

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

DISTRICT OF COLUMBIA, Plaintiff, v. STARKODA C. PLUMMER Defendant.	Case No.: 2019 CA 004380 B Judge: John M. Campbell Next Event: Scheduling Conference Date: October 4, 2019 at 9:30am
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DISTRICT OF COLUMBIA'S
MOTION FOR PRELIMINARY INJUNCTION

The District of Columbia (District), by and through its Attorney General, commenced this civil enforcement action to compel Defendant, Starkoda C. Plummer, the owner of property located at 3911 R St., SE, Washington, D.C. ("Property"), to repair deteriorating lead-based paint at the Property, civil penalties and other appropriate relief under the District's Lead Hazard Prevention and Elimination Act, D.C. Code §§ 8-321.01 *et seq.*, and the Act's implementing regulations, 20 DCMR §§ 3300 *et seq.* (collectively, the "Lead Hazard Act" or "Act"). The Lead Hazard Act authorizes the District to bring an action "to secure a temporary restraining order, a preliminary injunction, a permanent injunction, or other appropriate relief to enforce compliance with the provisions of [the Lead Hazard Act]." D.C. Code § 8-231.15(e). Pursuant to the Lead Hazard Act and Super. Ct. R. Civ. P. 65, the District moves this Court for entry of a preliminary injunction to enjoin Defendant to comply with the Act.

The factors this Court may consider in determining whether to grant the District's request for a preliminary injunction are: (1) whether the District is substantially likely to succeed on the merits; (2) whether the District and its consumers are in danger of being irreparably harmed during the pendency of the action, absent injunctive relief; (3) whether the balance of hardships tips in the District's favor; and (4) whether the public interest favors granting the injunctive relief. *See District of Columbia v. Grp. Ins. Admin.*, 633 A.2d 2, 21 (D.C. 1993); *In re Antioch Univ.*, 418 A.2d 105, 109 (D.C. 1980).

The District seeks a preliminary injunction because Defendant has failed to comply with Administrative Orders issued by the District's Department of Energy and Environment ("DOEE"). After Defendant failed to respond to the Administrative Orders, DOEE issued Notices of Infraction. In both instances, DOEE petitioned the Office of Administrative Hearings to enforce the Administrative Orders. OAH issued Final Orders finding Defendant in default of the Administrative Orders and imposing administrative fines and civil penalties.

Defendant has not responded to these written mandates, nor has she taken any action to abate the conditions at the Property.

Irreparable harm is presumed when the Attorney General exercises express statutory authority to enjoin violations of the law. *See, F.T.C. v. Mallett*, 818 F. Supp. 2d 142, 146 (D.D.C. 2011) (collecting cases); *see also, S.E.C. v. Mgmt Dynamics, Inc.*, 515 F.2d 801, 808 (2d Cir. 1975). Beyond a presumption of irreparable harm, there is substantial evidence of irreparable harm demonstrated by the confirmed presence

of lead-based paint that is deteriorated and peeling from the window sills, walls and other surfaces at the Property, creating an exposure risk to not only tenants of the Property, but to the surrounding community. The District seeks a preliminary injunction to compel the Defendant to take immediate action and prevent further endangerment to the health and welfare of District residents.

The balance of harms clearly favors the District. Defendant has been repeatedly directed to comply with the Lead Hazard Act. Defendant has demonstrated by her continued indifference and non-compliant behavior, no regard for the District's Lead Hazard Act.

The public interest favors the entry of a preliminary injunction because the District will have a mechanism to enforce compliance rather than resorting to traditional enforcement measures which the Defendant has consistently disregarded or ignored. An injunction will prevent the Defendant from further endangering or threatening to endanger the public health and welfare of District residents by exposing them to lead-based paint, a well-known neuro-toxin.

For the foregoing reasons which are more fully set forth in the attached Memorandum of Points and Authorities, the District requests that the Court enter the attached proposed Order.

