

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

DISTRICT OF COLUMBIA,

Plaintiff,

v.

A.J. EDWARDS REALTY, et al.,

Defendants.

2022 CA 002823 B

Judge Yvonne Williams

ORDER GRANTING IN PART MOTION FOR ORDER TO SHOW CAUSE

Before the Court is Plaintiff's, the District of Columbia ("Plaintiff" or "the District"), Motion for Order Directing Adolphe Edwards and A.J. Edwards Realty to Show Cause ("Motion"), filed March 15, 2023. For the reasons set forth below, the Motion is **GRANTED IN PART**.

I. BACKGROUND

In this matter the government seeks to address dozens of alleged housing code violations at nine residential apartment buildings owned by Defendants, A.J. Edwards Realty and Adolphe Edwards. Between February 2019 and May 2021, the Department of Consumer and Regulatory Affairs ("DCRA") inspected Defendants' properties 42 times and cited Defendants for almost three hundred housing code violations. First Amended Complaint ("Compl.") ¶ 3. On February 7, 2023, the Parties filed a Joint Motion for Entry of Consent Order Under the Tenant Receivership Act, which the Court granted on February 24, 2023 ("Consent Order"). In the Consent Order, the Parties agreed that if Defendants met firm deadlines to inspect and repair emergency and hazardous housing code violations, the District would not seek appointment of a receiver under the Tenant Receivership Act ("TRA"). Consent Order ¶¶ 1, 9-10. If Defendants failed to satisfy these

obligations by February 28, 2023, their signature on the Consent Order would serve as pre-authorization for the appointment of a receiver. *Id.* at ¶ 10.

The Consent Order set forth the following timeline for identification and abatement of housing code violations. By February 10, 2023, Defendants were to engage a third-party inspector from the District’s list of pre-approved list of inspectors. Consent Order ¶ 2. Simultaneously, Defendants were to begin repairing known emergency housing code violations by February 10, 2023. *Id.* at ¶ 3. The emergency housing code violations included electrical and fire hazards, doors without locks or deadbolts, mold, hazards to disabled tenants, and a lack of emergency egress fixtures and equipment. *See id.* By February 17, 2023, the third-party inspector was to complete an inspection of the “plumbing, piping, electrical system, heating systems, roof, structural frame, doors, fire safety equipment, lighting, and other building elements.” *Id.* at ¶ 2. By February 24, 2023, Defendant was to file a status report “detailing each Housing Code violation” found in the inspection including a spreadsheet cataloging each violation. *Id.* By February 28, 2023, Defendants were to “abate all known housing code violations,” including abating all mold, fixing all water and sewer leaks, engaging an exterminator to curb a known rodent infestation, installing lights in all common areas, and abating all lead-based paint hazards. *Id.* at ¶ 4. By March 3, 2023, Defendants were to file a status report demonstrating compliance which was to include updates to the spreadsheet of housing code violations, confirmations from each tenant that all housing code violations in their unit have been fixed, and verification from the mold assessor. *Id.* at ¶ 5. Defendants would have an ongoing duty to abate all known emergency housing code violations within 24 hours and all non-emergency violations in occupied units within 72 hours. *Id.* at ¶ 7.

Almost immediately, Defendants encountered issues adhering to the schedule set by the Consent Order. On February 10, 2023, Defendants filed a Motion to Extend Time (“Motion to

Extend”), seeking to extend all deadlines by one week because there had been a fire at one of Defendants’ properties and Lisa Wright’s, an employee and assistant to Defendant Edwards who has substantial responsibility overseeing the work to repair the properties, mother unexpectedly passed away. Motion to Extend ¶ 3. On February 14, 2023, the District opposed the Motion to Extend on the grounds that Defendants had shown no effort to comply up to that point and had missed the deadline to engage a third-party inspector. Opposition to Motion to Extend 2-3. On February 17, 2023, Defendants filed a Status Report noting that Defendants had contacted four inspectors but had not yet retained one; had hired a master electrician and begun fixing lighting issues; had fixed the heating systems in all the properties; had installed new doors and releasable bars to allow emergency egress; and had retained mold and pest control companies.

