

Western Division Housing Court
Unofficial Reporter of Decisions

Volume 8

Feb. 5, 2021 — Mar. 22, 2021
(and certain older decisions)

ABOUT

This is an unofficial reporter for decisions issued by the Western Division Housing Court. The editors collect the decisions on an ongoing basis for publication in sequentially numbered volumes. Presently, this unofficial reporter is known as the “Western Division Housing Court Reporter.” Inasmuch as the reader’s audience is familiar with this unofficial reporter, the reader is invited to cite from these decisions by using the abbreviated reporter name “W.Div.H.Ct.”

WHO WE ARE

This is a collaborative effort by and among several individuals representative of the Court, the local landlord bar, and the local tenant bar:

Hon. Jonathan Kane, First Justice, *Western Division Housing Court*

Hon. Robert Fields, Associate Justice, *Western Division Housing Court*

Hon. Michael Doherty, Clerk Magistrate, *Western Division Housing Court*

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Peter Vickery, Esq., *Bobrowski & Vickery, LLC*

Messrs. Dulles and Vickery serve as co-editors for coordination and execution of this project.

OUR PROCESS

The Court has agreed to set aside copies of all its written decisions. Periodically, the editors collect and scan these decisions, employing commercial-grade “optical character recognition” software to create text-searchable PDF versions. On occasion, the editors also receive copies of decisions directly from advocates, which helps ensure completeness. When the editors have gathered a sufficient quantity of pages to warrant publication, they compile the decisions, review the draft compilation with the Court for approval, and publish the new volume. Within each volume, decisions are assembled in chronological order. The primary index is chronological, and the secondary index is by judge. The editors publish the volumes online and via an e-mail listserv. Additionally, the Social Law Library receives a copy of each volume. The volumes are serially numbered, and they generally correspond to an explicit time period. But, for several reasons, each volume may also include older decisions that had not been available when the prior volume was assembled.

EDITORIAL STANDARDS

In General. By default, decisions are *included* unless specific exclusion criteria are met. Exclusion criteria are intentionally limited, and the editors have designed them to minimize any suggestion of bias for or against any particular litigant, type of litigant, attorney, firm, type of case, judge, witness, *etc.* In certain circumstances, redactions may be used in lieu of exclusions.

Exclusion by the Court. The Court intends to provide the editors with all of its decisions except those from impounded cases and those involving highly sensitive issues relating to minors—the latter being a determination made by the Court in its sole discretion. The Court does not provide decisions issued by the Clerk Magistrate or any Assistant Clerk-Magistrate. Additionally, the

¹ Formerly of Community Legal Aid, and historically associated with the local tenant bar.

Court does not ordinarily provide decisions issued as endorsements onto the face of motion papers. The Court retains inherent authority to withhold other decisions without notice.

Exclusion by the Editors. The editors will exclude material if one or more of the following specific criteria are met:

1. Case management and scheduling orders.
2. Terse orders and rulings that, due to a lack of sufficient context or background information, are clearly unhelpful to a person who is not familiar with the specific case.
3. Orders detailing or discussing highly sensitive issues relating to minors, mental health disabilities, specific personal financial information, and/or certain criminal activity. As applied to decisions involving guardians ad litem or the Tenancy Preservation Program, this means those decisions are not automatically excluded by virtue of such references alone, however they are excluded if they reveal or fairly imply specific facts about a party's mental health disability.

The editors make their decisions by consensus, applying their best good faith judgment. In certain circumstances, the editors will employ redactions during this process.

In certain circumstances, the editors may elect to confer further with the Court before deciding whether to exclude a decision based on references to confidential information (*e.g.*, information relating to minors, medical records, domestic-relations matters, substance use, and guardian ad litem reports) that might lead to the public disclosure of private facts. If the editors or the Court chose to exclude a decision after such a review, the editors will revise the exclusion criteria to reflect the principles that led to that determination.

The exclusion criteria and the review criteria will undoubtedly grow, change, and evolve over time. The prefatory text of each volume will reflect the most recent version of the criteria.

Final Review. Prior to publication of any given volume, the editors will submit the draft volume to the Court for a final review to ensure that it meets the editorial standards.

PUBLICATION

Volumes are published in PDF format at www.masshousingcourtreports.org. We also have a listserv for anybody who wishes to receive new volumes by e-mail when they are released. Those wishing to sign up for the listserv should e-mail Aaron Dulles, aaron.dulles@mass.gov.

SECURITY

The editors use GPG technology to protect against altered copies of the PDF volumes. Alongside each volume is another file with Aaron Dulles's digital signature of authentication. Readers may authenticate each volume using freely available GPG software. In addition to the PDF volume and its accompanying signature file, the reader will need Aaron Dulles's "public key," which can be found by searching his name on keyserver.pgp.com. The key is associated with the e-mail address dulles@jd11.law.harvard.edu, and it has the following "fingerprint" identifier:
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CONTACT US

Comments, questions, and concerns may be raised to any person involved in this project. Out of respect for the Court's time, please direct such communications at the first instance to Aaron Dulles (aaron.dulles@mass.gov) and/or Peter Vickery (peter@petervickery.com).

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COMMONWEALTH OF MASSACHUSETTS

HAMPDEN, SS:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
SUMMARY PROCESS
NO. 19H79SP004794

FEDERAL HOME LOAN MORTGAGE CORPORATION,

Plaintiff

VS

JACKLYN RUDZIK,

Defendant

Order on Plaintiff's Motion for Summary Judgment

This is a summary process action in which Plaintiff Federal Home Loan Mortgage Corporation ("Freddie Mac") is seeking to recover possession of the residential property at 13 Pine Street, Westfield, Massachusetts currently occupied by the sole remaining defendant, Jacklyn Rudzik ("Rudzik").

This matter came before the court on Freddie Mac's motion for summary judgment. Freddie Mac is seeking judgment only on its claim for possession of the 13 Pine Street property. Freddie Mac waived its claim for use and occupancy damages. Rudzik did not file an opposition to the plaintiff's summary judgment motion. She did not appear at the court hearing on February 3, 2020, or otherwise dispute the factual assertions set forth by Freddie Mac in the motion.

The undisputed evidence in the summary judgment record establishes that Patrick St. Lawrence ("St. Lawrence") is the former owner of the 13 Pine Street property. He secured a mortgage loan on the property secured by a mortgage held by PeoplesBank. St. Lawrence occupied the 13 Pine Street property as his residence together with Rudzik.

St. Lawrence defaulted on his mortgage obligations, and on July 23, 2019 PeoplesBank conducted a foreclosure sale to foreclose on St. Lawrence's mortgaged interest in the subject property. The foreclosure proceeded in strict compliance with the underlying mortgage and

statutory power of sale. Freddie Mac was the high bidder at the foreclosure auction and holds legal title to the 13 Pine Street property.¹

St. Lawrence and Rudzik remained in possession of the property after the foreclosure sale. Neither PeoplesBank nor Freddie Mac entered into a tenancy relationship with St. Lawrence or Rudzik. After the foreclosure sale St. Lawrence and Rudzik occupied the premises as sufferance occupants.

On October 2, 2019 Freddie Mac served St. Lawrence with a 3-day notice to quit. Thereafter, Freddie Mac commenced this summary process action against St. Lawrence. St. Lawrence vacated the 13 Pine Street property by October 31, 2020; however Rudzik continued to occupy the premises. In an order dated December 2, 2020, the court allowed Freddie Mac's motion to dismiss the complaint as against St. Lawrence and to substitute Rudzik as the sole remaining defendant. Rudzik did not file an answer has not otherwise contested any claim set forth in the summary process complaint.

I rule as a matter of law that Freddie Mac's right to possession of the 13 Pine Street property is superior to any right to possession that Rudzik might have; and Freddie Mac has established its claim to possession as a matter of law.

Accordingly, Freddie Mac's motion for summary judgment is **ALLOWED**.

**ORDER FOR ENTRY OF JUDGMENT CONSISTENT WITH
HOUSING COURT DEPARTMENT STANDING ORDER 5-20**

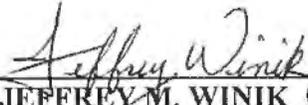
Based upon all the credible evidence submitted as part of the summary judgment record in light of the governing law, it is **ORDERED** that:

1. Judgment enters for plaintiff Federal Home Loan Mortgage Corporation and against defendant Jacklyn Rudzik on the claim for possession;
2. Plaintiff's claim for use and occupancy damages against defendant Jacklyn Rudzik is waived and dismissed;

¹ The foreclosure deed conveying title to the 13 Pine Street property from PeoplesBank to Freddie Mac was recorded on August 9, 2019 with the Hampden County Registry of Deeds in Book 22797, Page 483.

3. Execution for possession shall issue on April 1, 2021; however the plaintiff shall not levy on the execution prior to May 1, 2021 or on the day next after the date on which any applicable eviction moratorium order expires or is rescinded, **WHICHEVER IS LATER.**

SO ORDERED.


JEFFREY M. WINIK *let permission*
ASSOCIATE JUSTICE (Recall Appt.) *Am*

February 2, 2021

the Court's attention for further measures including, but not limited to, sanctions and/or contempt.²

4. The Guardian ad Litem is authorized to and shall investigate any probate cases which may concern the disposition of the subject property and/or any inheritance left to the Defendant Ben Gordon.
5. The Guardian ad Litem is authorized to and shall file into such probate matters filings and motions as may be necessary to protect Mr. Gordon's interests, and to report to this Court all such actions.
6. The Guardian ad Litem shall file an updated report on his efforts by no later than February 23, 2021.
7. This matter is scheduled for a status conference for March 2, 2021 at 11:00 a.m. by Zoom. The Clerks Office shall provide written instructions on how to participate by Zoom. Any questions can be directed to that office at 413-748-7838.

So ordered this the 3rd day of February, 2021.


Hon. Robert G. Fields *Am.*

² See *Fletcher v. Dorchester Mut. Ins. Co.*, 437 Mass. 544, (2002) ("That duty is then enforced as needed by appropriate court orders, up to and including holding the witness in contempt.")

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 19-SP-4750

PAUL BOUTOT,

Plaintiff,

v.

JENNIFER ORTIZ,

Defendant.

ORDER

**ESTE DOCUMENTO CONTIENE INFORMACION
IMPORTANTE. POR FAVOR, CONSIGA UNA TRADUCCION
IMMEDIATAMENTE**

After hearing on February 3, 2021, on the landlord's motion for the court to issue the execution for outstanding rent and possession of the subject premises, at which only the landlord appeared and the tenant failed to appear after being given notice of the hearing, the following order shall enter:

1. The motion, treated as one to amend the judgment, is hereby ALLOWED.
2. Judgment shall enter for the landlord for possession plus \$4,473.75 and court costs. Execution shall issue in due course.
3. The landlord reported to the court that he has tried many times to communicate with the tenant ("knocked on her door 50 times") about rent and repairs and that she is not engaging in any communication with him. It is particularly unfortunate that the tenant is not engaging as there are so many additional resources available to avoid eviction during the COVID emergency.
4. Wayfinders, which administers emergency rental assistance funds that have been increased and enhanced to address the COVID pandemic, can be reached on-line at: www.wayfindersma.org/hcec-assessment and by telephone at 413-233-1600.
5. Additionally, the federal government has generated an order that may have the effect of halting physical evictions if the tenant completes a CDC declaration and provides same to the landlord. The tenant may wish to obtain a copy of a CDC declaration to determine if the Temporary Halt in Residential Evictions to Prevent Further Spread of COVID-19, at 85 Fed. Reg. 55,292 (September 4, 2020) applies to her. If so, she should provide a copy of the declaration with her signature to the landlord and to the court.
6. The state government has also increased the availability of free legal assistance. The tenant should contact Community Legal Aid to see if she can access free legal assistance by calling 413-781-7814.

So entered this 5th day of February, 2021.

RF

Robert Fields, Associate Justice ^{AM}

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 20-SP-1121

ROBERT MARTIN,)
)
PLAINTIFF)
)
v.)
)
MARY HAMEL,)
)
DEFENDANT)

FINDINGS OF FACT, RULINGS
OF LAW AND ORDER

This summary process action was before the Court for trial on February 2, 2021. Plaintiff seeks to recover possession of 77 Holland Drive, East Longmeadow, Massachusetts (the "Premises") from Defendant. Plaintiff appeared for trial with counsel, and Defendant appeared and represented herself. The tenancy having been terminated without fault of Defendant, the Court accepted Defendant's testimony as an oral petition for a stay pursuant to G.L. c. 239, §§9-13. The hearing on the stay was consolidated with the trial on the merits.

Based on all the credible testimony, the other evidence presented at trial and the reasonable inferences drawn therefrom, in light of the governing law the Court finds as follows:

Plaintiff owns the Premises. The parties agree that Defendant is Plaintiff's ex-girlfriend and that she moved into the Premises in 2015. Defendant did not sign a lease or pay rent. In early 2020, the parties broke up and Defendant subsequently secured a restraining order from the

Palmer District Court which allowed her to remain in the Premises and which prohibited Plaintiff from entering the Premises.¹ The parties agree that the restraining order has expired.

Plaintiff had a deputy sheriff serve a notice to quit on February 26, 2020, which Defendant received. Plaintiff filed a summary process summons and complaint on October 29, 2020. Given the no-fault nature of this case, the Court finds that Plaintiff introduced sufficient evidence to satisfy his prima facie case for possession.

Defendant, who lives in the Premises with her school-age child, does not assert any defenses or counterclaims. She acknowledges that she has no right to continue to live in the Premises but seeks "a few more weeks" to move. She testified that she has a pending RAFT application² and has been looking for a place to move. Because Defendant failed to present any legally cognizable defenses, Plaintiff must prevail on his case to recover possession.

With respect to the statutory provisions relating to no-fault evictions set forth in G.L. c. 239, §§ 9-13, Defendant testified credibly that she has been engaged in a diligent housing search but has not been able to find a new residence for her and her child. The Court finds that she satisfies the criteria for a stay of execution pursuant to G.L. c. 239, § 10, and that a stay is warranted.³

¹ The order from Palmer District Court was not offered into evidence, but the parties were in general agreement as to the terms of the order.

² Defendant is not entitled to the protections afforded tenants under either Chapter 257 of the Acts of 2020 or the CDC eviction moratorium because this case was not filed as a non-payment of rent case and unpaid rent is not an element of Plaintiff's case. Moreover, although Plaintiff did not raise the issue and therefore the Court does not need to address it, Defendant may not have any rights of a tenant under the circumstances of this case.

³ Even if G.L. c. 239, § 9-13 did not apply, based on the length of time Defendant has resided at the Premises and her testimony that she has no place to go at this time, principles of equity also support a stay of execution. Although Plaintiff is entitled to regain possession of his home, he currently has a place to stay. The balance of equities favors Defendant with respect to her request for a short stay of execution.

Based upon all of the credible testimony and evidence presented at trial in light of the governing law, it is ORDERED that:

1. Judgment shall enter for Plaintiff for possession only.
2. Issuance of the execution shall be stayed until March 1, 2021.
3. Defendant must use best faith efforts to find alternative housing. She shall keep a log of all efforts, including the address of any housing about which she inquires, the date and time of contact, method of contact, name of contact person and result of contact. She shall also keep a log of all efforts made to obtain short term rental assistance, particularly with respect to her contacts with Way Finders (which has a program to assist people who need to relocate).

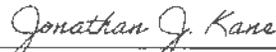
4. If despite her efforts Defendant has not found a place to move to by March 1, 2021, she can extend the vacate date one time only, through March 31, 2021. If Defendant wishes to take advantage of the one-month extension, she must:

- a. Deliver payment of \$1,000.00 for her use and occupancy of the Premises for the month of March 2021 to Plaintiff's counsel no later than Friday, February 26, 2021 at 4:00 p.m.⁴
- b. Provide to Plaintiff's counsel, along with payment, the log referenced in item number 3 above.

⁴ Because neither party introduced any evidence or testimony as to the fair rental value of the Premises, the Court decided upon the sum \$1,000.00 for monthly use and occupancy in order to avoid the necessity of a subsequent hearing on the issue of use and occupancy. If either party seeks a different use and occupancy rate, that party may file a motion to modify the rate and the Court will schedule an evidentiary hearing. The moving party shall provide the Court and the other party with any exhibits to be introduced at the hearing no less than three days prior to the hearing.

5. Plaintiff may file a motion to issue the execution (eviction order) after expiration of the ten-day statutory appeal period, but no motion to issue the execution shall be scheduled before March 1, 2021.

SO ORDERED this 2th day of February 2021.



