his opposition to the plaintiff's motion for summary judgment. The order struck that portion of Thomas Suchodolski's summary judgment affidavit that included statements of fact and opinions purportedly rendered by Jean Mitchell. In his affidavit Suchodolski identifies Mitchell as "a Document Examiner and Digital Evidence Handling Expert." Suchodolski states in his affidavit that he hired Mitchell to assist him in his July 15, 2019 examination of his mortgage promissory note in Deutsche Bank's possession. At pages 11-13, ¶ 10(a – i) of his affidavit Suchodolski includes statements, observations and opinions made by Mitchell in person and in a "report." I ruled that Suchodolski's testimony about Mitchell's statements, observations and opinions – all offered for the truth of the assertions – are hearsay, and do not fall within any exception to the hearsay rule.

The defendants argue that my March 1, 2021 should upon reconsideration be vacated based upon "a particular and demonstrable error in the original ruling or decision."

After giving careful consideration of the arguments presented by the parties, and upon a review of the docket entries and filings in this action, I am satisfied that my March 1, 2021 order was correct and was not based on a particular or demonstrable error of fact or law. Accordingly, the defendants' motion is **DENIED**.[1]

I concluded in my March 1, 2021 order, and reach the same conclusion upon reconsideration, that the defendants have not made a factual showing, supported by competent and credible evidence, sufficient to constitute good cause for their failure to submit the Mitchell report/affidavit in a timely fashion prior to the January 12, 2021 summary judgment deadline by which the defendants were obligated to file their opposition papers, including supporting affidavits.

In 2019 the defendants retained Jean Mitchell, a purported document expert, to examine the defendants' promissory note (that was in the plaintiff's possession), prepare a written report, render an opinion and perhaps testify at trial (or submit a summary judgment affidavit prior to trial). Mitchell conducted her examination of the defendant's promissory note on July 15, 2019. It is apparent from a review of the signature page of defendants' proposed Exhibit A (Mitchell's report/affidavit), that Mitchell had prepared a draft report/affidavit by August 8, 2019.[2] Therefore, measured from July 16, 2019 (the date on which Mitchell examined the defendants promissory note and/or August 8, 2019 (the date that appears on the signature page of Mitchell's report/affidavit), the defendants had approximately 18 months to provide the plaintiff with a copy of Mitchell's report/affidavit (as a supplemental response to discovery) and file it with their summary judgment papers by the January 12, 2021 filing deadline set by the court prior to the scheduled summary judgment hearing (January 20, 2021). Though defendant's counsel argued in support of his reconsideration motion that Mitchell's report/affidavit constituted critical evidence

[1] The plaintiff, in their opposition memorandum, moved that the court strike the proffered affidavit of Jean Mitchell appended to the defendants' motion as Exhibit A. Further, the plaintiff filed a motion on March 31, 2021 seeking to strike the affidavit of Thomas Suchodolski dated March 31, 2021 (which plaintiff's counsel received an hour before the March 31, 2021 hearing). For purposes of preserving an accurate procedural record only, I shall not strike Exhibit A (the Mitchell affidavit) nor shall I strike Suchodolski's March 31, 2021 affidavit; however, in light my denial of the defendants' motion for reconsideration, the proffered affidavit of Jean Mitchell and Suchodolski's March 31, 2021 affidavit shall not be added to or made a part of the substantive factual summary judgment record.

[2] Immediately above Mitchell's signature page is the following, "Subscribed and sworn under the pains and penalties of perjury this 8th day of August 2019." I note that the notary public's certification states that the document was signed by Mitchell in her presence on January 19, 2021. There is no explanation for this discrepancy in the dates. However, for purposes of ruling on this motion I shall assume that the Mitchells draft report/affidavit was prepared on or by August 8, 2019 but was not signed until July 19, 2021.

at the core of their defense to the plaintiff's claim of superior right of possession, he did not consider Mitchell's evidence to be so critical or necessary at the time he filed the defendants' discovery responses. In their response to plaintiff's Interrogatory No. 5, executed on March 13, 2020, the defendants stated that "[t]he defendant has not determined the need to call an expert witness at this time, however, the Defendant reserves the right to update this response should the need arise."[3] These interrogatory answers were provided eight months after Mitchell had examined the promissory note, and seven months after she had prepared a draft report/affidavit. At no time between March 13, 2020 (the date on which the interrogatory answers were executed) and January 20, 2021 (the summary judgment hearing date) did the defendants supplement or update their responses to plaintiff's expert Interrogatory No. 5 or No. 8. At no time between those dates did the defendants make any effort to notify the plaintiff - formally or informally - that they intended to include Mitchell's report/affidavit in the summary judgment record and use it as part of their opposition to the plaintiff's summary judgment motion.

Further, in December 2020 the parties agreed to the filing deadlines set forth in court's summary judgment scheduling order. The scheduling order provided that the defendants were required to file their opposition to the plaintiff's summary judgment and their cross-motion for summary judgment (together with affidavits and documents) by January 12, 2021. This deadline was intended to afford the plaintiff and the court with adequate time to review the submitted memorandum, affidavits and documents prior to the January 20, 2021 hearing. The defendants submitted their opposition papers together with Suchodolski's January 5, 2021 affidavit (in which he references information set forth in Mitchell's report/affidavit); however, despite the court ordered deadline, the defendants did not file Mitchell's report/affidavit by January 12, 2021.

At no time between December 2020 and January 12, 2021 did the defendants file a motion seeking additional time and leave to submit Mitchell's report/affidavit late.

At the summary judgment hearing on the January 20, 2021 the defendants' attorney stated for the first time that, with respect to the purported report/affidavit of Jean Mitchell, "we have that document now. My client wants to enter it into evidence." In his March 31, 2021 affidavit

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[3] In their response to plaintiff's Interrogatory 8 (asking for the identity of all individuals they intend to call as a trial witness), the defendants again state that "[d]efendant has not determined the need to call expert witnesses at this time, however, he reserves the right to update this response and to call witnesses as the case develops.

It pushes the outer limits of credibility to believe that the defendants had not spoken with Mitchell about her inspection of the note (if not review the draft report/affidavit) anytime between August 9, 2019 and March 31, 2020.

Suchodolski states (¶ 10) that "I received Ms. Mitchell (sic) sworn and executed expert affidavit on January 19, 2021."[4] The defendants assert that Mitchell was unable to complete and execute her report/affidavit prior to January 19, 2021 because of problems attributable to her illness, or her medical disability, or difficulties getting her signature notarized because of Covid-19 pandemic related travel or meeting restrictions. They argue that these illness/disability/pandemic related issues prevented Mitchell from delivering her report/affidavit to the defendants, and thus prevented the defendants from timely filing her report/affidavit with the court a copy to the defendants within the deadlines set by the court.

The problem with the reasons set forth by the defendants is that the reasons are based upon factual assertions unsupported by any competent admissible evidence. First, the defendants have not submitted an an affidavit from Mitchell in which she sets forth why she was unable to complete and deliver her sworn and executed report/affidavit to the defendants prior to January 19, 2021. Instead, the defendants rely on Suchodolski's March 31, 2021 affidavit in which he refers to statements purportedly made by Jean Mitchell to Joseph Suchodolski for the truth of Mitchell's assertions. This constitutes classic hearsay (I had previously stricken statements made by Mitchell to Suchodolski set forth in his January 5, 2021 summary judgment affidavit based upon the same hearsay problem). Simply stated, Suchodolski is not competent to testify as to Mitchell's state of health, or what she could or could not do with respect to her report/affidavit owing to pandemic-related limitations or restrictions.[5]

I am satisfied that my March 1, 2021 ruling was correct as a matter of fact and law. I find that the defendants have not made a sufficient showing of good cause to justify their failure to submit Mitchell's report/affidavit by January 12, 2021 in compliance with the court's summary

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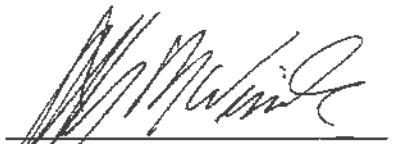
[4] He had at least a draft of Mitchell's report/affidavit at the time he signed his January 5, 2021 affidavit (which sets forth statements made by Mitchell in that draft).

[5] Further, even if I had found that the defendants had made a sufficient showing of good cause to support their request that they be allowed to file the Mitchell report/affidavit late, I would have to balance the importance of Mitchell's affidavit testimony against issues of fairness and judicial economy. To do this I would have to make a threshold "gatekeeper's" judgment as to whether the Mitchell report/affidavit constituted competent admissible evidence that could be included in the summary judgment record and thus would have to afford the plaintiff an opportunity to retain their own expert, depose Mitchell and thereafter conduct a Daubert-Lanigan hearing to determine whether Mitchell is qualified to render an expert opinion. I would have to take into account the fact that the case was commenced in 2019, that I have already heard and taken under advisement the summary judgment motion, and that proceeding with a Daubert-Lanigan hearing would necessarily delay this case by many months at significant additional expense to the plaintiff.

judgment scheduling order.

SO ORDERED.



JEFFREY M. WINIK
ASSOCIATE JUSTICE (Recall Appt.)

April 1, 2021

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 21-CV-134

COLLEEN LEBOEUF,

Plaintiff,

v.

KARL PEARSON, BRIARWOOD 17, LLC, JOHN SUZER,

Defendants.

ORDER

After hearing on March 31, 2021 on the plaintiff's emergency motion for alternate housing, at which the moving party and the defendant Briarwood 17 appeared, and at which Attorney Christine Pikula appeared on behalf of the City of West Springfield, but for which the defendants Karl Pearson and John Suzer failed to appear after proper notice given, the following order shall enter:

1. The court finds the plaintiff's testimony credible that she was a sub-tenant of the defendant Carl Pearson and that Mr. Pearson illegally locked her out of the premises. Accordingly, Mr. Pearson shall provide the plaintiff, Colleen Lebouef, with alternate housing in the form of a motel or hotel until further order of the court or until Ms. Lebouef secure permeant alternate housing.

2. The defendant landlord, 17, LLC shall continue to investigate Ms. Lebouef's claims and if secures any of her personal belongings shall notify her so that such belongings may be returned to her.

3. Ms. Lebouef's phone number may be obtained [redacted].

4. The plaintiff reports that she is interested in amending this case to seek damages and has requested a Case Management Conference to schedule deadlines for same and for the remainder of the litigation.

5. This matter shall be scheduled for a Case Management Conference with the Clerk's Office **April 15, 2021 at 11:00 a.m. by Zoom**. The Clerk's Office shall provide written instructions on how to participate by Zoom. Additionally, if one is unable to participate by Zoom remotely, they may come to the courthouse and utilized one of the court's Zoom room facilities. The Clerk's Office can be reached at 413-748-7838.

So entered this 2nd day of April, 2021.

Robert Fields, Associate Justice

Cc: Christine Pikula, Esq., City of West Springfield

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 20-SP-1712

MASON WRIGHT SENIOR LIVING, INC.	)	
	)	
PLAINTIFFS	)	
	)	
V.	)	**ORDER**
	)	
CATALINO FELICIANO,	)	
	)	
DEFENDANT	)	

This matter came before the Court by Zoom on March 31, 2021 on Plaintiff's emergency motion for a preliminary injunction. Plaintiff appeared with counsel. Defendant appeared by telephone and represented himself.

Plaintiff owns and operates a 99-unit affordable senior living community in Springfield known as the Mason Wright Retirement Community (the "Community"). Defendant resides in the Community at 74 Walnut Street, Apartment #220 (the "Premises"). Plaintiff alleges that Defendant smokes in the Premises in violation of the lease, and that because he uses oxygen from time to time, his smoking in the presence of oxygen creates a condition that endangers or materially impairs the health, safety and well-being of Defendant and the residents and staff of the Community. Plaintiff seeks a Court order that Defendant immediately vacate the Premises. A summary process trial in this matter is scheduled for April 7, 2021.

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Defendant denies smoking in the Premises. He testified that he used to smoke two or three packs of cigarettes per day, and now smokes only two or three cigarettes, and that he smokes in a designated smoking area called the "smoking porch." Plaintiff's executive director acknowledged that the Community has a "smoking porch" not far from the Premises.

In considering a request for injunctive relief, the Court evaluates in combination the moving party's claim of injury and chance of success on the merits. If the Court is convinced that failure to issue the injunction would subject the moving party to a substantial risk of irreparable harm, the Court must then balance this risk against any similar risk of irreparable harm which granting the injunction would create for the opposing party. What matters as to each party is not the raw amount of irreparable harm the party might conceivably suffer, but rather the risk of such harm in light of the party's chance of success on the merits. Only where the balance between these risks cuts in favor of the moving party may a preliminary injunction properly issue. *See* Packaging Industries Group, Inc. v. Cheney, 380 Mass. 609, 617 (1980).

Here, the Court is convinced that the other residents and staff of the Community are at risk if Defendant smokes around oxygen. Given Defendant's denials, is not clear if Plaintiff will prevail at trial, but given that trial is only one week from today, and given the exigent circumstances present if Defendant is in fact found to be smoking in the Premises around oxygen, the Court enters the following order, which shall remain in effect until further order of the Court:

1. Defendant shall not smoke in the Premises.
2. Defendant may smoke on the "smoking porch" in compliance with Property rules, so long as he is not using oxygen at the time.

3. The $90.00 fee for injunctive relief set forth in G.L. c. 262, § 4 will be waived if this matter settles by agreement or if judgment enters in favor of Plaintiff. If judgment enters in favor of Defendant, Plaintiff will be assessed the $90.00 fee.