On February 24, 2023, the Court held a Status Hearing. Defendants reported that they were actively working to abate electrical and lighting hazards and had ensured that all exterior and interior doors had been fitted with locks. They represented that they had abated or were actively working to abate all other known violations and would do so by the deadline. The District expressed doubt, raising concerns that Defendants were relying upon unapproved tradespeople and had not even completed the inspection. The District raised concerns that the inspection would reveal many other violations and would significantly add to the expected amount of work. Defendants responded that they were operating under tight deadlines and were prioritizing the abatement of housing code violations over the completion of paperwork. The Court determined that if Defendants were on track to satisfy its obligations by the deadlines, their Motion to Extend previous deadlines was moot. Also on February 24, 2023, Defendants filed a Status Report containing evidence of permits for repair work, invoices for work performed, confirmation of inspections at some of the properties, and acknowledgements from residents at Defendants’ 2427

Alabama Ave. SE property (“Alabama Ave.”). On March 3 and March 8, 2023, Defendants filed more assorted evidence showing ongoing repairs.

Despite the ongoing work in early March 2023, the District determined that Defendants had not completed their work by the February 28, 2023, therefore triggering paragraph ten of the Consent Order. On March 1 and March 8, 2023, the District contacted Defendants about the appointment of a receiver. Motion 2-3. Defendants refused to consent to the appointment. *See id.* On March 15, 2023, the District filed the instant Motion. The District represents that Defendants have missed every deadline in the Consent Order. The District notes that as of March 8, 2023, Defendants had not completed inspections of any of the units at six of the nine properties. *Id.* at 5. Of the inspections that had been performed, six found significant housing code violations, making it highly likely that violations exist at the 83 uninspected units across the six remaining properties. The District also noted that Defendants have never filed a spreadsheet identifying violations and repairs, making it difficult to verify that Defendants have actually abated all known violations. *Id.* The District represented that on March 6, 2023, the Office of the Attorney General (“OAG”) visited the six uninspected properties and saw pest infestations, chipping and peeling presumed lead paint, substantial water damage. *Id.* at 6. OAG documented its findings with hundreds of pages of photographs of existing violations, tenant declarations of ongoing emergency housing code violations, and records of prior infractions identified by the D.C. Department of Consumer and Regulatory Affairs (“DCRA”). *See Exhibits 1-5.*

On March 21, 2023, Defendants filed a Supplemental Status Report stating that they continue to abate violations, install new door and lighting fixtures, abate pest infestations, and conduct inspections of their properties.¹ On March 29, 2023, Defendants filed an Opposition to

¹ Defendants’ March 21, 2023, Status Report identifies 21 attached documents. However, it appears that only the Status Report and none of the attachments was filed.

the Motion (“Opposition”), stating that it was substantially complying with the Consent Order despite unforeseen emergencies and the District’s “unrealistic demands.” Opposition 1. Defendants take issue with the Consent Order, arguing that the District proposed an unrealistic timeline, rejected Defendants’ proposed edits, compelled Defendants to sign the Consent Order or face further litigation, and then refused to consent to Defendants’ February 10, 2023, Motion to Extend.

On April 5, 2023, the District filed a Reply. The District argues that because Defendants acknowledge their noncompliance and have not shown good cause for their noncompliance, the Court must appoint a receiver and sanction Defendants. Reply 2. The District argues that if the Defendants believed that the housing code violations at its properties were so numerous that it could not complete the inspections and repairs by the end of February, Defendants should not have agreed to the Consent Order. Reply 4-6.

Defendants have not filed any status reports since March 21, 2023.