Dated: July 23, 2019

Respectfully submitted,

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Columbia

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CERTIFICATE OF SERVICE

I, David S. Hoffmann, certify that on July 23, 2019, a copy of the foregoing Motion for Preliminary Injunction was served by regular U.S. mail upon the Defendant at:

Starkoda C. Plummer
3911 R Street SE, #4
Washington, D.C. 20020

/s/ David S. Hoffmann

DAVID S. HOFFMANN
Assistant Attorney General

**IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION**

<p>DISTRICT OF COLUMBIA,</p> <p style="text-align:right">Plaintiff,</p> <p style="text-align:center">v.</p> <p>STARKODA C. PLUMMER</p> <p style="text-align:right">Defendant.</p>	<p>Case No.: 2019 CA 004380 B Judge: John M. Campbell</p> <p>Next Event: Scheduling Conference Date: October 4, 2019 at 9:30am</p>
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**DISTRICT OF COLUMBIA’S MEMORANDUM OF POINTS AND AUTHORITIES
IN SUPPORT OF ITS MOTION FOR PRELIMINARY INJUNCTION**

INTRODUCTION

The District of Columbia (District) moves for a preliminary injunction to enjoin Defendant, Starkoda C. Plummer from violating and continuing to violate the District’s Lead Hazard Prevention and Elimination Act (“Lead Hazard Act”), D.C. Code §§ 8-321.01 *et seq.*, and the Act’s implementing regulations, 20 DCMR §§ 3300 *et seq.* (collectively, the “Lead Hazard Act”) and endangering the public health and welfare of District residents. To protect District residents, this Court should enter a preliminary injunction that enjoins Defendant to immediately take the following corrective action at the Property, to the satisfaction of the District, namely: (1) repair deteriorating paint identified as a lead-based paint hazard¹; (2) repair underlying conditions contributing to paint failure; (3) eliminate dust and soil hazards; (4) re-

¹ “Lead-based paint hazards” are defined as “any condition that causes exposure to lead from lead-contaminated dust, lead-contaminated soil, deteriorated lead-based paint . . .” D.C. Code § 8-231.01(21).

paint repaired surfaces; (5) retain a person or entity trained in lead-safe work practices to perform the work; (6) obtain a clearance report that meets the requirements of 20 DCMR § 3318.7 and submit the report to DOEE within 7 days upon completion of the report; and (7) conduct an additional clearance examination thirty-six (36) months after completion of the foregoing work and submit the clearance report to DOEE within 7 days upon completion of the report.

As set forth in greater detail below, the District is likely to prevail on the merits in this case. Additionally, the balances of equities weigh in favor of the District. While irreparable harm is presumed in a government action to enforce a statute meant to protect the public, District residents will be irreparably harmed by the deteriorated conditions at Defendant's Property. For these reasons, this Court should grant the District's motion and enter the proposed preliminary injunction order.

STATEMENT OF FACTS

Lead has harmful effects on nearly every organ in the human body. Children under age six and pregnant women are particularly susceptible to lead. In children, lead can cause behavior and learning problems, lower IQs, hyperactivity, slowed growth, hearing problems and anemia. In adults, lead can cause cardiovascular effects including increased blood pressure and hypertension, decreased kidney function and reproductive problems. See, <https://www.epa.gov/lead/learn-about-lead>.

Defendant is the owner of a multi-tenant property located at 3911 R St. SE in the District of Columbia ("Property"). See, Mouhaman Decl. ¶ 3. On September 6, 2017, DOEE received a complaint regarding peeling and chipping paint on the

exterior of the Property. On September 18, 2017, DOEE conducted a visual inspection of the Property. Due to the age of the Property and condition of the exterior paint, the Property was presumed to have lead-based paint hazards. See, Mouhaman Decl. ¶ 4.