SO ORDERED this 2nd day of April 2021.

Jonathan J. Kane
Jonathan J. Kane, First Justice

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

FRANKLIN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 21-CV-139

OSCAR RAMIREZ,	)	
	)	
PLAINTIFF	)	
	)	**ORDER FOR**
V.	)	**TEMPORARY HOUSING**
	)	
WILLIAM ALDRICH, ET AL.,	)	
	)	
DEFENDANTS	)	

This matter came before the Court by Zoom on April 1, 2021 for further proceedings following a March 24, 2021 hearing at which the Court ordered Defendants to provide temporary alternative housing for Plaintiff and his family following a fire that caused Plaintiff's dwelling at 603 Leyden Road, Apt. B, Greenfield, Massachusetts (the "Premises") to be condemned. All parties appeared without counsel. After hearing, the following order shall enter:

1. Defendants shall continue to provide hotel accommodations in the same manner as currently provided through and including the night of April 30, 2021, provided that Plaintiff pays $550.00 (the amount of monthly rent) to Defendants by the end of business today. If payment is not made, or if payment is made by check that does not clear, Defendants may file a motion to terminate their obligation to provide housing to Plaintiff.
2. Defendants shall immediately provide Plaintiff with all information necessary for Plaintiff to be reimbursed by Defendants' insurance carrier for up to $750.00 for his

actual costs of hotel room rental and the other expenses related to displacement by fire as set forth in G.L. c. 175, § 99, Fifteenth A.

3. Defendants shall provide Plaintiff with access to the Premises at 1:00 p.m. on April 2, 2021 to retrieve belongings. Plaintiff stated that he needed approximately one hour for this task. Thereafter, Defendants may change the locks and shall keep the Premises secure thereafter to protect Plaintiff's remaining belongings.
4. Defendants shall provide access to the Premises to Plaintiff at 1:00 p.m. on April 29, 2021 to retrieve the balance of his belongings.
5. On May 1, 2021, (a) legal and actual possession of the Premises shall vest in Defendants, (b) Plaintiff will have no further rights in or access to the Premises, and (c) Defendants will have no further obligation to provide alternative housing.[1]

SO ORDERED this 2nd day of April 2021.

Jonathan J. Kane
Jonathan J. Kane
First Justice

[1] Plaintiff has been in contact with Franklin Country Regional Housing and Redevelopment Authority Regarding financial assistance for moving costs.

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 20-SP-1725

CHICOPEE HOUSING AUTHORITY,

PLAINTIFF

V.

WENDY HILLS,

DEFENDANT

ORDER FOR JUDGMENT AND APPOINTMENT OF GAL

This for cause summary process matter came before the Court on April 7, 2021 by Zoom for trial. Plaintiff seeks to recover possession of certain residential premises located at 400 Britton Street, #415, Chicopee, Massachusetts (the "Premises"). Defendant did not appear. Counsel for Plaintiff represented that Defendant resides in a nursing home and demonstrated that Defendant was served at both the Premises and at [redacted] where she now lives.

The Court finds that service on Defendant is sufficient, and that, as a result, Plaintiff is entitled to judgment by default. Judgment shall enter for possession and damages in the amount of $2,770.00 based on unpaid rent since June of 2020. Given the circumstances of this case, however, prior to issuing an execution the Court will order the appointment of a guardian ad litem ("GAL") for Defendant to investigate whether Defendant is likely to return to the Premises and, if not, whether Defendant has any wishes with respect to the disposition of her belongings. The Court will request that the GAL provide a report on the results of the GAL's investigation at or prior to the next court date.

In light of the foregoing, the Court shall schedule a hearing on Plaintiff's motion for issuance of the execution at **2:00 p.m. on April 28, 2021**. No execution shall issue prior to this hearing. This Order will serve as notice and Plaintiff is not required to file a motion. The Court shall send a copy of this Order to Defendant at [redacted] where she currently resides.

SO ORDERED this 8th day of April 2021.

Jonathan J. Kane
First Justice

cc: ACM Cunha

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

CASE NO. 17-SP-1345

BEACON RESIDENTIAL MANAGEMENT, L.P.,

Plaintiff,

v.

JONATHAN CASTELLANO,

Defendant.

ORDER

After hearing on April 8, 2021, at which the landlord appeared through counsel and the defendant tenant appeared with counsel, and for which the Guardian Ad Litem appeared, the following order shall enter:

1. The landlord may access the tenant's unit for repairs upon 24 hours written notice that states the date and time for said access and the anticipated repairs.
2. The tenant shall not unreasonably deny access as those designated times.

9 W.Div.H.Ct. 49

3. The landlord shall issues subpoenas to the tenant's bank and the Department of Transitional Assistance in the hope of obtaining documents it requires for the recertification of the tenant's lease. If the already sent releases and these subpoenas fail to achieve the desired effect of obtaining said documents, the court would entertain a motion to add these two entities as party to this case.
4. The tenant, through counsel, shall provide the landlord with bank records they reported to have in their possession, forthwith.
5. This matter shall be scheduled for further review and for any properly marked motions on **April 30, 2021 at 11:00 a.m. by Zoom**. The Clerk's Office shall provide the parties with written instructions on how to participate in said hearing by Zoom.

So entered this 9th day of April, 2021.

Robert Fields

Robert Fields, Associate Justice AM

Cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

FRANKLIN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 20H79CV000701

SUSAN BATCHELDER MANAGING AGENT FOR PARK VILLA APARTMENTS,

PLAINTIFF

V.

PATRICIA CHAREST,

DEFENDANT

ORDER TO VACATE

This matter came before the Court for a Zoom hearing on April 12, 2021 on Plaintiff's motion to enforce a Court Order. Plaintiff appeared with counsel; Defendant did not appear despite notice.[1]

This Court entered an order on December 23, 2020 prohibiting Defendant, who uses oxygen, from smoking in her apartment at 4G Park Villa Drive, Turners Falls, MA (the "Premises"). Defendant was put on notice that a violation of the Court order could result in her immediate removal from the Premises in order to protect the health and safety of other residents. Subsequently, Plaintiff alleged Defendant violated the Court order, and a further hearing was held on January 22, 2021, at which time the Court, despite grave concerns about the risk of smoking near oxygen, gave Defendant one more chance to comply. The Court's reprieve was based on Defendant's testimony (a) that she did not appreciate the seriousness of the matter

[1] In addition to notice by mail, Plaintiff's counsel represented that the property manager slid notice of the hearing under Defendant's door.

because she had not been present at the December 23, 2020 hearing, and (b) that she had somewhere to move on April 1, 2021.[2]

Defendant continues to violate the Court's order. A neighbor who lives in an adjoining unit testified that Defendant continues to smoke regularly in the Premises and that the heavy smoke odors have impacted her tenancy. The property manager testified that she has entered the Premises on a number of occasions since the last hearing date and has seen a large, floor oxygen tank in the bedroom and a portable oxygen tank in the living room with cigarette butts in an ashtray nearby. The Court is convinced that Defendant's behavior of smoking in the Premises around oxygen tanks places the health and safety of other residents at extreme risk.

Accordingly, the Court hereby orders that Defendant vacate the Premises and not return without prior order of this Court except by appointment with management to retrieve her personal belongings. If Defendant wishes to contest this order, she should file a motion with the Court immediately. Plaintiff shall instruct the deputy sheriff's office to provide Defendant with at least 72 hours' advance notice of the date and time that they will return to physically remove her from the Premises. Plaintiff is not authorized to remove Defendant's belongings from the Premises pending entry of judgment for possession in the summary process case which was entered on February 17, 2021 (docket number 21H79SP000719).

SO ORDERED this 13th day of April 2021.

Jonathan J. Kane

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

cc: Court Reporter

[2] Plaintiff's property manager testified that Defendant has provided at least three notices of her intent to vacate since January of this year.

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

CASE NO. 20-SP-1639

TODD GROVER,

Plaintiff,

v.

FASHA GODFREY,

Defendant.

ORDER

This matter came before the court on April 8, 2021 for trial, at which both parties appeared with counsel. After consideration of the evidence introduced at trial, the following order shall enter:

1. **Background:** The plaintiff, Todd Grover (hereinafter, "landlord") purchased the three-family house at 49 North Main Street in South Hadley, Massachusetts in

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June, 2020 in which the defendant, Fasha Godfrey (hereinafter, "tenant") was already a tenant on the third floor (hereinafter, "premises"). The landlord commenced this eviction action alleging that the tenant violated the lease by allowing her boyfriend to reside at the premises. The tenant disputes this allegation and defends the action by asserting that her boyfriend, Ernest Fickling, does not occupy or reside at the premises in violation of the lease.

2. **Notice to Vacate:** The landlord sent a Notice to Vacate to the tenant on or about October 19, 2020. The notice states two grounds for the eviction. First, that the lease was expiring and that it would not be renewed. Thus, a *no fault* basis. The second ground was that the tenant had "permitted an unauthorized occupant to reside with you at the premises for a period of months." Thus, a *fault* basis. A landlord can not terminate for both *no fault* and *fault* bases. This rule is necessary for various reasons. If a termination is based on *no fault*, a tenant may file counterclaims (which may effect possession under G.L. c.239, s.8A) but not so if based on *fault*. Including both bases equivocates the notice and effects a tenant's statutory rights. Additionally, a termination notice must be clear and unambiguous and "a landlord must choose one position and stick with it." See, *Maguire v. Haddad,* 325 Mass. 590, 593 (1950).
3. That said, the tenant did not seek dismissal based on the vacate notice and the parties treated this matter as a *fault* eviction, putting in evidence in support of and in defense of the allegation that Mr. Fickling is residing at the premises in violation of the lease. As such, the court too will treat this solely as a *for fault*

eviction matter and analyze the evidence in regards as to whether or not the landlord has met his burden of proof.

4. **The Landlord's Allegation Regarding Mr. Fickling:** The landlord presented three witnesses including himself, his wife, and the tenant on the second floor, Zhane Bady-Ping. Ms. Bady-Ping gave testimony that she has only seen the tenant once, has never met Mr. Fickling, but that hears a man's voice from the tenant's apartment and assumes it is Fickling---at all different hours at daytime and nighttime. This testimony is consistent with the tenant and Mr. Fickling's testimony that he visits the tenant every day and stays some nights, but it is not otherwise helpful in determining if Mr. Fickling is occupying the premises in violation of the lease.
5. The landlord's wife, Mary Grover, testified that she sees Mr. Fickling coming and going to and from the house pretty much every day at various times. Such testimony is also consistent with that of the tenant and Mr. Fickling---that he visits the tenant every day and that he sometimes stays overnight.
6. The landlord's testimony was very focused on photographs he put into evidence that show cars he believes to be driven by Mr. Fickling being parked in his lot with great frequency, including some early in the morning just after 6:00 a.m. and some as late at after 11:00 p.m. It is not certain whose cars are the subject of the photographs, which include different model cars being asserted as being that of Mr. Fickling (Jeep, Mitsubishi, and Subaru). There is no evidence which of these cars are driven by Mr. Fickling and the landlord's testimony regarding seeing Mr. Fickling get in or out of a car was not specifically tied to any particular

vehicle. Additionally, the tenant's testimony that she drives various rental cars when her vehicle is in the shop added further confusion as to what car in the photographs is being alleged to being driven by Mr. Fickling.

7. That all said, the impression given by the aggregate of the evidence presented by and on behalf of the landlord is that Mr. Fickling is at the premises often, likely every day. That description is consistent with the testimony of the tenant and Mr. Fickling. The fact that he *is* there everyday is not in dispute. The question before the court is whether he is residing and or occupying the subject premises in violation of the lease term.

8. **The Lease Term:** Paragraph 11 of Ms. Godfrey's lease, is entitled No Subletting or Assignment and states in pertinent part:

> Further, tenant shall not permit anyone, other than those individuals listed in paragraph 1[1] of this Lease Agreement, to occupy the dwelling unit other than on a temporary basis. For purposes of this paragraph, temporary basis shall mean occupancy for fourteen days or less by any one person in a calendar year.

9. **Mr. Fickling Resides Elsewhere:** Mr. Fickling is a tenant at 24 Oakwood Terrace in Springfield, Massachusetts. He has a lease for that premises, resides there with roommates, and pays rent and his portion of the utility bills. He gets all of his mail there, and his license and voter registration have that address. He gets no mail nor has any clothes or other belongings at the subject premises. Additionally, the tenant was very credible in her testimony that she would not

[1] Only the tenant is listed in paragraph 1 of the lease.

permit Mr. Fickling to reside with her and credits the fact that he lives elsewhere as the key to the success of their relationship.

10. Mr. Fickling visits the premise daily and visits late into the night with some regularity. It can not be that because Mr. Fickling visits daily under the circumstances described above that the tenant has violated the lease. The tenant and Mr. Fickling admit that he will also often stays vernight for some or all of a weekend.

11. The landlord's basis for the above noted lease violation is that Mr. Fickling stays over at night and that in the aggregate he does so in access of 14 days over a span of one year.

12. On the facts before the court, that Mr. Fickling resides and pays rent under a lease elsewhere, gets no mail nor stores any belongings at the subject premises, is not permitted by the tenant to move-in with her, and likely stays overnight on many weekends with the tenant at the subject premises, the court does not view such behavior as "subletting or assigning" and not a substantial violation of the lease upon which eviction is appropriate.

