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**

OMNIBUS ORDER

Before the Court are the following Motions: (1) The District of Columbia's ("the District") Motion for Summary Judgment Against Defendants Adolphe Edwards and A.J. Edwards Realty and Motion for Additional Briefing on Remedies ("MSJ"), filed September 8, 2023, to which Defendants A.J. Edwards Realty and Adolphe J. Edwards filed an Opposition on April 19, 2024, and the District filed a Reply on May 3, 2024; (2) Defendant 2425-2431 Alabama Avenue LLC's ("Ala. Ave.") Motion to Dismiss Second Amended Complaint ("MTD"), filed July 30, 2024, to which the District filed an Opposition on August 13, 2024, and Ala. Ave. filed a Reply on August 21, 2024. For the reasons set forth below, the MSJ is **GRANTED IN PART**, and the MTD is **DENIED**.

I. BACKGROUND

a. Facts

For decades, Defendants A.J. Edwards Realty and Adolphe Edwards (collectively, "Edwards") owned nine multi-family rental accommodation buildings, located in two areas of the District of Columbia: 1301 Missouri Avenue NW, 1309 Missouri Avenue NW, 1315 Missouri Ave NW, 5906 13th Street NW, and 5912 13th Street NW (collectively, the "Missouri Avenue Properties"); and 2425 Alabama Avenue SE, 2427 Alabama Avenue SE, 2429 Alabama Avenue

SE, and 2431 Alabama Avenue SE (collectively, the "Alabama Avenue Properties"). Second Am. Compl. ¶ 12. Defendant A.J. Edwards Realty is a sole proprietorship, owned and managed by Defendant Adolphe Edwards. *Id*. ¶ 13.

The Properties have been in decline for an extended period, posing a serious threat to tenants' healthy, safety, and security. Second Am. Compl. ¶ 1. The District of Columbia's Department of Consumer and Regulatory Affairs ("DCRA")—which became the Department of Buildings ("DOB") on October 1, 2022—inspected the Properties on 42 occasions between February 2019 and May 2021, and cited Edwards for various housing code violations in each building and consequently served fines on Edwards' address of record. *Id*. ¶ 3. In July 2022, DCRA/DOB performed additional inspections and discovered both new housing code violations and that the previously violations generally persisted, and again served fines on Edwards' address of record. *Id*. When DCRA/DOB returned in December 2022, the agency found that the previously cited violations generally persisted. *Id*. DOB has observed 1,521 housing code violations at the Properties since 2019. *Id*.

From June 2018 to May 2021, DCRA and the District Department of Energy and Environment ("DOEE") inspectors observed 75 areas with chipping and peeling paint at each of the Properties. Second Am. Compl. ¶ 4. Such chipping and peeling paint was observed on at least eleven occasions at the Missouri Avenue Properties, and at least eight at the Alabama Avenue Properties. *Id*. ¶¶ 19, 26. In July and December 2022, DCRA/DOB observed additional areas in the Properties that had chipping and peeling paint. *Id*. ¶ 4. All the buildings were built before 1978, and therefore are presumed to have lead-based paint. ¶ 12. In June 2018, technicians confirmed the presence of led-based paint in a unit and a common area of the Missouri Avenue Properties by using an X-Ray Fluorescence Analyzer. *Id*. ¶ 19.

DOEE subsequently issued administrative orders to Edwards on November 24, 2020 and March 2, 2021, ordering Edwards to eliminate the lead-based paint hazards and to submit a third-party clearance examination report to DOEE. Second Am. Compl. ¶ 20. Edwards has not complied with these DOEE orders. *Id*. Additionally, Edwards failed to provide the lead-based paint disclosure forms and clearance reports to tenants prior to executing leases, as required by the Lead Hazard Prevention and Elimination Acts ("LHPEA"). *Id*. ¶ 17. Edwards has admitted to not maintaining records of these forms and reports. *Id*.; MSJ Ex. 3 at 3.

In addition to the LHPEA violations, District inspectors have observed a myriad of other housing code violations at the Properties on multiple occasions over the last six years. Second Am. Compl. ¶ 16. At the Missouri Avenue Properties, inspectors have observed water damage and plumbing leaks, fire and safety violations (such as inoperative smoke detectors, defective electrical panels, and broken glass windows), and unsanitary conditions in the common areas (such as trash and urine odors). *Id*. ¶¶ 18, 21-23. At the Alabama Avenue Properties, inspectors have observed water damage and plumbing leaks (such as damp walls and a ceiling collapse), as well as and fire and safety violations (such as inadequate heating and missing entry door locks). *Id*. ¶¶ 25, 27, 28. Edwards collected over $1 million in rent from tenants while the above conditions were present.[1] MSJ Ex. 20. Many of these conditions persist to this day. Second Am. Compl. ¶¶ 24, 29.

On or about December 14, 2023, 2425-2431 Alabama Avenue, LLC ("Ala. Ave.") became the owner of the Alabama Avenue Properties. Second Am. Compl. ¶ 12. Ala. Ave. has proposed a full-gut rehabilitation of the Alabama Avenue Properties, which it estimates will cost approximately $4,191,635 and take between six and nine months to complete. *Id*. ¶¶ 32-33. Ala. Ave. purchased the Properties while subject to a Receivership. *See* Order (June 8, 2024).

