SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

DISTRICT OF COLUMBIA	:	**Case No. 2021 CA 002209 B**
Plaintiff,	:	
	:	
v.	:	**Judge Heidi M. Pasichow**
	:	
VANTAGE, *et al.*,	:	
Defendants.	:	

ORDER (1) GRANTING CONSENT MOTION FOR ENTRY OF CONSENT ORDER (2) DENYING AS MOOT PLAINTIFF DISTRICT OF COLUMBIA'S OPPOSED MOTION FOR PRELIMINARY INJUNCTION, (3) GRANTING DEFENDANT VANTAGE MANAGEMENT'S OPPOSED MOTION TO DECLARE DISTRICT'S OPPOSED MOTION FOR PRELIMINARY INJUNCTION MOOT AGAINST VANTAGE MANAGEMENT, (4) HOLDING DEFENDANT VANTAGE'S OPPOSED MOTION FOR A PROTECTIVE ORDER IN ABEYANCE, (5) HOLDING DEFENDANT MP PPH, LLC'S MOTION FOR PROTECTIVE ORDER IN ABEYANCE, AND

This matter comes before the Court based on (1) the parties' Consent Motion for Entry of Consent Order ("Consent Motion"), filed February 1, 2022; (2) Plaintiff District of Columbia's ("District") Opposed Motion for Preliminary Injunction ("PI Motion"), filed July 20, 2021; (3) Defendant Vantage Management's ("Vantage") Opposed Motion to Declare District's Opposed Motion for Preliminary Injunction Moot Against Vantage Management ("Moot Motion"), filed November 1, 2021; (3) Defendant Vantage's Opposed Motion for Protective Order ("PO Motion"), filed November 29, 2021; and (5) Defendant MP PPH, LLC's ("MP PPH") Motion for Protective Order ("PO Motion"), filed December 9, 2021. All parties are represented by counsel.

I. Background

On July 1, 2021, the Office of the Attorney General for the District of Columbia initiated this action against Defendant MP PPH, LLC and Defendant Vantage Management, Inc. for violations of the Consumer Protection Procedures Act ("CPPA") and unlawful trade practices arising from numerous housing code violations. The alleged violations center around Marbury

Plaza, a 674-unit apartment complex constructed in 1968, located in the Anacostia neighborhood around 2300-2330 Good Hope Road, SE, Washington, DC 20020. Marbury Plaza consists of nine buildings, two eleven-story towers, and seven garden-style buildings.

Plaintiff District of Columbia has brought this action to enforce provisions of the Tenant Receivership Act ("TRA") and the CPPA. Defendant MP PPH, LLC is a corporation that purchased Marbury Plaza in June of 2015. Defendant Vantage Management, Inc. is a property management company hired to manage the property in April of 2015. Plaintiff District of Columbia has alleged numerous violations of Housing and Property Maintenance Codes that impact the health, life, safety, and security of tenants. In Plaintiff District of Columbia's Complaint, hundreds of code violations were alleged to have occurred, including: mold; fire and safety issues; electrical issues; heating, cooling, and ventilation issues; pest and bed bug infestations; failures to provide disability services; malfunctioning elevators; discrimination against housing voucher holders and; false advertising non-existent amenities.

II. Analysis

On July 20, 2021, Plaintiff District filed an Opposed Motion for Preliminary Injunction. In that Motion, Plaintiff District alleged the same violations as it alleged in its Complaint, namely systemic violations of the D.C. Housing Code, false advertising of amenities, failures to provide accessibility features, discriminatory housing policies, as well as violations of the CPPA and TRA. PI Mot. at 1. Plaintiff District's Motion asked this Court to compel Defendants to conduct full property assessments for mold, plumbing, HVAC, elevators, electricals, and general property safety assessments. *Id.* Further, the Motion required Defendants to provide Plaintiff District with reports from those assessments as well as relocate affected tenants. *Id.* On August 20, 2021, Defendant Vantage filed its Opposition to Plaintiff District's Motion for Preliminary injunction