Following the inspection, DOEE issued an Administrative Order to Defendant, dated October 6, 2017. See, Mouhaman Decl. ¶ 4 and Exhibit 1. The Order included the results of the prior inspection and required Defendant to repair the deteriorating paint conditions, obtain a clearance report, and perform an additional clearance examination thirty-six (36) months after completion of the repairs. *Id.*

On January 22, 2018, Defendant met with DOEE regarding her ability to perform the work to eliminate the lead hazard on the Property. See, Mouhaman Decl. ¶ 7. As a result of that meeting, DOEE inspected the exterior of the Property using a hand-held X-Ray Fluorescence (“XRF”) analyzer that detects and quantifies the amount of lead present and recorded the results of the XRF test results in a spreadsheet. See, Mouhaman Decl. ¶ 7 and Exhibit 4. The results of the testing confirmed the presence of lead-based paint on the exterior of the Property. *Id.* DOEE attempted to communicate the results of the inspection to Defendant, but received no response from her. *Id.*

As a result of the January 24, 2018 inspection and Defendant’s failure to comply with to the Administrative Order, DOEE issued a Notice of Infraction dated May 21, 2018 (“NOI”) for violation of the Administrative Order that included a civil penalty of \$1,100. See, Mouhaman Decl. ¶ 8 and Exhibit 5. When Defendant did not

respond to the NOI, DOEE sought relief from the Office of Administrative Hearings (“OAH”). Defendant, after having been properly served, failed to appear before OAH. OAH subsequently issued a Final Order, dated November 7, 2018, adding an additional civil fine for Defendant’s failure to respond to the NOI. *See*, Mouhaman Decl. ¶ 9 and Exhibit 6. After the Defendant failed to respond to the November 7 OAH Final Order, DOEE issued a Demand Letter dated December 10, 2018 ordering compliance with the Administrative Order including payment of outstanding civil penalties and costs, either in full or by installment payments. *See*, Mouhaman Decl. ¶ 10 and Exhibit 7.

On April 25, 2018, DOEE received a complaint from one of the tenants of the Property to conduct a lead-based paint inspection. *See*, Mouhaman Decl. ¶ 11. On May 1, 2018, DOEE conducted a lead-based paint inspection of Unit #3 at the Property. *See*, Mouhaman Decl. ¶ 11.

During the inspection, DOEE observed dust and paint chips, deteriorated and peeling paint on surfaces in the tenant’s unit and the common area of the Property. *See* Mouhaman Decl. ¶ 11. DOEE also observed dust and paint chips on the floor of the enclosed porch attached to the tenant’s unit. *See* Mouhaman Decl. ¶ 11. Deteriorated paint surfaces in the unit and common area were tested with a hand-held XRF analyzer that can detect and quantify the amount of lead present. *See* Mouhaman Decl. ¶ 11. Based on the results of the XRF testing, lead-based paint hazards were found in the unit and the common area of the Property. *See*, Mouhaman Decl. ¶ 11 and Exhibit 8. DOEE also collected dust samples from the Property and

submitted the samples for lab analysis. The sample analysis also confirmed the presence of lead in several dust samples. *See*, Mouhaman Decl. ¶ 11 and Exhibit 8.

Following the inspection, DOEE issued a second Administrative Order to the Defendant, dated May 15, 2018. *See*, Mouhaman Decl. ¶ 12 and Exhibit 8. The Order included the results of the May 1, 2018 inspection and required Defendant to repair the deteriorating paint conditions, obtain a clearance report, and perform an additional clearance examination thirty-six (36) months after completion of the repairs. *Id.* The Order also included an invoice for reimbursement of DOEE's costs to conduct the inspection. *Id.*

As a result of Defendant's failure to comply or otherwise timely respond to the Administrative Order, DOEE issued a NOI dated October 30, 2018, for violation of the Administrative Order which included a civil penalty of \$2,100. *See*, Mouhaman Decl. ¶ 13 and Exhibit 9. When Defendant did not respond to the NOI, DOEE sought relief from OAH. Defendant, after having been properly served, failed to appear before OAH. OAH subsequently issued a Final Order dated April 1, 2019, adding an additional civil fine for Defendant's failure to respond to the NOI. *See*, Mouhaman Decl. ¶ 14 and Exhibit 10.