[1] This sum is based on Edwards' hand-written records of rent paid at the Missouri Avenue Properties in 2018, 2019, 2020. The actual sum of rent collected for both Properties from 2018 to present day is likely much higher.

b. Procedural History

The District filed its original Complaint on June 24, 2022, seeking a declaratory judgment against Defendant A.J. Edwards Realty and Adolphe J. Edwards (collectively, "Edwards") under the Consumer Protection Procedures Act ("CPPA"), the Lead Hazard Prevention and Elimination Acts ("LHPEA"), and the Tenant Receivership Act ("TRA") for Edwards' long-term mismanagement and illegal conditions in Edwards' Properties. The District filed an Opposed Motion for Leave to Amend the District of Columbia's Complaint on February 3, 2023, which the Court granted on March 1, 2023, accepting the First Amended Complaint.

The Court entered an Order Appointing Receiver on May 19, 2023. At the September 26, 2023 Remote Status Hearing, the Court also ordered the District to file its proposed Receivership Plan on or before October 6, 2023. On September 8, 2023, the District filed an Unopposed Motion for Leave to File a Motion for Summary Judgment in Excess of Fifteen (15) Pages, to which it appended the instant MSJ. The Court granted the Unopposed Motion for Leave to File a Motion for Summary Judgment in Excess of Fifteen (15) Pages orally at the September 26, 2023 Remote Status Hearing.

On September 29, 2023, the District filed its Motion to Implement the Receiver's Stabilization Plan. However, on October 4, 2023, Defendants filed a Suggestion of Bankruptcy. Consequently, on October 24, 2023, the Court issued an Order Entering Bankruptcy Stay in the instant matter, staying all pending motions. The District subsequently filed an Opposed Motion to End Stay on Litigation and Enter New Scheduling Order ("Motion to End Stay") on January 25, 2024. At a February 2, 2024 Remote Status Hearing, the Court granted the Motion to End Stay in part and denied it in part, lifting the Bankruptcy Stay in this matter but only to determine the damages the District was entitled to seek from Defendants.

At a February 2, 2024 Remote Status Hearing, the Court granted the Motion to End Stay in part and denied it in part, lifting the Bankruptcy Stay in this matter but only to determine the damages the District was entitled to seek from Defendants. The Court also entered a briefing schedule for Defendants' Opposition to the District's MSJ and for the District's Reply in Support of its MSJ.

On February 23, 2024, the District filed a Praecipe on the Status of Receivership. The District subsequently filed an Opposed Motion to Supplement the Order Appointing Receiver and the Opposed Second Motion for Leave to Amend its Complaint on April 2, 2024. Through these Motions and the Praecipe, the District informed the Court that the Alabama Avenue Properties had been sold to 2425-2431 Alabama Avenue, LLC ("Ala. Ave.") and the Missouri Avenue Properties were under contract for sale to 5912 13th Street NW, LLC ("13th Street LLC") with a closing date of May 1, 2024. *See generally* Praecipe (February 23, 2024); Mot. to Suppl. The contract included an agreement that the 13th Street LLC would perform all maintenance and repairs at the property until the transaction is finalized. *Id*.

On April 19, 2024, Defendants Adolphe Edwards and A.J. Edwards Realty filed an Opposition to the District's Motion for Summary Judgment. The District filed its Reply on May 3, 2024.

On June 5, 2024, U.S. Bankruptcy Judge Elizabeth L. Gunn of the U.S. Bankruptcy Court for the District of Columbia issued an order stating that the litigation before this Court "may continue in all respects but-for enforcement or collection of a money judgment from the Debtor [Adolphe Judson Edwards] pursuant to police and regulatory exception to the automatic stay of 11 U.S.C. § 362(b)(4)." Consistent with the U.S. Bankruptcy Court's June 5, 2024 Order, at a

June 7, 2024 Remote Status Hearing, the Court lifted the bankruptcy stay for all matters but for enforcing or collecting a money judgment from Defendant Adolphe Edwards.

In a June 28, 2024 Order, the Court denied the Motion to Implement Receiver's Stabilization Plan as Moot, granted the Motion to Supplement Receivership Order, and granted the District's Motion to Amend, accepting the Second Amended Complaint as filed. Ala. Ave. was consequently added as a Defendant in this matter. The Court treated the Motion to Supplement Receivership Order and Motion to Amend as conceded under Super. Ct. R. 12-I(e), as no Party filed any Opposition.

Ala. Ave. filed its Motion to Dismiss on July 30, 2024, to which the District filed an Opposition on August 13, 2024, and Ala. Ave. filed a reply on August 21, 2024.