II. DISCUSSION

a. Defendants Have Failed to Comply With the Consent Order

The Court may hold parties in civil contempt of Court for failure to follow the Court’s orders. D.C. Code § 11-944(a) (2023 Repl.). “Courts have a right to demand, and do insist upon, full and unstinting compliance with their commands.” *D.D. v. M.T.*, 550 A.2d 37, 44 (D.C. 1988) (internal citations omitted). Parties must take steps to “diligent[ly] and energetic[ally]” comply with court orders. *Id.* (internal citations omitted). If a party is concerned that it cannot comply with a court order, the party should seek modification of the order or else proceed at its own peril. *Id.* Civil contempt, unlike criminal contempt, does not require any finding of willfulness. *Bolden v. Bolden*, 376 A.2d 430, 432-33 (D.C. 1977) (citing *McComb v. Jacksonville Paper Co.*, 336 U.S.

187 (1949)). Once a movant has established noncompliance with a court order, the burden shifts to the alleged contemnor to show good cause for its noncompliance. *Bolden*, 376 A.2d at 433.

There is no genuine dispute that Defendants have failed to comply with the Consent Order. The Consent Order required Defendants to finish inspections of over one hundred units across nine properties by February 17, 2023. As of today, April 24, 2023, there is no evidence that Defendants have even completed those inspections. Furthermore, Defendants have not provided sufficient information – foremost, a spreadsheet of all known violations – by which the Court can quantify their progress. The entire process of inspecting the properties and remedying violations was to occur in one month (i.e., by February 28, 2023). Two months later and despite Defendants’ representations to this Court on February 24, 2023, that they would meet their deadline, neither the inspections nor the repairs are complete.

Defendants have not sufficiently justified their noncompliance. Consent orders are contracts which should be “enforced as written” according to the “four corners” of the document. *See Fed. Mktg. Co. v. Va. Impression Prods. Co.*, 823 A.2d 513, 521 (D.C. 2003) (enforcing an adjudication of civil contempt based on a party’s failure to adhere to a consent decree). The only exceptions would be if the consent order arose from fraud, duress, mistake, or was rendered impossible to perform. *E.g., Moore v. Jones*, 542 A.2d 1253, 1254 (D.C. 1988). Defendants’ argument that the Consent Order timeline was so strict that it was impossible to adhere to from the start is not persuasive. Defendants chose to execute the Consent Order in lieu of the District petitioning the Court for receivership immediately. If Defendants believed that the Consent Order set unrealistic deadlines, they should not have agreed to those deadlines. Furthermore, Defendants should not have represented to the Court on February 24, 2023, that they could meet the deadlines.

The Court is similarly unpersuaded by Defendants' argument that two unforeseen circumstances – a fire at the Alabama Avenue property and Ms. Wright's mother's untimely passing – justifies their delay. Even if the Court had extended all deadlines one week such that Defendants' deadline for full compliance was March 7, 2023, Defendants were nowhere close to completing all repairs by that date. Defendants have had more than twice the time allowed by the Consent Order and have yet to even complete all the inspections.

b. Relief

Plaintiffs seek three forms of relief: appointment of a receiver pursuant to paragraph 10 of the Consent Order; attorney fees related to the instant Motion; and a fine of \$100 per day for every day that Defendants refused to allow for appointment of a receiver.

The Court will appoint a receiver to oversee Defendants' properties. The Court should enforce consent orders as written. *See Fed. Mktg. Co. v. Va. Impression Prods. Co.*, 823 A.2d 513, 521 (D.C. 2003). Defendants agreed that if they “do not complete their obligations under this Order [by] February 28, 2023,” the Court may appoint a receiver pursuant to the Tenant Receivership Act. Consent Order ¶ 10; *see* D.C. Code § 42-3651.01 *et seq.* The TRA allows for appointment of a receiver who will oversee repair of a residential property where a property “has been operated in a manner that demonstrates a pattern of neglect for the property for a period of 30 consecutive days and such neglect poses a serious threat to the health, safety, or security of the tenants.” D.C. Code § 42-3651.02(b). “Serious threat to the health, safety, or security of the tenants” are defined as:

- (A) Vermin or rat infestation;
- (B) Filth or contamination;
- (C) Inadequate ventilation, illumination, sanitary, heating or life safety facilities;
- (D) Inoperative fire suppression or warning equipment;
- (E) Inoperative doors or window locks; or
- (F) Any other condition that constitutes a hazard to tenants, occupants or the public.