Prior to filing this action, DOEE made another attempt to compel Defendant to comply with the Lead Hazard Act by issuing a Demand Letter dated May 2, 2019. *See*, Mouhaman Decl. ¶ 15 and Exhibit 11. Defendant, as she has done repeatedly, did not respond to the Demand Letter. To verify that Defendant had taken no action to comply with the Order or the Lead Hazard Act, DOEE conducted a visual

inspection on June 6, 2019. *See*, Mouhaman Decl. ¶ 16 and Exhibit 12. This latest inspection confirmed that the conditions of the Property remain unchanged and continue to endanger the health and welfare of the tenants and District residents. *See*, Mouhaman Decl. ¶ 16.

ARGUMENT

I. In a Civil Enforcement Action, the District Must Show Only a Likelihood of Success on the Merits and a Balance of Equities in Favor of an Injunction.

This Court should grant the District's motion for preliminary relief, as the District will likely prevail on the merits of this civil enforcement case. A balancing of the equities favors a court-ordered injunction that enjoins Defendant to comply with the Lead Hazard Act and prevents further endangerment to the public health and welfare of District residents.

In deciding whether to grant a preliminary injunction, a Court generally must consider four factors: (1) whether the District is substantially likely to succeed on the merits; (2) whether the District and its consumers are in danger of being irreparably harmed during the pendency of the action, absent injunctive relief; (3) whether the balance of hardships tips in the District's favor; and (4) whether the public interest favors granting the injunctive relief. *See, District of Columbia v. Grp. Ins. Admin.*, 633 A.2d 2, 21 (D.C. 1993); *In re Antioch Univ.*, 418 A.2d 105, 109 (D.C. 1980). Each of these factors is part of a continuum, such that a strong likelihood of success on the merits may justify an injunction where there is a lesser showing of irreparable injury. *District of Columbia v. Greene*, 806 A.2d 216, 223 (D.C. 2002).

This test is truncated when the government seeks to exercise its express statutory authority to enjoin violations of the law. In such cases, the District “bears the lesser burden of satisfying the ‘public interest’ standard, requiring only a showing of (1) a likelihood of success on the merits and (2) a balance of the equities at stake.” See *F.T.C. v. Mallett*, 818 F. Supp. 2d 142, 146 (D.D.C. 2011) (collecting cases); *S.E.C. v. Mgmt. Dynamics, Inc.*, 515 F.2d 801, 808–09 (2d Cir. 1975) (holding that, because government suits for injunctions are creatures of statute, “[p]roof of irreparable injury or the inadequacy of other remedies as in the usual suit for injunction is not required”) (quotations omitted) (emphasis added). Here, the District is likely to succeed on the merits, and the balancing of the equities favors entry of the preliminary injunction.

A. The District is Likely to Establish that Defendant Violated the Lead Hazard Act.

The District is likely to succeed on the merits of the claims in its Complaint, namely, that Defendant has violated and continues to violate the District’s Lead Hazard Act. Visual inspections, XRF testing, and analytical results of samples taken from the Property confirm the presence of lead-based paint hazards. See, D.C. Code § 8-231.01(21). The Lead Hazard Act authorizes the District to seek judicial relief in the form of an injunction to compel compliance with the Act and to secure any other appropriate relief including civil penalties under D.C. Code §§ 8–231.05(b)(3) and 8-231.15(e).

The facts submitted in support of this Motion demonstrate that Defendant has ignored repeated demands from DOEE and maintained conditions at her Property in violation of the Lead Hazard Act. The most recent inspection on June 6, 2019,

demonstrates that Property conditions remain unchanged and Defendant continues to expose tenants and nearby District residents to confirmed lead-based paint hazards. See Mouhaman Decl. ¶ 15.