13. **Conclusion and Order:** Based on the foregoing, judgment shall enter for the tenant for possession.[2]

[2] There is an account annexed in the summons and complaint for alleged unpaid use, occupancy, and/or rent which given judgment entering for the tenant shall not be addressed herein. The landlord has remedy to seek collection of any outstanding use and occupancy in another manner including a subsequent summary process action.

So entered this 13th day of April, 2021.

Robert Fields, Associate Justice

Cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

CASE NO. 21-CV-191

TROY TANNER,

Plaintiff,

v.

MIGUEL CRESPO,

Defendant.

ORDER

After hearing on April 8, 2021, on the plaintiff tenant's motion for injunctive relief at which both parties appeared without counsel, the following order shall enter:

1. The defendant landlord shall not enter the tenant's room without his express permission, other than in a *bona fide* emergency.
2. The landlord shall call the tenant names nor make any threats towards him.

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3. If the landlord requires access to the tenant's room for repairs, he shall provide written notice at least 48 hours in advance which describes the anticipated work, the time of needed access, and the estimated duration of said access.
4. Any and all such repairs that require licensure shall be done by licensed individuals and any necessary permits shall the be obtained.
5. The landlord shall take all necessary steps to ensure that the tenant's name remains intact on the mailbox as long as he resides at the premises.
6. The landlord shall comply with the evictions laws and shall not engage in harassment towards the tenant vacating nor use self-help eviction tactics.

So entered this 13th day of April, 2021.

Robert Fields, Associate Justice

Cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

BERKSHIRE, ss

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 20H79CV000429

TOWN OF WEST STOCKBRIDGE,	)	
	)	
PLAINTIFF	)	
	)	
v.	)	**ORDER ON PLAINTIFF'S**
	)	**PETITION FOR FINES AND**
REGINALD LEONARD ET AL.,	)	**ATTORNEYS' FEES**
	)	
DEFENDANTS	)	

This code enforcement matter came before the Court on April 1, 2021 on a petition by the Plaintiff, the Town of West Stockbridge by and through its Board of Health (the "Town"), for an award of reasonable attorneys' fees and costs and an assessment of fines against Defendant Reginal Leonard ("Mr. Leonard") in connection with the Court's finding of contempt on November 23, 2020 ("Contempt Order").[1] Defendant, Gennari's Mill Pond Trailer Park, Inc. ("the Park") did not take a position with respect to the Town's petition against Mr. Leonard. Both Defendants appeared through counsel, and Mr. Leonard appeared and represented himself.

The Town seeks an award of attorneys' fees and costs in the amount of $1,989.00, an amount supported by an affidavit of counsel. The Town also seeks an assessment of fines in the amount of $7,400.00 based on daily fines of $100.00 from October 15, 2020 to December 28, 2020 consistent with Court orders in this case dated September 16, 2020, November 24, 2020 and December 28, 2020.

[1] In its Contempt Order, the Court gave Mr. Leonard thirty (30) days to purge the contempt. When he failed to do so, the Court ordered the imposition of fines and authorized the Park to remedy the violations. As of the hearing date on April 1, 2021, the code violations have been corrected, at least in part due to work done by the Park on Mr. Leonard's behalf.

In opposition, Mr. Leonard testified that he was confused about the concept of "contempt" and did not know what it meant to "purge" the contempt. He admits that he did not correct the violations in the required time frames and focused his testimony primarily on the unregistered car at the subject premises that did not get removed until the Park had it towed. He claims to have worked diligently to try to get it registered but does not have the title. He also testified that this autistic son loves the car and that he wants to keep it once he finds a way to get it registered. He also testified that his only income comes from being a school bus driver and doing other intermittent part-time jobs, and that he has no realistic way to pay the $9,389.00 sought by the Town.

It is axiomatic that "[c]ivil contempt is a means of securing for the aggrieved party the benefit of the court's order." *Demoulas v Demoulas Super Markets, Inc.*, 424 Mass. 501, 565 (1997). Here, the violations for which Mr. Leonard was cited have been corrected. Assessing the substantial fines sought by the Town would serve no purpose given Mr. Leonard's apparent inability to pay; in fact, assessment of the fines could ultimately lead to Mr. Leonard losing his home, an outcome that is far too drastic under the circumstances.

Nonetheless, Mr. Leonard should face consequences for failing to comply with Court orders, and the Court shall assess reasonable attorneys' fees and costs as a sanction. Using the lodestar approach (*see Fontaine v. Ebtec Corp.* 415 Mass. 309, 325 (1993), the Court finds that the attorneys' fees sought by the Town are reasonable in time and billing rate and in light of the results obtained and that the costs are likewise reasonable. Accordingly, taking into consideration Mr. Leonard's limited financial means and his testimony that he could find a way to pay $100.00 per month, the Court will impose as a sanction for contempt attorneys' fees and costs in the amount of $1,989.00; provided, however, that $789.00 will be waived if Mr. Leonard pays $1,200.00 of this amount. Mr. Leonard may pay the $1,200.00 of legal fees and costs in installments of $100.00 due

by the 15th day of each month beginning in June 2021 and continuing through May 2022. If Mr. Leonard is able to pay the full amount of $1,200.00 before May 2022, he may stop making monthly installment payments.

SO ORDERED, this 13th day of April ~~2020~~ 2021

Jonathan J. Kane
Jonathan J. Kane
First Justice

cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS

WESTERN DIVISION, SS.

HOUSING COURT
DEPARTMENT OF
THE TRIAL COURT
CIVIL ACTION
No. 21-CV-174

CITY OF SPRINGFIELD
CODE ENFORCEMENT DEPARTMENT
HOUSING DIVISION,

Plaintiff

v.

LAWRENCE A. JORDAN (owner),
LINDA MURPHY (tenant),
WILMINGTON SAVINGS FUND SOCIETY, FSB (mortgagee), and
MIDLAND FUNDING, LLC (lienholder)

Defendants

Re: Premises: 80 Merida Street, Springfield, Massachusetts

ORDER
(Hampden County Registry of Deeds Book/Page: #12709/389)

After a videoconference hearing on Tuesday, April 13, 2021, for which a representative of the Plaintiff and LAWRENCE A. JORDAN appeared, and after having been given notice of said hearing a representative of the other Defendants did not appear, the following order is to enter:

1. LINDA MURPHY, as the occupant of the above premises, is an indispensable party to this matter and shall be added as to this matter as such in place of ANY AND ALL TENANTS.

2. The Plaintiff shall serve LINDA MURPHY with a copy of the original petition and exhibits, FORTHWITH.

3. Defendant LINDA MURPHY and her respective household members must vacate the above said premises FORTHWITH, and not re-occupy until such time as the emergency violations have been corrected and the condemnation lifted, or by leave of Court.

4. Defendants LAWRENCE A. JORDAN and LINDA MURPHY shall be enjoined from using a generator with extension cords to provide energy to the dwelling.

5. Defendant LAWRENCE A. JORDAN shall not allow anyone to occupy the above said premises until such time as a certificate of compliance has been issued by the City of Springfield, or the condemnation has lifted, or with leave of this Court.

6. Defendant LAWRENCE A. JORDAN shall be enjoined from transferring the above said property without written permission from the Plaintiff until the conditions complained of have abated, or with leave of the Court.

7. Defendants LAWRENCE A. JORDAN and LINDA MURPHY shall allow the Plaintiff access to the subject property the purpose of re-inspection on April 22, 2021 between 9:00 a.m. and 4:00 p.m. to verify compliance with this order.

8. This matter shall be up for a videoconference review with the Court on Tuesday, April 27, 2021 at 3:00 p.m. The Clerks Office shall provide the parties with written instructions on how to participate in said hearing by Zoom. Failure of the Defendants to appear on said date may result in the filing of a complaint for contempt.

So entered this 15th day of April, 2021.

Robert G. Fields, Associate Justice
Western Division Housing Court

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

CASE NO. 19-SP-5277

WAYFINDERS, INC. AGENT FOR THE LORRRAINE,

Plaintiff,

v.

BENJAMIN BOLIVER,

Defendant.

ORDER

After hearing on April 13, 2021 on the tenant's motion to stop a currently scheduled physical eviction, at which the landlord appeared through counsel and at which the tenant appeared *pro se*, along with two of his brothers and his Elliot Homeless Services caseworker, the following order shall enter:

1. Upon the tenant signing releases for the landlord to be able to speak with providers and family members regarding the tenant, the landlord shall cancel the physical eviction currently scheduled for Thursday, April 15, 2021.

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2. The tenant shall pay the landlord $280 forthwith to cover the costs of the cancelled eviction.
3. The tenant shall have his apartment cleaned and brought into a safe and sanitary condition by no later than April 18, 2021.
4. The landlord shall give notice to the tenant, with copies to his Elliot Homeless Services caseworker and his brothers of a time and date to inspect the unit. Said notice shall be give at least 48 hours in advance of the inspection.
5. The Elliot Homeless Services caseworker shall immediately report to the landlord if the tenant refuses him entry into the unit during his twice-per-week visits.
6. The landlord may file the current execution with the Clerk's Office which will issue a new one. The landlord shall not schedule another physical eviction without leave of court. It is anticipated that the extension of time for the tenant to remain in his unit is six weeks from today.
7. This matter shall be scheduled for further hearing on **May 21, 2021 at 11:00 a.m. by Zoom.** The Clerk's Office shall provide the parties, and the tenants' brothers copies, of written instructions on how to participate in said hearing by Zoom.

So entered this 15th day of April, 2021.

Robert Fields, Associate Justice AM

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT OF THE COMMONWEALTH

Hampden, ss.

Housing Court Department
Civil Action No. 21-CV-202

HEDGE HOG INDUSTRIES CORP.,
Plaintiff

v.

AMERICA BURGOS,
Defendant

ORDER

After Zoom hearing on April 16, 2021, at which the Plaintiff appeared through counsel, the Defendant did not appear at the scheduled hearing date[1] and at which a representative of the Tenancy Preservation Program appeared, the following Order shall enter:

1. The Plaintiff is authorized to maintain the property located at 85 Putnam Circle, Springfield, MA as vacant, boarded and secured.
2. The Defendant is ordered to remain away from the property at 85 Putnam Circle, Springfield, MA unless authorized and supervised by the Plaintiff as set forth in this Order.
3. The Defendant shall not allow or authorize anyone to enter or access to the property at 85 Putnam Circle, Springfield, MA.
4. If the Defendant requires access to any belongings or personal property located on the interior of 85 Putnam Circle, Springfield, MA, she shall request access by appointment and shall contact the Plaintiff's office at [redacted] to make such appointment. The

[1] This matter was scheduled for hearing on April 15, 2021 at 12pm at which time the Defendant failed to appear despite notice and after attempts were made to reach her. Due to technical issues with the Court's recording device, the hearing was continued to April 16, 2021.

Plaintiff is authorized to oversee and supervise any access to the apartment.

5. If the Defendant wishes to request that she be allowed to re-occupy the property, she shall appear for a further hearing by **Zoom on May 6, 2021 at 10:00am**.
6. If the Defendant fails to appear for the review hearing, the Plaintiff may request that it be authorized to take possession of 85 Putnam Circle, Springfield, MA and may request extension of Paragraphs 2 and 3 of this Order.
7. The Clerk's Office shall mail a copy of this Order to the Defendant at 85 Putnam Circle, Springfield, MA 01104 and to 1309 St. James Avenue, Apt. 1C, Springfield, MA 01104.

Dated: April 16, 2021

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

COMMONWEALTH OF MASSACHUSETTS

HAMPDEN, SS

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 21-CV-185

TODD ILLINGSWORTH,
PLAINTIFF

v.

TATIANA MARIE SANCHEZ
AND KEYSHAWN BROADY,
DEFENDANTS

ORDER TO VACATE

This matter first came before the court on April 6, 2021 on Plaintiff's motion for a temporary restraining order barring Defendants from occupying a residential unit located at 13 ½ Morris Street, 2d Floor, Rear (the "Premises"). Defendants failed to appear at the hearing. Based on the verified and uncontroverted allegations that Defendants moved into the Premises without the permission or knowledge of Plaintiff and that Plaintiff has neither consented to nor received any money for Defendants' use and occupation of the Premises, the Court found that Plaintiff was entitled to injunctive relief. Before entering a permanent injunction awarding possession to Plaintiff, the Court ordered a further hearing on April 20, 2021, to give Defendants an opportunity to appear.

Defendants did not appear at the April 20, 2021 hearing. Accordingly, the following order shall enter:

1. Plaintiff is entitled to a permanent injunction awarding him possession of the Premises. Defendants must vacate the Premises within forty-eight (48) hours of delivery of this notice. Plaintiff shall deliver a copy of this order to the Premises and make note of the date, time and method of delivery.

2. If Defendants fail to vacate the Premises as ordered, Plaintiff may treat Defendants as trespassers in accordance with G.L. c. 266, § 120 and have them removed from the Premises by a deputy sheriff after serving a 48-hour notice consistent with G.L. c. 239, § 3. Any belongings remaining at the time Defendants are removed shall be stored in a manner consistent with the requirements of G.L. c. 239, § 4. After Defendants have vacated or been removed from the Premises and any remaining belongings moved to storage, Plaintiff may change the locks and retake possession of the Premises.

SO ORDERED this 2nd day of April 2021.

Jonathan J. Kane

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

cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS

BERKSHIRE, ss

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 20-CV-0365

LENOX SCHOOLHOUSE, LLC,
PLAINTIFF

v.

PEDRO DELGADO,
DEFENDANT

ORDER ON MOTION FOR INJUNCTIVE RELIEF

This matter came before this Court on April 20, 2021 on Plaintiff's request for the issuance of a summons for contempt and for further preliminary relief pending the contempt trial. Both parties appeared, Defendant without counsel. Steve Abellie of the Tenancy Preservation Program ("TPP") also appeared.