II. LEGAL STANDARD

a. Dismissal Under Rule 12(b)(6)

A complaint should be dismissed under Rule 12(b)(6) if it does not satisfy the requirement of Rule 8(a) that a pleading contain a "short and plain statement of the claim showing that the pleader is entitled to relief." *Potomac Dev. Corp. v. District of Columbia*, 28 A.3d 531, 543 (D.C. 2011) (quoting Super. Ct. Civ. R. 8(a)). "To survive a motion to dismiss, a complaint must set forth sufficient information to outline the legal elements of a viable claim for relief or to permit inferences to be drawn from the complaint that indicate that these elements exist." *Williams v. District of Columbia*, 9 A.3d 484, 488 (D.C. 2010) (citation and quotations omitted); *see Doe v. Bernabei & Wachtel, PLLC*, 116 A.3d 1262, 1266 (D.C. 2015) ("To survive a motion to dismiss, a complaint must set forth sufficient facts to establish the elements of a legally cognizable claim.") (citations and quotations omitted)). In resolving a motion to dismiss, "the court accepts as true all allegations in the Complaint and views them in a light most

favorable to the nonmoving party." *Jordan Keys & Jessamy, LLP v. St. Paul Fire & Marine Ins. Co.*, 870 A.2d 58, 62 (D.C. 2005) (citations and quotations omitted).

"A pleading that offers 'labels and conclusions' or 'a formulaic recitation of the elements of a cause of action will not do.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)); see *Sundberg v. TTR Realty, LLC*, 109 A.3d 1123, 1128–29 (D.C. 2015) ("[W]here a complaint pleads facts that are merely consistent with a defendant's liability, it stops short of the line between possibility and plausibility of entitlement to relief." (Citations and quotations omitted)). "To satisfy Rule 8(a), plaintiffs must nudge their claims across the line from conceivable to plausible." *Tingling-Clemmons v. District of Columbia*, 133 A.3d 241, 246 (D.C. 2016) (citation and quotations omitted). However, "[w]hen there are well-pleaded factual allegations, a court should assume their veracity and then determine whether they plausibly give rise to an entitlement to relief." *Carlyle Inv. Mgmt., L.L.C. v. Ace Am. Ins. Co.*, 131 A.3d 886, 894 (D.C. 2016) (alteration in original) (citation and quotations omitted).

"A complaint should not be dismissed because a court does not believe that a plaintiff will prevail on its claim; indeed it may appear on the face of the pleadings that a recovery is very remote and unlikely but that is not the test." *Carlyle Inv. Mgmt., L.L.C.*, A.3d at 894 (citation, quotations, and brackets omitted). In addition, the Court should "draw all inferences from the factual allegations of the complaint in the [non-movant's] favor." *Id*. (citation omitted). However, legal conclusions "are not entitled to the assumption of truth," *Potomac Dev. Corp*., 28 A.3d at 544 (quoting *Iqbal*, 556 U.S. at 664), so "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Sundberg*, 109 A.3d at 1128–29 (quoting *Iqbal*, 556 U.S. at 678). The complaint must plead "factual content that allows

the court to draw the reasonable inference that defendant is liable for the misconduct alleged." *Poola v. Howard Univ.*, 147 A.3d 267, 276 (D.C. 2016) (citation and quotations omitted).

b. Summary Judgment Under Rule 56

Rule 56(a) provides in relevant part, "[t]he court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Super. Ct. Civ. R. 56(a). Summary judgment "is properly regarded not as a disfavored procedural shortcut, but rather as an integral part of the [Superior Court rules] as a whole, which are designed to secure the just, speedy and inexpensive determination of every action." *Mixon v. Wash. Metro. Area Transit Auth.*, 959 A.2d 55, 58 (D.C. 2008) (quotations and citations omitted). "Summary judgment may have once been considered an extreme remedy, but that is no longer the case," and indeed District of Columbia courts have "recognized that summary judgment is vital." *Doe v. Safeway, Inc.*, 88 A.3d 131, 133 (D.C. 2014) (citations omitted).

The moving party has the burden to establish that there is no genuine issue of material fact and that it is entitled to judgment as a matter of law. *See Osbourne v. Capital City Mortgage Corp.*, 667 A.2d 1321, 1324 (D.C. 1995). "At this initial stage, the movant must inform the trial court of the basis for the motion and identify 'those portions of the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, which it believes demonstrate the absence of a genuine issue of material fact.'" *Paul v. Howard Univ.*, 754 A.2d 297, 305 (D.C. 2000) (quoting *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986)). The facts supporting a motion for summary judgment must be in a form that would be admissible at trial. Super. Ct. Civ. R. 56(c)(2).

If the moving party carries this burden, the burden shifts to the non-moving party to show the existence of an issue of material fact. *Smith v. Swick & Shapiro, P.C.*, 75 A.3d 898, 901 (D.C.

2013). "A genuine issue of material fact exists if the record contains some significant probative evidence…so that a reasonable fact-finder would return a verdict for the non-moving party." *Brown v. 1301 K Street Ltd. P'ship*, 31 A.3d 902, 908 (D.C. 2011) (quotation and citation omitted). "[T]he mere existence of a scintilla of evidence in support of the plaintiff's position will be insufficient to defeat a motion for summary judgment." *Smith*, 75 A.3d at 902 (quotation and citation omitted). In addition, a party "cannot stave off the entry of summary judgment through [m]ere conclusory allegations." *Id.* (quotation and citation omitted). Likewise, the non-moving party's "mere speculations are insufficient to create a genuine issue of fact and thus withstand summary judgment." *Hunt v. District of Columbia*, 66 A.3d 987, 990 (D.C. 2013) (quotation and citation omitted). The party opposing summary judgment "must produce at least enough evidence to make out a *prima facie* case in support of [their] position." *Joeckel v. DAV*, 793 A.2d 1279, 1281-82 (D.C. 2002). In so doing, the "party opposing summary judgment must set forth by affidavit or in similar sworn fashion specific facts showing that there is a genuine issue for trial." *Wallace v. Eckert, Seamans, Cherin & Mellott, LLC*, 57 A.3d 943, 950-51 (D.C. 2012) (quotation and citation omitted). Rule 56(c) establishes the requirements for raising a genuine factual dispute in a form that would be admissible in evidence at trial.