Accordingly, the District is very likely to succeed on the merits of its claims that Defendant has violated and continues to violate the District's Lead Hazard Act and endanger Property tenants and District residents.

B. The Balancing of Equities Supports Preliminary Relief.

After considering the likelihood of success on the merits, the Court must balance the equitable factors in connection with deciding where to enter the requested preliminary injunction. In so doing, the Court may consider: (i) whether the District and its residents are in danger of being irreparably harmed during the pendency of the action, absent injunctive relief; (ii) whether the District and its residents will suffer greater harm than Defendants if the relief is not granted; and (iii) whether the public interest favors granting the injunctive relief. See, *Grp. Ins. Admin.*, 633 A.2d at 21.

1. Property Tenants and District Residents Will Be Irreparably Harmed if Defendant Continues to Maintain Lead-Based Paint Hazards at His Property.

The Court may presume irreparable injury in this case because the Office of the Attorney General seeks a preliminary injunction “in the public interest” pursuant to its statutory enforcement authority under the Lead Hazard Act. D.C. Code §§ 8-231.05(b)(3) and 8-231.15(e). A well-developed body of federal case law establishes that a federal agency, such as the Federal Trade Commission, seeking a preliminary injunction pursuant to its statutory enforcement authority “bears the lesser burden of satisfying the ‘public interest’ standard, requiring only a showing of (1) a likelihood of success on the merits and (2) a balance of the equities at stake.” *F.T.C. v. Mallett*,

818 F. Supp. 2d 142, 146 (D.D.C. 2011) (collecting cases); *see also*, *S.E.C. v. Mgmt. Dynamics, Inc.*, 515 F.2d 801, 808 (2d Cir. 1975) (“[Government] suits for injunctions are creatures of statute . . . [p]roof of irreparable injury or the inadequacy of other remedies as in the usual suit for injunction is not required.”) (quotations omitted); *S.E.C. v. Levine*, 517 F.Supp.2d 121, 147 (D.D.C. 2007) (“There is no requirement that the Commission demonstrate irreparable injury or lack of any adequate remedy at law.”). Similarly, the Court may presume irreparable injury here because the Attorney General is authorized by the Lead Hazard Act to seek injunctive relief for violations of these laws and implementing regulations. D.C. Code § 8–231.05(b)(3) and § 8–231.15(e).

Beyond a presumption of irreparable harm, the tenants of the Property and District residents will continue to suffer irreparable harm if injunctive relief is not granted. The confirmed lead-based paint hazards at the Property continue to expose tenants and nearby residents to lead, a potent neuro-toxin with demonstrable effects on humans.

2. The District Will Suffer Greater Harm if Relief is Not Granted Than Harm to Defendants if Relief is Granted.

The potential harm to the District and its residents outweighs any potential harm to Defendant resulting from entry of the requested preliminary injunction. As discussed above, the harm to the Property tenants and nearby residents will be irreparable if relief is not granted. Defendant has no legitimate interest in continuing to maintain lead-based paint hazards and has shown by her indifference to repeated efforts by DOEE that she has no intention or compulsion to comply with the Lead Hazard Act. Nor can Defendant complain that compliance with the Act presents an unreasonable burden. *See Mallett*, 818 F.Supp.2d at 150; *see also United States v. Daniel Chapter One*, 793 F. Supp. 2d 157, 163 (D.D.C. 2011) (“[T]here is no hardship to [defendants] in requiring them merely to follow the law . . .”) (quoting *F.T.C. v. City*

W. Advantage, Inc., No. 2:08–CV–00609–BES–GWF, 2008 WL 2844696, at *6 (D. Nev. July 22, 2008))). Defendant’s continued egregious disregard of the Act, after repeated orders and demands, shows that she is unable or unwilling, or both, to follow the law.