and argued that Plaintiff District had not demonstrated by clear and convincing evidence that the relief it seeks is justified by facts or law, nor has it demonstrated a likelihood of success to justify the "sweeping relief" it sought. Vantage Opp. at 1. On August 24, 2021, Defendant MP PPH filed its Opposition to Plaintiff District's Motion for Preliminary Injunction and argued that due to the contracts entered into by Defendant Vantage with MP PPH's approval, the relief requested by Plaintiff District has already been obtained, thus obviating the need for an injunction. MP PPH Opp. at 2. Further, Defendant MP PPH argued that Plaintiff District's request is not supported by the record as the "extent of the inspections" are insufficient to support the "extraordinary relief" Plaintiff District sought, and adopted Defendant Vantage's arguments they asserted in their Opposition. *Id.*

On November 1, 2021, Defendant Vantage filed its Opposed Motion to Declare the District of Columbia's Opposed Motion for Preliminary Injunction Moot Against Vantage Management, Inc. In that Motion, Defendant Vantage argued that it no longer managed the Marbury Plaza Apartments as Defendant MP PPH, LLC has hired a new management company. Moot Mot. at 1. Defendant Vantage stated that it now has neither the ability nor the right to enter the property and cannot make any corresponding repairs, and as such, the relief Plaintiff District sought is moot against Defendant Vantage. *Id.* On November 8, 2021, Plaintiff District filed a Praecipe consenting to Defendant Vantage Management's Opposed Motion to Declare District's Opposed Motion for Preliminary Injunction Moot Against Vantage Management.

On November 29, 2021, Defendant Vantage filed a Motion for Protective Order and argued that in the course of this litigation, it has produced approximately 51,000 pages of documents, some of which have been marked "CONFIDENTIAL." PO Mot. at 2. These documents have been so marked because they contain either (1) identifying information of third parties (i.e., tenants);

(2) these documents relate to confidential business and/or important proprietary information belonging to Defendant Vantage; and (3) if these documents were to be produced, these documents would cause harm to Defendant Vantage and/or they would lose a competitive advantage. Defendant Vantage argued that disclosure of these documents to third parties would expose a litany of identifying and private information of tenants, such as Social Security numbers, addresses, etc. *Id.* at 3-4. Disclosure of these documents to Plaintiff District could render these confidential documents susceptible to Freedom of Information Act ("FOIA") requests, thus damaging Defendant Vantage by sharing discreet business practices and proprietary information with its competitors. *Id.*

On December 9, 2021, Defendant MP PPH LLC joined Defendant Vantage's Motion for Protective Order in full and adopted Defendant Vantage's arguments by reference.

On December 13, 2021, Plaintiff District filed its Opposition to Defendants Vantage and MP PPH LLC's Motions for Protective Orders. In that Opposition, Plaintiff District argued that Defendant Vantage wishes to keep these confidentially-marked documents away from law enforcement agencies, despite the fact that law enforcement agencies could agree to be bound by a protective order. Opp. at 3. Plaintiff District argued that Defendant Vantage's position would allow a protective order to prevent the District or the Attorney General from disclosing evidence of criminal behavior to law enforcement agencies and that prevention is at odds with the public interest. *Id.* Next, Plaintiff District addressed Defendant Vantage's argument that confidential information should remain protected from FOIA requests. *Id.* at 5. Plaintiff District agreed that confidential information such as third-party information and identifying information for tenants would be shielded from FOIA requests. *Id.* Further, proprietary business information is already shielded from the public and is protected from FOIA requests as per the District of Columbia's

FOIA statute, D.C. Code § 2-534(a)(2) (exempting "information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy"). *Id.* at 6. Plaintiff District specifically discussed that Defendant Vantage's proposed protective order would require the District to give notice and opportunity to be heard, should the District receive a FOIA request for information marked "CONFIDENTIAL." Finally, Plaintiff District proposed that for documents marked "CONFIDENTIAL" that might be on the public docket, the filing party could redact information from those documents that appear on the public record, and provide Plaintiff District an unredacted copy filed under seal. *Id.* at 7. Plaintiff District conceded that this would shift the burden from the District to the Defendants as the Defendants would have to file motions to seal documents and allow the Court to weigh the potential harm from disclosure against the public interest of having the documents disclosed to the public. *Id.* at 8.