Viewing the non-moving party's evidence in the light most favorable to it, the Court must decide whether "the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law." *Hunt*, 66 A.3d at 990 (quotation and citation omitted). The Court may grant summary judgment only if no reasonable juror could find for the non-moving party as a matter of law. *Biratu v. BT Vermont Ave., LLC*, 962 A.2d 261, 263 (D.C. 2008). The Court cannot "resolve issues of fact or weigh evidence at the summary judgment stage." *Barrett v. Covington & Burling, LLP*, 979 A.2d 1239, 1244 (D.C.

2009). The Court also cannot make credibility determinations favoring any witnesses' testimony or discrediting internal inconsistencies in a single witness's testimony. *Fry v. Diamond Constr.*, 659 A.2d 241, 245-46 (D.C. 1995) (citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986)).

III. MOTION TO DISMISS

a. Parties' Arguments

In its July 30, 2024 Motion to Dismiss, Ala. Ave. argues that the District has not stated a claim against it, and therefore it should be dismissed from the case. MTD at 9-10. In other words, Ala. Ave. asserts that the Second Amended Complaint does not allege any wrongdoing by Ala. Ave. nor seek any relief as to Ala. Ave., instead only seeking to maintain "oversight" over the re-development of the Alabama Avenue Properties. *Id.* Ala. Ave. further argues oversight by this Court is unnecessary, as the two remaining occupied units in the Alabama Avenue Properties are "under the supervision of other Judges of this Court" in other cases. *Id.* at 10.

In the District's August 13, 2024 Opposition, it argues that the Alabama Avenue Properties remain the subject of a receivership, and therefore naming Ala. Ave. as a Defendant in the instant case is proper. Opp'n to MTD at 1. The District contends that naming Ala. Ave. as a Defendant "is not about whether the company has done something right or wrong," but rather that Ala. Ave. knowingly brought a property subject to a receivership, and such receivership continues until the basis for the receivership no longer exists. *Id.* at 2 (citing D.C. Code § 42-3651.07). In summary, the District seeks to add Ala. Ave. "to carry out the amended receivership order until the statutory requirements for terminating the receivership are met." *Id.* at 2.

Ala. Ave. contends in its August 21, 2023 Reply that the District has no basis to continue to "oversee" the Alabama Avenue Properties. Reply to MTD at 1. Ala. Ave. contends the District

has not articulated that Ala. Ave. meets the criterion for a receivership under D.C. Code § 42-3651.02(a), as it is not a "rental housing accommodation" and has not received notice of any violations that it is accused of committing. *Id*. at 2-3.

b. Discussion

The District alleges that "the conditions of the [Alabama Avenue] Properties continue to pose a serious threat to the health, safety, or security of the tenants," and that Ala. Ave.'s "proposed budget for a full gut rehabilitation is insufficient to make the Alabama Avenue Properties complaint with District law." Second Am. Compl. ¶¶ 81-82. Put simply, the District contends that the conditions for which the Court previously found necessitated the appointment of a Receiver have not yet been abated. The Court agrees. Consequently, Ala. Ave.'s MTD is denied.

The purpose of the Tenant Receivership Act is to enable a Receiver to oversee the rehabilitation of defunct rental properties in the District of Columbia. *See* D.C. Code § 42-3651.01 ("The purpose of the appointment of a receiver under this chapter shall be to safeguard the health, safety, and security of the tenants of a rental housing accommodation if there exists a violation of District of Columbia or federal law which seriously threatens the tenant's health, safety, or security."). A receivership may be terminated only if "[t]he Court determines that the receivership is no longer necessary because the grounds on which the appointment of the receiver was based no longer exist" and other specific conditions are met, or if "[t]he Court determines on recommendation from the receiver that the violations giving rise to the appointment of the receiver cannot be abated[.]"

The Court found it appropriate under D.C. Code § 42-3651.01 *et seq*. to appoint a Receiver for the Properties in May 2023 based on the hazardous conditions of the Properties. *See* Order (May 19, 2023). Ala. Ave. knew the Properties were subject to a Receivership when they

purchased the Alabama Avenue buildings in December 2023. The Court's Supplemental Receivership Order names Ala. Ave. as a party, and orders it to file certain documents with the Court.[2] *See* Order (June 28, 2024).

Furthermore, Ala. Ave. readily admits they intend to use the Properties for low-income rental housing in the near future and are beginning an extensive rehabilitation project for that purpose, MTD at 3, undermining its contention that it is not a "housing accommodation" under D.C. Code. § 42-3651.01. In addition, there currently remains at least one tenant at the Alabama Avenue Properties. MTD at 4. While all parties hope that Ala. Ave.'s extensive rehabilitation of the Alabama Avenue Properties will eliminate the current threats to the health, safety, and security of current and future tenants, the Court has not yet seen evidence that the previously identified threats have yet been eliminated.

