

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

DISTRICT OF COLUMBIA,

Plaintiff,

v.

16TH ST. HEIGHTS ELIJAH LLC,

Defendant.

Civil Action No. 2021 CA 002139 B

**ORDER GRANTING PLAINTIFF’S OPPOSED MOTION FOR A
PRELIMINARY INJUNCTION**

This action was brought by Plaintiff the District of Columbia (the “District”), through the Office of Attorney General (“OAG”), against Defendant 16th St. Heights Elijah LLC (“Defendant”), the owner and operator of two adjacent multi-unit residential apartment buildings (comprising fifty-nine units) located at 1450 Somerset Place NW, Washington, D.C. 20011 and 1451 Sheridan Street NW, Washington, D.C. 20011 (the “Properties”). The District alleges Defendant has failed to maintain the Properties in a safe and habitable condition, leading to serious security deficiencies threatening the safety of Defendant’s tenants in violation of the Consumer Protection Procedures Act (“CPPA”), D.C. Code §§ 28-3901–28-3913.

Now before the Court is the District’s Motion for a Preliminary Injunction (the “Motion”), filed July 7, 2021, which seeks the implementation of certain safety measures at the Properties pending the resolution of this litigation. The Court held hearings on the Motion over three days (July 21, July 22, and August 10, 2021), during which live testimony and the arguments of counsel were presented. Having considered the Motion, the memorandum of points of authorities and

evidence attached thereto, the testimony of the seven witnesses presented to the Court,¹ and the arguments presented by the parties, the Court grants the Motion for the reasons stated below.

I. Legal Standard

When the District seeks preliminary injunctive relief under an express statutory grant of enforcement authority like the CPPA, the Court presumes irreparable harm and applies an abbreviated test that weighs whether: (1) the District is substantially likely to succeed on the merits; (2) the balance of hardships tips in the District’s favor; and (3) the public interest favors granting the injunctive relief. *See District of Columbia v. Town Sports Int’l, LLC*, Case No. 2020 CA 003691 B, at *8 (D.C. Sup. Ct. Oct. 8, 2020) (granting preliminary injunction in CPPA enforcement case); *see also F.T.C. v. Consumer Defense, LLC*, 926 F.3d 1208, 1212-14 (9th Cir. 2019) (upholding preliminary injunction for the government because irreparable harm was correctly presumed in action alleging deceptive representations and material misrepresentations in violation of consumer protection laws); *F.T.C. v. Mallett*, 818 F. Supp. 2d 142, 146 (D.D.C. 2011) (collecting cases).

II. Analysis

The evidence presented by the District in support of the Motion was strong, credible, and reflects serious safety concerns at the Properties. In particular, the evidence establishes the security conditions at the properties are currently endangering the life, limb, or property of Defendant’s tenants. As the crime wave in the District and around the country is substantial, it is critically important that landlords take reasonable measures to protect the safety of their tenants. Defendant

¹ The District presented the testimony of OAG investigator Ashley Norman, Metropolitan Police Department (“MPD”) Officer Jean Gautreaux, as well as four tenants of the Properties (Tesfaye Lencho, Mizan Werdede, Saba Abraham, and Meseret Wondimagegne). Defendant presented the testimony of Monna Khan, principal for Defendant.

has the obligation to protect the tenants and invitees of its fifty-nine dwelling units from being exposed to criminal elements. The evidence shows Defendant has not done so, and the entry of a preliminary injunction is warranted under the facts and the law.

A. The District Has Established a Substantial Likelihood of Success on the Merits

The District has established a substantial likelihood of success on the merits of its alleged CPPA violations. The evidence makes clear that Defendant has failed to provide basic, reasonable safety precautions at the Properties. *See* D.C. Code § 28-3904(a), (d), (e) and (f). Many of these issues have been ongoing for months, if not years.

Lighting. The evidence shows lighting in the exterior common areas of the Properties, including at exterior entrance doors, historically has been inconsistent and chronically deficient. This was well-documented through the testimony and pictures presented by OAG investigator Ashley Norman. In addition, MPD Officer Jean Gautreaux, who has patrolled the area for the past several years, offered persuasive, credible testimony regarding the deficient lighting conditions at the Properties, the hazards caused by those conditions, and his fear of visiting the Properties alone at night absent MPD back-up. This lack of adequate lighting in the past leads to serious concerns going forward. Defendant's principal, Monna Khan, testified that there is a contract in place for the lighting at the Properties, and the evidence does reflect improvements in the exterior lighting since the lawsuit was filed. However, Defendant should be required to maintain adequate lighting during the pendency of the lawsuit.

Ground Floor Windows. The evidence reflects that several years ago, Defendant removed security bars on the windows of the Properties' basement and street level (ground floor) units, and only later re-installed *some* ground floor window bars (only on windows with exterior A/C units). This remains a serious security issue at the Properties, as reflected by the evidence presented

regarding break-ins through those windows—including the testimony of a tenant who witnessed an intruder slicing through the screen of one such window. Installing bars on basement and ground floor windows is a basic security measure that Defendant should be required to implement.