On December 17, 2021, Defendant Vantage filed a Reply in Support of Motion for Protective Order, disputing Plaintiff District's characterization of information-sharing with law enforcement agencies. Reply at 1. Defendant Vantage argued that numerous federal circuit decisions uphold Defendant Vantage's position and that Plaintiff District could extort settlements out of civil defendants by lording criminal liability over their heads. *Id.* at 2-3. Further, information gathered by law enforcement agencies must adhere to stringent criminal processes and Plaintiff District wishes to circumvent them by endorsing an unrestricted policy of sharing information. *Id.* at 3. Next, Defendant Vantage argued that FOIA requestors could be Defendant Vantage's competitors and likely have no public interest in those documents, but rather seek to harm Defendant Vantage's competitive advantage. *Id.* at 4. Defendant Vantage cited Plaintiff District's argument and acknowledged that the District, rather than Defendant Vantage, would be better situated to determine whether a FOIA exemption applied, however, the District would not be in a

position to judge what documents of Defendant Vantage's are confidential in nature, such as proprietary business information. *Id.* at 5. Finally, regarding the burden-shifting, Defendant Vantage pointed out that should Defendant Vantage or Defendant MP PPH, LLC overlook the need to file a motion to seal any document, that document remains unsealed. *Id.* This would unreasonably create further expense and undue stress on Defendants by shifting the burden that should fall on the party seeking to affirmatively unseal a document or disclose it. *Id.*

January 28, 2022 Hearing

On January 28, 2022, the parties convened for a status hearing whereby the proposed Consent Order and pending motions were discussed and resolved by the Court, with the exception of the Motion for Protective Order. The parties discussed that the proposed Consent Order moots Plaintiff District's Motion for a Preliminary Injunction as to Defendant MP PPH as the proposed Consent Order directs Defendant MP PPH actions. The Motion for a Preliminary Injunction is also mooted as to Defendant Vantage as a Praecipe was filed by the District on November 8, 2021 consenting to granting Defendant Vantage's Motion to Declare District's Opposed Motion for Preliminary Injunction Moot Against Vantage Management because Defendant Vantage is no longer the manager of the property. The parties argued in support of their positions contained within the filings. The parties agreed that, in relation to the outstanding Motion for a Protective Order and subsequent pleadings, as discussed above, three issues remained to be resolved: (1) disagreement about law enforcement agency information sharing; (2) disagreement about FOIA requests and what effect a potential Protective Order would have; and (3) disagreement about the burden of protecting confidential information.

Although the Plaintiff and the Defendants disagreed about some aspects of the Motion for Protective Order, they agreed to discuss a joint proposal for a protective order that would notify

the Defendants if any FOIA production occurs and which documents would be produced. With regard to the dispute about what information would and could be shared with law enforcement agencies, the parties clarified that the protective order would only apply to documents marked "CONFIDENTIAL" and that a vast majority of documents would not be protected under any potential protection order. The parties agreed that there are Constitutional implications to consider regarding sharing of information with law enforcement, such as the Warrant Clause of the Constitution and Plaintiff District assured Defendants and the Court that private information about tenants would not be provided to law enforcement. Finally, with regard to the burden shifting, the parties discussed whether filing the documents under seal would or could inundate the Court with unnecessary litigation as well as whether it would drain valuable resources from both Defendants and Plaintiff District. The Court assured the parties that it will take the matter of the Motion for Protective Order under advisement, holding those motions in abeyance until after the Court enters the parties' Consent Order. Further, pursuant to the parties' representations that they were close to reaching agreement on what a proposed protective order might include, the Court urges the parties to continue discussions and either submit a joint proposed protective order or a joint praecipe updating the Court, prior to the March 29, 2022 Mediation currently scheduled for 9:00 am as ordered by the Court. The joint praecipe or joint protective order should be filed on or before March 22, 2022.