In summary, based on the information currently before the Court, the reason for receivership has not yet been abated. Therefore, the District's Second Amended Complaint states a viable claim against Ala. Ave., and dismissal of Ala. Ave. as a Defendant in this matter is not appropriate at this time. *See* D.C. Code § 42-3651.07; *Williams*, 9 A.3d at 488. Defendant Ala. Ave. may file a motion to terminate receivership if it perceives that the conditions warranting the appointment of a Receiver have since been remedied.

IV. MOTION FOR SUMMARY JUDGMENT

a. Parties' Arguments

In its September 8, 2023 MSJ, the District moves for summary judgment as to A.J. Edwards Realty and Adolphe Edwards' (collectively, "Edwards") liability for violations of the LHPEA and CPPA, and requests a separate briefing schedule to determine civil penalties, restitution, and

[2] Despite the Court Ordering Ala. Ave. to file a report within 14 days of the June 28, 2024 Order, Ala. Ave. did not file such a report until September 19, 2024.

attorney's fees. MSJ at 2. The District notes that Edwards had received notice of hundreds of LHPEA and Housing Code violations at both the Missouri and Alabama Avenue Properties from 2018 to 2019, which he failed to correct. *Id*. at 3. The District asserts these violations also constitute violations of the CPPA, and that Edwards also violated the CPPA by making misrepresentations and material omissions to tenants regarding the habitability, condition, and general maintenance of the Properties. *Id*.

As to the LHPEA violations, the District contends that Edwards, in violation of D.C. Code § 8-231 *et seq*.: (1) "failed to maintain his residential dwelling units and common areas free of lead-based paint hazards," which he did not promptly address despite notice of the violation; (2) "failed to disclose to tenants, prior to entering a lease, information reasonably known to the owner about the presence of lead-based paint, lead-based paint hazards, and DOEE enforcement actions at the residential unit;" (3) "did not provide tenants with a clearance report issued within the previous twelve months when those tenants has a child under the age of six living in the dwelling unit;" and (4) "did not timely comply with DOEE administrative orders." MSJ at 19-22.

Regarding violations of the CPPA—D.C. Code § 28-3904 *et seq*.—the District maintains that Edwards violations of the Housing Code and LHPEA are *per se* violations of the CPPA, as the CPPA makes it unlawful to "violate any provision of title 16 of the District of Columbia Municipal Regulations." MSJ at 24. In addition, the District contends that Edwards violated the CPPA by making misrepresentations as to material facts that have a tendency to mislead, and by representing that services were of a particular standard when they were, in fact, of another. *Id*. at 26-28.

Edwards presents a myriad of arguments in its April 19, 2024 Opposition to the District's MSJ. Edwards first argues that A.J. Edwards Realty is not subject to judgment because it is not a

legal entity separate from Adolphe Edwards. Opp'n to MSJ at 3. Edwards further asserts he is not subject to liability for civil penalties or restitution under the LHPEA or CPPA because the District's claim for injunctive relief is moot, Defendants therefore have no liability for restitution under the CPPA. *Id*. at 5-7. Edwards similarly contends that the District is not entitled to judgment under the LHPEA, as the purpose of the statute it to "enforce compliance," and Edwards no longer owns or controls the Properties at issue. *Id*. at 8-9. Edwards further states the District's evidence is either inadmissible or inconclusive, contending that some of the District's evidence is hearsay. *Id*. at 9-11. Edwards also claims that none of the inspectors cited by the District inspected every single unit of any building at any given time, and therefore the District's claims that the alleged violations went unabated are generalizations. *Id*. at 14-15.

In the District's May 3, 2024 Reply, the District reiterated that Edwards violated the LHPEA by failing "to promptly address 137 chipping and peeling presumed lead-based paint hazards for 5,674 days," failing to "provide tenants with lead-based paint disclosure forms on 18 occasions and lead- based paint clearance reports on five occasions," and admitting to "failing to comply with administrative orders for 1,463 days" that "demanded Edwards eliminate, and verify he eliminated, lead-based paint hazards." Reply to MSJ at 2. The District further emphasized that Edwards "committed 1,317 *per se* violations [of the CPPA] by failing to timely abate Housing Code infractions," and that Edwards "misrepresented to 82 tenants that he would provide Housing-Code complaint units through the warranty of habitability" and "misrepresented to 82 tenants he would exercise reasonable care to maintain his properties while failing to have in place an adequate maintenance program." *Id*.

The District argues that Edwards' statement regarding the injunctive relief is premature, as the MSJ is limited to liability, not relief. Reply to MSJ at 4. The District further contends the CPPA

makes it clear that a court has the authority too issue civil penalties, regardless of any equitable relief. *Id*. at 5. The District also states that the DOB business records are properly before the Court as they "are prepared over the course of regularly conducted agency enforcement activities—and this is sworn to by the custodial record keeper under penalty of perjury." *Id*. at 6-7. The District points out that Edwards failed to directly respond to the District's Statement of Undisputed Material Facts as required by Rules 56(b)(2)(B) and Rule 12-I(k), and that the Court may grant summary judgment based on this failure alone. *Id*. at 8.