Jonathan J. Kane
First Justice, Western Division

cc: Court Reporter

Although Plaintiff's counsel notes that no substantive actions took place between the filing of the complaint and the filing of her appearance, this argument misses the larger point. Hedge Hog Industries is not a small and unsophisticated landlord, nor is it a stranger to this Court. In fact, the opposite is true. Housing Court records show Hedge Hog Industries is a party in 67 cases from 2014 to the present, many (if not most) of which were filed after the *Hatcher* decision was issued.¹ Mr. Serricchio, who identifies himself as the president of Hedge Hog Industries, should have known that his company needs to have a lawyer represent it in all matters before this Court. Dismissal without prejudice is appropriate in this case, therefore, "in order to ensure the fair administration of justice and to deter such conduct in the future." *See id.*, 479 Mass. at. 543-44.²

At the conclusion of the hearing, Defendant's counsel informed the Court that he was not sure if Defendant would want to pursue her counterclaims in light of the dismissal of Plaintiff's claims. Accordingly, if Defendant wishes to pursue her counterclaims, she must file a request with the Clerk's Office, referencing this Order, asking that the case be transferred to the civil docket with her name listed as the Plaintiff, and the Clerk's Office will issue a tracking order. If such a request is not received by **February 19, 2021**, all claims and counterclaims will be dismissed, and the case closed.

SO ORDERED this 8th day of February 2021.


Jonathan J. Kane
First Justice

cc: Clerk's Office
Court Reporter

¹ Although the issue is not before this Court, the *Hatcher* decision recites that "where a person who is not authorized to practice law signs and files a summary process complaint – and where that conduct is not inadvertent but by design, or part of a pattern or practice -- we hold that a court has the inherent authority, in the exercise of its sound discretion, to impose appropriate sanctions, including attorney's fees and other costs, in order to ensure the fair administration of justice and to deter such conduct in the future." 479 Mass. at 543-44.

² The Court need not address the other grounds to dismiss this action, but the Court notes its reservations about the legal sufficiency of the notice to quit and the complaint.

**COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT**

HAMPDEN, ss

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 20-SP-795

THEODORE BURRELL,

Plaintiff

v.

CHRIS TRACESKI, KORI WILSON
AND KELLY WARDYNSKI,

Defendants

FINDINGS OF FACT,
RULINGS OF LAW,
AND ORDER FOR JUDGMENT

This summary process action was before the Court for trial on February 4, 2021. Plaintiff (sometimes referred to herein as the “landlord”) seeks to recover possession of 4 Armory Street, #3, Greenfield, Massachusetts (the “Premises”) from Defendants. Plaintiff appeared for trial with counsel. Defendants Kori Wilson and Kelly Wardynski (collectively referred to herein as the “tenants”) appeared and represented themselves. Defendant Chris Traceski did not appear.¹

As a preliminary matter, the Court determines that the tenants do not satisfy the criteria for protection from eviction set forth in Chapter 257 of the Acts of 2020 (“Chapter 257”) or the eviction moratorium order set forth by the Centers for Disease Control and Prevention found at 85 Fed. Reg. 55292 (the “CDC Order”). After a hearing on January 5, 2021 at which they, the tenants were informed in writing about short term emergency rental assistance that was available

¹ The parties agree that Defendant Traceski vacated the premises in late 2019. Because the rent arrearage in question in this case appeared to have accrued after Mr. Traceski vacated, and because he is no longer in possession of the unit, he will be dismissed from this case within fifteen days unless Plaintiff’s counsel moves for other relief.

through the Franklin County Regional Housing and Redevelopment Authority, and they were provided a link to the RAFT program. *See Order entered January 8, 2021.* They were also informed of their right to provide a declaration to the landlord in order to seek protection under the CDC Order. *Id.* Nonetheless, the tenants do not have a pending RAFT application at present, nor does not appear that a CDC declaration was provided to the landlord prior to trial.

In order to take advantage of the protections against evictions provided under both State and Federal laws, the tenants have to show that they have been making reasonable efforts to seek financial assistance. They had a month from the previous Court hearing to complete a RAFT application; although Ms. Wardynski claims that she only found out on the morning of trial that her RAFT application was incomplete, she had sufficient time to follow up on the status of her application well in advance of trial. Likewise, the tenants have had plenty of time to ensure that the landlord was provided with a declaration under the CDC in advance of trial. Accordingly, the Court deems that neither Chapter 257 nor the CDC Order preclude the Court from conducting the trial and entering judgment.²

Based on all the credible testimony, the other evidence presented at trial and the reasonable inferences drawn therefrom, in light of the governing law the Court finds as follows:

Plaintiff is the owner of the Premises. He rented the Premises to Mr. Traceski in or about 2016 pursuant to a lease with a one-year term. Mr. Wilson moved into the Premises with Mr. Traceski, although he was not named in, and did not sign, the lease. The landlord acknowledges

² Notwithstanding the foregoing, the tenants can still attempt to assert their rights under Chapter 257 and/or the CDC Order prior to a physical eviction. If they can demonstrate that their application for rental assistance is complete and pending, or if they provide a signed declaration pursuant to the CDC Order to Plaintiff's counsel and the Court, they may file a motion to stay issuance of (or use of) the execution (eviction order) and the Court will at that time determine the applicability of Chapter 257 and the CDC Order.

that, at some point, he became aware that Mr. Wilson was also living at the Premises and did not object. Mr. Traceski vacated the Premises in or about October 2019, apparently without advance notice to the tenants.

In early November 2019, the landlord served a notice to quit addressed to “Chris Traceski and All Occupants.” He claims he addressed it in this manner because he did not know Mr. Wilson’s name. Mr. Wilson acknowledges receiving the notice to quit, and he understood that it applied to him. In fact, he filed an answer in the summary process case and assented to the landlord’s request that he be added as a party defendant. Under the circumstances, the Court determines that the failure to name the Mr. Wilson on the notice to quit had no meaningful practical impact and finds that the notice is legally sufficient. *See Cambridge Street Realty, LLC v. Stewart*, 481 Mass. 121, 130 (2018).³

Monthly rent for the Premises is \$1,200.00. As of the date of trial (inclusive of the month of February 2021), the landlord claims that the tenants owe \$24,400.00 in unpaid rent. The tenants do not dispute the amount or monthly rent or rental arrears. Accordingly, the Court finds that Plaintiff has established his prima facie case for possession and unpaid rent.

Mr. Wilson filed an answer⁴ asserting that bad conditions existed in the Premises and that the landlord knew or should have known about them. At trial, the tenants admitted that they

³ The notice to quit, which was dated November 3, 2019, did not reference Ms. Wardynski because she did not move into the Premises until February 2020. Her subsequent occupancy of the Premises, without permission of the landlord, does not render the notice to quit defective.

⁴ The answer was not filed timely, but Mr. Wilson filed a motion for leave to file a late answer that had not been ruled upon prior to trial. Without objection by Plaintiff, the Court allowed the late answer and Plaintiff elected to proceed with the trial. Ms. Wardynski did not file an answer.

never reported any bad conditions to the landlord in writing, but testified to the following conditions of disrepair:

- i. water entering into their bathroom from the unit above theirs;
- ii. problems with the refrigerator, including lack of a vegetable drawer and missing knobs;
- iii. mice;
- iv. heat not working correctly;
- v. a leak under the kitchen sink;
- vi. one instance of the electricity being shut off.

The tenants also testified generally about a Board of Health inspection on November 25, 2020 and a resulting order for certain repairs to be made. The tenants did not offer the report as an exhibit, however, did not call the health inspector as a witness and did not provide visual evidence that showed the defective conditions.

Where a tenant's counterclaim in a summary process action involves allegations pertaining to the landlord's failure to repair defective conditions in the premises, in order to establish an affirmative defense to possession under G.L. c. 239, § 8A the tenant must prove that the landlord knew or should have known of the defective conditions before the tenant was first in arrears in his or her rent. *See Boston Housing Authority v. Hemingway*, 363 Mass. 184 (1973). Here, the tenants did not demonstrate that the landlord knew or should have known of the defective conditions prior to October 2019 when they first fell behind in the rent. Although it is possible that some of the conditions complained of did exist as of October 2019, the burden is on the tenants to prove this fact, and they failed to do so. Notably, the tenants never testified that

they were withholding rent due to conditions; on the contrary, Ms. Wardynski testified that they fell behind on the rent when their roommate, Mr. Traceski, moved out unexpectedly and their income was not sufficient to pay the rent. Accordingly, Defendant have failed to establish an affirmative defense to possession.

Even though the tenants have no legal defense to possession, their allegations regarding conditions at the Premises constitute a claim for breach of the implied warranty of habitability for which Plaintiff is strictly liable (meaning he is liable without regard to any good-faith efforts he made to correct the defects). *Berman & Sons v. Jefferson*, 379 Mass. 196 (1979). To constitute a breach of warranty, the defects must materially affect the health or safety of the occupants. *Hemingway*, 363 Mass. at 199. The measure of damages for a breach of warranty is the difference between the value of the premises as warranted, and the value in their actual condition. *Haddad v. Gonzalez*, 410 Mass. 855 (1991). It is usually impossible to fix damages for breach of the implied warranty with mathematical certainty, and the law does not require absolute certainty, but rather permits the Court to use approximate dollar figures so long as those figures are reasonably grounded in the evidence admitted at trial. *Young v. Patukonts*, 24 Mass. App. Ct. 907 (1987).

The only substantial defect about which the tenants testified is the leak into the tenants' bathroom coming from the unit above.⁵ The landlord acknowledged that a similar leak had occurred in the past and that he hoped his most recent repair would "finally" fix the problem. This condition entitles the tenants to an abatement of rent. Given that the tenants did not specify

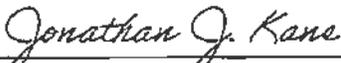
⁵ The other conditions of disrepair about which the tenants complain cannot be considered substantial defects, particularly in light of the tenants' failure to provide any evidence to the Court from which it could assess the severity or duration of the defects.

the length of time and frequency that water entered their bathroom, rather than calculate the difference between the value of the premises with and without the defect on a monthly basis, the Court deems that a \$1,000.00 rent abatement reasonably compensates the tenants for this issue.⁶

Based on the evidence presented at trial in light of the governing law, it is **ORDERED** that:

1. The landlord is owed \$24,000.00 in rent and use and occupancy through February 2021.
2. The tenants are entitled to a rent abatement in the amount of \$1,000.00.
3. After offsetting the tenants' damages from the amount owed, the amount owed to the landlord is \$23,000.00.
4. Judgment shall enter for Plaintiff for \$23,000.00, plus court costs.
5. Execution shall issue upon written application after the statutory appeal period expires.

SO ORDERED this 10th day of February 2021.


Jonathan J. Kane
First Justice, Western Division

cc: Court Reporter

⁶ The Court notes that the tenants did not offer any evidence to support their claim that the leak caused mold and property damage.

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPSHIRE, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 20-SP-381

LIVE PLEASANT, LP)
)
 PLAINTIFF)
)
 V.)
)
 JENNIFER GOLDMAN,)
)
 DEFENDANT)

ORDER

This case came before the Court on February 9, 2021 for a Zoom hearing on Defendant’s motion to stop the physical eviction scheduled for February 11, 2021. Plaintiff appeared with counsel and Defendant appeared without counsel. Representatives of Tenancy Preservation Program (“TPP”) and Commonwealth Care Alliance (“CCA”) also appeared.

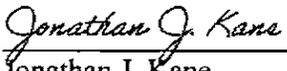
After hearing, Defendant’s motion to stop the eviction is **DENIED** for the reasons stated herein. Defendant has appeared before this Court on a number of occasions seeking to avoid eviction, both by opposing Plaintiff’s motions to issue an execution and seeking stays on the use of the execution. Some of the procedural history is set forth in the Court’s Order dated October 20, 2020. In each instance that she has appeared before this Court, Defendant has made promises to correct the serious health and safety concerns that caused Plaintiff to terminate the tenancy in the first place, but at no time has Defendant made meaningful progress toward that goal.

The Court is satisfied that Defendant has been provided sufficient opportunities and access to resources to preserve her tenancy. Plaintiff is managed by Way Finders, a non-profit agency well-suited to assist tenants with a variety of resources to help them avoid eviction.

Management gave Defendant numerous opportunities to help herself before filing this summary process case, and TPP and other social service providers were put in place to support Defendant during the Court process. Defendant has repeatedly offered excuses explaining why she could not work with the particular service provider assigned to assist her or why, after initially agreeing to accept services, she obstructed or terminated services.¹ Any promises she makes to accept services that she has repeatedly denied, obstructed or terminated in the past are not credible.

Even now, on the eve of the physical move-out, Defendant produced exhibits showing that she complained to management about odors in common areas and elevators and doors lacking accessibility buttons, but she offered no evidence whatsoever demonstrating that she has made good-faith efforts to correct the serious lease violations that she promised to address nearly a year ago. On this record, the Court is unwilling to grant any further stays.²

SO ORDERED this ^{10th} day of February 2021.


Jonathan J. Kane
First Justice

¹ TPP reports that it closed its case with Defendant in December due to lack of cooperation.

² This summary process case was filed due to material violations of the lease, and, therefore, neither Stat. 2020, c. 257 nor the CDC eviction moratorium apply.

**COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT**

Hampden, ss:

**HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 21-CV-44**

SERGEANT HOUSE, L.P.,

Plaintiff,

v.

NIKOLAS FOWLER,

Defendant.

ORDER

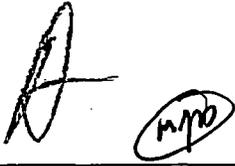
After hearing on February 9, 2021 on the plaintiff landlord's emergency motion to remove the defendant tenant from the premises, at which the landlord appeared through counsel and the tenant did not appear, the following order shall enter:

1. The court is satisfied based on the filings and the testimony of witnesses that without the issuance of an injunctive order requiring that the tenant to **IMMEDIATELY** stay away from the premises located at 82 Bridge Street in

Northampton, Massachusetts, there is a significant risk of harm to the residents of that address.

2. Accordingly, the tenant shall FORTHWITH stay away from his apartment and the entire premises until further court order.
3. The landlord shall post a copy of this order on the tenant's door FORTHWITH.
4. The landlord shall also provide a copy of this order to [REDACTED] and to the Northampton Police Department.
5. The landlord has authority to have the tenant removed from the premises IMMEDIATELY and prevent his return until further order of the court with coordination with the police or the sheriffs' office.
6. The tenant and/or the police or sheriff are directed to contact [REDACTED] to discuss temporary housing and other forms of assistance at the following numbers: [REDACTED]
7. This matter is scheduled for further hearing on **February 19, 2021 at 3:00 p.m. by Zoom.** The Clerks Office shall provide written instructions on how to participate in the hearing by Zoom and that office can be reached with any questions about Zoom at 413-748-7838.
8. The tenant may also want to contact Community Legal Aid to seek legal assistance by calling 413-781-7814.

So entered this 10TH day of FEBRUARY, 2021.

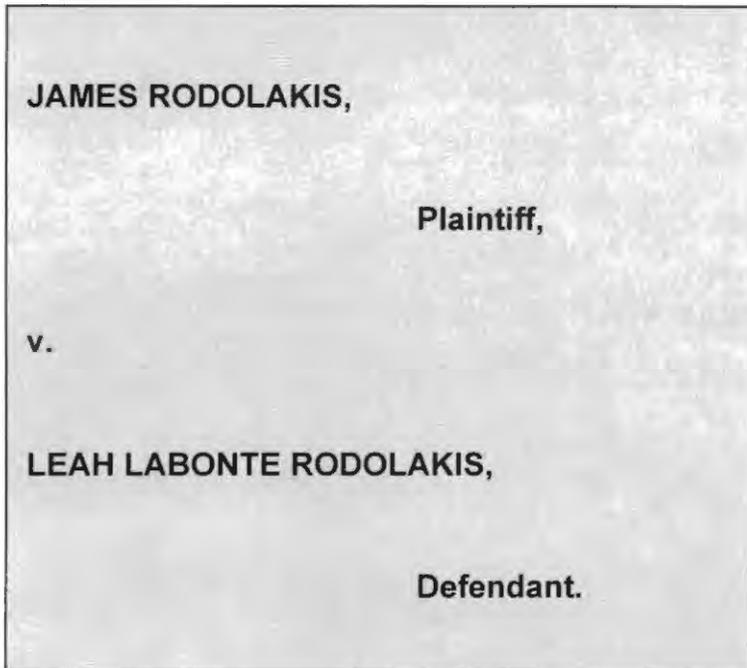


Robert Fields, Associate Justice

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 19-SP-736



ORDER

After hearing on February 12, 2021 on the defendant's motion to stop a physical eviction, at which all the parties appeared, the following order shall enter:

1. The motion is denied for the reasons stated on the record.
2. The parties have agreed to work with each other and the office of the Sheriff to coordinate the removal of the defendant's personal property to her new housing location in a manner consistent with G.L. c.239, s.4.

3. If it is necessary and coordinated between the parties to have a portion of the defendant's belongings to a second location (storage facility) and there are additional costs for same, the plaintiff may pay such costs up front but shall be reimbursed by the defendant for such costs.

So entered this 16th day of February, 2021.