After hearing at which testimony was taken from two witnesses for Plaintiff, Defendant and a witness called by Defendant, the following order shall enter:

1. No summons for contempt shall issue at this time because Plaintiff did not provide a Court order that could be enforced by contempt proceedings. The stipulation attached to Plaintiff's verified complaint is not signed by a judge or Housing Specialist and it is not clear that the Stipulation was ever reviewed by the Court.
2. Plaintiff did not satisfy its burden of proof to obtain the injunctive relief sought; that is, an order that Defendant be immediately enjoined from entering on the property where he is a tenant and that Plaintiff be allowed to change the locks.
    a. With respect to allegations that Defendant has interfered with the quiet enjoyment of other persons on the property, the testimony does not support

such an extraordinary request. It may well be that Defendant's activities between the hours of 10:00 p.m. and 3:00 a.m. disturb his downstairs neighbor, Mr. Davies, but Plaintiff had no evidence that Defendant's conduct was intentional or so beyond the bounds of what typically occurs in multi-family housing environments to justify the remedy sought, particularly when summary process provides an adequate remedy at law.

b. With respect to the allegations that Defendant engaged in threatening and/or inappropriate behavior toward other residents and/or management staff, the property manager testified credibly that on one occasion, Defendant caused her discomfort in her office due to his rising anger when talking about another tenant. There is no evidence that Defendant threatened her or directed his anger at her in this meeting or acted in a way the warrants the extreme sanction of immediate expulsion from the property. Likewise, his comment about the relationship between his neighbor and the maintenance supervisor, while inappropriate, does not warrant eviction.

3. Although the Plaintiff has not met its burden for injunctive relief, the Court hereby orders that Defendant:

   a. cooperate with TPP and follow its recommendations;

   b. limit all communication with management and its attorneys to bona fide landlord/tenant matters and emergencies;

   c. respect the right of other residents and their guests to the peaceful enjoyment of the property;

d. not engage in threatening, harassing or inappropriate behavior toward others on the property, including without limitation other residents and Plaintiff's employees and agents.

4. The fee for injunctions set forth in G.L. c. 262, § 4 is not applicable as injunctive relief is denied.

SO ORDERED this 22nd day of April 2021.

Jonathan J. Kane

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

cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

CASE NO. 20-SP-36

MASON SQUARE APARTMENTS,

Plaintiff,

v.

GENEVA SINGLETON, GEORREL CRAPPS, and REGINALD N. CRAPPS,

Defendants.

ORDER

This matter came before the court for hearing on April 20, 2021 on the landlord's motion for entry of judgment, at which only the landlord appeared and the tenant did not appear after proper notice, and the following order shall enter:

1. The landlord's motion for entry of judgment shall be continued to the date noted below so as to provide the tenants greater opportunity to engage in this process and access resources that may be available to pay the rental arrearage and prevent eviction.

2. The tenants should be aware that there are increased resources available as a result of the COVID-19 pandemic for parties involved in the eviction process for both legal services and rental assistance.
3. There are various financial programs related to COVID-19 that may be helpful to the tenants to pay the monies they owe to the landlord and avoid eviction. Such programs include (but are not limited to): RAFT funds which can e reached on-line at **www.wayfindersma.org/hcec-assessment** or by phone at 413-233-1600.
4. Additionally, the Tenancy Preservation Program can assist with rental assistance applications and processes and can also help with individuals and families with mental health issues and can be reached at 413-233-5327.
5. Additionally, the federal government has generated an order that may have the effect of halting physical evictions if the tenant completes a CDC declaration and provides same to the landlord. The tenants may wish to obtain a copy of a CDC declaration if the *Temporary Halt in Residential Evictions to Prevent Further Spread of COVID-19*, at 85 Fed. Reg. 55,292 (September 4, 2020) applies to them. If so, they should provide a copy of the declaration with their signatures to the landlord and to the court.
6. The state government has also increased the availability of free legal assistance. The tenants should contact Community Legal Aid to see if they can access free legal assistance by calling 413-781-7814.
7. This matter shall be scheduled for Zoom hearing on **May 4, 2021 at 11:00 a.m.** The Clerk's Office shall provide the parties with instructions on how to appear by

Zoom. The parties may also use the Zoom Room at the courthouse if they are unable to access Zoom on their own. The Clerk's Office can be reached by calling 413-748-7838.

So entered this 23rd day of April, 2021.

Robert Fields, Associate Justice AM.

COMMONWEALTH OF MASSACHUSETTS

HAMPSHIRE, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 20-SP-1289

SOUTH HADLEY HOUSING AUTHORITY,

PLAINTIFF

v.

ORDER TO STOP EVICTION

ROBERT ROBITAILLE,

DEFENDANT

This summary process action brought for lease violations came before the Court by Zoom on April 21, 2021 on Defendant's motion to stop the physical eviction scheduled for tomorrow, April 22, 2021. Plaintiff appeared through counsel. Defendant appeared and represented himself.

Plaintiff informed the Court that this case is the fourth time that an execution has issued for possession since 2016. In the previous three instances, Plaintiff reinstated the tenancy following agreements made in Court. In this case, which does not involve any claims for non-payment of rent, Plaintiff is unwilling to reinstate the tenancy.

Defendant was given notice of the date of the physical eviction on March 16, 2021, over one month ago, but did not seek this stay until the day prior to the levy. Although Defendant testified that his daughter, who has been living with him for an extended period of time without the authority of management, will be moving out today, the Court finds that this promise is insufficient to justify an order that Plaintiff give Defendant yet another opportunity to reinstate his tenancy. The Court will, however, exercise its equitable powers and allow Defendant additional time to access resources that might be able to help him transition to new housing. The following order shall enter:

1. Plaintiff shall cancel the physical eviction presently scheduled.
2. Upon return of the execution, Plaintiff shall be sent a new execution so that it may have an additional 90-day period to schedule the physical eviction.

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3. Defendant shall pay $140.00 to Plaintiff forthwith to be applied to eviction cancellation charges.[1]

4. Use of the execution shall be stayed through May 31, 2021. Defendant shall not be entitled to any further extensions of time to move. He is strongly encouraged to contact Way Finders immediately to begin the process of seeking assistance with moving costs.

SO ORDERED.
DATE: 4-21-21

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

[1] Defendant requested that the $140.00 be deducted by Plaintiff from his bank account rather than requiring him to bring a money order to the management office. Because the parties already have an arrangement whereby Plaintiff deducts monthly rent by an ACH withdrawal, the Court authorizes the ACH withdrawal in lieu of direct payment by Defendant.

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss: **HOUSING COURT DEPARTMENT**

WESTERN DIVISION

CASE NO. 20-SP-1125

FITZGERALD REALTY CORP.,
Plaintiff,
v.
DANIEL HALLEY,
Defendant.

ORDER

After hearing of April 23, 2021, at which both parties appeared with counsel and at which Richard Holden, from Highland Valley Elder Services, appeared, the following order shall enter:

1. The landlord's motion for entry of judgment and issuance of the execution is denied, without prejudice.
2. The tenant has continued to pay his rent and has not caused any disturbances and has engaged in a housing search to relocate, though as was discussed during much of the hearing the tenant must improve both the housing search and the documentation of same.
3. Attorney Martin agreed to generate a housing log form for the tenant to utilize to document his search which is to include each effort made to locate housing and the dates, details, and outcomes of each effort.

4. The tenant shall continue to work with Mr. Holden in a greater housing search effort and shall reach out to Steve Connor of Veteran's Services to enlist his services in this endeavor. The tenant shall also work with Soldier On and the VA to increase and enhance his housing search.
5. The court shall also refer this matter to Mr. Connor. The tenant can be reached at [redacted].
6. The tenant shall also work with Mr. Holden to communicate with the housing complexes and housing authorities in the area to put the tenant on all appropriate waiting lists.
7. This matter shall be scheduled for review on **June 9, 2021 at 10:00 a.m.** by Zoom. The Clerks' Office shall provide written instructions on how to participate in said hearing and may be reached with any questions regarding Zoom at 413-748-7838.

So entered this 26th day of April, 2021.

Robert Fields w/permission mcp

Robert Fields, Associate Justice

cc: **Richard Holden**, Highland Valley Elder Services, 320 Riverside Dr., #B, Northampton, MA 01062

Steve Connor, Veteran's Services, 240 Main St., Suite 4, Northampton, MA 01060-3113

COMMONWEALTH OF MASSACHUSETTS

HAMPDEN, ss

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 19-SP-3254

KELLY OUTHUSE AND
FERNANDA FERREIRA,

PLAINTIFFS

v.

ORDER FOR ISSUANCE OF EXECUTION
(*EVICTION ORDER*)

BRIAN GILLESPIE AND
JESSICA REWA,

DEFENDANTS

1. This is a no-fault summary process action in which the Plaintiff seeks re-issuance of an execution to recover possession of residential premises located at 26 Hampden Street, Ludlow, Massachusetts.

2. Plaintiffs' motion to strike Defendant Gillespie's CDC declaration is hereby ALLOWED. As reasons therefor, Defendants did not appear to oppose the motion after notice of the hearing was sent to them. Moreover, Mr. Gillespie agreed to vacate on or before March 1, 2020, before the COVID-19 state of emergency was declared in Massachusetts, therefore invalidating any claim that COVID-19 interfered with their ability to vacate as required. Lastly, this matter was not commenced for non-payment of rent, and in fact had Mr. Gillespie vacated as required and paid the monthly use and occupancy from August 2019 (when the agreement was made) through the vacate date, he would vacated not owing any money to Plaintiffs.[1]

3. Plaintiffs shall file a First Amended Affidavit Regarding CDC Order and may note that the Court struck Mr. Gillespie's CDC declaration. Plaintiffs represent that they never received a CDC declaration from Defendant Rewa.

[1] Because this case was not commenced solely for nonpayment of rent, Stat. 2020, c. 257 is inapplicable. In any event, Plaintiffs' counsel confirmed with Way Finders before the hearing that the only application for rental assistance made by Defendants was denied.

4. Based on the foregoing, and Plaintiffs' representation that $12,000.00 is owing for use and occupation based on the terms of the August 22, 2019 agreement, Plaintiffs are entitled to issuance of the execution in the amount of $13,000.00 upon return of the original execution.

SO ORDERED

By: Jonathan J. Kane
Jonathan J. Kane
First Justice, Western Division Housing Court

DATE: 4/26/21

COMMONWEALTH OF MASSACHUSETTS

HAMPDEN, SS

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 20-CV-203

CITY OF SPRINGFIELD CODE ENFORCEMENT,

PLAINTIFF

v.

U.S. BANK, N.A. AS TRUSTEE, ET AL.,

DEFENDANTS

ORDER ON MOTION TO SUBSTITUTE PARTIES

This matter came before the Court on April 13, 2021 on a motion to substitute parties filed by Defendant U.S. Bank, N.A. ("the Bank"). The prospective defendant, All About Real Estate, LLC ("AARE"), opposes the motion. Counsel for the City of Springfield (the "City") and a former resident currently being housed in a hotel by the Bank also appeared.

The essential facts are not in dispute. The Bank owned certain real property at 106 Greene Street, Springfield, Massachusetts (the "Property") by virtue of a foreclosure action. The Property had been condemned by the City due to code violations. Pursuant to a Court order dated April 27, 2020, the Bank was enjoined from transferring the Property without written permission from the City unless the violations had been corrected. On or about February 4, 2021, with the written consent of the City, the Bank sold the Property to AARE and a deed was recorded on March 8, 2021.

Because this is a code enforcement case commenced by the City to correct violations, and because the City consented to the sale and essentially released the Bank from its obligations regarding correction of the conditions, it is not an appropriate case to substitute parties. If the

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City finds continuing violations at the Property, it will start a separate action against the new owner. But for the provision in the April 27, 2020 Court order requiring the Bank to provide temporary alternative housing to the former residents, the Court would dismiss this action.

Dismissing the action, however, would extinguish the former occupants' right to alternative housing. The only way that obligation can be terminated is by order of the Court or agreement of the former occupants. Accordingly, the Court determines that, on the facts presented here, the appropriate action is for the Bank to seek leave of court to terminate its temporary housing obligation. For the foregoing reasons, the Bank's motion to substitute parties is DENIED.

SO ORDERED this 27th day of April 2021.

Jonathan J. Kane

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

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

CASE NO. 20-SP-1524 and 20-SC-106

ALLYSON LABELLE,

Plaintiff,

v.

MELISSA BORER, ERICA BROWN and MARCIA BROWN,

Defendants.

ORDER

After hearing on April 7, 2021 at which only the plaintiff and her attorney appeared, the following order shall enter:

1. **Background:** The plaintiff, Allyson Labelle (hereinafter, "landlord") owns a house at 12 ½ Staple Street in Adams, Massachusetts (hereinafter, "premises"). The defendants Melissa Borer and Erica Brown (hereinafter, "tenants") reside at the premises at a monthly rent of $850. The landlord terminated the tenancy for non-payment of rent in November, 2020 and then commenced this eviction action on

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December 3, 2020. On December 7, 2020 the landlord commenced a small claims matter against Marcia Brown, who is the guarantor on the tenants' lease, for unpaid rent. The landlord's motion to consolidate the two matters, the eviction case (20-SP-1524) and the small claims matter (20-SC-1524), was allowed on February 18, 2021. On February 24, 2021 the landlord filed a motion in the consolidated matters to amend the complaint for two additional claims for damages; for an oil bill and for attorneys fees. That motion was allowed on March 4, 2021. These consolidated cases were scheduled for trial on March 22, 2021 and when none of the defendants appeared, they were defaulted. The matter was then scheduled for a damages hearing for April 7, 2021, at which the defendants again failed to appear. After consideration of the evidence presented at hearing on April 7, 2021, the following findings of fact and rulings of law shall enter:

2. **The Landlord's Claim for Rent and Possession:** The landlord served the defendants with a non-payment of rent termination notice and then a timely summary process summons. The tenants have failed to pay their rent, use, or occupancy since July, 2020 at a monthly rate of $850. As such, the landlord shall be awarded possession of the premises against the tenants and $7,650 for her rent claim against all three defendants.