Finally, the District asserts that Edwards does not dispute the District's specific factual allegations. Reply to MSJ at 8. The District contends there is "no material dispute that Edwards received notices of violation observed by the DCRA and DOB in 2022, that "Edwards has failed to timely perform over a thousand necessary repairs," and that "DCRA's February 2021 inspection occurred in a tenant-occupied unit." *Id*. at 8-15.

b. Discussion

As detailed below, summary judgment against Edwards in Counts I-V is appropriate in this case. There are no genuine disputes of material fact as to Edwards' recurrent violations of the LHPEA and CPPA, and the District is entitled to summary judgment as a matter of law. Super. Ct. Civ. R. 56(a). The requested relief in Count VI, Appointment of a Receiver, is moot, as a Receiver has already been appointed. Therefore, the District's MSJ is granted in part.

1. Edwards' Failure to Comply with Rule 56(b)(2)(B) and Rule 12-I(k)

As an initial matter, Edwards' Opposition does not conform with the requirements of Rule 56(b)(2)(B). Rule 56(b)(2)(B) requires a party opposing a motion for summary judgment to "file a statement of the material facts that the opponent contends are genuinely disputed." Super. Ct. Civ. R. 56(b)(2)(B). Furthermore, "[t]he disputed material facts must be stated in separate

numbered paragraphs that correspond to the extent possible with the numbering of the paragraphs in the movant's statement." *Id*. Rule 12-I(k) similarly requires that "[a] motion for summary judgment must comply with the requirements of Rule 56." Super. Ct. Civ. R. 12-I(k). In his Opposition, Edwards provides 28 statements of material fact in genuine dispute in response to the District's 484, only three of which make any reference to the District's Statement of Material Facts.

The Court may grant the District's MSJ on this basis alone. *See Sanchez v. Magafan,* 892 A.2d 1130, 1134 (D.C. 2006) ("[S]ummary judgment may be entered if an opponent does not 'file a Rule 12-I(k) statement *or otherwise enumerate with reasonable precision* the material facts alleged to be in dispute.'") (citing *EDM & Assocs. v. Gem Cellular*, 597 A.2d 384, 392 n.14 (D.C. 1991) (emphasis in original). As both Parties have admitted, the record in this case is exorbitantly large, totaling over 3,278 pages. Reply to MSJ at 8; Opp'n to MSJ at 9. This is certainly an example where failure to comply with Rule 12-I(k) has the effect of requiring "the trial judge, unaided by counsel, to search a voluminous record for genuine issued of disputed material fact." *Id*. By failing to show the existence of an issue of material fact, the non-moving party fails to meet its burden. *Smith*, 75 A.3d at 901.

However, the Court generally prefers to decide cases on the merits. *Johnson v. Payless Shoe Source, Inc.* 841 A.2d 1249, 1258 (D.C. 2004). Therefore, the Court details additional bases for the grant of summary judgment on the issue of Edwards' liability below.

2. Business Records

Edwards argues that several of the District's exhibits to their MSJ are inadmissible hearsay, and therefore the Court may not consider them. Opp'n to MSJ at 10-11. Edwards specifically takes issue with Exhibit 12—totaling 1,274 pages—stating generally that this exhibit contains "a compilation of documents which on their face appear to be DCRA violations notices, Lexis-Nexis

records, D.C. Tax and Revenue documents, Activity Logs of the Government of the District of Columbia, and DOB infraction notices." *Id*. at 10. While it is true that the facts supporting a motion for summary judgment must be in a form that would be admissible at trial, Super. Ct. Civ. R. 56(c)(2), the documents submitted by the District are largely admissible as business records, or otherwise the same information can be deduced through other admissible means.

A business record may be admitted as an exception to the general rule against hearsay if it is "[a] record of an act, event, condition, opinion or diagnosis" which: (A) was "made at or near the time by—or from information transmitted by—someone with knowledge;" (B) was "kept in the course of a regularly conducted activity of a business, organization, occupation, or calling, whether or not for profit;" (C) was made as a "regular practice of that activity;" (D) can be introduced through a custodian or other qualified witness; and (E) "the opponent does not show that the source of the information or the method or circumstances of preparation indicate a lack of trustworthiness." Fed. R. Evid. 803(6). Under Rule 43-I(a), such records are "not excluded by the rule against hearsay, regardless of whether the declarant is available as a witness." Super. Ct. Civ. R. 43-I(a).

Under D.C. Code § 14-508, a "record of a regularly conducted activity, as shown by a certification of the custodian or another qualified person, shall be deemed authentic without further testimony as evidence in any judicial proceeding or administrative hearing." D.C. Code § 14-508(b). "Certification" is defined as "a written declaration under oath subject to penalty of perjury," and a "qualified person" means a person who would be able to establish the authenticity of a record if called as a witness at trial." D.C. Code § 14-508(a)(1)-(2).

The DCRA violation notices are properly considered as business records. First, there is a sworn certification from a custodial recordkeeper that the documents are "authentic records of

regularly conducted business activities" and that they meet the elements of Rule 43-I(a), which mirrors Fed. R. Evid. 803(6). MSJ Ex. 12 at 1-2. This satisfies the requirements of D.C. Code § 14-508. Moreover, Edwards has not presented any evidence to indicate "the source of the information or the method or circumstances of preparation indicate a lack of trustworthiness," Fed. R. Evid. 803(6)(E).