Robert Fields
Am.
Robert Fields, Associate Justice

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 18-SP-4081

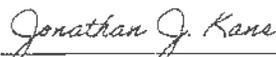
CITYWIDE ASSOCIATES, LTD.,)
)
 PLAINTIFF)
)
 v.)
)
 JESSICA RIVERA,)
)
 DEFENDANT)

ORDER

This parties in this matter appeared before the Court by Zoom on February 12, 2021 on Plaintiffs' continued motion to enforce a Court agreement. Counsel for Plaintiff appeared. Defendant did not appear. Plaintiff's counsel reported that Defendant paid all rent arrears but did not pay court costs as required by the Court agreement. Accordingly, the following order shall enter:

1. Defendant shall pay March rent by March 5, 2021.
2. Defendant shall pay the outstanding court costs of \$170.76 to the landlord no later than March 20, 2021.
3. If the tenant complies with this Order, the landlord shall dismiss this case and file a satisfaction of judgment.

SO ORDERED, this 17th day of February 2021.


Jonathan J. Kane
First Justice

**COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT**

Hampden, ss:

**HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 19-SP-4428**

**CITY OF SPRINGFIELD C/O WITMAN
PROPERTIES, INC.**

Plaintiff,

v.

MAKITA S. GILLIAM et al

Defendants,

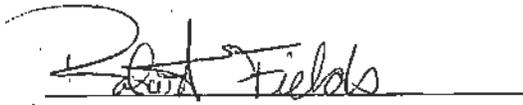
ORDER

After hearing on February 17, 2021 on review of this matter, at which the landlord appeared through counsel and Makita Gilliam (tenant) appeared *pro se*, the following order shall enter:

1. The defendants shall continue to diligently search for alternative housing and shall keep a detailed log of all such efforts.
2. The defendants shall provide a copy of this housing search log to the plaintiff's counsel by no later than March 24, 2021.

3. The defendants shall continue to pursue their RAFT application.
4. This matter is scheduled for further review on **March 31, 2021 at 11:00 a.m.**,
The Clerk's Office shall provide written instructions on how to participate in
said hearing by Zoom.

So entered this 18th day of February 2021.



Robert G. Fields, Associate Justice ^{AM.}

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION

ALLYSON LABELLE,

Plaintiff,

v.

MELISSA BORER and ERICA BROWN,

Defendants.

20-SP-1524

ALLYSON LABELLE,

Plaintiff,

v.

MARCIA BROWN,

Defendant.

20-SC-106

After hearing on February 17, 2021, on the plaintiff landlord's motion to consolidate the summary process matter, *Allyson Labelle, v. Melissa Borer and Erica Brown* (20-SP-1524) and the small claims matter, *Allyson Labelle v. Marcia Brown* (20-SC-106), at which only the moving party appeared, the following order shall enter:

1. The motion is allowed and the two matters shall be consolidated for hearing at the same trial.
2. The landlord will file a motion to amend to include a claim for heating oil costs by no later than February 24, 2021.
3. A hearing on said motion shall be scheduled for **March 4, 2021 at 3:00 p.m. by Zoom**. The Clerk's Office shall provide written instructions on how to participate by Zoom and can be reached for Zoom related questions at 413-748-7838.
4. Given the ongoing COVID emergency, there are additional resources to assist tenants in avoiding eviction, including free legal assistance, a federal moratorium on evictions, and rental assistance. Below is more information about each of these resources.
5. The federal government has also generated an order that may have the effect of halting physical evictions if the tenant completes a CDC declaration and provides same to the landlord. The tenant may wish to obtain a copy of a CDC declaration to determine if the Temporary Halt in Residential Evictions to Prevent Further Spread of COVID-19, at 85 Fed. Reg. 55,292 (September 4, 2020) applies to her. If so, she should provide a copy of the declaration with her signature to the landlord and to the court.

6. Community Legal Assistance can be reached at 413-781-7814.
7. WayFinders can be reached online at: www.wayfindersma.org/hcec-assessment or by phone at 413-233-1600;

So entered this 18th day of February, 2021.



Robert Fields, Associate Justice ^{AM}

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 17-SP-1562

LYONS FAMILY TRUST,

Plaintiff,

v.

FRANCIS R. DIPASQUALE and KRISTEN
LEACH,

Defendants.

ORDER

After hearing January 8, 2021, at which all parties appeared through counsel, the following order shall enter:

1. **Background:** After trial, the defendants (plaintiffs-in-counterclaim) were awarded a judgment for attorneys fees in the amount of \$8,167.50 on multiple fee-shifting counterclaims. After issuance of the execution on said judgment, the attorney for the counterclaiming defendants sent a letter to the court's Clerks Office indicating that the execution failed to contain interest on the judgment.

Shortly thereafter, counsel for the plaintiff (defendant-in-counterclaim) sent a correspondence with its opposition to interest accruing on the attorney fee judgment. The Clerks Office treated these correspondences as a motion and opposition thereto and marked it for hearing.

2. **Discussion:** Interest on attorneys fees finds its basis in statutory authority. G.L. c.235, s.8, and the amount of the interest added to the award is to accrue at 12% per annum in accordance with G.L. c.231, s.6C. Unlike other damages, however, interest on a judgment for attorneys fees accrue from the date of the entry of such judgments. See, *Cheryl Nardone v. Patrick Motor Sales, Inc.*, 46 Mass. App. Ct. 452 (1999).
3. **Order:** Accordingly, the defendants' motion for the accrual of interest on the judgment for attorneys fees is hereby ALLOWED and interest shall accrue on that judgment for attorneys fees from the date of the entry of said judgment.

So entered this 18th day of February, 2021.

Robert C. Fields w/ permission
me

Robert Fields, Associate Justice

Cc: Michael Doherty, Clerk Magistrate

**COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT**

Hampden, ss:

**HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 19-SP-4394**

MGC REALTY, LLC,	
	Plaintiff,
v.	
BEATRICE SOLIVAN,	
	Defendant.

ORDER

After hearing on February 8, 2021 on the defendant tenant's motion for a continuance of the trial, at which the tenant appeared with counsel and the defendant landlord appeared through counsel, the following order shall enter:

1. The motion for a continuance in the trial date is based on the tenant's interest to protect her constitutional rights against self-incrimination. More specifically, the facts that form the basis for this eviction matter are the same as those upon which the tenant has been charged criminally and faces a criminal trial.

2. The court's roll in determining whether the eviction proceedings should be stayed pending the completion/final disposition of the tenant's criminal proceedings is to "balance any prejudice to the other...[party]...which might result from granting a stay, against the potential harm to the party claiming the privilege if [s]he is compelled to chose between defending the civil action and protecting [her]self from criminal prosecution." See, *United States Tr. Co. v. Herriott*, 10 Mass. App. Ct. 313 (1980).
3. The court appreciates the seriousness of the allegations articulated in the termination notice. Given all the factors presented, however, including that the tenant is presently incarcerated pending her criminal trial, that the neighbor and alleged victim of the tenant no longer resides at the premises, and also that the tenant is seeking a jury trial in this matter, the court shall grant a continuance of the trial date.
4. By March 8, 2021, the tenant shall file a memorandum in support of her jury demand and the status of rent payments made by, on behalf of, the tenant.
5. The landlord shall file its opposition to the jury demand and report its position as to rents paid by, or on behalf of, the tenant.
6. A hearing on the late filing of the jury demand issue shall be scheduled by Zoom for **March 18, 2021 at 2:00 p.m.** The Clerk's Office shall provide written instructions on how to participate on Zoom. Tenant counsel shall notify the court if he wishes the court to issue a *habeas corpus* for the tenant's Zoom appearance for this hearing.

So entered this 18th day of February, 2021.

Robert Fields

Robert Fields, Associate Justice

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

BERKSHIRE, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 20-SP-837

MICHAEL HELSMOORTEL,)
)
 PLAINTIFF)
)
 v.)
)
 KELLY SIMONETTA,)
)
 DEFENDANT)

ORDER FOR ENTRY OF JUDGMENT

1. This is a summary process action in which the Plaintiff seeks to recover possession of the subject premises from the Defendant.
2. Both parties appeared at the hearing held on February 18, 2021 and represented themselves.
3. The Court finds that the Defendant has substantially violated one or more material terms of the Court agreement dated November 3, 2020.
4. The Court finds that the Defendant does not have a pending application for short-term emergency rental assistance.
5. The Court hereby orders that judgment shall enter for the Plaintiff for possession and damages in the amount of \$8,250.00 (inclusive of February 2021), plus court costs.
6. The Plaintiff may request the application in writing (without need for further hearing) after expiration of the statutory ten-day appeal period, along with a First Amended Plaintiff's Affidavit Concerning CDC Order, provided, however, that he shall not request the application before **March 9, 2020** so long as:
 - a. the Defendant mails the Plaintiff \$550.00 (representing February 2021 use and occupancy (rent) and thereby reducing the balance set forth in paragraph 4 above), postmarked by **February 19, 2021**, and
 - b. the Defendant mails the Plaintiff \$550.00 (representing use and occupancy for March 2021) postmarked by **March 4, 2021**.
7. If the Defendant completes an application for short-term emergency rental assistance, she has the right to seek further stay on use of the execution (eviction order) so long as she can satisfy the Court that she has a pending application at that time.

SO ORDERED this 17th day of February 2021.

By: Jonathan J. Kane
Jonathan J. Kane, First Justice

COMMONWEALTH OF MASSACHUSETTS

FRANKLIN, ss.

HOUSING COURT
WESTERN DIVISION

Greenfield Board of Health,)
Plaintiff)
v.)
Douglas Wight, et al.,)
Defendants)

19-CV-1084

Douglas Wight,)
Plaintiff,)
v.)
Gretchen Lieberwirth,)
Defendant.)

20-SP-1173

After hearing on February 9, 2021 for review on Receivership, the Code Enforcement matter captioned above and on the summary process case of *Wight v Lieberwirth*, 20-SP-1173, at which the plaintiff city, the Receiver, and the lender appeared through counsel, and at which the defendant property owner and two of the named tenants (Lainey and Cardinale) appeared *pro se*, and also at which Jennifer Avery of the Franklin County Sheriff's office appeared, the following order shall enter relating to the Receivership:

1. The Receiver reported that the lead paint remediation and abatement work approved and authorized in the Order of January 21, 2021 has not been accomplished due to weather constraints. The work is exterior work and since the Receiver will be employing encapsulate paint, the temperature needs to be at or above freezing when it is applied.

2. The Receiver anticipates that the work should be accomplished within the next three weeks.
3. Defendant Wight indicated a desire to do all or some of the lead abatement work as a cost savings measure. Any participation by Mr. Wight shall be at the sole discretion and approval of the Receiver.
4. Once the de-leading work is completed it is anticipated that the Receivership efforts will be completed and a final report may be submitted for approval and closure of the Receivership.
5. The Receiver is to provide a status and financial update to all parties on or before March 10, 2021.
6. These matters shall be scheduled for a Status Hearing and for any appropriately marked motions on **March 17, 2021 at 10:00 AM by ZOOM**. The Clerk's office shall provide written instructions to the parties on how to participate in the Hearing by Zoom.

So entered this 22nd February, 2021.

Robert Fields / by KE Ann
Robert Fields, Associate Justice. n/penn 1522

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 20-SP-1213

RICHARD REIL,

Plaintiff,

v.

KEVIN BLANCHARD,

Defendant.

ORDER

After hearing on February 22, 2021, originally scheduled for trial, at which both parties appeared, the following order shall issue:

1. Counsel from Community Legal Aid (CLA) and a representative from the Tenancy Preservation Program (TPP) appeared at the hearing.
2. TPP will meet with the tenant and immediately assist him in applying for rental arrearage funds from RAFT and any other applicable fund available to the tenant.

3. After conducting an intake with the tenant in a Zoom break out room, CLA has agreed to consider representing him in these proceedings. CLA counsel reported that CLA will make that decision within a couple of days. CLA shall provide the tenant with instruction on filing of the Answer and the CDC order/declaration if it chooses to not provide him with representation.
4. The tenant shall file an Answer by no later than March 8, 2021.
5. The trial date is continued to **March 22, 2021 at 9:00 a.m.** TPP shall appear for said hearing to report on its assistance in this matter. The Clerk's Office shall provide written instructions on how to participate in this hearing by Zoom. The tenant shall work with TPP and the court (and CLA if they are representing him) on how to participate by Zoom including a visual presence at the hearing.

So entered this 23rd day of February, 2021.



Robert Fields, Associate Justice ^(AM)

Cc: Tenancy Preservation Program
Community Legal Aid, Attorney Bodner

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 21-CV-85

CITY OF SPRINGFIELD, CODE
ENFORCEMENT DEPARTMENT,

Plaintiff,

v.

NETKARIOS A. PAPOUTSAKIS, et al.,

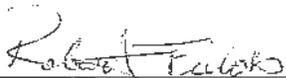
Defendants.

ORDER

After hearing on February 25, 2021, at which the plaintiff city appeared through counsel, at which the defendant property owner Netkarios Papoutsakis appeared with counsel, and at which two of the tenants of the subject premises, Idalia Allende and Jose Santos who reside in the first floor unit appeared *pro se*, the following order shall enter:

1. Defendant property owner Papoutsakis shall provide hotel accommodations for all of the tenants at the premises until the city lifts the condemnation on the premises.
2. Defendant property owner Papoutsakis must make all necessary repairs to the premises and have the condemnation lifted as promptly as possible, utilizing licensed professionals and pulling proper permits when required.
3. This matter shall be scheduled for a review hearing, and any other properly scheduled motions on **March 11, 2021 at 2:00 p.m. by Zoom**. The Clerk's Office shall provide written instructions for the parties to participate by Zoom.

So entered this 24th day of February, 2021.



Robert Fields, Associate Justice

Cc: Court Reporter

2019, she transferred to a three-bedroom apartment where she resided with her two minor children. [REDACTED]

On July 26, 2019, Ms. Flores had a serious argument with the father of her children, Mr. Rios. As a result of the incident, [REDACTED] Ms. Flores left the Premises and allowed Mr. Rios to remain there with the children. Ms. Flores did not ask to be removed from the lease and gave her consent to add Mr. Rios to the lease. Mr. Rios submitted an application, which was approved by Plaintiff on August 13, 2019. Before Mr. Rios was actually added to the lease, however, Ms. Flores revoked her consent. As a result, Mr. Rios, despite being the only adult living in the Premises, never became an authorized occupant. After the trial concluded, on or about February 3, 2021, Mr. Rios relinquished possession and moved to another apartment with the children.³

Despite Mr. Rios vacating the Premises, the Court finds that Ms. Flores violated a material term of her subsidized lease by not using the Premises as her primary residence and by knowingly permitting Mr. Rios to live in the Premises without the approval of management.⁴ The lease violation entitles Plaintiff to judgment for possession; equitable principles, however, must be considered because that Ms. Flores would like suffer irreparable harm if she lost her project-based Section 8 subsidy. In light of the fact that Mr. Rios no longer lives at the Premises and

³ This fact was brought to the Court's attention by a "Notice of Changed Circumstances" filed by Mr. Rios. The other parties do not contest the assertion that Mr. Rios vacated the Premises.

⁴ The notice to quit alleges a separate lease violation by Ms. Flores as a result of the incident with Mr. Rios on July 26, 2019. The parties stipulated that Ms. Flores and Mr. Rios got into an argument at the Premises and that the police were called, but insufficient evidence was presented at trial for the Court to find that this single disturbance constitutes a material lease violation.

given Ms. Flores' explanation that she acted as she did in order to ensure stable housing for her children, a remedy short of eviction is appropriate under the circumstances.

During the trial, Plaintiff's assistant site manager, Elsie Perez, testified that Ms. Flores underreported her income from approximately February to June of 2020 and that she owes \$1,025.00 in rental arrears as a result. If this Court is to apply equitable principles to allow Ms. Flores the opportunity to remain as a tenant, the same principles compel the Court to require Ms. Flores to pay the amount she should have paid had she accurately reported her income.

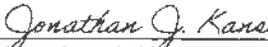
Accordingly, the following Order shall enter:

1. Judgment for possession shall not enter at this time.
2. Ms. Flores shall seek emergency short-term rental assistance, whether through Way Finders or another agency, to repay the \$1,025.00 in rental arrears, plus court costs of \$210.76, for a total of \$1,235.76.⁵ She shall provide Plaintiff with evidence of a pending application no later than March 15, 2021. No judgment shall enter so long as Ms. Flores' application is pending.
3. If Plaintiff is not satisfied that Ms. Flores has a pending application for rental assistance as of March 15, 2021, and if Ms. Flores has not otherwise paid the balance due or made arrangements to do so that are acceptable to Plaintiff, Plaintiff may file a motion for entry of judgment. Entry of judgment and issuance of an execution will be subject to Chapter 257 and the CDC Order.