3. **The Landlord's Claim for Heating Oil:** The landlord put the lease between the parties into evidence. That lease requires the defendants to pay for heating of the premises. On or about February 2, 2021, there was no oil in the heating tank and the landlord paid for $638.77 in heating oil. Accordingly, the landlord is awarded $638.77 in heating costs against all three defendants.

4. **The Landlord's Attorneys Fees:** The landlord is seeking an award for attorneys fees based on the terms of the lease. The lease at paragraph #19 states:

> **Attorneys' Fees:** In the event that the LANDLORD reasonably requires services of an attorney to enforce the terms of the Lease or to seek to recover possession or damages, the TENANT shall pay the LANDLORD the reasonable attorney's fee incurred and all costs, whether or not a summary process action or other civil action is commenced or judgement is obtained.

This language is exactly the language of the lease in another matter heard by the court, wherein the landlord was represented by the same attorney (Chavin) and in which said lease term was found unenforceable. See, *Pelletier v. Arnold and Tripodes,* Western Div. Hsg. Ct. Docket No. 17-CV-1076 (Fields, J., November 2, 2018) for an extensive ruling on why the lease term regarding attorneys fees was ruled unconscionable, violative of public policy, and unenforceable. Accordingly, the lease provision in this instant matter is found unenforceable and the claim for attorneys fees is denied.

20. **Conclusion and Order:** Based on the foregoing, judgment shall enter for possession for the landlord as against the tenants, with execution to issue in due course. Additionally, judgment shall enter for the landlord as against all three defendants for $7,650 for rent, use, and occupancy through March, 2021 plus $638.77 in oil heating costs.

So entered this 27th day of April, 2021.

Robert Fields

Robert Fields, Associate Justice (AM)

CC: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 20-SP-1038

ANA RODRIGO,	)	
	)	
PLAINTIFF	)	
	)	
V.	)	**FINDINGS OF FACT, RULINGS**
	)	**OF LAW AND ORDER FOR**
ASHLEY GILLESPIE,	)	**JUDGMENT**
	)	
DEFENDANT	)	

On April 13, 2021, this summary process case based on non-payment of rent came before the Court for a video-conference trial. Plaintiff ("the landlord") seeks to recover possession of residential premises located at 453 East Street, First Floor, Ludlow, Massachusetts (the "premises") from Defendant ("the tenant"). Both parties appeared and represented themselves.

As a preliminary matter, the Court finds that the tenant has submitted a declaration as provided in the Centers for Disease Control and Prevention's Temporary Halt in Evictions to Prevent Further Spread of COVID-19 (the "CDC declaration").[1] The tenant, however, does not satisfy the criteria for protection from eviction set forth in Chapter 257 of the Acts of 2020 ("Chapter 257") because she was unable to provide adequate evidence of a pending application for

[1] The landlord denies receiving the declaration when the tenant claims she sent it, but whether she did or did not get a copy at that time, the Court finds that a declaration was submitted prior to trial.

emergency rental assistance.[2] The landlord testified that she has never been contacted by a representative of Way Finders with respect to any application filed by the tenant.

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

The tenant moved into the Premises on or about August 1, 2019 pursuant to a written lease that was not actually signed until September 9, 2019. Monthly rent was set at $1,100.00, due on the first day of the month. The tenant signed a statement of conditions, dated September 9, 2019, acknowledging the absence of any conditions in the premises that needed repair. In February 2020, the landlord served the tenant with a legal sufficient notice to quit, at which time the tenant owed $750.00 in rent for November and $1,100.00 in rent for the months of December 2019, January 2020 and February 2020. Since that time, the landlord contends that the tenant has paid a total of $210.00.

The tenant did not file an answer but asserted defenses to the landlord's claim for rent. She testified that, since November 2019, she has made three payments in the aggregate amount of $410.00; namely, $110.00 in March 2020, $100.00 on June 14, 2020 and $200.00 on June 21, 2020. The landlord testified that she did not receive the $200.00 payment. Even crediting the tenant with this disputed payment, based on the agreed-upon monthly rental amount of $1,100.00, the acknowledged balance of unpaid rent is $19,040.00 through the date of trial.

The tenant contends that she should not be required to pay all of the rent owed because of various problems with the premises, particularly relating to the heat, which the tenant says she was

[2] Although the tenant did show the Court a copy of a text message from Way Finders, it is undated and only confirms that the initial submission was received, not that the application is complete and pending.

without for long stretches of time. The Court finds that the periodic lack of heat was caused by the tenant's failure to put fuel oil in the tank, which she was obligated to do under the written rental agreement. With respect to the major incident about which the tenant testified -- the fire in the furnace that led to the fire department coming the premises on November 5, 5020 -- the Court finds that the landlord had the furnace inspected (but not cleaned) on October 28, 2020, at which time the tank was found empty. Thereafter, when the tenant placed oil in the tank and ran the furnace, it caused the furnace to malfunction after having been left unused for a period of time due to lack of oil.

The fire department discharged water and chemicals into the furnace and removed parts of it in order to access the interior. When the Ludlow Board of Health inspected the next day, the furnace was not working as a result of the incident the previous day. The landlord subsequently repaired and/or replaced the furnace. The furnace was not functioning for approximately three weeks. The Court concludes that the fire in the furnace was caused by a combination of the landlord's failure to clean the furnace and the tenant's failure to fill the oil tank, thereby allowing it to run dry. Because the tenant was in arrears in her rent at the time of the furnace malfunction on November 5, 2020, the Court finds that she is not entitled to a rent abatement pursuant to General Laws c. 239, § 8A.[3]

Based on the foregoing, and in light of the governing law, it is hereby ORDERED that:

1. Judgment shall enter for Plaintiff for possession and money damages for unpaid rent in the amount of $19,040.00, plus court costs and interest.

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3 Other than the non-working furnace, the health inspector found some relatively minor code violations. In light of the statement of conditions signed by the tenant on September 9, 2019 acknowledging the absence of conditions in need of repair, the Court finds that these violations were not the fault of the landlord.

2. Based on the tenant's CDC declaration, no execution (eviction order) shall issue until the expiration of the CDC order (currently scheduled for June 30, 2021, subject to extension); provided, however, that in order to stay the use of the execution, Defendant must pay $1,100.00 by the fifth of each month beginning in May 2021 for her use and occupation of the premises.
3. If Defendant does not make a payment required in paragraph 2, Plaintiff may file a motion for issuance of the execution.

SO ORDERED this 27th day of April 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. 18-SP-4249

ROSEMARY THOMAS,

PLAINTIFF

V.

AIESHA JAWANDO ET AL,

DEFENDANTS

ORDER FOR PAYMENT AND AMENDED TRUSTEE

On April 14, 2021, this matter came before the Court on Defendant's motion for issuance of execution and additional attorney's fees based on Plaintiff's failure to pay a judgment for contempt entered against her on December 8, 2020. Plaintiff opposes the motion but does not dispute that the contempt judgment has not been paid.

A civil contempt proceeding, although considered part of the civil action out of which the contempt arose, is a separate proceeding. *See* Rule 65.3 of the Massachusetts Rules of Civil Procedure. Here, a complaint for contempt was filed on October 9, 2020. Judgment for contempt entered on December 8, 2020 pursuant to Rule 58 and is entirely separate from the judgment in the underlying civil action for damages. Plaintiff has no legal basis to withhold payment on the final judgment for contempt until after final judgment enters on the underlying action.

The Court acknowledges that entry of judgment is not the same as an order for payment. In this case, however, where Plaintiff has already violated a Court order, the Court will allow Defendants' request for an order of payment of the contempt judgment amount, plus post-judgment interest, out of funds of Plaintiff held by the Westfield Bank (the "Trustee").

In light of the foregoing, the following order shall enter:

1. Plaintiff is hereby ordered to pay the contempt judgment amount of $3,874.76, plus post-judgment interest accruing after the date judgment entered (December 8, 2020) in the amount of $177.20, for a total of $4,051.96.[1]
2. The Trustee shall pay to the order of Defendants' counsel the sum of $4,051.96 from funds it holds in the name of Plaintiff. These funds should not be deducted from the $100,000.00 previously ordered to be held in trust in this matter unless the Trustee has no other available funds in the name of Plaintiff from which to deduct the sum.

SO ORDERED this 27th day of April 2021.

Jonathan J. Kane

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

[1] Defendants have not cited to any statutory or common law authority for the assessment of attorney's fees under the circumstances presented here, so the Court is not ordering payment of additional attorney's fees at this time.

COMMONWEALTH OF MASSACHUSETTS

HAMPDEN, ss

HOUSING COURT DEPT.
WESTERN DIVISION
DOCKET NO. 20-CV-157

CITY OF HOLYOKE,
Petitioner

v.

HEIRS AND ASSIGNS OF MIGUEL FERRIERA
AKA MIGUEL FERREIRA (OWNERS);
NATIONSTAR MORTAGE, LLC (MORTGAGEE);

DIANA DIAZ CENTENO (TENANT),
LUZ M. CENTENO REYES (TENANT),
KARIN RIVERA LOPEZ (TENANT),
IRAIDA MIRANDA (TENANT),
JOHN AND JANE DOE (TENANTS)
Respondents

Subject Property: 50-52 VERNON STREET, HOLYOKE, MA 01040

INTERIM ORDER

After a virtual zoom hearing on April 27, 2021, at which counsel for the Plaintiff, City of Holyoke, the Receiver, Hann Realty, LLC, the Heirs and Assigns of Miguel Ferreira aka Miguel Ferreira and Defendant Mortgagee, Nationstar Mortgagee appeared, and at which Diana Diaz Centeno and Iraida Miranda and Luis Caceres appeared, the following Order is to enter:

1. The subject property is a three-family residential dwelling, which is currently occupied by five individuals on the first floor and four individuals on the third floor. The Receiver reports that three of the first floor occupants will be moving to the second floor (which has now been renovated) and the other two first floor occupants will be vacating. The Receiver plans to offer some or all of the occupants of the third floor, and/or former tenant Ms. Centeno (who reports living in a shelter with her children), occupancy of the first floor once the renovation of the first floor is complete. The Receiver would then renovate the third floor.

2. On or about February 27, 2020, the Plaintiff filed an Emergency Petition to Enforce the State Sanitary Code and for Appointment of a Receiver for the subject property located at 50-52 Vernon Street, Holyoke, Massachusetts 01040.

3. After hearing on March 3, 2020, the Receiver, Hann Realty, LLC was appointed by this Court as a Receiver for the subject property.

4. The Receiver, Hann Realty, LLC, performed certain emergency work and repairs to the subject property. During this time, the Receiver incurred expenses in the amount of **$11,094.00.**

5. On or about July 30, 2020 the Receiver submitted its Motion to Approve Rehabilitation Plan with Second Report, and after hearing on August 19, 2020, said plan was allowed on an incremental basis with a return date in September 2020. Specifically, the Receiver was able to undertake work as outlined in the approved rehabilitation plan under the heading dated "9-31-2020." The Receiver estimates total rehabilitation costs between **$190,550.00** and **$214,500.00.**

6. On September 31, 2020, the parties appeared for a further hearing and to determine the next steps towards rehabilitation of the subject property. After hearing on September 31, 2020, it was determined that the Receiver, Hann Realty, LLC, was permitted to continue making repairs as outlined in the approved rehabilitation plan, with specific reference to the items listed under the heading dates "9-31-2020" and "10-30-2020."

7. On September 31, 2020, Tenant, Carlos Orria, was dismissed from this action as he had vacated the premises and therefore no longer resided at the above-mentioned property.

8. The Receiver's Motion to Amend Rehabilitation Plan to change the completion date to July 30, 2021 is **ALLOWED**.

9. The Receiver's reports are up to date. The most recent report was filed and served upon all parties on April 16, 2021. To date, the Receiver reports incurred expenses in the amount of $142,371.56 (including deductions for rent). The Plaintiff has reviewed the report and noted a small discrepancy in the lien amount. Accordingly, the Court finds that the correct lien amount through the reporting period is **$142,353.56.**

10. The Plaintiff conducted a comprehensive inspection of the property on April 20, 2021. The reports from the inspection are submitted with this Order.

11. The Receiver filed and served upon all parties its proof of insurance on March 12, 2020.

12. The Receiver shall file with the Court and serve upon all parties and lienholders a copy of the next Receiver's report no later than June 8, 2021.

13. The Receiver expects to complete the following work before the next report date: **Continue work on first floor unit work on first floor.**

14. The City of Holyoke shall coordinate an inspection of the subject property on June 15, 2021.

15. A review of the Receivership shall be heard **June 22, 2021 at 11:00 a.m.** by Zoom.

So ordered this 28th day of April 2021.

Jonathan J. Kane

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

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 17-CV-506

NOREEN NOWAK-MORAN,

PLAINTIFF

V.