3. The Public Interest Favors a Preliminary Injunction.

The public has a strong interest in the enforcement of the District’s Lead Hazard Act. Specifically, the public has a strong interest in preventing exposure to lead-based paint hazards. The risks associated with ingestion of lead are well-documented, particularly in sensitive populations such as children and pregnant women. There is no legitimate interest in continuing to allow Defendant or anyone else to engage in unlawful practices that pose known health risks to those exposed to those risks. The potential harm to the tenants occupying the Property and nearby residents outweighs any potential harm to Defendant resulting from the entry of the requested preliminary injunction. Therefore, the public interest favors entry of the District’s preliminary injunction.

CONCLUSION

For the foregoing reasons, the District respectfully requests that this Court grant the District’s Motion for a Preliminary Injunction and enter the attached proposed Order. The District requests an evidentiary hearing be scheduled.

Dated: July 23, 2019

Respectfully submitted,

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IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

<p>DISTRICT OF COLUMBIA,</p> <p style="text-align:center">Plaintiff,</p> <p style="text-align:center">v.</p> <p>STARKODA C. PLUMMER,</p> <p style="text-align:center">Defendant.</p>	<p>Case No.: 2019 CA 004380 B Judge: John M. Campbell</p>
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PRELIMINARY INJUNCTION ORDER

This matter is before the Court on Plaintiff District of Columbia’s (the “District”) Motion for Preliminary Injunction (“Motion”). Having considered that Motion, along with its supporting memorandum, declarations, and exhibits, any opposition thereto, and the entire record in this case, and having given notice and an opportunity to be heard to Defendant, the Court makes the following findings:

1. That there is good cause to believe that Defendant, the owner of property located at 3911 R St., S.E., Washington, D.C., has violated and will continue to violate the Lead-Hazard Prevention and Elimination Act, D.C. Code §§ 8-231.01 *et seq.* and the Act’s implementing regulations, 20 DCMR §§ 3300 *et seq.* (collectively the “Lead Hazard Act”) by failing to abate known lead-based paint hazards at the property. The District therefore is likely to prevail on the merits of its claims that Defendant has violated and is violating the foregoing laws and regulations.

2. That there is good cause to believe that immediate and irreparable injury will occur to tenants at the property and adjacent and nearby District

residents, including harm to tenants and nearby residents who have or may come into contact with known lead-based paint hazards in, on and near the tenant-occupied building on the property; and

3. That, weighing the equities, including the public interest and the potential harm to Defendant, it appears that a preliminary injunction is both appropriate and necessary; and

4. That, pursuant to SCR–Civil R. 65(c), no security is required of the District of Columbia for issuance of this preliminary injunction order.

Based on the foregoing findings, it is this ____ day of _____, 2019, hereby:

ORDERED that the Motion is **GRANTED**; and it is

FURTHER ORDERED pursuant to the Lead Hazard Act, that Defendant shall correct all violations at the property by performing each of the following:

1. Within 30 days of the date of this Order, retain an individual or business entity certified pursuant to D.C. Code § 8–231.10 to perform lead-based paint activities identified herein.
2. Within 60 days of the date of this Order, perform a risk assessment of all tenant-occupied units at the Property (except Unit #3).
3. Within 90 days of the date of this Order, implement abatement or interim controls to eliminate all lead-based paint hazards (interior and exterior) at the property.
4. No sooner than one hour after the completion of lead-based paint hazard

control activities, and no later than three business days after completion, perform a clearance examination of the Property that meets the requirements of 20 DCMR § 3318.7.

5. Within 30 days of completion of the requirements in Paragraph 3 herein, provide a report detailing all lead-based paint activities to the District.

FURTHER ORDERED that this Preliminary Injunction Order shall remain in effect during the pendency of this case; and it is

FURTHER ORDERED that this Court shall retain jurisdiction of this matter for all purposes.

SO ORDERED.

Dated: _____

JUDGE JOHN M. CAMPBELL