⁵ The intent of this provision is to make Plaintiff whole, so any rental arrears accruing after trial will be included in the balance due.

4. Ms. Flores shall transfer to a different unit if Plaintiff so requires based on the change of her household composition.
5. When Ms. Flores reaches a \$0 balance, and assuming Ms. Flores is otherwise in compliance with the terms of this Order, Plaintiff's counsel shall so notify the Court and the case will be dismissed.

SO ORDERED this 24th day of February 2021.



Jonathan J. Kane
First Justice, Western Division

cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS

BERKSHIRE, SS

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 20-SP-695

PAUL TRCZINSKI ACTING BY
AND THROUGH JTC PROPERTY
MANAGEMENT,

Plaintiff

v.

FINDINGS OF FACT, RULINGS OF
LAW AND ORDER FOR JUDGMENT

KRISTIN BARAN AND
ROBERT KLUM,

Defendants

This is a summary process action in which the Plaintiff seeks to recover possession of the subject premises from the Defendant based on nonpayment of rent.

The Plaintiff was represented by counsel at trial on February 23, 2021.

Defendant Kristin Baran appeared for trial and was not represented by counsel. Defendant Robert Klum did not appear for trial.

Defendant Kristin Baran stipulates that she received the notice to quit and that the current balance of unpaid rent is \$9,800.00.

The Defendants did not file a timely answer and/or counterclaims.

At this time, the Defendants are not protected from eviction by virtue of Chapter 257 of the Acts of 2020 ("Chapter 257") or the eviction moratorium order set forth by the Centers for Disease Control and Prevention found at 85 Fed. Reg. 55292 (the "CDC Order"). They did not demonstrate to the satisfaction of the Court a pending application for short-term emergency rental assistance, nor did they assert that they provided the Plaintiff with a declaration pursuant to the CDC Order.

Based on the stipulated facts and absence of defenses, it is **ORDERED** that judgment shall enter for the Plaintiff for possession and damages in the amount of \$9,800.00, plus court costs.

The Plaintiff must file a Rule 10 affidavit for judgment to enter against Defendant Robert Klum.

Execution shall issue ten (10) days after the date that judgment enters. The Plaintiff must file a Plaintiff's First Amended Affidavit Concerning CDC Order before execution can issue.

If, at any time prior to the levy on the execution, the Defendants can demonstrate to the satisfaction of the Court that they have a pending application for short-term emergency rental assistance, they may bring a motion before the Court to stay use of the execution pursuant to Chapter 257.

SO ORDERED this 2th day of February 2021.

By: Jonathan J. Kane
Jonathan J. Kane, First Justice

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 19-SP-3924

PHEASANT HILL VILLAGE ASSOCIATES,
L.P.,

Plaintiff,

v.

MARIA LABASCO a/k/a MARIA LABOSCO
and THOMAS TROUGHTON,

Defendant.

ORDER

After hearing on February 12, 2021, at which the landlord appeared through counsel and the defendant tenant Maria Labasco appeared with LAR counsel and her criminal defense counsel, and the co-defendant Thomas Troughton appeared *pro se*, the following order shall enter:

1. **Background:** This is a *cause* eviction matter in which the July 24, 2019 Notice Terminating Tenancy alleges that the two tenants were engaged criminal activity

which included the sale of illegal narcotics (to wit: Oxycodone and Suboxone) from the subject premises that led to the tenants' arrest on May 1, 2019.

2. The tenant, Maria Labasco (hereinafter, "Labasco") is facing criminal proceedings in the Westfield District Court and her husband, the co-tenant Thomas Troughton (hereinafter, "Troughton") was charged in Federal Court and entered a guilty plea. Troughton was released from custody to return home in May, 2020 pending the disposition of his case, to be able to assist in Labasco's care [REDACTED]
3. At the February 10, 2021 hearing, the landlord is seeking summary judgment. Labasco, preliminarily, is seeking a continuance in all proceedings, arguing that she is unable to file an affidavit in opposition to the summary judgment motion or testify at trial based on her 5th Amendment right against self-incrimination while she awaits her criminal matter.
4. **The Landlord's Motion for Summary Judgment:** The standard of review in determining whether to grant summary judgement is whether, viewing the evidence in light most favorable to the non-moving party, all material facts have been established and the moving party is entitled to judgement as a matter of law. See *Casseus v. E. Bus Co., Inc.*, 478 Mass. 786, (2018). At the summary judgement stage, the burden of proof is on the moving party (See *Gurry v. Cumberland Farms, Inc.*, 406 Mass. 615, (1990) "The burden proving that no material factual issue exists is on the moving party..."). Therefore, the moving party must "affirmatively demonstrate" that there is "no genuine issue of material fact" on each and every material issue to the case and further, they must

demonstrate that there is no evidence which would support the non-moving party's case. *Tate v. Dep't of Mental Health*, 419 Mass. 356, (1995).

5. **Discussion:** The landlord argues that there is no dispute of the material facts in this case and highlights that Troughton has entered a guilty plea in his criminal matter and thus has admitted to the sale of illegal drugs from the subject premises. When viewed with the clear provisions in the lease that subject the tenants to eviction for engaging in illegal drug activity in the residence or for such criminal activity to be engaged in by others who are in the tenants' control, the landlord argues, judgment must enter. The landlord further argues that given the ruling in *Department of Housing and Urban Development v. Rucker*, 535 U.S. 125 (2002), which would have the effect of foreclosing an "innocent tenant" defense by Labasco, there is no need to go to trial in this matter, no need to await the outcome of Labasco's criminal trial, and the court should enter summary judgment as a matter of law.
6. The landlord argues that the result of Labasco's criminal matter has no bearing on the law of this case. Even if Labasco is found *not guilty* in her criminal matter, the landlord argues, the holding in *Rucker* and the unavailability of "the innocent tenant" defense require this court to enter judgment for possession for the landlord as a matter of law.
7. Labasco, asserting opposition to the summary judgment motion without feeling free to submit an affidavit based on her not wanting to waive her constitutional rights against self-incrimination, argues that she may be able to establish facts at trial that may constitute a defense. More specifically, she may be able to present

a defense that she was either unaware or unable to address drug-related activity at the premises due to her disabilities. See *Flavia Moretalara v Boston Housing Authority*, 99 Mass. App. Ct. 1 (2020), which holds that the court may consider the nexus between a tenant's physical and/or mental impairments and her inability to address criminal activity transpiring in or around the residence. This mitigating factor must then be weighed against the seriousness of the housing violation in order to properly determine whether a reasonable accommodation could be provided to allow the tenant to continue to reside therein. Failure to consider a reasonable accommodation denies the tenant of a right guaranteed under federal and state law. *Ibid.* See also, *Boston Housing Authority v. Bridgewater*, 452 Mass. 833 (2009) [Fair housing obligations, such as the obligation to "reasonably accommodate" tenants with disabilities, supersede the "strict liability" imposed by "one strike lease provisions" such as provisions pertaining to drug-related activity.]

8. **Labasco's Constitutional Right Against Self-Incrimination:** Labasco seeks a continuance in these proceedings, both at summary judgment and trial, as she presently faces criminal proceedings on charges based on the same allegations that form the basis of these eviction proceedings. Labasco's criminal defense attorney, Maria Barroso, Esq., filed an affidavit and appeared at the hearing, and has advised Labasco to not testify or submit an affidavit in opposition to the summary judgment proceeding. In deciding whether to grant a continuance, "the judge's task is to balance any prejudice to the other civil litigants which might result from granting a stay, against the potential harm to the party claiming the

privilege if [s]he is compelled to choose between defendant the civil action and protecting [her]self from criminal prosecution." *United States Tr. Co. v. Herriot*, 10 Mass. App. Ct. 313 (1980).

9. There is no question that the drug-related criminal activity being alleged in these eviction proceedings is extremely serious. The anticipated testimony at trial by law enforcement officials will describe multiple sales of drugs during a several-month-long surveillance. That said, allowing a continuance in these proceedings will not foreclose the landlord's remedy of pursuing this eviction for these alleged criminal behavior and with the court's strict prohibition of any future such activity pending the disposition of these proceedings, maintains a status quo that protects the landlord and the tenants' neighbors.
10. When asked during the hearing about any additional harm to the landlord if a continuance was granted, landlord's counsel asserted that the tenants' neighbors are all aware that the tenants were arrested for selling drugs from their home and after almost two years they are still there and that a continuance will further suggest that even if tenants sell drugs at these premises, one will be able to stave off eviction for a very long time.
11. The harm to Labasco, [REDACTED] in a subsidized unit, if these proceedings are not continued is grave and would force her to choose between her 5th Amendment privilege against self-incrimination and her subsidized housing. Her choice, on advice of her counsel, appears to be to not testify and thus her capacity to defend against this eviction matter foreclosed.

12. **These Proceedings Shall be Continued:** Given that Labasco's assertion of her 5th Amendment privilege has resulted in her not being able to provide an affidavit in opposition to the summary judgment motion, and will likely prevent her from testifying at trial, and given the ongoing protections against any further criminal activity occurring pending trial (and the landlord has not alleged that any such behavior has reoccurred in the past 22 months since the May 1, 2019 arrest), the court shall continue both the summary judgment proceeding as well as the trial at this time.

13. **Conclusion:** Based on the foregoing, Labasco's request that the summary judgment proceedings as well as the trial be continued is allowed. The tenants shall continue to be under a strict order that they not engage in any criminal activity nor allow anyone to do so at their unit. This matter shall be scheduled by the Clerk's Office for a status conference in early May, 2021. The tenant shall update the landlord on the disposition of her criminal matter by the 15 day of each month beginning in March, 2021, and also update the court at the next hearing.

So entered this 25th day of February, 2021.



Robert Fields, Associate Justice

Cc: Court Reporter

Alexander Cerbo, Law Clerk

Uri Strauss, Esq., LAR counsel

Maria Barroso, Esq., Labasco's Criminal Defense Counsel

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 19-SP-5122

BEACON RESIDENTIAL MANAGEMENT, L.P.,

Plaintiff,

v.

JULIA MELENDEZ,

Defendant.

ORDER

**ESTE DOCUMENTO CONTIENE INFORMACION
IMPORTANTE. POR FAVOR, CONSIGA UNA
TRADUCCION INMEDIATAMENTE**

This matter came before the court for hearing on February 25, 2021, on the landlord's motion for judgment, at which only the landlord appeared, and the following order shall enter:

1. The landlord's motion for entry of judgment shall be continued to the date noted below so as to provide the tenant greater opportunity to engage in this process and access resources that may be available to pay the rental arrearage and prevent eviction.
2. The landlord asserts that \$1,108 is outstanding in use and occupancy through February, 2021 plus court costs of \$178.70.
3. The tenant should be aware that there are greater resources available during this COVID emergency to parties involved in evictions for both legal services as well as rental assistance.
4. Berkshire Housing Development Corp., which administers emergency rental assistance funds that have been increased and enhanced to address the COVID pandemic, can be reached on line at berkshirehousing.com ; and by telephone at 413-499-1630 X168.
5. Additionally, the Tenancy Preservation Program can assist with rental assistance applications and processes and can also help with individuals and families with mental health issues and can be reached at
6. Additionally, the federal government has generated an order that may have the effect of halting physical evictions if the tenant completes a CDC declaration and provides same to the landlord. The tenant may wish to obtain a copy of a CDC declaration to determine if the Temporary Halt in Residential Evictions to Prevent Further Spread of COVID-19, at 85 Fed. Reg. 55,292 (September 4, 2020) applies to her. If so, she should provide a copy of the declaration with her signature to the landlord and to the court.

7. The state government has also increased the availability of free legal assistance. The tenant should contact Community Legal Aid to see if she can access free legal assistance by calling 413-781-7814.
8. This matter shall be scheduled for hearing on **March 19, 2021 at 11:00 a.m.** The Clerk's Office shall provide the parties with instructions on how to appear for said event by Zoom. If the tenant has no means of attending by Zoom, she may contact the Clerk's Office to make arrangements to utilize the court's Zoom station for this event.

So entered this 26th day of February, 2021.



Robert Fields, Associate Justice

Cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS

FRANKLIN, SS

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 19-SP-5341

KPB BERGERON APTS,
Plaintiff

v.

ORDER FOR JUDGMENT AND
ISSUANCE OF EXECUTION
(*EVICTION ORDER*)

ANDREA SCHEMPP,
Defendant

1. This is a summary process action in which the Plaintiff seeks to recover possession of the subject premises from the Defendant based on breach of a Court agreement dated January 3, 2020.
2. Both parties appeared at the hearing on Plaintiff's motion for entry of judgment and issuance of execution held on February 24, 2021. Neither party was represented by counsel.
3. The Court finds that the Defendant has substantially violated one or more material terms of the Court agreement. Judgment shall enter for the Plaintiff for possession and damages in the amount of \$13,481.25, plus court costs of \$218.16, retroactive to January 3, 2020.
4. Execution (eviction order) shall issue upon receipt of Plaintiff's First Amended Affidavit Regarding CDC Order. **The levy (physical move-out) shall not be scheduled prior to March 8, 2021.**
5. The Court finds that the first two elements of Stat. 2020, c. 257, § 2(b) have been satisfied (i.e., this case was brought solely for nonpayment of rent and the non-payment was due to or exacerbated by the COVID-19 emergency). The Court further finds that Defendant does not have a pending application for short-term emergency rental assistance.
6. If Defendant files an application for short-term emergency rental assistance and can demonstrate to the Court that it is pending, she may file a motion to stay use of the execution.

SO ORDERED.

By: Jonathan J. Kane
Jonathan J. Kane, First Justice

DATE: 2-26-21

dispose of any remaining belongings.

SO ORDERED this ^{JM} 26 day of February 2021.

Jonathan J. Kane
Jonathan J. Kane
First Justice

cc: Amanda Watson, Franklin Country Regional Housing and Redevelopment Authority

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 20-SP-1255

MCP UNLIMITED, LLC.,

Plaintiff,

v.

PATRICIA STALEY,

Defendant.

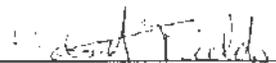
ORDER

After hearing on February 24, 2021, at which the landlord appeared through counsel and the tenant appeared *pro se*, the following order shall enter:

1. The parties reported to the court that the tenant has applied for RAFT funds and that her application is currently pending.
2. As such, and in accordance with Chapter 257 of the Acts of 2020, this matter shall be continued until the date below for a status hearing.

3. The parties should be made aware that there are additional legal and financial resources available during this COVID emergency. Such include the COVID Eviction Help Project (CELHP) which may be able to provide free or lo-cost legal assistance to eligible landlords and tenants and can be reached at <https://evictionlegalhelp.org> as well as Community Legal Services at 413-781-7814 and the Hampden County Bar Association at 413-732-4648.
4. Additionally, the Tenancy Preservation Program at 413-233-5327 can assist with RAFT applications as well as with people with disabilities.
5. Additionally, the federal government has generated an order that may have the effect of halting physical evictions if the tenant completes a CDC declaration and provides same to the landlord. The tenant may wish to obtain a copy of a CDC declaration to determine if the Temporary Halt in Residential Evictions to Prevent Further Spread of COVID-19, at 85 Fed. Reg. 55,292 (September 4, 2020) applies to her. If so, she should provide a copy of the declaration with her signature to the landlord and to the court.
6. This matter shall be scheduled for hearing on **March 25, 2021 at 10:00 a.m.** The Clerk's Office shall provide the parties with written instructions on how to participate in this hearing by Zoom.

So entered this 26 day of February, 2021.



Robert Fields, Associate Justice ^{AV}

Cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampshire, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 20-SP-1316

COLONIAL VILLAGE, LLC,

Plaintiff,

v.

SIQI LU,

Defendant.

ORDER

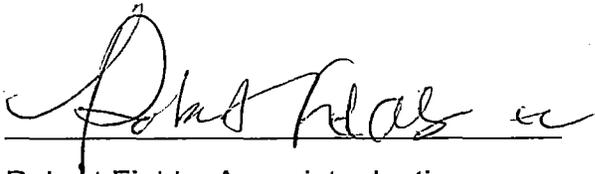
After hearing on February 26, 2021, at which the landlord appeared through counsel and the tenant appeared *pro se*, the following order shall enter:

1. The parties reported to the court that the tenant's rent balance is \$0.
2. The remaining claim by the landlord is for the court costs of \$215.28.
3. The tenant's position is that she should not have to pay the costs because she was withholding rent based on allegations of the landlord's failure to address

problems at the premises and due to the fact that she paid all of the rental arrearage.

4. The court has given the tenant the opportunity to consult with a lawyer to either seek leave of the court to file a late Answer with defenses and counterclaims or agree to pay the court costs to the landlord and reserve all of her rights.
5. The tenant is provided the phone numbers for Community Legal Aid at 413-781-7814 and the Hampden County Bar Association at 413-732-4648.
6. This matter is scheduled for further hearing on **March 30, 2021 at 9:00 a.m.** by Zoom. The Clerk's Office shall provide the parties with written instructions on how to participate in said hearing by Zoom.