The Court granted the parties' Motion to Enter the Consent Order filed on January 4, 2022 and recited in detail below and ordered the parties to attend a mediation scheduled for March 29, 2022 at 9:00 am. Further, the Court set a Status Hearing so that the Court may hear from both parties regarding the status of the litigation on April 5, 2022 at 9:30 am. As further noted below, the Consent Order includes a request for a Status Hearing no later than 150 days after issuance of

the Consent Order.

Consent Order

In the parties' Consent Order, filed January 4, 2022, the parties represented that the District filed a Complaint for violations of the Tenant Receivership Act and the Consumer Protection Procedures Act against MP PPH and Vantage Management, Inc., the owner and onsite manager, respectively, of the Marbury Plaza Apartments, located at 2300–2330 Good Hope Road, Southeast, Washington DC ("the Property"). Consent Order at 1. Defendant MP PPH has denied liability and interposed defenses. *Id.* Vantage Management has given MP PPH notice, effective October 31, 2021, that it is withdrawing as the Property's onsite manager. *Id.* MP PPH is willing, upon the terms and conditions set forth in the District and Defendant MP PPH's Consent Order, to assess and remediate the Conditions.

Accordingly, the Court will grant the Consent Motion for Entry of Consent Order and deny as moot Plaintiff District of Columbia's Opposed Motion for Preliminary Injunction, per the parties joint proposed Consent Order. Further, the Court grants Defendant Vantage's Opposed Motion to Declare Plaintiff District's Opposed Motion for Preliminary Injunction Moot Against Vantage Management, as per the November 8, 2021. Defendants' Vantage and MP PPH's Motions for Protective Order are held in abeyance, pending the entry of the Consent Order, as discussed above, as well as the parties' discussions at the January 28, 2022 hearing where the parties represented that they are continuing resolution of the issues surrounding the submission of a proposed protective order.

For updates on DC Superior Court's available resources and protocol in handling the ongoing coronavirus please continue to check: https://www.dccourts.gov/coronavirus.

It is this 2nd day of March 2022 hereby,

FURTHER ORDERED that the Plaintiff District's Consent Motion for Entry of Consent Order is **GRANTED**; it is,

ORDERED that Plaintiff District of Columbia's Opposed Motion for Preliminary Injunction is **DENIED AS MOOT**; it is,

FURTHER ORDERED that Defendant Vantage Management's Opposed Motion to Declare District's Opposed Motion for Preliminary Injunction Moot Against Vantage Management is **GRANTED**; it is,

FURTHER ORDERED that Defendant Vantage's Opposed Motion for a Protective Order is **HELD IN ABEYANCE**; it is,

FURTHER ORDERED that Defendant MPP PPH, LLC's Motion for Protective Order is **HELD IN ABEYANCE**; it is,

FURTHER ORDERED that the parties submit a proposed Joint Protective Order or a Joint Praecipe updating the Court on the status of the parties' Protective Order negotiations, they shall do so on or before **March 22, 2022.**

FURTHER ORDERED that the parties **SHALL APPEAR for Mediation on March 29, 2022 at 9:00 am**; it is,

FURTHER ORDERED that the parties **SHALL APPEAR for a Status Hearing on April 5, at 9:30 am in virtual Courtroom 516**; it is,

FURTHER ORDERED that, per the Consent Motion for Entry of Consent Order adopted by the parties, the parties **SHALL APPEAR for a Status Hearing on June 17, 2022 at 10:30 am in virtual Courtroom 516**; and it is,

FURTHER ORDERED that Plaintiff District of Columbia and Defendant MP PPH, LLC **CONSENT ORDER** is **GRANTED AS FOLLOWED:**

WHEREAS, on or about July 2, 2021, the District filed a Complaint for Violations of the Tenant Receivership Act and the Consumer Protection Procedures Act against MP PPH and Vantage Management, Inc. ("Vantage"), the owner and onsite manager, respectively, of the Marbury Plaza Apartments, a residential apartment complex located at 2300-2330 Good Hope Road, SE, Washington, DC (the "Property");