Second, Edwards' argument that the DCRA violation notices are not "business records" because the DOB did not inherit duties to maintain prior DCRA records is inapposite to D.C. Code. Pursuant to D.C. Code § 10-563.01(b), as of October 1, 2022, the key functions of the DCRA were transferred to the DOB, including "protection of the public through the regulation or rental housing…and assurance of compliance with legislated housing standards and health, safety and sanitation standards for neighborhoods." D.C. Code § 10-563.01(b)(1); D.C. Code § 1-1506.01(III)(A)(5). Furthermore, "all…records" were transferred to the DOB. D.C. Code § 10-563.01(c).

Even assuming *arguendo* the Lexis Nexis "public records" address searches do not fall within the business records exception, the information contained in these documents may be admitted through other means. These documents appear to be introduced to prove that the address on the DCRA violation notices match Edwards' home address and e-mail address for purposes of proving notice. Mr. Edwards himself confirmed his home address of 12 Longfellow Street NW and e-mail address of ajedwards4@netzero.net in his sworn deposition testimony. MSJ Ex. 1 (Edwards Depo. Trans. Day 1, 20:17-18; 21:15-16). Consequently, the documents presented by the District in support of its MSJ and the information therein are properly before the Court.

3. LHPEA Violations (Counts I, II, and III)

A residential property constructed prior to 1978 is presumed to contain lead-based paint. 20 DCMR § 3301.1. Under the LHPEA, owners must maintain "all dwelling units, common areas of multifamily properties, and child-occupied facilities constructed prior to 1978…free of lead-based paint hazards." D.C. Code § 8-231.02(a). A lead-based paint hazard is any condition that causes exposure to lead from deteriorated lead-based paint or presumed lead-based paint, such as chipping and peeling. D.C. Code § 8-231.01(22). If the DOEE orders an owner to eliminate a lead-based paint hazard, the owner must comply with the order. 20 DCMR § 3318.5; D.C. Code § 8-231.03(d)(1)(A). Furthermore, the owner must provide official lead-based paint disclosures to potential tenants before executing a lease. 20 DCMR § 3313.1-2; D.C. Code § 8-231.04(a)(2). When a "person at risk," such as a child under the age of six or a pregnant woman, regularly visits or resides in a dwelling unit, the owner of the dwelling unit must provide the tenant with an official clearance report. 20 DCMR § 3313.3; D.C. Code § 8-231.04(b)(c).

The record clearly demonstrates that Edwards repeatedly and continuously violated provisions of the LHPEA and did not correct the violations, despite receiving notice requiring him to do so. Edwards was the owner of the Properties at the time this case was filed and at the time the pertinent DCRA notices were filed. The Properties were constructed prior to 1978 and therefore are presumed to have lead-based paint. 20 DCMR § 3301.1. Edwards knew this. MSJ Ex. 1 (Edwards Depo. Trans. Day 1, 55:14-16); Ex. 3 at 3. The presence of lead-based paint was confirmed by DOEE's use of an X-ray Fluorescence Analyzer. MSJ Ex. 13, ¶¶ 7-8. The Properties collectively had over 100 areas with chipping and peeling paint hazards. MSJ Ex. 12, 27. Edwards was sent official notifications of the violations by DCRA. *Id*. Edwards was also ordered by the DOEE to eliminate the lead-based paint hazards. MSJ Ex. 13. Despite notification of the chipping and peeling paint in 2019, 2020, and 2021, subsequent inspections in July and December 2022

confirmed that the hazard remained unaddressed in several different locations. MSJ Ex. 12. Edwards admits he did not timely comply with the DOEE orders. MSJ Ex. 3 at 4.

Likewise, Edwards did not provide the required official lead-based paint disclosures to tenants or provide high risk tenants with the required clearance report. Edwards admitted that he has never provided tenants with a form asking tenants to sign to confirm they had received lead-based paint disclosures. MSJ Ex. 2 (Edwards Depo. Trans. Day 2, 10:18-21). Edwards likewise admitted that he has not maintained records of any lead-based paint disclosure forms purportedly provided to tenants. MSJ Ex. 3 at 3. Over a dozen tenants testified through sworn declarations that they did not receive either lead-based paint disclosure forms or clearance reports (for those tenants at high risk). MSJ Ex. 17.

The record on Edwards' violation of the LHPEA is so clear that no reasonable juror could find for him as a matter of law. *Biratu*, 962 A.2d at 263. Consequently, summary judgment is warranted on Counts I, II, and III.

4. CPPA Violations (Counts IV and V)

The CPPA makes it unlawful to "engage in an unfair or deceptive trade practice, whether or not any consumer is in fact misled, deceived, or damaged thereby, including to:

> (d) represent that goods or services are of particular standard, quality, grade, style, or model, if in fact they are of another;
>
> (e) misrepresent as to a material fact which has a tendency to mislead; [and]
>
> (dd) violate any provision of title 16 of the District of Columbia Municipal Regulations."