MARIA ORTIZ,

DEFENDANT

ORDER FOR ISSUANCE OF CAPIAS

On April 27, 2021, this matter came before the Court for a Zoom hearing on Defendant's second motion for contempt. Counsel for both parties appeared.

The Court entered an order of contempt against Plaintiff on February 5, 2021 for her failure to comply with a deposition subpoena. Plaintiff was ordered to attend a deposition scheduled by Defendant's counsel by March 31, 2021, and to produce requested documents at least seven days in advance of the deposition. The Court also ordered Plaintiff to pay Defendant's counsel $300.00 as a sanction for contempt. Plaintiff did not attend a deposition and did not pay the $300.00 sanction. According, after hearing, the following Order shall enter:

1. Judgment for contempt shall enter in favor of Defendant.
2. Plaintiff shall pay the $300.00 previously ordered to be paid to Defendant's counsel and, as a further sanction for her continued contempt of Court orders, she shall pay to Defendant's counsel an additional $1,200.00, for a total of $1,500.00. Payment shall be made no later than May 14, 2021.

3. A capias for civil arrest shall issue to compel Plaintiff to appear in person at the Western Division Housing Court at **11:00 a.m. on May 17, 2021** for further order regarding production of documents and attendance at a deposition to be scheduled. If Plaintiff cannot be brought to this Court at that time the deputy sheriffs are authorized to bring her to Court at any time during business hours.
4. Defendant's counsel shall provide the deputy sheriffs with information about where to serve Plaintiff with the capias.

SO ORDERED this 28th day of April 2021.

Jonathan J. Kane

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

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 20-SP-1117

BEACON RESIDENTIAL MANAGEMENT LP,	)	
PLAINTIFF	)	
V.	)	**MEMORANDUM OF DECISION AND ORDER**
HUDSON COLLINS AND BRANDY LEE FUNK,	)	
DEFENDANTS	)	

This summary process action came before the Court for a Zoom trial on March 31, 2021. Plaintiff Beacon Residential Management Limited Partnership and/managing agent for Baystate Place Limited Partnership (the "Plaintiff") seeks to recover possession of 414 Chestnut Street, #416, Springfield, Massachusetts (the "Premises") from Hudson Collins and Brandy Lee Funk (the "Defendants") due to alleged material violations of their lease.[1] Defendant filed an answer and all parties appeared for trial represented by counsel.

The parties stipulated to the following facts: Baystate Place Limited Partnership owns, and Beacon Residential Management Limited Partnership manages, the property located at 414 Chestnut Street, Springfield, Massachusetts (the "Property"). Defendants occupy the Premises with their four minor children and have the benefit of Section 8 rental assistance in

[1] Because this case is not based on the non-payment of rent, Stat. 2020, c. 257 does not apply, nor do the eviction protections promulgated by the Centers for Disease Control.

the form of a project-based subsidy. They signed a lease for the Premises on or about August 11, 2017 (the "Lease"). Defendants each received a notice to quit on or shortly after July 20, 2020. The Court finds no defect in the notice or service of same. Plaintiff filed a summary process summons and complaint in Springfield District Court, and the case was subsequently transferred to this Court. The Court finds no defects in notice, service or timely filing of the summons and complaint.

Plaintiff terminated Defendants' tenancy based on allegations of violations of the Lease. Most relevant to this case, pursuant to paragraph 23 of the Lease, Plaintiff has a right to terminate the Lease for "criminal activity by a tenant … that threatens the health, safety or right to peaceful enjoyment of the premises by other residents…." Lease, ¶ 23(c)(6)(a).[2] The Plaintiff has the burden of proof in demonstrating that Defendants' conduct constitutes a material violation of the Lease.

Based on all the credible testimony, the other evidence presented at trial and the reasonable inferences drawn therefrom, the Court finds the following:

On May 27, 2020, a car which Ms. Funk rented and was driving and in which Mr. Collins, a third adult and a young child were passengers was targeted by police as likely transporting illegal firearms and ammunition. The car was driving to Massachusetts from out of state. When it crossed the Massachusetts/Connecticut state line on I-91, police followed it and effectuated a traffic stop at the intersection of Leete Street and Fort Pleasant Avenue in

[2] The notice to quit also references other provisions of the Lease; namely, ¶ 23(c)(6)(b) (criminal activity that threatens the health, safety or right to peaceful enjoyment of their residences by persons residing in the immediate vicinity of the premises), ¶ 13(b) (using the unit for unlawful purposes), ¶ 13(c) (engaging in or permitting unlawful activities in the unit, common areas or project grounds) and ¶ 13(e) (making or permitting noises or acts that disturb the rights or comfort of neighbors). Each of these provisions relate to conduct occurring on or in the immediate vicinity of the Premises, and the Court finds insufficient evidence to prove violations of these provisions.

Springfield. According to witness testimony, this intersection is approximately two and a half miles from the Property, although the distance is not precise.

Detective Moynahan of the Springfield Police Department testified credibly that firearms and ammunition were located in the vehicle and that neither Defendant has a license to carry firearms or ammunition. Springfield Police Department Sergeant Hitas testified credibly that he located a fanny pack within the reach of Defendant Collins on the floor of the front passenger side of the vehicle where Defendant Collins was sitting. The fanny pack contained a black firearm with wooden handle that was loaded with live ammunition and that had been reported as stolen in South Carolina, as well as additional rounds of live ammunition. Following a search of the car, police also found another firearm and more ammunition, including in a fanny pack that was located at the feet of the young child in the back seat. Mr. Collins was arrested and charged with several offenses, including carrying a loaded firearm without a license.[3]

In light of these factual findings and inferences, the issue is whether Plaintiff has established its prima facie case that Defendants materially breached ¶ 23 of the Lease. First, with respect to the question of whether the activity described constitutes "criminal activity," the Court finds that conviction of a crime is not a necessary element of the analysis, both because Defendants explicitly agreed that neither arrest nor conviction is required (*see* Lease ¶ 23(c)(10)) and because the purpose of the Lease provision regarding criminal activity is to protect the safety and quiet enjoyment of other residents, not to impose penalties on the wrongdoer. *See Lowell Housing Auth. v. Melendez*, 449 Mass. 34, 38 (2007). Applying the

[3] The Court notes that a police report was admitted into evidence as a business record through Sargent Kenny, keeper of records of the Springfield Police Department. The Court did not give weight to statements contained in the police report made by individuals who did not testify at trial.

civil preponderance of the evidence burden of proof, the Court concludes that it is more likely than not that Defendants' involvement in the transportation of loaded firearms and live ammunition without a license to be in possession of same constitutes "criminal activity" as that term is used in ¶ 23 of the Lease.

Criminal activity is not necessarily a material violation of the Lease, however. In this case, the criminal conduct must "threaten[] the health, safety or right to peaceful enjoyment of the premises by other residents." *See* Lease, ¶ 23(c)(6)(a). Defendants argue that even if the activity is deemed to be criminal for purposes of this eviction action, it occurred off the Property and too far away to threaten the safety of other residents at the Property. With respect to this issue, the Supreme Judicial Court has held that "certain criminal activity, such as assault by means of a dangerous weapon and armed robbery, is so physically violent, **or associated with violence**, that one who engages in it normally would pose a threat to, or reasonably inspire a significant level of fear on the part of, tenants forced to live in close proximity to the offending tenant." *Id.* at 39 (emphasis added).

In the *Melendez* case, the tenant assaulted and attempted to rob a patron of a convenience store approximately one mile from the housing development where the defendant lived. Although the Defendants in this case did not commit an act of violence, transporting loaded, stolen firearms, with more live ammunition in the car, is closely associated with violence and creates a very real and immediate possibility of serious injury to others. As the Court wrote in *Melendez*, "[i]t should not be necessary to wait until someone is hurt" to take steps to protect other residents of the Property. *Id.* The conduct of these Defendants, particularly as it was undertaken with their child in the car, demonstrates a clear risk of other unlawful conduct.

With respect to the proximity of the arrest to the Property, this is not a case where the criminal activity occurred in a particular physical location such as a convenience store. The arrest happened to occur approximately two and a half miles from the Property because that is where the car in which the Defendants were travelling was stopped by police. Defendants were driving, however, and could have been headed to the Property, which is a fair inference given that their child was in the car. Even if they were on their way to a different location at when the car was stopped, Defendants were likely planning to return home that day, possibly still in possession of a loaded firearm and live ammunition.

Based on the foregoing, the Court finds that Plaintiff has demonstrated facts necessary to establish its prima facie case that Defendants' actions constitute a material violation of the Lease. Although Defendants filed an answer to the complaint, each of the Defendants asserted their Fifth Amendment privilege against self-incrimination and elected not to testify at trial. They did not call any witnesses or introduce any evidence to contest Plaintiff's prima facie case.

Accordingly, based on the credible testimony and the evidence presented at trial, and the reasonable inferences drawn therefrom, it is hereby ORDERED that:

1. Judgment for possession shall enter for Plaintiff.
2. Execution for possession shall issue upon written application after expiration of the statutory appeal period.

SO ORDERED this 29th day of April 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. 20-SP-1692

MAPLE COMMONS,	)	
	)	
PLAINTIFF	)	
	)	
V.	)	**FINDINGS OF FACT, RULINGS**
	)	**OF LAW AND ORDER FOR**
VLAD GRINGAUZ,	)	**JUDGMENT**
	)	
DEFENDANT	)	

On April 7, 2021, this non-payment summary process case came before the Court for a video-conference trial. Plaintiff (sometimes referred to herein as the "landlord") appeared through counsel. Defendant (sometimes referred to herein as the "tenant") appeared in person and represented himself.[1]

As a preliminary matter, the Court finds that the tenant has not provided the landlord with a declaration as described in the Centers for Disease Control and Prevention's Temporary Halt in Evictions to Prevent Further Spread of COVID-19 (the "CDC Order"). The Court further finds that he does not satisfy the criteria for protection from eviction set forth in Chapter 257 of the Acts of 2020 ("Chapter 257") because he does not have a pending application for emergency rental assistance at this time.

Based on all the credible testimony and the other evidence presented at trial, the Court finds as follows:

[1] Mr. Gringauz has been unwilling to engage with the Tenancy Preservation Program or Community Legal Aid despite being provided with opportunities to do so. He is encouraged to reconsider and accept the help that these programs might able to provide.

The tenant lives at 24 High Street, # 122, Springfield, Massachusetts (the "premises"). The tenant has a project-based Section 8 subsidy and his monthly rent is set at 30% of his adjusted income. Currently, his monthly rent is $126.00. For January 2020 and February 2020, his rent was set at $789.00 (toward which the tenant paid $214.00) and for March it was set at $791.00 (toward which the tenant paid $695.00).[2] For April and May 2020, his rent was $0.00, and beginning in June 2020 to the present, his rent has been $126.00. The tenant has not made any payments since June 2020. The total balance of rent now due is $2,632.00. The landlord served the tenant with a legally sufficient 14-day notice to quit dated November 16, 2020 and filed this summary process action on December 15, 2020.

The tenant did not file an answer; however, at trial, he disputed the amount of rent that the landlord claims is due. He asserts that the landlord erroneously calculated his portion of the monthly rent for several months when he began working as a Lyft driver. The tenant provided his own calculations with different, lower figures. The Court finds that the difference can be attributed to the landlord's use of the tenant's gross wages and the tenant's use of net wages in calculating his adjusted income. The Court finds that the landlord properly certified the tenant's income using gross wages and properly calculated the amount of rent charged each month.[3]

Because he did not agree with the calculations and based on what he believes are inconsistencies and unsupported allegations of forged documents, the tenant refused to sign some of the necessary HUD-required paperwork for setting his rent and then simply stopped paying rent altogether after the last payment he made on March 27, 2020. Notably, the tenant does not

[2] The increase in monthly rent is attributable to the tenant's income as a driver for Lyft.

[3] Pursuant to 24 CFR § 5.609, the term annual income includes "the full amount, before any payroll deductions, of wages and salaries, overtime pay, commissions, tips and bonuses, and other compensation for personal services." Deductions may be made in determining adjusted income, but the starting point as correctly used by the landlord in this case is the total (gross) wages reflected in the Lyft records.

dispute the rental amount of $126.00 in effect since June 2020, yet he has not made a single payment. Although the Court understands that the tenant believes there are powerful forces allied against him, he has not asserted any legal defenses to the landlord's claim that he owes unpaid rent in the amount of $2,632.00 through the month of April 2021.

Accordingly, based on the credible testimony and the evidence presented at trial, and the reasonable inferences drawn therefrom, it is hereby ORDERED that:

1. Judgment shall enter for Plaintiff for possession and money damages for unpaid rent in the amount of $2,632.00, plus court costs.
2. Based on principles of equity, prior to the issuance of the execution (eviction order), Defendant shall be given an opportunity to pay the balance owed and retain his tenancy.[4] In order to streamline this process, on or before May 7, 2021, Defendant shall come to the Western Division Housing Court during business hours and shall be put in contact with a representative of Way Finders. He shall be offered the assistance of Court staff to ensure that he understands the steps he needs to take to obtain the rental assistance funds.
3. On or before May 5, 2021, and by the 5th of each month thereafter until further order of this Court, Defendant shall pay Plaintiff the amount of $126.00, representing the charge for his use and occupation of the Premises.
4. Defendant shall not harass, intimidate or threaten any employee of Plaintiff.

[4] Defendant has a project-based Section 8 subsidy for which many people wait years to get. Plaintiff represented that it is willing to reinstate the tenancy but requires the tenant to pay rent. Moreover, because of the COVID-19 pandemic, plentiful funds are available for tenants who owe rent arrears.