WHEREAS, MP PPH has denied liability and interposed defenses;

WHEREAS, on or about July 20, 2021, the District filed an Opposed Motion for a Preliminary Injunction seeking to compel MP PPH and Vantage to assess and remediate certain alleged conditions at the Property (the "Conditions");

WHEREAS, Vantage has given MP PPH notice, effective October 31, 2021, that it is withdrawing as the Property's onsite manager; and

WHEREAS, MP PPH is willing, upon the terms and conditions set forth herein, to assess and remediate the Conditions.

NOW, THEREFORE, in accordance with the foregoing, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and without admission of any fact, fault, or liability, the Parties agree as follows:

1. Effective November 1, 2021, MP PPH has replaced Vantage as MP PPH's onsite manager of the Property with TM Associates Management, Inc. ("TM Associates"), a management company that is (1) licensed to do business in the District of Columbia; (2) experienced in managing multi-family residential housing complexes. and (3) has not been the subject of significant litigation concerning housing conditions. If MP PPH should replace TM

Associates with another management company at any time during the pendency of this litigation, MP PPH shall ensure that such company: (a) is licensed to do business in the District of Columbia; (b) is experienced in managing multi-family residential housing complexes and (c) has not been the subject of significant litigation concerning housing conditions.

2. Within thirty (30) days of the Effective Date, MP PPH shall:

    a. Per the agreement with KenMORE Pest Control and Termite Services, complete the extermination work in 100% of the Property's units and selected common areas, as well as perform exclusion treatments to prevent the ingress and egress of rodents, insects, and vermin from the Property, in compliance with District of Columbia law. KenMORE will continue to provide monthly treatments of the Property's units and selected common areas for at least (6) months and continue to provide monthly treatments for living units who request service thereafter.

    b. Provide the District with the current schedules for security officers at the Property.

3. Within thirty (30) days of the Effective Date, MP PPH shall, through a licensed professional, conduct a full assessment of:

    a. all plumbing at the Property including water infiltration issues, water heating issues, and any drywall work that are found as a result of the inspection.

    b. the Property's HVAC systems.

    c. the Property's elevators and chairlifts.

    d. all living units, unoccupied units, and common areas for mold.

    e. all living units, common areas, and outdoor areas for electrical hazards and

fire and safety hazards.

f. the sufficiency of exterior lighting throughout the Property.

4. Within thirty (30) days of the Effective Date, MP PPH shall also cause TM Associates to:

a. certify in writing that it has been trained on fair housing practices in the District of Columbia, including the prohibition on discrimination based on source of income.

b. provide the Property's tenants with the protocols for complaints, maintenance requests, meetings with management, and unit inspections.

5. Within sixty (60) days of the Effective Date, MP PPH shall complete the items below:

a. Fully resolve all Notices of Infraction ("NOIs") issued by the District's Department of Consumer and Regulatory Affairs ("DCRA") which, as of the Effective Date, are set for hearing before the District's Office of Administrative Hearings ("OAH"), and furnish evidence thereof to the District in such form and substance as is regular for the business before the OAH.

b. Complete all CTI inspection repairs.

c. Secure all points of entry to all buildings on the Property so only those with key access may enter the Property.

i. Add access control readers and electronic locks at exterior door locations currently without controls:
- 2300 – two exterior doors
- 2330 – two exterior doors

ii. Add CCTV cameras at new access control doors:
- 2300 two cameras
- 2330 two cameras

iii. Integrate access system to record guard tours to insure that all exterior doors are patrolled 2 to 3 times per night shift:
- Add door controls at each exterior door to give audible alarm at the door

- Add an alarm indication on the access system main desk computer if door is propped open.

d. Install and maintain security cameras in all laundry rooms at the Property.

e. Ensure exterior lighting throughout the Property is sufficient pursuant to the assessment in Paragraph 3.

f. Ensure that all laundry facilities in the Property are operational.

g. Maintain a number of hours and schedule of security personnel pursuant to the existing Security Contract.

h. Permit a representative of the Metropolitan Police Department to assess the adequacy of revised security measures including, but not limited to, exterior lighting, unauthorized access to the Property, and number and type of security incidents. The Parties shall convene to discuss those findings, as well as tenant feedback.