Doors and Locks. The evidence clearly establishes the Properties' exterior entrance doors have not been sufficiently secured. They are regularly out of alignment, and the locks on those doors are often jammed or otherwise not in working condition. Moreover, the keys to those doors are easily duplicable, leading to the threat of non-tenants gaining easy access to the Properties. MPD Officer Gautreaux testified credibly about the impact of these deficient locks and doors, including his experiences being called to the Properties to remove trespassing non-tenants who were found smoking and sleeping in the Properties' common areas. The Defendant has an obligation to ensure exterior entrances to its Properties are secure, and Defendant should be required to come up with a plan for doing so (for example, through a keyless entry system or rekeying the building entrance doors with non-duplicable keys).

Security Guard and Cameras. Considering the above issues, it is clear the tenants (including families) in these fifty-nine apartment dwellings are at serious risk to their safety; indeed, they are so exposed to crime they are little more protected than were they to pitch a tent on the street. Accordingly, it is reasonable and justified to require Defendant to hire an armed guard immediately to constantly patrol the Properties during non-daylight hours, the presence of which will help ensure exterior doors are closed and locked and permits intervention if there is further criminal activity. The installation of security cameras at the Properties' entrances is similarly warranted. As technology has evolved, such cameras have become a necessity for fighting and deterring crime.

The evidence further reflects Defendant has been on notice of these safety deficiencies for

at least the past several months. Ms. Khan testified her staff is regularly at the Properties, meaning these issues should have been obvious to Defendant. Moreover, in March 2021, Councilmember Janeese Lewis George sent Defendant a letter reporting many of these same concerns.

B. The Balance of Hardships Weighs in the District's Favor

The Court finds the balance of the hardships weighs in the District's favor. As described above, absent a preliminary injunction, Defendant's tenants and their invitees are at great risk to their safety, health, and welfare. The evidence presented by the District reflects a series of criminal incidents considering Defendant's lack of security measures, including break-ins, property damage, and an armed robbery—causing tenants to live in constant anxiety for their safety. This imposes a significant hardship on the District, as the safety and welfare of tenants is the District's charge. Absent a preliminary injunction, it appears to be only a matter of time before there is a more serious violent incident (for example, involving physical bodily harm) at the Properties.

On the other hand, granting the preliminary injunction will cause no undue hardship on Defendant, which already has an obligation under the law to provide a reasonably safe environment for its tenants. Given the foregoing, and in balancing the equities which exist between the defendant, its tenants, and the District, the issuance of a Preliminary Injunction is warranted.

C. The Public Interest Favors Entry of a Preliminary Injunction

Finally, the public interest favors granting the requested relief. It is in the public interest to have basic measures in place to help secure the safety and welfare of Defendant's tenants and their invitees. An Order of preliminary injunction should greatly ease the anxiety of the tenants so they may have peace when they sleep.

D. Contested Authorities

The Defendant argued during these proceedings that the District did not have, nor did it

cite, any legal authorities to support the imposition of affirmative obligations on it (such as the hiring of armed security personnel during non-daylight hours). The Court took such arguments into account, and strove to ascertain the legal line that exists between the duty of the Metropolitan Police Department and the duty of the Defendant to ensure public safety in its property. On balance, and weighing all the competing interests and factors, the Court finds that the issuance of this Order is just and warranted.

III. Conclusion

For the reasons stated above, it is hereby:

ORDERED that the District's Motion for a Preliminary Injunction is granted; and

FURTHER ORDERED that:

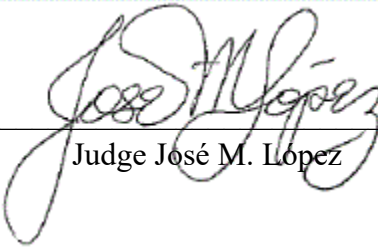
- A. By no later than September 10, 2021, and continuing until there is a final order in this lawsuit, Defendant shall contract with a third-party lighting provider that is obligated to ensure that the Properties' exterior common areas, including building entrances, remain adequately lit and that light bulbs are regularly replaced. A copy of that contract must be provided to the District by September 10, 2021, and the contract may not be terminated absent a further Court Order; and
- B. By no later than August 13, 2021, and at least until September 24, 2021, Defendant shall hire an armed security guard to patrol the Properties daily from 6:00 p.m. to 6:00 a.m.;² and
- C. By no later than September 10, 2021, Defendant shall install security cameras at each of the Properties' exterior entrances and shall maintain those cameras in working

² The Court will, if needed, re-evaluate a continued armed security guard at the Properties at the September 24, 2021 status conference.

condition until there is a final order in this lawsuit; and

- D. By no later than September 10, 2021, Defendant shall submit to the District a report containing a comprehensive plan for securing the exterior entry doors to the Properties and ensuring they are tamper-proof; and
- E. The parties shall report to the Court on the status of Defendant's compliance with the above orders at the September 24, 2021 status conference.

SO ORDERED THIS 20th day of August, 2021.



Judge José M. Lopez

Copies to:

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Adam Teitelbaum, Esq.
Matthew Meyer, Esq.
Counsel for Plaintiff (via electronic service)

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