So entered this 1st day of March, 2021.



Robert Fields, Associate Justice

COMMONWEALTH OF MASSACHUSETTS

HAMPDEN, SS

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 19-SP-5468

PYNCHON II, LP,
Plaintiff

v.

ORDER FOR ISSUANCE OF EXECUTION
(*EVICTON ORDER*)

MAGDALIA ORTIZ,
Defendant

1. This is a summary process action in which the Plaintiff seeks issuance of an execution to recover possession of the subject premises. Judgment entered on January 16, 2020.
2. The Plaintiff was represented by counsel at the virtual hearing held on February 25, 2021. The Defendant appeared and represented herself.
3. The Court finds that the Defendant is not protected from eviction by virtue of Chapter 257 of the Acts of 2020 or the eviction moratorium order set forth by the Centers for Disease Control and Prevention found at 85 Fed. Reg. 55292 because she has no pending application for short-term rental assistance and she did not serve the landlord with a declaration under the CDC Order.
4. The Court finds that the Defendant is in substantial violation of a material term of the Agreement for Judgment entered into on January 16, 2020 by failing to make the agreed-upon payments.
5. Execution for possession and damages in the amount of \$13,545.34 shall issue forthwith.
6. Use of the execution shall be stayed (not used) unless and until the stay is lifted by further order of this Court.
7. The Defendant is hereby ordered:
 - a. To complete her 2020 and 2021 income recertifications with management by March 8, 2021.
 - b. To pay \$240.00 toward use and occupancy by March 3, 2021.

- c. To accept assistance from with Tenancy Preservation Program and/or management to get the support she needs to complete the income recertifications and to complete a RAFT application.
8. The Plaintiff may file a motion to lift the stay if the Defendant fails to comply with the terms of this Order.
9. The parties shall return (by Zoom) for review on compliance with the terms of this Order and for further conditions on use of the execution on **March 29, 2021 at 10:00 a.m.**

SO ORDERED

DATE: 3/1/21

By: Jonathan J. Kane
Jonathan J. Kane First Justice

cc: Tenancy Preservation Program

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 19-SP-5240

SPRING MEADOW ASSOCIATION OF
RESPONSIBLE TENANTS, INC.,

Plaintiff,

v.

JEANNETTE PABON,

Defendant.

ORDER

**ESTE DOCUMENTO CONTIENE INFORMACION
IMPORTANTE. POR FAVOR, CONSIGA UNA
TRADUCCION INMEDIATAMENTE**

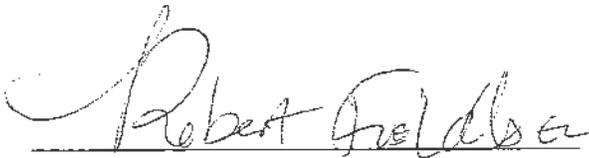
This matter came before the court for hearing on February 26, 2021, on the landlord's motion for judgment, at which only the landlord appeared, and the following order shall enter:

1. The landlord's motion for entry of judgment shall be continued to the date noted below so as to provide the tenant greater opportunity to engage in this process and access resources that may be available to pay the rental arrearage and prevent eviction.
2. The landlord asserts that \$10,038.49 is outstanding in use and occupancy through February, 2021 plus court costs.
3. The tenant should be aware that there are greater resources available during this COVID emergency to parties involved in evictions for both legal services as well as rental assistance.
4. Wayfinders Inc., which administers emergency rental assistance funds that have been increased and enhanced to address the COVID pandemic, can be reached on-line at: www.wayfindersma.org/hcec-assessment and by telephone at 413-233-1600.
5. Additionally, the Tenancy Preservation Program can assist with rental assistance applications and processes and can also help with individuals and families with mental health issues and can be reached at 413-233-5327. A referral was made by the court at the hearing to the Tenancy Preservation Program to assist the tenant in all ways they can--particularly with the tenant's application for rental arrearage funds from all available sources.
6. Additionally, the federal government has generated an order that may have the effect of halting physical evictions if the tenant completes a CDC declaration and provides same to the landlord. The tenant may wish to obtain a copy of a CDC declaration to determine if the Temporary Halt in Residential

Evictions to Prevent Further Spread of COVID-19, at 85 Fed. Reg. 55,292 (September 4, 2020) applies to her. If so, she should provide a copy of the declaration with her signature to the landlord and to the court.

7. The state government has also increased the availability of free legal assistance. The tenant should contact Community Legal Aid to see if she can access free legal assistance by calling 413-781-7814.
8. This matter shall be scheduled for hearing on **March 30, 2021 at 10:00 a.m.** The Clerk's Office shall provide the parties with instructions on how to appear for said event by Zoom. If the tenant has no means of attending by Zoom, she may contact the Clerk's Office to make arrangements to utilize the court's Zoom station for this event.

So entered this 1st day of March, 2021.



Robert Fields, Associate Justice

Cc: Tenancy Preservation Program
Court Reporter

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT OF THE COMMONWEALTH

HAMPDEN, ss

HOUSING COURT DEPARTMENT
DOCKET NO.: 20H79CV000651

GINA TYK,
Plaintiff

v.

GREGORY HILL,
MICHELLE HILL,
Defendants

ORDER OF THE COURT

On February 25, 2021, the parties appeared with counsel for further orders and reached mutually agreeable terms of a Court Order. Accordingly, with the assent of the parties, the following Order shall enter:

1. Defendants (the "Landlords") shall not be allowed to enter the unit of Plaintiff (the "Tenant") unless it is a requested emergency repair;
2. The Landlords will remove the 258E order they have posted on the front door forthwith;
3. The Landlord will place a lock on the door to the Tenant's unit by 5 p.m. on March 1, 2021 and give a key to the Tenant. The manual locking mechanism will be on the inside of the door. The Landlords shall communicate with Tenant's counsel, Attorney Nicoletti, to schedule the installation. If at any time Springfield Code Enforcement determines that the lock is improper, the Landlords will take the necessary action to comply with the Code Enforcement order.
4. The parties agree that the Tenant will have exclusive use of the kitchen and laundry

from 10:00 a.m. to 1:00 p.m. weekdays and from 10:00 a.m. to 11:00 a.m. and 2:00 p.m. to 3:00 p.m. on weekends/holidays without the Landlords or any of their family members present in the kitchen/laundry. The Landlords will leave out the vacuum so that the Tenant can clean her room during this time. The Tenant will be allowed to video record during this period to ensure compliance by both parties.

5. Communication between the parties shall only be allowed for bona fide emergencies, in which case the Tenant will only contact Gregory Hill by phone or text message. Otherwise, all communications shall be between the Landlords and Attorney Nicoletti via e-mail.
6. The Tenant and Krysten Sariah Tris Hill will have no contact, including phone, text, or email.
7. The Tenant will not unreasonably restrict the Landlords' access to the holiday closet with 24-hours' notice.
8. The Tenant's unit may be shown by a realtor and/or prospective buyers with 36-hours' advance notice to Attorney Nicoletti. The Landlords may not be present in the Tenant's unit during the showings.
9. The Landlords will be allowed to hire a photographer for the purpose of taking pictures of the Tenant's unit to aid in selling the house. The Landlords will give 48 hours' notice to Attorney Nicoletti of the entry of the professional photographer. The Tenant agrees to have the space in presentable condition for photography.
10. The Landlords' counsel, Attorney Wilson, made an oral motion to withdraw as counsel and, with the assent of the Landlords and Attorney Nicoletti, the motion is ALLOWED.

11. If any party alleges a material violation of the terms of this Order, it shall serve and file a motion to enforce the agreement, along with any proposed exhibits, at least three (3) business days prior to any hearing.

SO ORDERED this 1st day of March, 2021.

Jonathan J. Kane
Jonathan J. Kane, First Justice

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPSHIRE, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 20-SP-1135

ZHEN HUA WANG, ET AL.,)
)
 PLAINTIFFS)
)
 V.)
)
 WILLIAM F. BALINT, JR,)
)
 DEFENDANT)

**ORDER ON DEFENDANT'S
MOTION TO DISMISS**

This matter came before the Court on February 25, 2021 for a Zoom trial. The parties appeared through counsel. Prior to trial, Defendant's counsel filed a motion to dismiss based on a defective notice to quit and a defective Summons and Complaint. After hearing, the Defendant's motion to dismiss is ALLOWED.

The notice to quit upon which the landlord relies in this case is dated October 18, 2020 and cites as reasons for termination "non-payment of rent and also in accordance with Sections 4, 11 and 17" of the lease. Section 17 of the lease references the tenant's obligation to maintain the premises in a clean and neat condition. The notice required the tenant to vacate on the 14th day after receipt of the notice and informed the tenant that the balance of the total arrearage was \$15,839.23. On the Summons and Complaint, which was served on November 2, 2021, the reason given for eviction is "breach of lease, end of lease, non-payment of rent" and it indicated that \$18,188.68 in "rent" was owed despite the landlord itemizing charges for late fees, utilities and interest as part of this amount.¹

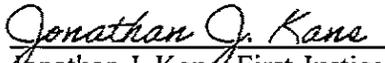
¹ Plaintiffs' counsel notes that the notice to quit and Summons and Complaint were drafted without the benefit of counsel. Although the Court is aware of the challenges facing self-represented landlords in complying with the

The Court finds that the notice to quit relied upon in this case is defective and failed to properly terminate the tenancy. In Massachusetts, a tenant is entitled to a clear, unequivocal and unambiguous termination of tenancy. *See Adjartey v. Central Div. Housing Court*, 481 Mass. 830, 851 (2019). With respect to the reason given for termination, a landlord cannot “blow hot and blow cold ... [but must] choose one position and stick to it.” *See Maguire v. Haddad*, 325 Mass. 590, 593 (1950). In this case, by including both non-payment and lease violations as the cause for terminating the tenancy, Plaintiffs create uncertainty as to whether Defendant has a statutory right to cure (as is the case in a termination for non-payment but not where fault is alleged); also, pursuant to the lease, a termination notice based on lease violations requires 30 days’ notice, not 14 days as was provided.

With respect to the Summons and Complaint, the Court finds it defective in that it lists three separate reasons for the eviction: breach of lease, end of lease and non-payment of rent. Each of these bases brings different procedural consequences for the parties; e.g., in a case involving fault the landlord has the burden of proof on those claims and the tenant is not allowed to raise counterclaims. *See* G.L. c. 239, § 8A. Moreover, the reasons listed in the complaint must be identical reasons to those in the notice to quit, and in this case, they are not.²

At the hearing, after the Court announced its ruling that the Plaintiffs’ case would be dismissed, Defendant agreed to voluntarily dismiss his counterclaims. Accordingly, this case shall be dismissed in its entirety, without prejudice to either party.

SO ORDERED this 15th day of March 2021.


Jonathan J. Kane, First Justice

summary process statutes and court rules, Plaintiffs cannot use ignorance as an excuse for not adhering to well-established legal requirements.

² The complaint also seeks recovery of late fees, interest and utility charges which are not recoverable in a summary process case. The Court does not need to base its decision on this defect or the other bases put forth by Defendant in light of the determination that the notice and Summons and Complaint are defective for the reasons stated.

At a hearing on March 3, 2020, the Court found that Plaintiff was entitled to a temporary restraining order prohibiting Defendant from remaining at the premises. On March 12, 2020, the parties entered into a court Agreement (at which Defendant was represented through the Lawyer for the Day program) whereby Defendant agreed to vacate by April 1, 2020 and to allow Plaintiff to change the locks if Defendant failed to vacate.

Although Defendant failed to vacate by April 1, 2020, Plaintiff elected not to change the locks because of the COVID-19 pandemic. Defendant continues to occupy the temporary housing, even though she is no longer in the program and is paying no use and occupancy. According to Plaintiff's counsel, she has declined all services offered by Plaintiff to assist her in finding replacement housing. Based on the foregoing, the Court will reissue the order to vacate as requested by Plaintiff as follows:

1. Defendant shall vacate the premises no later than 3 p.m. on March 17, 2021. Should she not vacate voluntarily, Plaintiff may enlist the services of the police or the deputy sheriffs to have Defendant removed as a trespasser. Plaintiff may thereafter change the locks. Plaintiff shall store any personal belongings found within the Premises in a manner consistent with the requirements of G.L. c. 239, § 4.
2. If Defendant seeks any additional time to relocate, she shall appear by Zoom at 9:00 a.m. on March 12, 2021, at which time the Court shall consider a request for a brief extension of the vacate date. If for any reason Defendant cannot participate in the hearing by Zoom, she may contact the Clerk's Office at (413) 748-7838 in advance for other alternatives.

3. Plaintiff shall provide Defendant with a copy of this Order at her residence forthwith.

SO ORDERED this 1st day of March 2021.

Jonathan J. Kane
Jonathan J. Kane
First Justice

cc: Court Reporter

THE COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT .

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CIVIL ACTION NO.: 20-CV-675

SENIORITY HOUSE,
Plaintiff)
)
v.)
)
TEOFILO RIVERA,
Defendant)
)

ORDER

After hearing held via Zoom on March 1, 2021 at which both parties were present with counsel, and at which representatives of Tenancy Preservation Program (“TPP”) and Commonwealth Care Alliance (“CCA”) participated, the following Order shall enter:

1. Plaintiff will investigate replacement of Defendant’s stove and installation of a “CookStop” or similar device intended to reduce the risk of kitchen fires and install such a device if practical. Until such a device is installed, the stove in Defendant’s unit shall remain disconnected.
2. If the stove is reconnected with the fire-prevention device, only Defendant’s personal care attendants may use the stove. Defendant may not use the stove himself without further order of the Court.
3. Defendant will cooperate with TPP, CCA and all other service and health providers working on his behalf.
4. The parties shall return for further review by Zoom at **10:00 a.m. on April 4, 2021.**

So entered this 2nd day of March 2021.

Jonathan J. Kane
Jonathan Kane, First Justice

COMMONWEALTH OF MASSACHUSETTS

HAMPDEN, SS

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 19-SP-3575

SPRINGFIELD GARDENS LP,¹
Plaintiff

v.

ORDER FOR AMENDED JUDGMENT

ASHEEAM TAYLOR,
Defendant

1. This is a summary process action in which the Plaintiff seeks to recover possession of the subject premises from the Defendant.
2. The Plaintiff was represented by counsel at the hearing held on March 1, 2021.
3. The Defendant did not appear after notice. Plaintiff's counsel reports that he attempted and failed to reach the Defendant immediately prior to the hearing.
4. The Court finds that the Plaintiff is entitled to an amended judgment for amounts accruing after the previous judgment entered on March 11, 2020.
5. The Court hereby orders that amended judgment shall enter for the Plaintiff for possession and damages in the amount of \$16,000.00, plus court costs of 165.00 (these amounts are inclusive of use and occupancy due for March 2021).
6. Execution shall issue upon written application ten (10) days after the date that judgment enters, provided that the Plaintiff has filed a First Amended Plaintiff's Affidavit Concerning CDC Order.

SO ORDERED

DATE: 3/2/21

By: Jonathan J. Kane
Jonathan J. Kane, First Justice

¹ Springfield Gardens LP was substituted for A2ZLH Portfolio Holdings, LLC as the plaintiff prior to this hearing.

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 19-SP-3491

U.S. BANK, N.A.,

Plaintiff,

v.

CHARLENE DICKERSON, et al.,

Defendants.

ORDER

After hearing on February 5, 2021, at which both the plaintiff and the defendant, Charlene Dickerson, appeared through counsel, the following order shall enter:

1. The plaintiff's motion for reconsideration of the court's ruling on the plaintiff's motion for summary judgment is denied. Though the plaintiff's summary judgment motion and motion for reconsideration both assert that the record provides sufficient evidence upon which the court can find and rule that the

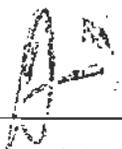
lender mailed the debt acceleration letter to the defendant, there still remains a question about that fact.

2. The "letter log" submitted by the plaintiff does not sufficiently explain whether the letter was mailed to the defendant or sent only "on line" as indicated in the log.
3. Additionally, the affidavit submitted by the plaintiff, aimed to provide sufficient support for a finding that the letter was sent by mail, does not accomplish same as the affiant does not speak to whether it was sent to the defendant by mail.
4. Accordingly, a material issue remains for determination at trial.
5. Additionally, the plaintiff's motion *in limine* to limit the issues for trial is denied.
6. The defendant asserted in her Answer that the lender acted in bad faith regarding the modification terms of her loan. Unlike her assertion that the lender failed to send her the debt acceleration letter by mail---which if proven could void the foreclosure sale---her claim that the lender acted in bad faith regarding a loan modification will require her to prove that the violation "rendered the foreclosure so fundamentally unfair that [she] is entitled to affirmative equitable relief, specifically the setting aside of the foreclosure sale 'for reasons other than failure to comply strictly with the power of sale provided I the mortgage.'" *U.S. Bank National Association v. Schumacher*, 467 Mass. 421, 422 (2014), quoting *Bank of Am., NA. v. Rosa*, 466 Mass. 613, 624 (2013).
7. This claim, regarding the modification is a claim the defendant is free to assert at trial. That said, it appears that the lender was not aware at the time of the February 5, 2021 hearing that the defendant was still asserting same that claim. Accordingly, the trial scheduled for March 11, 2021 shall be postponed and the

court and the parties shall utilize that date, at 9:00 a.m. for a further case management conference to determine what pretrial submissions shall be required prior to trial (perhaps further discovery and pretrial memoranda).