6. Within ninety (90) days of the Effective Date, MP PPH shall:

a. Complete the mold remediation work in the units found by Arrowhead Environmental Consulting to contain mold, as set forth in the agreement between MP PPH and Boston Environmental and Contracting, Inc.

b. Complete the mold remediation work, as identified by the assessment outlined in Paragraph 3 above, of all other living units, unoccupied units, and common areas at the Property. The mold assessor shall adhere to lead paint remediation protocols during remediation.

7. Within one hundred twenty (120) days of the Effective Date, MP PPH shall complete the items below:

a. Remediation of all HVAC issues identified during the assessment outlined in Paragraph 3 above, including replacement of HVAC systems where necessary.

b. Remediation of all plumbing issues identified during the assessment outlined in Paragraph 3 above.

c. Remediation of defects with the Property's elevators and chairlifts, as identified during the assessment outlined in Paragraph 3 above, and, to the extent the assessment deems replacement of elevators or chairlifts to be necessary, engage a contractor to do that.

d. Remediation of all electrical hazards and fire and safety hazards identified during the assessment outlined in Paragraph 3 above.

e. Roof replacement and repair work.

f. Ensure that the pool at the Property is safe for use and enjoyment.

8. Within one hundred fifty (150) days of the Effective Date, MP PPH shall demonstrate to the District, at a status conference before the Court, the progress and status of all assessments and remediation work set forth in Paragraphs 3-7 above.

9. The requirements in Paragraphs 3-7 shall not waive any obligation of MP PPH to comply with notices of violation and/or notices of infraction issued by any District agency.

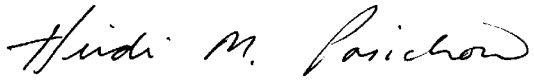
10. To the extent that Paragraphs 3-7 contain conflicting deadlines, the earlier deadline shall apply.

11. All assessments and work undertaken at the Property by MP PPH pursuant to the Order shall be conducted by licensed professionals in compliance with the applicable District of Columbia codes and best industry practices.

12. MP PPH will provide the District with reports from each of the inspections/assessments detailed herein within five business days of receiving such reports from the inspectors/assessors.

13. MP PPH will provide the District with all contracts related to the remediation of any issue described herein within five business days of executing such contracts.
14. MP PPH will provide the District with monthly updates regarding compliance with the agreement herein beginning on January 5, 2022.
15. MP PPH shall expeditiously and fully fund all repairs identified during the inspections/assessments. MP PPH shall also expeditiously and fully fund the replacement of any system/machinery when recommended by an assessor/inspector.
16. MP PPH has previously engaged the services of a solar powered generator provider for the installation of solar powered panels and other equipment at the Property for cost savings and energy efficiency. Upon completion of the roof replacement and repair referenced in Paragraph 7 above, MP PPH shall proceed to instruct its solar provider to proceed with the work.
17. MP PPH shall deliver a letter to the tenants in the form attached as Exhibit A within five business days of the Effective Date.
18. Should the District seek to bring to the Court any Motion or request any relief related to MP PPH compliance with this Order, the District will provide Counsel for MP PPH with two (2) business days' notice, unless the District determines there is "imminent danger" pursuant to D.C. Official Code § 42-3131.01(c)(1)(F), before filing a motion for appropriate relief.
19. Upon at least three weeks' prior notice, or such other time period as may be agreed upon by MP PPH and the District, MP PPH will provide the District access to each unit and common areas in the Property for inspection by the District and their inspectors

20. The District's claims for injunctive relief against MP PPH pertaining to housing conditions shall be stayed until the Court conducts the status conference referenced in Paragraph 8 above.



Heidi M. Pasichow
Associate Judge
(Signed in Chambers)

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