5. The parties shall return on May 19, 2021 at 10 a.m. for status on Defendant's application for rental assistance and Plaintiff's motion to issue the execution (eviction order). Defendant may appear in person at the courthouse for this event.

SO ORDERED this 29th day of April 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. 20-SP-1725

CHICOPEE HOUSING AUTHORITY,

PLAINTIFF

V.

WENDY HILLS,

DEFENDANT

ORDER FOR ISSUANCE OF EXECUTION

This for-cause summary process action came before the Court on April 27, 2021 by Zoom on a scheduled motion to issue execution. Defendant resides in a nursing home and did not appear. The Court-appointed guardian ad litem ("GAL"), Attorney Brown, completed the investigation requested at the prior hearing and reports that Defendant is not likely to return to the subject premises. He does not contest the issuance of the execution. He also reports that Defendant cannot offer any alternative for moving her belongings. Accordingly, the following order shall enter:

1. Execution for possession and damages in the amount of $2,770.00 will issue forthwith.
2. Plaintiff has agreed to pay for Defendant's belongings to be moved to storage pursuant to G.L. c. 239, §§ 3 and 4, as well as the first month of storage fees.
3. The GAL shall remain in place until after the levy has occurred for the limited purpose of informing Defendant and her social worker where the items are stored and how they might be retrieved.

9 W.Div.H.Ct. 110

SO ORDERED this 30th day of April 2021.

Jonathan J. Kane

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

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

CASE NO. 21-CV-246

CATHERINE "CD" LEFEBVRE,

Plaintiff,

v.

CAROLYNE HINKEL,

Defendant.

ORDER

After hearing on April 29, 2021 on the plaintiff's motion for injunctive relief, at which both parties appeared with counsel, the following order shall enter:

1. For the reasons stated on the record, the defendant landlord shall continue to provide alternate housing accommodations for the plaintiff tenant until further order of the court.

2. The landlord will investigate with the Town and others the possibility of making the subject premises habitable and safe and shall update counsel for the tenant on said investigation by no later than May 24, 2021.

3. The tenant shall maintain a log which documents their efforts to secure alternate housing and shall provide a copy of same to the landlord by no later than May 24, 2021.

4. This matter shall be scheduled for further hearing by zoom on **May 27, 2021 at 9:00 a.m**. The Clerk's Office shall provide the parties with instructions on how to appear at said hearing by Zoom. If either party wishes to present exhibits at this hearing they shall e-file same to the court and serve to the other party said exhibit(s) in a single filing so that all exhibits can be scrolled through in one document with each exhibit clearly identified by a number or letter. Counsel, shall also be prepared to utilize the "share screen" function in the Zoom platform, if at all possible, during the hearing.

So entered this 30th day of April, 2021.

Robert Fields

Robert Fields, Associate Justice (am)

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

CASE NO. 18-SP-5751

SANDRA MACFADYEN,

Plaintiff,

v.

CHRISTOPHER ALBANO,

Defendant.

ORDER

This matter came before the court on March 18, 2021 on the plaintiff's motion for entry of judgment and issuance of an execution for possession. After hearing, at which both parties appeared with counsel, the following order shall enter:

1. **Background:** The parties entered into an Agreement and filed same on November 8, 2019 (hereinafter, "Agreement"). The terms of the Agreement provided the defendant had a "first right" to purchase the subject premises located at 95 Woolworth Street in Longmeadow, Massachusetts (hereinafter, "premises"). In

paragraph #2 of the Agreement, the parties agreed that there would be an appraisal of the premises and that the defendant would be "exclusively permitted to purchase the premises by March 1, 2020 at the appraised value minus 2%." In paragraph #4, the parties agreed to return to court on or about March 1, 2020 at which time the defendant was "required to show that he has a firm commitment from a lender to purchase the premises." Further, the parties agreed that "[s]hould such commitment not be in place by this date, Plaintiff may requested [sic] an entry for possession only and shall not be permitted to use an execution prior to May 1, 2020..."

2. **Plaintiff's Motion for Enforcement of the Agreement and for Entry of Judgment for Possession:** The plaintiff now appears before the court and argues that because the defendant did not meet the requirements of the Agreement and still to this day does not have "firm commitment from a lender to purchase the premises" as required by paragraph #4 of said Agreement, judgment should enter for her for possession in accordance with said Agreement.

3. **Defendant's Defense to the Motion for Enforcement and Entry of Judgment**: The defendant does not dispute the fact that he does not have a commitment from a lender to purchase the property. His defense is that the appraisal did not take into consideration what he asserts are major deficiencies with the premises such as the existence of two underground oil tanks. Additionally, he asserts that he is unable to obtain financing from a bank due to the existence of the alleged oil tanks. Lasty, he argues that after bringing to the attention of the plaintiff the deficiencies in the appraisal for its failure to account for the alleged oil tanks, and making offers to purchase at a lower price, the plaintiff failed to act in good faith thereafter when she

chose to refuse the offer and require the price of $340,060 (2% lower than appraisal) as agreed to in the Agreement.

4. After consideration of the evidence admitted, including testimony, photographs, and email exchanges, the court finds and so rules that the defendant's arguments are insufficient to avoid the enforcement of the terms of the Agreement. The February 18, 2020 "Settlement Proposal" (hereinafter, "Offer") sought a purchase of the premises for a price of $225,000. Given the terms of the Agreement, to pay the appraisal price minus 2% (which came to $340,060), this would be a very significant departure from the terms reached in the Agreement. This is especially so given the inclusion by the defendant in his Offer that one aspect of the lower price offer was the relinquishing of his "one-third interest" in the property, a basis that has nothing to do with the alleged deficiency of the appraisal itself.

5. Much of the hearing was consumed by testimony and argument that there exist two oil tanks buried at the property. The parties agree that many years ago, sometime around the year 2000, an oil tank was removed from the basement of the property. Their dispute, at this time, is that the defendant argues that there are two additional tanks buried at the property. The entirety of the evidence in support of this assertion is that the defendant's father, Michael Albano, testified that he grew up in this house as a child and then spent a great deal of time at the house over his lifetime and has a very clear memory that there are two additional tanks buried at the property, besides the one that was removed.[1]

[1] The only other evidence purported to establish the existence of additional oil tanks are photographs of a single rusted pipe sticking out of the ground near a stone wall. There was no testimony from any witness definitively

6. The court also notes that prior to and after the December 19, 2019 appraisal, the defendant (through counsel or otherwise) nor his father informed the appraisal company that they thought the appraisal was flawed due to its failure to identify the issues with the allegedly buried oil tanks----or any of the other significant conditions that the defendant listed in the Offer referred to above. Also noteworthy is the defendant's failure, after the appraisal or even later when the Offer was rejected by the plaintiff, to file a motion in court prior to March 1, 2020 to alter the March 1, 2020 deadline in paragraph #4 of the Agreement, so as to pursue his concerns about the appraisal.

7. **Conclusion and Order:** Based on the foregoing, the plaintiff's motion is allowed and judgment for possession shall be entered for the plaintiff against the tenant.

So entered this 30th day of April, 2021.

Robert Fields, Associate Justice

Cc: Court Reporter

stating that this pipe is connected to an underground tank, and it appears to this judge more like a "vent" style pipe than a pipe through which to pump oil. Without a proper witness, the court has no idea what this pipe is connected to, if anything.

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

CASE NO. 19-SP-3729

MASON SQUARE APARTMENTS,

Plaintiff,

v.

VANESSA HERNANDEZ-CRESPO,

Defendant.

ORDER

ESTE DOCUMENTO CONTIENE INFORMACION IMPORTANTE. POR FAVOR, CONSIGA UNA TRADUCCION IMMEDIATAMENTE

This mater came before the court for hearing on April 28, 2021, on the landlord's motion for judgment, at which only the landlord appeared and the tenant did not appear, and the following order shall enter:

1. The landlord's motion for entry of judgment shall be continued to the date noted below so as to provide the tenant greater opportunity to engage in this process and access resources that may be available to pay the rental arrearage and prevent eviction.
2. The tenant should be aware that there are greater resources available during this COVID emergency to parties involved in evictions for both legal services as well as rental assistance.
3. There are various financial assistance programs related to COVID-19 that may be helpful to the tenant to pay the monies she owes to the landlord and avoid an eviction. Such programs include (but are not limited to): RAFT funds which can be reached on-line at **www.wayfindersma.org/hcec-assessment** or by phone at 413-233-1600.
4. Additionally, the Tenancy Preservation Program can assist with rental assistance applications and processes and can also help with individuals and families with mental health issues and can be reached at 413-233-5327.
5. Additionally, the federal government has generated an order that may have the effect of halting physical evictions if the tenant completes a CDC declaration and provides same to the landlord. The tenant may wish to obtain a copy of a CDC declaration to determine if the Temporary Halt in Residential Evictions to Prevent Further Spread of COVID-19, at 85 Fed. Reg. 55,292 (September 4, 2020) applies to her. If so, she should provide a copy of the declaration with her signature to the landlord and to the court.

6. The state government has also increased the availability of free legal assistance. The tenant should contact Community Legal Aid to see if she can access free legal assistance by calling 413-781-7814.
7. This matter shall be scheduled for hearing on **May 17, 2021 at 11:00 a.m.** The Clerk's Office shall provide the parties with instructions on how to appear for said event by Zoom. If the tenant has no means of attending by Zoom, she may contact the Clerk's Office to make arrangements to utilize the court's Zoom station for this event.

So entered this 30th day of April, 2021.

Robert Fields

Robert Fields, Associate Justice (Am)

COMMONWEALTH OF MASSACHUSETTS

HAMPDEN, SS

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 21-CV-186

POWDERMILL VILLAGE APTS,

PLAINTIFF

v.

YAMILETTE MENDEZ,

DEFENDANT

AMENDED ORDER FOR PRELIMINARY INJUNCTION

The parties appeared before the Court on April 30, 2021 by Zoom on Plaintiff's emergency motion for an order that Defendant immediately vacate the premises she occupies at Powdermill Village (the "Property"); namely, 126 Union Street, Building 11, Apartment 16, Westfield, Massachusetts (the "Premises"). Defendant, who did not appear for the initial hearing on the Plaintiff's application for a temporary restraining order or the subsequent hearing when the temporary restraining order was converted to a preliminary injunction, appeared with the assistance of the Lawyer for the Day program. After an evidentiary hearing, the following order shall enter:

1. The preliminary injunction entered following the April 22, 2021 hearing shall be modified as follows:
    a. Defendant shall not cause any damage to the Premises or to any other part of the Property;
    b. Defendant shall not cause unsanitary conditions at the Premises or at any other unit on the Property to which she may be relocated;

c. Defendant shall comply with the Property's pet policy.[1]

d. Defendant shall not create disturbances that interfere with the peaceful enjoyment of other residents at the Property;

e. Defendant shall not harass, intimidate or threaten any other person lawfully on the Property, including without limitation other residents and their guests and management and maintenance staff working at the Property.

f. Defendant shall not permit other individuals to reside at the Premises without the prior written consent of Plaintiff;

2. Plaintiff's employees may schedule weekly inspections of the Premises or any other unit on the Property to which Defendant is relocated. Defendant shall allow access for each these inspections. Both parties may document the inspections with photographs.

3. Defendant shall cooperate with the Tenancy Preservation Program ("TPP") and has agreed to meet with a representative today to complete the intake process and determine what services might be available to Defendant.

4. The parties shall return on the previously scheduled Zoom hearing date of **May 11, 2021 at 2:00 p.m.** for status review.

SO ORDERED this 3rd day of May 2021.

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

cc: Court Reporter

[1] Defendant stated on the record that she may make a reasonable accommodation request, and nothing in this order precludes her from making such a request.

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 21-SP-318

SPECTRA S1, LLC,
PLAINTIFF
v.
KIMALEXIS LUGO,
DEFENDANT

ORDER

DOCKET NO. 21-SP-319

SPECTRA S1, LLC,
PLAINTIFF
v.
SUZANNA RAMOS,
DEFENDANT

DOCKET NO. 21-SP-320

SPECTRA S1, LLC,
PLAINTIFF
v.
ADRIANNA TORRES,
DEFENDANT

DOCKET NO. 21-SP-621

SPECTRA S1, LLC,
PLAINTIFF
v.
YANIRA ALVAREZ,
DEFENDANT

DOCKET NO. 21-SP-623

SPECTRA S1, LLC,
PLAINTIFF
v.
ALEXIS DIAZ,
DEFENDANT

The five separate non-payment summary process matters captioned herein arise out of the same operative facts. Each of the defendants is a tenant at 52-54 Patton Street in Springfield, Massachusetts. Each of the defendants was served with a Summary Process Summons and Complaint (hereinafter referred to as the "writ") by Constable Ruben Roberto and each of the defendants seeks to dismiss their respective case on the basis that service was made less than the minimum seven days that is required between service of the writ and the entry date by which the case is commenced. *See* Uniform Summary Process Rule 2(b) ("Service of a copy of a properly completed Summary Process Summons and Complaint shall be made on the defendant no later than the seventh day nor earlier than the thirtieth day before the entry day..."). The entry date must be a Monday, so the last day for service of the writ is the Monday prior to the entry date. In each instance (with one exception discussed later), the plaintiff filed returns of service with the electronic signature of Constable Roberto attesting, under the pains and penalties of perjury, that the writs were served on a Monday, and in each case, the defendant testified that service was actually made on a Tuesday.[1]

Constable Roberto testified that, with respect to each of the five cases herein, he was asked to complete the service by an Essex County constable, Michael Cataldo. He said that after he completed service, he relayed the information to Constable Cataldo, who would then fill in the return of service and affix Constable Roberto's electronic signature on it. In one instance, in the matter involving Defendant Torres, Constable Cataldo erroneously inserted his own electronic signature on a return of service completed by Constable Roberto. When this error came to light in Defendant Torres' motion to dismiss, the plaintiff filed a motion to allow the

[1] The last day for service on Defendants Lugo, Ramos and Torres was Monday, January 11, 2021, and the last day for service on Defendants Alvarez and Diaz was Monday, February 1, 2021.

filing of a corrected return of service.[2] The Court infers from Constable Roberto's testimony that he did not review the completed returns of service for accuracy before Constable Cataldo transmitted the returns to plaintiff's counsel.