8. Based on the foregoing, this matter shall be heard on **March 11, 2021 at 9:00 a.m.** for a further pretrial conference with the judge by Zoom.

So entered this 3rd day of March, 2021.



Am.
Robert Fields, Associate Justice

CC: Michael Doherty, Clerk Magistrate (Re: Scheduling)
Court Reporter

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 20-SP-1023

THOMAS MARSZALEK,

Plaintiff,

v.

MYRON and KELLY PHELPS,

Defendants.

ORDER

After hearing on March 1, 2021, on the landlord's motion to enforce the Agreement of the parties, at which the landlord appeared with counsel and the tenants appeared with Lawyer for the Day counsel, the following order shall enter:

1. By the terms of the November 12, 2020 Agreement, the tenants were to vacate the premises by December 31, 2020.

2. The tenants and their three children have not yet vacated, but continue to be focused on doing so—at this point by utilizing the state's emergency family shelter system.
3. At the time of the hearing, the tenants completed, filed, and served a CDC declaration.
4. Based on the submission of the CDC declaration and given the tenants' focus on expeditiously vacating the unit, and given the ongoing COVID pandemic, the court shall continue the landlord's motion for amended judgment and execution for hearing at the Status Hearing scheduled below. If the tenants are able to vacate before the next hearing date, the landlord as agreed to waive any and all outstanding rent, use, and occupancy.
5. In the meantime, the tenants will continue to work with the state's emergency shelter system and shall also inquire with Way Finders, Inc. which can be reached at 413-233-1500.
6. A hearing shall be scheduled for March 29, 2021 at 12:00 p.m. by Zoom. The Clerk's Office shall provide the parties with written instructions on how to participate in the hearing by Zoom. The Clerk's Office can be reached with questions at 413-748-7838.

So entered this 4th day of March, 2021.



Robert Fields, Associate Justice ^{AM.}

Cc: Community Legal Aid (Lawyer for the Day counsel)

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPSHIRE, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 19-CV-1016

TOWN OF HATFIELD BOARD OF)
HEALTH,)
PLAINTIFF)
V.)
GEORGE W. EMENY)
DEFENDANT)

INTERIM ORDER

This matter came before the Court on March 2, 2021 by Zoom on a complaint for civil contempt. The parties appeared through counsel.

In order to hold Defendant in contempt in a civil case, the Court must find clear and convincing evidence of disobedience of a clear and unequivocal demand. *See In re Birchall*, 454 Mass. 827, 838-39 (2009). The aim of civil contempt is to coerce performance of a required act for the benefit of the aggrieved complainant. *Id.* at 848. "Civil contempt is a means of securing for the aggrieved party the benefit of the court's order." *See Demoulas v Demoulas Super Markets, Inc.*, 424 Mass. 501, 565 (1997) (citation omitted).

After hearing, the Court finds the Agreement of the Parties entered on October 16, 2020 insufficiently clear and unequivocal to enter a finding of contempt. Nonetheless, the Court is concerned that Plaintiff has not corrected urgent health and safety violations that exist at his home at 320 West Street, North Hatfield, Massachusetts (the "Premises"). Accordingly, the Court will entertain a request by Plaintiff for an order that Defendant vacate the Premises until the material health and safety violations have been corrected.

Defendant shall take steps forthwith to bring the Premises into compliance with the State Health Code and the State Building Code with respect to unobstructed egress, smoke detectors and heating, as well as any other urgent risks to the health and safety of Defendant and the general public. He is encouraged to reach out to agencies that assist veterans and elders to take steps to find alternative housing if he is ordered to vacate the Premises pending correction of the code violations.

Plaintiff's health agent has agreed to do an interior and exterior inspection on Sunday, March 7, 2021 at 1 p.m. The parties shall return for further hearing by Zoom at 12:00 p.m. on March 8, 2021.

SO ORDERED this 4th day of March 2021.

Jonathan J. Kane
Jonathan J. Kane, First Justice

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE No. 20-SP-1267

U.S. BANK, N.A.,

Plaintiff,

v.

EILEEN LACASSE, et al.,

Defendants.

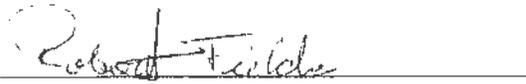
ORDER

This matter came before the court for trial on March 4, 2021, at which the plaintiff appeared through counsel and the defendants appeared *pro se*, and after hearing the following order shall enter:

1. Judgment shall enter for possession only for the plaintiff.
2. For the reasons stated on the record, there shall be stay on the issuance of the execution until July 1, 2021 unless the defendants breach the terms of the paragraph below.

3. The defendants shall pay use and occupancy by the 15th of each month beginning March 15, 2021 in the amount of \$350 per month. The parties shall discuss forthwith the specifics of how such payments are to be tendered; e.g., electronically, VENMO, etc.

So entered this 5th day of March, 2021.



Robert Fields, Associate Justice ^{AM}

COMMONWEALTH OF MASSACHUSETTS

HAMPDEN, SS

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 20-SP-0054

AL BOUDIN,
Plaintiff

v.

ORDER ON MOTION TO
STAY USE OF EXECUTION

JOSHUA GIBBS & ALLIE BREWER,
Defendants

This case came before the Court on March 5, 2021 by Zoom for hearing on the tenants' motion to stop a physical eviction. After hearing, the following Order shall enter:

The eviction scheduled for 9 a.m. on March 7, 2021 shall be canceled based on CDC declarations signed by each tenant under the pains and penalties of perjury. The tenants shall comply with the following conditions:

1. The tenants shall pay the landlord \$400.00 by 4 p.m. today and \$400.00 by 4 p.m. on Monday, March 7, 2021. These payments shall compensate the landlord for cancellation fees, which the Court expects will be \$650.00. Any excess amount above the actual costs associated with the service fee and non-refundable moving company charges shall be credited to the total balance due.
2. If the tenants have not surrendered possession and returned to keys to the landlord by March 19, 2021, they shall pay \$1,100.00 to compensate the landlord for use and occupation charges for March 2021.
3. If the eviction moratorium set forth by the CDC has not been extended beyond its current expiration date of March 31, 2021, the landlord may reschedule the eviction after March 31, 2021, provided that the tenants do not then have a pending application for short term rental assistance, in which case they are protected from eviction by Chapter 257 of the Acts of 2020. If the CDC eviction moratorium is extended beyond March 31, 2021, or if

the tenants have a pending application for short term rental assistance, the landlord shall not reschedule the eviction without permission of the Court and the tenants shall pay \$1,100.00 to the landlord by the 3rd of every month they remain in possession of the subject premises.

4. The landlord shall be entitled to renew his execution by motion (and after returning the original execution) if the tenants continue to reside in the subject premises when the current execution in his possession expires.

SO ORDERED

DATE: 3/8/21

By: Jonathan J. Kane
Jonathan J. Kane First Justice

COMMONWEALTH OF MASSACHUSETTS

HAMPDEN, SS

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 16-SP-3896

DEUTSCHE BANK NATIONAL TRUST
COMPANY, AS TRUSTEE OF THE HOME
EQUITY MORTGAGE LOAN ASSET-
BACKED TRUST SERIES INABS 2006-E
UNDER THE POOLING AND SERVICING
AGREEMENT DATED DECEMBER 1, 2006,
Plaintiff

ORDER FOR ISSUANCE OF
EXECUTION (EVICTION ORDER)

v.

ADRIAN JOHNSON,
Defendant

1. This is a post-foreclosure summary process action in which the Plaintiff obtained judgment on March 13, 2020. The Plaintiff now seeks issuance of an execution to recover possession of the subject premises against Defendant and all other occupants. Defendant testified that the other occupants are her sons.
2. The Plaintiff was represented by counsel at the hearing held on March 2, 2021.
3. The Defendant appeared and was not represented by counsel.
4. The Plaintiff's counsel represented that he did not believe the CARES Act forbearance relating to foreclosure-related evictions involving federally backed mortgages is applicable.¹
5. The Defendant testified that her daughter had an interest in purchasing the home.
6. Execution (eviction order) shall issue forthwith for possession only.
7. Use of the execution shall be stayed (not used) pending further Court order. The parties shall return to determine whether the Court will lift the stay and, if so, on what conditions at a hearing to be held on March 24, 2021 at 3:30 p.m. The additional time may be used for the Defendant's daughter to contact the Plaintiff regarding an offer to purchase the home and for the Defendant to decide if she will make a request for an extension of time to vacate.

SO ORDERED

DATE: 03/08/21

By: Jonathan J. Kane
Jonathan J. Kane, First Justice

¹ If counsel subsequently learns that the CARES Act applies, he shall so inform the Court.

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE No. 19-SP-190

BANK OF NEW YORK MELLON,

Plaintiff,

v.

ALTON KING,

Defendant.

**ORDER FOR DISMISSAL OF
THE DEFENDANT'S APPEAL
AND FOR ISSUANCE OF THE
EXECUTION FOR
POSSESSION**

After hearing on November 20, 2020, on the plaintiff's motions for scheduling past-due use and occupancy payments and for dismissal of the defendant's appeal, at which both parties appeared through counsel, the following order shall enter:

1. In its June 17, 2020 opinion, *Bank of New York Mellon v. Alton King, Jr.*, 485 Mass. 37 (2020), the SJC, ruling on the defendant's appeal of this court's setting of the appeal bond, remanded this matter to the Housing Court to establish a

schedule for payment by the defendant of past amount due as of rent since November [2019]. The SJC also made it very clear that the past amounts due “shall not otherwise alter the requirement that the defendant immediately pay use and occupancy of \$4,000 per month as set out in the original Housing Court order, with the first such payments due on the date of the issuance of this decision.”

2. Subsequently to said SJC ruling, the plaintiff filed a motion in the Appeals Court to dismiss the defendant’s appeal which was “denied without prejudice to renewal in the Housing Court. The appellee is given leave to file, and the Housing Court is given leave to consider, a motion to dismiss this appeal (Madonado, J.)”. Case Docket, Appeals Court 2020-P-0474, at 9/11/2020.
3. The summary process appeal bond statute at G.L. c.239, s.5(h) is clear that after five days of the higher court’s decision on an appeal of the setting of the bond by the lower court, if the defendant fails to his periodic payment within five days after the issuance of that decision, the appeal from the judgment is to be dismissed. At the time of the instant hearing in November, 2020, the defendant had not made any payments.
4. Along with the clarity of the SJC’s decision noted above, and in compliance with G.L. c.239, s.5(h), it is abundantly clear that this court must, and shall, dismiss the defendant’s appeal and issue execution for possession for the plaintiff.
5. Having dismissed the appeal of the final judgment for possession and ordered the issuance of an execution for possession, this court need not address the issue of establishing a payment schedule for unpaid use and occupancy.

Nothing in this order shall act to bar any claim the plaintiff may have for those unpaid funds.

So entered this 9th day of March, 2021.

Robert A. Fields *wpumassiney*

Robert Fields, Associate Justice

Cc: Laura Fenn, ACM for Appeals

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 18-SP-5447

PHOENIX DEVELOPMENT, INC. ,

Plaintiff,

v.

PRINCE GOLPHIN, JR. et al.,

Defendants.

ORDER

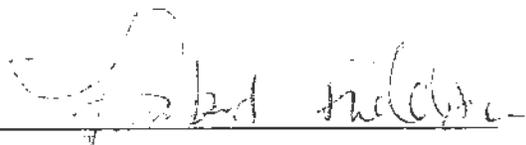
After hearing on February 18, 2021, on the plaintiff's motion for summary judgment, the following order shall enter:

1. **Background:** It appears that the parties agree to the underlying facts that the defendant signed a promissory note and mortgage on July 31, 2006 to secure the premises of 248 King Street, Springfield, Massachusetts, that the premises were foreclosed upon, and that the plaintiff purchased the subject premises at a foreclosure auction on September 24, 2018.

2. The plaintiff moves for summary judgment, arguing that the foreclosure proceedings were proper and that it holds title, and therefore superior claim to possession over the defendants.
3. The defendant, Prince Golphin, Jr., (hereinafter, "Golphin") argues against summary judgment, claiming that the foreclosure was void due to inconsistencies in the chain of assignments.
4. **Summary Judgment Standard:** The standard of review in determining whether to grant summary judgment is whether, viewing the evidence in light most favorable to the nonmoving party, all material facts have been established and the moving party is entitled to judgment as a matter of law. See *Casseus v. E. Bus Co., Inc.*, 478 Mass. 786, (2018). At the summary judgment stage, the burden of proof is on the moving party to prove that there no material facts are in dispute. See, *Gurry v. Cumberland Farms, Inc.*, 406 Mass. 615, (1990)
5. **Chain of Assignments:** After reviewing all exhibits and documentation submitted to the Court as part of the summary judgment record, there is insufficient evidence outlining a consistent chain of assignments on the promissory note and mortgage to the aforementioned property, raising a material factual issue as to whether Deutsche Bank had standing to foreclose.
6. Under Massachusetts Law, "a foreclosing entity must hold the mortgage at the time of the notice and sale in order accurately to identify itself as the present holder in the notice and in order to have the authority to foreclose under the power of sale..." See *United States Bank Nat'l Ass'n v. Ibanez*, 458 Mass. 637, (2011).

7. Further, there must be an unbroken chain of assignments in order to foreclose.
See Sullivan v. Kondaur Capital Corp., 85 Mass. App. Ct. 202 (2014).
8. In the case at bar, the plaintiff has failed to show an unbroken chain of assignments. Golphin provides, as an exhibit attached to his opposition to plaintiff's motion for summary judgment, a chart which attempts to show the chain of assignments on the property. This chart was provided to Golphin by Myrna Page Moore, Vice President of Loan Documentation for Wells Fargo.
9. An examination of the chart reveals variations in names of the entities and fails to demonstrate a clear and consistent passing of assignments. This creates a material issue of fact to be determined at trial.
10. **Conclusion and Order:** Based on the foregoing, the plaintiff's motion for summary judgment is denied. The Clerk's Office shall schedule a Case Management Conference to schedule the remainder of the pretrial matters. Given the plaintiff's comments at the conclusion of the hearing, the parties may wish to re-engage in discovery.¹

So entered this 9th day of March, 2021.



Robert Fields, Associate Justice

Cc: Court Reporter

Michael Doherty, Clerk Magistrate

¹ Given the court's ruling herein, it need not address Golphin's secondary claim that the foreclosure is also void due to the lack of consideration given for the assignments.

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPSHIRE, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 20-SP-1212

CHRISTINE RUCINSKI,)	
)	
PLAINTIFF)	
)	
V.)	ORDER FOR USE AND
)	OCCUPANCY PAYMENTS
JAMIE JOAQUIN, ET AL.,)	
)	
DEFENDANTS)	

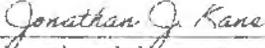
This matter came before the Court on March 8, 2021 for a Zoom videoconference hearing on Plaintiff's motion to require Defendants to pay for their use and occupancy of the subject premises pending trial. Defendants demanded a trial by jury. Plaintiff appeared with counsel: Defendant Joaquin appeared and represented herself.

At the outset of the hearing, Defendant Joaquin offered to make use and occupancy payments of \$1,200.00 per month beginning in April 2021 and Plaintiff's counsel accepted the offer. Accordingly, the following order shall enter:

1. Defendants shall pay \$1,200.00 per month for use and occupancy no later than the 3rd of each month beginning in April 2021. Payments shall be by money order. Plaintiff shall provide a receipt for each payment.
2. If Defendants fail to make the payments required, Plaintiff may file a motion for sanctions, including without limitation a request that the Court strike the jury demand and schedule a bench trial forthwith.

3. The Court has made no findings regarding the applicability of the CDC Order or Chapter 257 of the Acts of 2020. Should Plaintiff seek entry of judgment in this case, any relief granted shall be subject to the provisions of the aforementioned CDC Order and Massachusetts law.

SO ORDERED, this 9th day of March 2021.


Jonathan J. Kane
First Justice

cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS

FRANKLIN, SS

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 20-SP-1127

SCOTT CALLAHAN,

PLAINTIFF

v.