D.C. Code § 28-3904. Misrepresentations or false statements about goods or services need not be made intentionally to state a claim under the CPPA. *See Fort Lincoln Civic Ass'n v. Fort Lincoln New Town Corp.*, 944 A.2d 1055, 1072-73 (D.C. 2008). Plaintiffs do not have to actually be

mislead by the conduct in order for it to constitute a violation of the statute. D.C. Code § 28-3904 ("It shall be a violation…whether or not any consumer is in fact misled, deceived, or damaged thereby."). Whether a defendant violated the CPPA depends on how the defendant's conduct would be viewed by a reasonable consumer. *Pearson v. Soo Chung*, 961 A.2d 1067, 1074-75 (D.C. 2008). The CPPA is to "be construed and applied liberally to promote its purpose." D.C. Code § 28-3901(c).

Once Amended in 2016, the CPPA created a private right of action for tenants against landlords. *Sizer v. Velasquez*, 270 A.3d 299, 305 (D.C. 2022). In addition to the specific provisions addressing landlord-tenant relationships, the "goods and services" which are subject to protection from such "deceptive trade practices" referenced under D.C. Code § 28-3904 are broadly defined, to include "real estate transactions[] and consumer services of all types." D.C. Code § 28-3901(6)-(7).

Edwards violated D.C. Code § 28-3904(dd) by engaging in trade practices that violated 16 DCMR §§ 3305 (housing code requirements under 14 DCMR § 400 *et seq*) and 4003 (LHPEA regulations under 20 DCMR § 3300 *et seq*.). As discussed above, Edwards had ample actual and constructive notice of a myriad of ongoing and persistent housing code violations, as well as LHPEA violations. MSJ Exs. 12, 13, 17, 27, 30. Despite this, Edwards continued to operate the Properties as rental housing accommodations.[3]

Edwards also violated D.C. Code §§ 28-3904(d) and (e) by engaging in trade practices that violated the warranty of habitability. Warranty of habitability "is a term implied in every lease" that "requires a landlord to exercise reasonable care to maintain rental premises in compliance with the housing code." *Caesar v. Westchester Corp.*, 280 A.3d 176, 190 (D.C. 2022) (internal

[3] Though Edwards at time employed various individuals to assist him with the Properties, he asserted that he is "responsible for the policies at the [P]roperties." MSJ Ex. 1 (Edwards Depo. Trans. Day 1, 99:2-4).

quotations and citations omitted). A violation of the housing code is a quintessential example of the breach of the warranty of habitability. *Id*. Edwards entered into leases with his tenants. Edwards made misrepresentations of material facts by representing through the warranty of habitability that tenants would have housing-code complaint units, but consistently and repeatedly failed to provide such units. *See, e.g.,* MSJ Exs. 12, 13, 17, 27, 30; D.C. Code § 28-3904(e). Edwards similarly misrepresented the quality of maintenance services at the Properties by representing through the warranty of habitability that the Properties would be reasonably maintained, but did not in actuality provide adequate maintenance. *Parham v. CIH Props., Inc.*, 208 F. Supp. 3d 116 (D.D.C. 2016) (citing *George Washington Univ. v. Weintraub*, 458 A.2d 43, 47 (D.C. 1983) (holding that the warranty of habitability "creates for landlords a continuing duty during the lease term to 'exercise reasonable care to maintain rental premises in compliance with [D.C.] housing code.'"); *see also, e.g.*, MSJ Exs. 12, 13, 17, 27, 30; D.C. Code § 28-3904(d).

Again, viewing the evidence in the light most favorable to Edwards as the non-moving party, the record on Edwards' violation of the CPPA is so one-sided in favor of the District that summary judgment on Counts IV and V is appropriate. *Hunt*, 66 A.3d at 990.

5. Appointment of a Receiver (Count VI)

The Court previously appointed a Receiver to oversee the Properties. Consequently, Count VI is moot. It is inappropriate for the Court to "record [its] views concerning a controversy which no longer exists and to rule on a question which has become moot." *Banks v. Ferrell*, 411 A.2d 54, 56 (D.C. 1979). Therefore, the Court will not enter summary judgment as to Count VI.

c. Summary

For the reasons outlined above, summary judgment is entered against Edwards on Counts I, II, III, IV, and V of the Second Amended Complaint. Summary judgment not appropriate on

Count VI as it is moot. The Court will order additional briefing on the issue of damages following this matter's September 20, 2024 Remote Status Hearing.

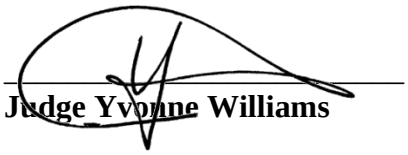
Accordingly, it is on this 19th day of September, 2024, hereby,

ORDERED that The District of Columbia's Motion for Summary Judgment Against Defendants Adolphe Edwards and A.J. Edwards Realty and Motion for Additional Briefing on Remedies is **GRANTED IN PART**; and it is further

ORDERED that Defendant 2425-2431 Alabama Avenue LLC's Motion to Dismiss Second Amended Complaint is **DENIED**; and it is further

ORDERED that the Parties shall be prepared to discuss a briefing schedule on remedies at this matter's September 20, 2024 Remote Status Hearing.

IT IS SO ORDERED.



Judge Yvonne Williams

Date: September 19, 2024

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