D.C. Code § 42-3651.02(c)(2). As has been documented by the DCRA for the past several years, recognized by the Parties in the Consent Order and in hearings before this Court, and documented in the District's exhibits to this Motion, multiple serious threats to health, safety, or security exist. Because Defendants have not completed inspections, the violations known to the Court – which independently warrant appointment of a receiver – may be only a fraction of the actual violations across the nine properties. Because of the emergency nature of many of these violations, the Court cannot allow Defendants to drag out the remediation process.

When a party files a successful motion for civil contempt, “the contemnor is ordinarily required to pay the aggrieved party's counsel fees, even in the absence of a finding of willfulness.” *D.D. v. M.T.*, 550 A.2d 37, 44 (D.C. 1988). The District seeks \$8,550 in attorney's fees pursuant to the Fitzpatrick Matrix which it avers stems from fifteen hours of work negotiating the appointment of a receiver and drafting the instant Motion. Motion 10-11. The District has not filed an attorney fee affidavits or other records substantiating this fee demand. The Court will therefore grant fees and allow for supplemental briefing on the issue of attorney fees. The District shall have 14 days to file a Petition for Attorney Fees seeking fees not to exceed \$8,550. Further oppositions and replies will be allowed under Rule 12-I.

The District's Motion is denied insofar as it seeks a \$100 daily fine on beginning on March 1, 2023, and presumably ending at the date a receiver is appointed. Courts may, within their discretion, impose “drastic” remedies for civil contempt including imprisonment and “staggering daily fine[s].” *D.D.*, 550 A.2d at 44 (D.C. 1988). Daily fines are not remedial but rather used to incentivize a contemnor to bring their conduct back within compliance with a court order. *See, e.g., United States v. Yonkers*, 856 F.2d 444, 450 (D.C. 1988) (imposing a daily fine of \$100 per day on each member of the Yonkers City Council and doubling each day until the Council brought

the City into compliance with a consent judgment). Given that the Court is appointing a receiver who will assume the duty of remedying the housing code violations at Defendants' properties, there is no reason to retroactively fine Defendants other than simply to punish them and deter future misconduct. The Court does not find such a fine to be necessary or productive.

Accordingly, it is this 26th day of April, 2023, hereby,

ORDERED that Plaintiff's Motion for Order Directing Adolphe Edwards and A.J. Edwards Realty to Show Cause is **GRANTED IN PART**; and it is further

ORDERED that Defendants Adolphe Edwards and A.J. Edwards Realty are adjudged to be in civil contempt; and it is further

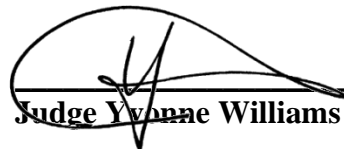
ORDERED that within five days of this Order, the District shall identify a proposed receiver; and it is further

ORDERED that within five days after the District identifies a proposed receiver, Defendant may file objections thereto; and it is further

ORDERED that within 14 days of this Order, the District may file a Petition for Attorney fees as described above; and it is further

ORDERED that the Parties may file Oppositions and Replies to the District's Petition for Attorney Fees in accordance with Superior Court Rule of Civil Procedure 12-I.

IT IS SO ORDERED.



Judge Yvonne Williams

Date: April 26, 2023

Copies to:

Wesley Rosenfeld
Counsel for Plaintiff

Timothy R. Willman
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