ORDER FOR ENTRY OF JUDGMENT

MARCO HOLLINGSWORTH
AND LISA GONZALEZ,

DEFENDANTS

1. This is a summary process action in which the seeks to recover possession of the subject premises based on breach of a Court agreement dated January 4, 2021. Defendants had the benefit of counsel at the time they signed the Court agreement, and the agreement was signed by a judge after a colloquy.
2. Defendants are tenants at sufferance, having held over after the expiration of their lease. As part of the Court agreement, they negotiated for an additional two months of possession without payment for use and occupation with a vacate date of March 5, 2021.
3. The Court is without legal authority to unilaterally modify the terms of the parties' agreement (*see Boston Hous. Auth. v. Cassio*, 428 Mass. 112 (1998)).
4. The Court finds that Defendants have substantially violated one or more material terms of the Court agreement by failing to vacate as required. Judgment shall enter for the Plaintiff for possession and unpaid rent in the amount of \$12,962.50 (court costs are \$0 according to the Court agreement).
5. Chapter 257 of the Acts of 2020 is inapplicable because the tenancy was not terminated solely for non-payment of rent (in fact, the tenancy was not terminated but instead expired without renewal at the end of the lease term).

6. Defendants are not covered persons under the eviction moratorium set forth by the Centers for Disease Control and Prevention found at 85 Fed. Reg. 55292 because they have not provided Plaintiff with a CDC declaration.
7. The execution (eviction order) shall issue upon written application subject to Plaintiff filing a First Amended Plaintiff's Affidavit Concerning CDC.

SO ORDERED

DATE: March 10, 2021

By: Jonathan J. Kane
Jonathan J. Kane First Justice

cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS

HAMPDEN, SS

**HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 20-SP-1434**

MARCUS KANE,

PLAINTIFF

v.

ORDER OF DISMISSAL

ERICA BLACKSTEAD,

DEFENDANT

This summary process action in which the Plaintiff seeks to recover possession of the subject premises from the Defendant came before the Court for a trial (by Zoom) on March 9, 2021. Both parties appeared and represented themselves.

After reviewing the notice to quit in this case, the Court finds that it is defective. The notice purports to terminate the tenancy due to lease violations, but Plaintiff concedes that Defendant never signed a written lease. Moreover, the parties submitted an Agreement for Judgment in a Probate and Family Court matter in which Plaintiff agreed to pay the mortgage and certain other expenses in lieu of child support, and the parties acknowledge that Defendant did not pay rent. Under these circumstances, pursuant to G.L. c. 186, § 12, Plaintiff has to provide three months' notice. Accordingly, Plaintiff's claim for possession is dismissed without prejudice.

Defendant filed a counterclaim in this matter related to her assertion that Plaintiff is not complying with the Agreement of Judgment in the Probate and Family Court case. The Probate

and Family Court is the proper venue to seek enforcement of that judgment. Accordingly,
Defendant's counterclaim in this case is also dismissed without prejudice..

SO ORDERED this 10th day of March 2021.

By: Jonathan J. Kane
Jonathan J. Kane, First Justice

cc: Clerk's Office (for dismissal)
Court Reporter

COMMONWEALTH OF MASSACHUSETTS

HAMPDEN, SS

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 20-SP-679

BC COLONIAL ESTATES LLC,
Plaintiff

v.

ORDER FOR ENTRY OF JUDGMENT
AND ISSUANCE OF EXECUTION

KENYONA WILSON,
Defendant

1. This is a summary process action in which the seeks to recover possession of the subject premises based on breach of a Court agreement dated February 27, 2020.
2. The Plaintiff was represented by counsel at the hearing held on March 5, 2021. The Defendant failed to appear after notice.
3. The Plaintiff's counsel filed an First Amended Plaintiff's Affidavit Concerning CDC Order attesting that the Plaintiff had not received a declaration from the Defendant and was not aware of any pending application for short term rental assistance that would protect the Defendant from eviction pursuant to Stat. 2020, c. 257.
4. The Court finds that the Defendant has substantially violated one or more material terms of the Court agreement by failing to make payments as required. Judgment shall enter for the Plaintiff, retroactive to February 27, 2020 pursuant to the terms of the Court agreement, for possession and damages in the amount of \$2,369.88, plus court costs of \$187.83.
5. Execution (eviction order) shall issue forthwith.

SO ORDERED

DATE: 3/11/21

By: Jonathan J. Kane
Jonathan J. Kane, First Justice

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 21-CV-56

BEACON RESIDENTIAL MANAGEMENT, LP,)

PLAINTIFF)

V.)

JOHANNA D'AMATO,)

DEFENDANT)

MEMORANDUM OF
DECISION AND ORDER

This matter came before the Court by Zoom for an evidentiary hearing on Plaintiff's request for injunctive relief; namely, an order that Defendant permanently vacate the federally subsidized apartment located at 803 Beacon Circle, Springfield, Massachusetts (the "Premises"). Both parties appeared with counsel on March 2, 2021 and March 3, 2021.

Based on all of the credible testimony and evidence presented at the hearing, and the reasonable inferences drawn therefrom, the Court finds as follows:

Plaintiff manages the Colonial Estates apartment complex of which the Premises is part. Jorge Maldonado ("Mr. Maldonado") lived at the Premises from 2014 until his death on or about December 21, 2020. The Premises are subsidized through a project-based Section 8 rental subsidy funded through HUD and the Low-Income Housing Tax Credits program. Mr. Maldonado is the sole individual named on the *Model Lease for Subsidized Programs* (the "lease"), which he signed on October 28, 2014.

The lease contains certain terms that are relevant to the analysis in this case. Pursuant to paragraph 4(c) of the lease, the tenant agrees that the monthly rent could be adjusted if there is a

change in the number of persons in the household. Paragraph 13 of the lease recites that a tenant may use the apartment only for the tenant and the individuals listed on the Owner's Certification of Compliance with HUD's Tenant Eligibility and Rent Procedures, Form HUD-50059 (the "HUD 50059 form") which is completed annually, and that no other individual can reside in the unit without prior written approval of the landlord. A tenant under this lease is also required to notify the landlord immediately if changes in the household size or income occur between annual recertifications. In signing the HUD 50059 form, the tenant certifies that the information provided is true and complete to the best of the tenant's knowledge and belief and acknowledges that civil fines and criminal penalties could be imposed for providing false information.

Plaintiff's Senior Property Manager ("SPM") testified that Mr. Maldonado has been the sole occupant identified on the HUD 50059 form since March of 2018, when he informed management that his son Luis Maldonado ("Luis") was no longer part of the household. The evidence supports his testimony: on the HUD 50059 form dated September 5, 2017, Mr. Maldonado certified that he and Luis occupied the household, but in each of the subsequent HUD 50059 forms he signed dated April 9, 2018, November 26, 2019 and February 18, 2020, Mr. Maldonado certified that he was the sole occupant of the Premises.

Defendant ("Ms. D'Amato") is Luis' mother. She testified that she moved into the Premises with Luis in August 2020 to help care for Mr. Maldonado. Although Ms. D'Amato testified that she applied to be a live-in aide at the time she moved in, no such application was offered into evidence and Plaintiff's SPM testified that no such application was ever approved. In fact, the witness testified credibly, and the Court finds, that Plaintiff was unaware that anyone was living in the household with Mr. Maldonado until after his passing in December 2020. By letter dated January 27, 2021, Plaintiff notified Ms. D'Amato that she was not authorized to live

in the Premises and was required to vacate by January 31, 2021. Ms. D'Amato did not vacate and continues to reside in the Premises. Because Mr. Maldonado was the sole authorized occupant of the Premises, the HUD rental subsidy terminated fourteen days after his death.

Ms. D'Amato testified that she paid Mr. Maldonado's portion of the rent (that is, the amount calculated based upon Mr. Maldonado's household income as certified to Plaintiff most recently on February 18, 2020) for January 2021 through Plaintiff's on-line rent-pay system, attempted to pay rent for February 2021 by money order, and again paid Mr. Maldonado's rent for March 2021. Plaintiff's SPM testified that his company has no way of rejecting rent payments made through its on-line rent-pay system and therefore Plaintiff did not knowingly accept rent from Ms. D'Amato.¹ When Ms. D'Amato proffered the money order for February 2021, the SPM rejected and returned it. The Court finds that Plaintiff did not intend to accept payments from Ms. D'Amato for rent or for her use and occupation of the Premises.

Based on the foregoing factual findings, the Court rules that Plaintiff is not required to file a summary process action against Ms. D'Amato. Summary process is an action to recover possession, and Ms. D'Amato never had legal possession of the unit by virtue of express or implied approval of Plaintiff or its agents. She may have had permission from Mr. Maldonado to reside in the Premises, but that arrangement does not establish a license between Plaintiff and Ms. D'Amato. For each year from 2018 through 2020, Mr. Maldonado certified on the HUD 50059 forms that no other person lived in the Premises, Plaintiff relied on his certifications to determine his share of the rent.

Ms. D'Amato's status was as a guest of Mr. Maldonado. His consent to allow her and Luis to occupy Premises expired upon his death. She cannot gain tenancy rights simply by

¹ Plaintiff's SPM testified that he would ascertain how to return the money Ms. D'Amato submitted through the on-line rent-pay program.

refusing to vacate following his passing. Accordingly, Plaintiff can recover possession without commencing a summary process action. *See United Co. v. Meehan*, 47 Mass. App. Ct. 315, 319 (1999) (“a landlord need not bring a summary process action against a person whose status is only as a guest or visitor of a tenant”).² By failing to vacate following Mr. Maldonado’s death, Ms. D’Amato became a trespasser as that term is defined in G.L. c. 266 § 120 (a person who, “without right ... remains in or upon the dwelling house ... after having being forbidden to do so by the person who has lawful control of the premises”).

Ms. D’Amato contends that, regardless of her status, Plaintiff does not meet the standard for injunctive relief. In considering a request for an injunction, the Court evaluates the moving party’s claim of injury in combination with its chance of success on the merits, and balances the risk of irreparable harm to the moving party if the injunctive relief is denied against any similar risk of irreparable harm which granting the injunction would create for the opposing party. *See Packaging Industries Group, Inc. v. Cheney*, 380 Mass. 609, 617 (1980). What matters as to each party is not the raw amount of irreparable harm the party might conceivably suffer, but rather the risk of such harm in light of the party’s chance of success on the merits. *Id.*

Here, the Court finds that the equities favor Plaintiff because Ms. D’Amato is not and never had a possessory interest in the Premises and has no rights to continue to reside there. It goes without saying that there is a substantial risk irreparable harm to Ms. D’Amato if the injunctive relief is allowed and she and Luis are ordered to vacate.³ Even so, the risk of harm to

² The Court rejects Defendant’s argument that summary process provides an adequate remedy at law. The case Defendant relies upon, *Attorney General v. Dime Savings Bank*, 413 Mass. 284 (1992), is distinguishable because it involves the rights of tenants. The occupants in that case established that they had been tenants of the mortgagor and held over after that right expired, which therefore required the post-foreclosure mortgagee to use summary process to regain possession.

³ [REDACTED]

Ms. D'Amato has to be balanced against the risk of irreparable harm to Plaintiff in light of the strength of Plaintiff's case. Plaintiff's risk of irreparable harm, although less immediate and personal, stems from its inability to offer a federally subsidized apartment to an individual or family that needs affordable housing. Apartments with project-based subsidies are scarce and the waiting list is long, and the public interest is served by providing such housing to qualified people who have been waiting years for a unit to become available. It would be manifestly unfair to the other families in need of subsidized housing to allow Ms. D'Amato to circumvent the waiting list and continue to reside in Mr. Maldonado's unit.⁴

Even though equitable considerations do not compel the Court to deny Plaintiff's motion for injunctive relief, the Court does have compassion for Ms. D'Amato and Luis. It would be an extreme hardship to require them to vacate on short notice in the midst of the continuing pandemic, so the Court shall allow them a reasonable amount of time to vacate and remove their personal belongings, after which time Plaintiff may reclaim the Premises without need for any further Court proceedings.⁵

Based on the foregoing, the Court enters the following ORDER:

1. Plaintiff's motion for injunctive relief is allowed.⁶

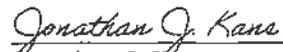
⁴ Although the loss of rental income is not typically considered irreparable harm, in this case, where rent is based on household income, and where the subsidy was removed fourteen days after Mr. Maldonado died, the loss of the subsidy is inextricably tied to the public interest of making subsidized apartments available to those in need.

⁵ Plaintiff's verified complaint seeks a permanent injunction, not a preliminary injunction. As a practical matter, there is not a meaningful difference given the Court's decision. Although the Court is awarding the ultimate relief on a preliminary basis, such an outcome is not prohibited (*see Petricca Constr. Co. v. Commonwealth*, 37 Mass. App. Ct. 392, 400 (1994)), and Plaintiff has demonstrated a clear entitlement to it based on the testimony and evidence presented.

⁶ In reaching the decision herein, the Court considered the decision of a single justice of the Appeals Court in *Forest Hills Housing Cooperative, Inc. v. Dim*, 2021-J-0034 (Feb. 19, 2021), a decision brought to the Court's attention by Defendant in a supplemental filing on March 5, 2021. The facts in this case are different from the facts in that case; notably, in the *Forest Hills* case, the occupant had permission from the landlord to live in the apartment as a live-in health care aide, claimed she had married the tenant and was introduced to management as the tenant's wife.

2. Ms. D'Amato may remain in the Premises (with or without Luis) through April 30, 2021, after which date she must vacate and remove her personal belongings. If she fails to vacate by that date, Plaintiff may treat Ms. D'Amato as a trespasser in accordance with G.L. c. 266, § 120 and have her removed with the assistance of the Springfield police or the deputy sheriff's office. Thereafter, Plaintiff may change the locks. This Order constitutes sufficient notice to Ms. D'Amato and Plaintiff is not obligated to provide any further notice of the time and date of the vacate order.
3. No later than March 31, 2021, Plaintiff shall refund any monies paid by Ms. D'Amato through Plaintiff's on-line rent-pay system for January 2021 and March 2021.
4. Plaintiff shall pay the \$90.00 fee for injunctive relief set forth in G.L. c. 262, § 4 no later than March 31, 2021.

SO ORDERED this 11th day of March 2021.


Jonathan J. Kane
First Justice

Cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 20-SP-1080

K & D REALTY,)	
)	
PLAINTIFF)	
)	
V.)	ORDER
)	
MICHAEL CROTEAU AND,)	
AUTUMN DICKSON,)	
)	
DEFENDANTS)	

This matter came before the Court on March 10, 2021 by Zoom for a hearing on Plaintiff's motion for a payment order for attorneys' fees and court costs. Plaintiff appeared through counsel; Defendants appeared without counsel.

Plaintiff represents that the rental arrearage was paid by Way Finders, Inc., leaving only court costs owed in the amount of \$170.00. Plaintiff also demonstrated that the lease permits it to be reimbursed for attorneys' fees in the amount of \$562.50 related to Defendants' default under the lease.¹

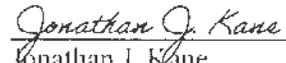
The parties reached an agreement whereby Defendants would pay the total of \$732.50 in monthly installments of \$75.00. They did not present an agreed-upon day of the month for

¹ Ordinarily, Plaintiff would need to commence a separate legal action (e.g. small claims) to collect amounts it claims are due other than rent and court costs. Here, Defendants agreed to a payment plan for the attorneys' fees for the convenience of resolving their entire balance in this action.

payments to be made, so the Court will impose a deadline of the 15th of each month for payment of the \$75.00 installment beginning in April 2021.

Because attorneys' fees are not permitted to be included in a summary process case, if Defendants fail to make payments for attorneys' fees as required in this order, Plaintiff will be entitled to a judgment (upon motion) for money damages only and not for possession.

SO ORDERED, this 11th day of March 2021.


Jonathan J. Kane
First Justice

cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS

HAMPDEN, SS:
DEPARTMENT

HOUSING COURT

WESTERN DIVISION
SUMMARY PROCESS
NO. 19H79SP005472

**TOWD POINT MORTGAGE TRUST ASSET-BACKED
SECURITIES SERIES 2016-2, U.S. BANK NATIONAL A
SSOCIATION AS INDENTURED TRUSTEE,**

VS.

EDWARD CRUZ and EDITH B. CRUZ,

Defendants

**Memorandum of Decision on Plaintiff's Motion for Summary Judgment and
Order for Entry of Judgment**

Defendants Edward Cruz and Edith B. Cruz (for clarity I shall refer to the defendants collectively as "Cruz") were the owners of the single-family residential property at 35 Dwight Road, in Springfield, Massachusetts (the "property"). The Cruz family occupy the property as their residence with their one minor child (age 16). Their child attends public school. Plaintiff Towd Point Mortgage Trust Asset-Backed Securities Series 2016-2, U.S. Bank National Association As Indentured Trustee (hereinafter "Towd Point") was the high bidder at the foreclosure sale conducted on April 23, 2019 and purportedly acquired title to the property upon execution and delivery of a foreclosure deed. The foreclosure deed is dated September 19, 2019.