The procedure followed by Constable Roberto is problematic in cases like these where service is challenged. Constable Roberto did not complete the returns of service himself, sign them himself and, apparently, did not proofread them after they were completed, despite having Constable Cataldo affix his electronic signature under the pains and penalties of perjury. He produced no contemporaneous record of the work he performed, nor did he have any way of confirming the details of service that he reported to Constable Cataldo. The second-hand production of the returns allows for mistakes to occur in not only the reporting of events from one constable to the other but also in the recording of the times and dates in the return itself by someone other than the person effectuating service.

In the cases at issue here, the returns do not recite the precise time of service. Including the other cases of which the Court takes judicial notice at the request of the defendants (all of which involve the same plaintiff and other tenants at 52-54 Patton Street),[3] Constable Roberto attests to serving four separate apartments in the building at 3:00 p.m. on January 11, 2021 and six separate apartments in the building at 1:30 p.m. on February 1, 2021. Constable Roberto concedes that the times included on the returns of service were "approximate" times, although the returns do not use that word.[4] All five of the defendants testified that they were served with process on a Tuesday, not on a Monday, and testified credibly about why the remembered the specific day they were served. In three of these five cases (and in several other cases of which

[2] The Court takes no action on the motion in light of this order.
[3] The other cases are 21SP321, 21SP622, 21SP624, 21SP658 and 21SP659.
[4] To be clear, the Court does not condone using approximate times in returns of service.

the Court took judicial notice listed in footnote 3), tenants at 52-54 Patton Street sent emails to Community Legal Aid on the day they were served with a writ, and, in each case, the date was a Tuesday. Based on the testimony of the defendants in these cases and the evidence presented to the Court, the Court concludes that service was untimely in each of the five above-captioned matters.

For the foregoing reasons, the Court hereby ALLOWS each of the defendants' respective motions to dismiss.

SO ORDERED this 3rd day of May 2021.

Jonathan J. Kane

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

COMMONWEALTH OF MASSACHUSETTS

FRANKLIN, SS

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 20-SP-802

KEVIN BLACKWOOD,
Plaintiff

v.

TAHIRAH C. MCKINNON,
Defendant

ORDER TO STOP EVICTION

This case came before the Court on May 3, 2021 by Zoom for hearing on the tenant's motion to stop a physical eviction. Both parties appeared, and the tenant was represented by Attorney Fonseca through the Lawyer for the Day program. After hearing, the following Order shall enter:

1. **The eviction scheduled for May 4, 2021 shall cancelled** and, because of the tenant's declaration under the CDC Order, it shall not be rescheduled prior to the expiration of the CDC eviction moratorium (currently scheduled for June 30, 2021).
2. The tenant must pay $300.00 to the landlord (if by mail, postmarked) by May 6, 2021 to reimburse the landlord for non-refundable cancellation fees.
3. The tenant is responsible for monthly use and occupancy (in the amount of $1,200.00, representing the agreed-upon rent) each month, beginning in May 2021.
4. The tenant did not have any proof that she has applied for emergency rental assistance, but if she has applied, or if she applies in the future, the landlord shall provide the documents required by the RAFT program (typically including, but not necessary limited to, a rent ledger, proof of property ownership and email contact information).
5. Within seven days, the landlord shall inspect or have contractors inspect the appliances and a window identified by the tenant as faulty, and the landlord shall arrange to have repairs made as needed. The tenant shall allow access for inspection and repairs on 24-hours' advance notice.

6. The landlord shall be entitled to a new execution by written application (without need for a hearing), provided that (a) he has returned the original execution now with the deputy sheriff or constable to the court, (b) he files a First Amended Plaintiff's Affidavit Regarding CDC Order, and (c) the execution may not be used to schedule a physical eviction before the expiration of the CDC eviction moratorium and/or before any pending application for rental assistance has been approved or denied as set forth in Chapter 257 of the Acts of 2020.

SO ORDERED

DATE: 05/04/21

By: Jonathan J. Kane
Jonathan J. Kane, First Justice

Date Filed: 5/3/2021 8:27 AM
Housing - Western
Docket Number: 19H79CV000739

Commonwealth of Massachusetts
THE TRIAL COURT

BERKSHIRE SS: HOUSING COURT DEPARTMENT
WESTERN DIVISION

CITY OF PITTSFIELD, BOARD OF HEALTH,
PLAINTIFF
vs.

DOCKET NO.: 19H79CV000739

THE ESTATE OF DONNA M. TROTTIER
PATRICK S MAYNARD
LINDA LAM
CITY OF PITTSFIELD DEPARTMENT OF COMMUNITY DEVELOPMENT
DEFENDANTS

Re: 41-43 Burbank Street, Pittsfield, MA 01201

ORDER

After a Zoom hearing on May 3, 2021, at which the City of Pittsfield, Board of Health, appeared through counsel and at which the Receiver, Anthony Witman of Witman Properties, Inc. appeared through counsel, the following order shall enter:

1. The City of Pittsfield Board of Health filed this action on or about August 19, 2019 seeking the appointment of a receiver for premises located at 41-43 Burbank Street in Pittsfield Massachusetts.
2. 41-13 Burbank Street is a vacant side by side duplex built around 1900 with approximately 2,700 square feet of living space. It became blighted and was abandoned when the owner, Donna M. Trottier passed away on January 2, 2019. Her two heirs, Patrick S. Maynard and Linda M. Lam, disclaimed any interest in the property.
3. This Court issued an order appointing Anthony Witman, President of Witman Property, Inc. as Receiver.

4. The Receiver filed a petition for Formal Probate (Docket Number BE19O081EA) in the Berkshire County Probate Court seeking a formal adjudication of heirs. The Probate Court allowed the Receiver's Petition.
5. The Receiver's Rehabilitation Plan dated December 28 , 2019 and approved by the Court on April 9, 2020 estimated the costs of rehabilitation to be between $142,150.00 and $176,300.00 including estimated overhead costs and expenses.
6. The Receiver filed an amended Rehabilitation Plan dated August 28 , 2019 which was approved by the Court on September 10, 2020. The Receiver's amended Rehabilitation Plan revised the estimated the costs of rehabilitation to between $156,150.00 and $192,350.00 including estimated overhead costs and expenses.
7. On April 16, 2021, the Receiver filed a Motion to Amend Rehabilitation Plan seeking to revise and increase the estimated costs of rehabilitation from the estimate approved by the Court on September 10, 2020 of $156,150.00 - $192,350.00 to a new estimate of $240,000.00 - $250,000.00 due to the increased cost of labor and material.
8. The City of Pittsfield assents to the Receiver's Motion to Amend the Rehabilitation Plan and the Court hereby approves the Receiver's Amended Rehabilitation Plan.
9. The Receiver's Report dated April 15 , 2021 documented $13,949.00 in new expenses and costs, bringing the Receiver's asserted lien to $194,374.00 through April 15, 2021.
10. Since the date of the last Receiver's report, the Receiver has complete the following:
    - Installation of 2 new gas services with piping for 2 new boilers;
    - Installation of 2 new stainless steel chimney liners and repair outside of chimney;
    - Ongoing inspections and grounds keeping.
11. The City has reviewed the Receiver's report for accuracy and found the documentation to support the lien acceptable.
12. Prior to July 31, 2021 and as set forth in its Report, the Receiver anticipates completing the following work:
    - Test and repair heating systems:
    - Install new siding (subject to weather)
    - Install interior trim, cabinets and fixtures in kitchens and bathrooms
    - Finish painting the interior;
    - Complete floor replacement;

- Install appliances;
- Clean and make market ready;
- Market for rent if Court approval is first obtained.

13. The Receiver anticipates completing the renovations on or before July 31, 2021.
14. The parties agree the Receiver's next Report shall be filed and served by 6/30, 2021.
15. The City shall inspect the property and be prepared to report on the progress on the work at the next Review Hearing.
16. This matter shall be scheduled for Review Hearing on 7/12, 2021 at 9 a.m. by Zoom and the Court shall send out Zoom instructions.

Date: May 4th, 2021

Jonathan J Kane
First Justice

Date Filed: 5/3/2021 8:31 AM
Housing - Western
Docket Number: 19H79CV000654

Commonwealth of Massachusetts
THE TRIAL COURT

BERKSHIRE SS: HOUSING COURT DEPARTMENT
WESTERN DIVISION

CITY OF PITTSFIELD, BOARD OF HEALTH,
PLAINTIFF

vs.

DOCKET NO.: 19H79CV000654

SILVER HILL PROPERTIES, LLC
CAROL M. FALCONE, MANAGER
OWNER OF 30 Division Street, Pittsfield
Massachusetts and US BANK as
custodian for TOWER DB VIII 2018-1
a party with an interest in the subject property
whose business address is 50 South 16th Street,
Suite 2050, Philadelphia, PA
DEFENDANTS

Re: 30 Division Street, Pittsfield, MA 01201

ORDER

After a Zoom hearing on May 3, 2021, at which the City of Pittsfield, Board of Health, appeared through counsel, at which the Receiver, Witman Properties, Inc. appeared through counsel, and at which Carol M. Falcone, manager of Silver Hills Properties LLC did not appear, the following order shall enter:

1. The Order for Appointment of Receiver dated September 24, 2019 is hereby further amended to extend the appointment of the Receiver through the completion date of the rehabilitation, which is anticipated to be by August 31, 2021, or for such time as further ordered by this Court.
2. The property located at 30 Division Street in Pittsfield, Massachusetts is a vacant 4-unit multifamily dwelling. Prior to the Receiver securing the property, it had been vandalized. The property was is a state of disrepair and was in need of a complete renovation.

3. The Receiver's Rehabilitation Plan dated December 28, 2019 and approved by the Court on January 30, 2020 estimated the costs of rehabilitation to be between $179,000.00 and $213,850.00 including estimated overhead costs and expenses.
4. On June 4, 2020, the Court approved the Receiver's Motion for Authorization to borrow funds from Chelsea Restoration Corporation In the approximate amount of $150,000.00.
5. The Receiver's Report dated April 16, 2021 documented $10,541.49 in new expenses and costs, bringing the Receiver's asserted lien to $115,733.49 through April 16, 2021. The City has reviewed the Receiver's report for accuracy and found the documentation to support the lien acceptable.
6. Prior to June 30, 2021 and as set forth in its Report, the Receiver anticipates completing the following work;
   - Obtain building permit;
   - Continue interior finish work and flooring;
   - Install cabinets and fixtures in kitchen and bathrooms;
   - Complete rough electrical and plumbing repairs;
   - Complete general repairs to exterior;
7. Prior to August 31, 2021 and as set forth in its Report, the Receiver anticipates completing the following work;
   - Complete installation of cabinets and fixtures in kitchen and bathrooms;
   - Complete installation of new gas line and repair heat;
   - Finish/replace floors;
   - Complete general repairs to exterior
   - Install appliances;
   - Clean and make ready;
   - Market for rent;

8. The parties agree the Receiver's next Report shall be filed and served by 6/29, 2021.
9. The City shall inspect the property and be prepared to report on the progress of the work at the next Review Hearing.

Date Filed: 5/3/2021 8:31 AM
Housing - Western
Docket Number: 19H79CV000654

10. This matter shall be scheduled for Review Hearing on 7/12, 2021 at 9:30 a.m. by Zoom and the Court shall send out Zoom instructions.

Date: May 4th 2021

Jonathan J Kane
First Justice

COMMONWEALTH OF MASSACHUSETTS

HAMPSHIRE, SS

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 19-SP-4881

DAVID TRAN,
Plaintiff

v.

PATRICK VEISTROFFER ET AL,
Defendants

ORDER TO STOP EVICTION

This case came before the Court on May 3, 2021 by Zoom for hearing on Defendants' motion to stop a physical eviction. Plaintiff appeared through counsel and Defendant Claudine Veistroffer appeared and represented herself. Ms. Veistroffer represented to the Court that Defendants have a signed lease for an apartment with a commencement date of June 1, 2021. After hearing, the following Order shall enter:

1. Plaintiff shall cancel the eviction scheduled for May 5, 2021 if Defendants deliver a cashier's or bank check to the office of Attorney Albano by 2:00 p.m. on May 4, 2021. If payment is made, it shall be applied first to non-refundable cancellation fees with the balance applied for use and occupation of the premises for the month of May 2021. If payment is not made as required herein, the eviction does not need to be cancelled.
2. Plaintiff may reschedule the physical eviction to occur after June 1, 2021.
3. Defendants shall not be entitled to any further stays.
4. If the execution previously issued expires prior to the rescheduled eviction date, Plaintiff may renew it by returning the old one without need for further hearing.

SO ORDERED

DATE: 5/4/21

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