In December 2019 Towd Point commenced this summary process action against the defendants seeking to recover possession of the foreclosed property.¹ Cruz filed an answer that included as a defense that the foreclosure sale was void *ab initio* for failure to strictly comply with a notice provision set forth in Paragraph 22 of their mortgage; and for that reason their right to possession is superior to the right asserted by Dowd Point.

This matter came before the court on Towd Point's motion for summary

¹ The complaint included an account annexed seeking fair rental damages for use and occupancy; however Towd Point stipulated that it is not seeking summary judgment on its use and occupancy damages claim and would waive that claim if it were to prevail on its claim for possession upon summary judgment.

judgment. Towd Point argues that it acquired title to the property upon foreclosure in strict compliance with the statutory power of sale; and that it is entitled to judgment as a matter of law on its claim for possession. Cruz argues that because Towd Point failed to comply with the notice requirements set forth in Paragraph 22 of the mortgage, the foreclosure sale was not conducted in strict compliance with the statutory power of sale, rendering the foreclosure void *ab initio* and the foreclosure deed to Towd Point a nullity. Cruz argues that their right to possession of the property is superior to any right Towd Point might hold, and that they are entitled to summary judgment on the claim for possession. The parties filed memoranda of law together with affidavits and documents in support of their respective positions.

After reviewing the undisputed evidence set forth in the summary judgment record and considering the arguments of the respective parties, I conclude as a matter of law that (1) the April 23, 2019 foreclosure sale is void *ab initio* because the default/right to cure notice relied upon by Towd Point failed to include information in strict compliance with ¶ 22 of the mortgage (specifically, information pertaining to the mortgagors' "*right to bring a court action to assert the non-existence of a default or any other defense of BORROWER to acceleration and sale*"), and (2) because the foreclosure sale has been rendered void *ab initio* Towd Point does not have a superior right to possession of the property over the right to possession asserted by Cruz.

For these reasons, Cruz is entitled to entry of summary judgment dismissing Towd Point's claim for possession.

Undisputed Facts

The following facts necessary to resolve the legal issues raised on summary judgment are based on facts set forth in the record that I conclude are not in dispute.

On December 28, 2007 Cruz executed a promissory note payable to Wilmington Finance, Inc., in the principal amount of \$133,200.00. The note was secured by a mortgage on the property granted by Cruz to Mortgage Electronic Registration Systems, Inc. ("MERS") as nominee for the lender.

Select Portfolio Servicing, Inc. (SPS") acted as the loan servicer on behalf of the mortgagee/lender holding the Cruz mortgage loan. On April 18, 2012 MERS assigned the Cruz mortgage to CitiMortgage, Inc.

Paragraph 22 of Cruz mortgage states in relevant part:

22. Acceleration; Remedies. Lender shall give notice to Borrower prior to acceleration following Borrower's breach or agreement in this Security Instrument . . . ***The notice shall specify:*** a) the default; (b) the action required to cure the default; (c) a date, not less than 30 days from the date the notice is given to the Borrower, by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Security Instrument and sale of the Property. ***The notice shall further inform Borrower of the right to reinstate after acceleration and the right to bring a court action to assert the non-existence of a default or any other defense of Borrower to acceleration and sale.*** If the default is not cured on or before the date specified in the notice, Lender at its option may require immediate payment in full of all sums secured by this Security Instrument without further demand and may invoke the STATUTORY POWER OF SALE and any other remedies permitted by Applicable Law. . . (emphasis added).

Cruz fell behind on their mortgage loan payment obligations beginning in May 2016.

On October 18, 2016 SPS sent Cruz a package that contained two separate documents regarding their past-due mortgage loan payment obligations. The first document is a notice entitled “90-Day Right to Cure Your Mortgage Default” dated October 18, 2016. I shall refer to this document as the “90-Day Notice.” It consists of two pages. The second document is a letter addressed to Cruz and is also dated October 18, 2016. It is untitled and consists of four pages. I shall refer to this second document as the “Letter.” For purposes of ruling on the summary judgment motion I shall assume that the 90-Day Notice and the Letter were sent to Cruz in the same envelope.

The 90-Day Notice includes the “right to cure default” information required by G.L. c. 244, § 35A, and follows the template format set forth in the implementing regulations, 209 CMR §§ 56.03 and 56.04. However, a § 35A statutory 90-day notice to cure default, standing alone, does not necessarily satisfy the contract-based default/notice to cure requirements set forth in ¶ 22 of the mortgage at issue in this case.

The 90-Day Notice includes some, but not all, of the information required to be included in the default/right to cure notice under the provisions of ¶ 22 of the Cruz mortgage. Specifically, consistent with the requirements of ¶ 22 the 90-Day Notice informed Cruz that (a) they were in default on their mortgage loan obligations from May

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to October 2016, (b) to cure the default they had to pay the past due amount (the exact amount is blacked out on the court's copy), (c) they had until January 16, 2017 to cure their default by tendering payment of the past due amount to SPS, (d) their failure to cure the default by that date could result in foreclosure and eviction from their home and (e) they could avoid foreclosure after acceleration by paying the total amount past due before a foreclosure sale takes place.

However, the 90-Day Notice does not include one essential statement required by ¶ 22 of the mortgage to notify the mortgagors that they “. . . *have the right to bring court action to assert the nonexistence of the default or any other defense you have to acceleration and sale.*”²

SPS did not send Cruz a separate default/right to cure notice under the provisions of ¶ 22 of Cruz's mortgage. Towd Point is relying on the 90-Day Notice and the Letter, read together, to constitute a ¶ 22 compliant default/right to cure notice.

On the second page of the 90-Day Notice (immediately below the signature line) the following sentence appears: “*Enclosed with this notice, **there may be additional important disclosures related to applicable laws and requirements that you should carefully review***” (emphasis added). However, the 90-Day Notice does not specifically identify, reference, or incorporate the information set forth the Letter, and does not state that such “additional disclosures” would include additional default/right to cure information required by the mortgage.

The four-page Letter is addressed to Cruz but does not have a heading. The Letter states in relevant part that “[t]his letter provides additional information about your mortgage loan default *and is intended to complement the enclosed . . . (150 Day Notice).*”³ *In the event of any conflict between the terms of this letter and those contained in the 90 Day Notice, the terms of the 90 Day Notice will control*” (emphasis added). The second to last paragraph on page 3 of the Letter states “[y]ou have the right to bring a court action to assert the non-existence of a default or any other defense you may have to acceleration and sale.” This tracks verbatim the “right to bring a court action” notification required by ¶ 22 of the mortgage. However, the Letter does not

² This is the same language that was the subject of *Pinti v. Emigrant Mortg. Co., Inc.*, 472 Mass. 226 (2012).

³ The letter refers to “the enclosed ‘150 Day Right to Cure Your Mortgage Default’” and later refers to the 90 Day Notice. I assume the “150 Day” reference is boiler-plate language that was mistakenly included in the notice.

mention or reference specifically ¶ 22 of the mortgage, and the Letter does not mention that this “right to bring a court action” language is a mandated provision that must appear in the mortgaged-based default/right to cure notice.

On May 2, 2016 CitiMortgage assigned the Cruz Mortgage back to MERS.

Cruz did not cure the mortgage loan default by January 16, 2017 or prior to the April 23, 2019 foreclosure sale.

On May 9, 2018 MERS assigned the Cruz mortgage to Firstkey Mortgage, LLC. On May 10, 2018 Firstkey Mortgage, LLC assigned the Cruz mortgage to Towd Point.

On December 27, 2018, Towd Point recorded a pre-foreclosure affidavit affirming that Towd Point had complied with loan modification provisions of G.L. c. 244, § 35B and that it was the holder of the promissory note in compliance with the provisions of G.L. c. 244, § 35C.

Cruz does not dispute that Towd Point, through its legal counsel, prepared a G.L. c. 244, § 14 notice of foreclosure sale that was mailed and delivered to Cruz at 35 Dwight Road residence at least 30 days prior to the scheduled date of the foreclosure sale, April 23, 2019.

As is set forth in Towd Point’s Affidavit of Sale, on April 23, 2019, at 2 p.m. a licensed auctioneer conducted a public foreclosure auction at the 35 Dwight Road property. Towd Point was the high bidder at the foreclosure auction with a bid in the amount of \$158,400.00.

On September 19, 2019, an agent of SPS, acting as attorney in fact for Towd Point, executed an Eaton/Pinti affidavit. The affidavit states that prior to the foreclosure sale Towd Point held the Cruz promissory note secured by the mortgage. Further the affidavit (§ 5 e) states that the notice of default strictly complied “with the terms and conditions precedent in the mortgage to acceleration and sale.” Specifically, the affidavit stated that the notice of default (the 90-Day Notice) had informed Cruz “*of the right . . . to bring an action to assert the non-existence of a default or other defense to acceleration and sale.*” This constitutes an explicit representation that the mortgagee had complied with the notice requirement set forth in ¶ 22 of the mortgage.

On September 4, 2019 an agent, acting on behalf of Towd Point, executed the Affidavit of Sale.⁴ On September 19, 2019 Towd Point executed and delivered a

⁴ The foreclosure deed, affidavit of sale and Eaton/Pinti affidavit were recorded at the Registry of Deeds
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foreclosure deed to the property to Towd Point for consideration paid of \$158,400.00.

Cruz has remained in possession of the property since the foreclosure sale.

On December 12, 2019 Towd Point served Cruz with a 72-hour notice to quit and vacate the 35 Dwight Road property.

On December 23, 2019 Towd Point commenced this summary process action against Cruz seeking to recover possession of the 35 Dwight Road property.

Discussion

The standard of review on summary judgment “is whether, viewing the evidence in the light most favorable to the non-moving party, all material facts have been established and the moving party is entitled to a judgment as a matter of law.” *Augat, Inc. v. Liberty Mut. Ins. Co.*, 410 Mass. 117, 120 (1991). See Mass. R. Civ. P. 56 (c). The moving party must demonstrate with admissible documents, based upon the pleading depositions, answers to interrogatories, admissions documents, and affidavits, that there are no genuine issues as to any material facts, and that the moving party is entitled to a judgment as a matter of law. *Community National Bank v. Dawes*, 369 Mass. 550, 553-56 (1976). All evidentiary inferences must be resolved in favor of the non-moving party. See *Simplex Techs, Inc. v. Liberty Mut. Ins. Co.*, 429 Mass. 196, 197 (1999). Once the moving party meets its initial burden of proof, the burden shifts to the non-moving party “to show with admissible evidence the existence of a dispute as to material facts.” *Godbout v. Cousens*, 396 Mass. 254, 261 (1985). The non-moving party cannot meet this burden solely with “vague and general allegations of expected proof.” *Community National Bank*, 369 Mass. at 554; *Ng Brothers Construction, Inc. v Cranney*, 436 Mass. 638, 648 (2002) (“[a]n adverse party may not manufacture disputes by conclusory factual assertions; such attempts to establish issues of fact are not sufficient to defeat summary judgment”). Summary judgment, when appropriate, may be rendered against the moving party.

To prevail in a summary process action involving foreclosed property (where the validity of the foreclosure is challenged) the plaintiff claiming to be the post-foreclosure owner of the property must prove that it has a superior right of possession to that property over the claimed ownership right asserted by the defendant who was the pre-foreclosure owner/occupant. To prove this element of its claim for possession the post-foreclosure

plaintiff must show “that the title was acquired strictly according to the power of sale provided in the mortgage.” *Wayne Inv. Corp. v. Abbott*, 350 Mass. 775, 775 (1966). See *Pinti v. Emigrant Mortg. Co., Inc.*, 472 Mass. 226 (2012); *Bank of New York v. Bailey*, 460 Mass. 327 (2011).

Towd Point argues that based on the undisputed evidence in the summary judgment record it has established that the April 23, 2019 foreclosure sale was valid, it is the owner of the property, and that its right to possession of the 35 Dwight Road property is superior to any right asserted by Cruz.

Cruz argue that Towd Point cannot show that it has a superior right to possession of the property because the April 23, 2019 foreclosure was void *ab initio*, rendering the subsequent sale of the property to Towd Point a nullity. Cruz’s defense is based on one contention. Cruz (self-represented litigants) attempted to frame an argument based on the holding in *Pinti v. Emigrant Mortg. Company, Inc.*, supra. Cruz argued that the October 18, 2016 default/right to cure notice relied upon by Towd Point does not strictly comply with the notification requirements set forth in ¶ 22 of the mortgage. However, rather than address the 90-Day Notice, Cruz focused on page 3 of the Letter; specifically alleging that the juxtaposition of the second paragraph (“[y]ou have the right to reinstate after acceleration of your account and commencement of foreclosure proceedings”) with the third paragraph (taken verbatim from ¶ 22 of the mortgage, the paragraph states that the mortgagors that they had “*the right to bring a court action to assert the non-existence of any default or any other defense of Borrower to acceleration and sale*” of the mortgaged property) created confusion as to when they could bring a court action to challenge the default.

After reviewing the written memoranda and considering the parties’ arguments presented at the motion hearing, I came to the realization that Cruz’s argument, while inartful, confused and misfocused, nonetheless presented a significant *Pinti* issue that had not been addressed by the parties. I issued a written order giving the parties the opportunity to submit supplemental memoranda to address what I understood to be the actual *Pinti* issue:

Whether as a matter of law the October 18, 2016 *90-Day Right to Cure Your Mortgage Default* notice (that does not appear to include any “right to bring a court action” information required by ¶ 22 of Cruz’s mortgage) can be read to incorporate the information set forth in the October 18,

2016 letter from Select Portfolio Servicing, Inc. (that does include “right to bring a court action” language that would appear to comply with ¶ 22 of Cruz’s mortgage). The court must answer this question before it can determine whether the April 23, 2019 foreclosure sale is valid or void *ab initio*.

Both parties submitted supplemental memoranda.

Paragraph 22 Issue: Compliance with the terms of the mortgage is an explicit prerequisite to exercising the statutory power of sale, G.L., c. 183, § 21.

Section 21 provides in relevant part that:

“. . . upon any default in the performance or observance of the foregoing or other condition, the mortgagee . . . may sell the mortgaged premises . . . by public auction . . . *first complying with the terms of the mortgage* and with the statutes relating to the foreclosure of mortgages by the exercise of a power of sale . . .” (emphasis added).

Because the statutory foreclosure process in Massachusetts allows a mortgagee to foreclose on real property without judicial approval or oversight, “one who sells under a power [of sale] must follow strictly its terms. If he fails to do so there is no valid execution of the power, and the sale is wholly void.” *U.S. Bank Nat’l Ass’n v. Ibanez*, 458 Mass. 637, 649-650 (2010), quoting *Moore v. Dick*, 187 Mass. 207, 211 (1905).

Pinti v Emigrant Mortg. Company, Inc., at page 232, mandates that in order to exercise the statutory power of sale to foreclose on real property “. . . strict adherence to the notice of default provisions in [¶ 22 of the mortgage] was required.” Substantial compliance is not sufficient “for a valid foreclosure sale.” *Id.* ¶ 22 of the mortgage states with clarity what information must be included in “the Notice” of default. The “right to bring a court action” provision sets forth information that must be included in “the Notice.”

Accordingly, to establish its prima facie case for possession Towd Point must show as to the foreclosure on Cruz’s property that it exercised the statutory power of sale in strict compliance with its terms, including strict compliance with ¶ 22 of the mortgage.

With respect to the default/right to cure notice at issue in this case (the 90-Day Notice) ¶ 22 of Cruz’s mortgage states in relevant part that:

The notice shall further inform Borrower of . . . the right to bring a court action to assert the non-existence of a default or any other defense of Borrower to acceleration and sale

(emphasis added).⁵

Therefore, consistent with *Pinti*, as a pre-condition to the valid exercise of the statutory power of sale Towd Point is obligated to show that it complied strictly with ¶ 22 of the mortgage; and to meet this burden of proof it must show that the 90 Day Notice included the ¶ 22 mandated information – either on its face or through explicit incorporation of a statement contained in another written document pertaining to the borrower’s “right to bring a court action to assert the non-existence of a default or any other defense.”

It is undisputed that the 90-Day Notice sent to Cruz, while it did include the information required by G.L. c. 244, § 35A, did not include the “right to bring a court action” language required by ¶ 22 of the mortgage. Therefore, standing alone, the 90-Day Notice does not strictly comply with the notice requirements of ¶ 22 of the mortgage.

Further, it is undisputed that while the Letter includes the ¶ 22 “right to bring a court action” information (at page 3, next last paragraph), it does not include information required by ¶ 22 of the mortgage stating the past due amount that must be paid by January 16, 2017 to cure the default. Therefore, the Letter, standing alone, does not constitute a default/right to cure notice that strictly complies with the requirements of ¶ 22 of the mortgage.

Towd Point argues that the 90-Day Notice complies strictly with ¶ 22 of the mortgage based on the following reasoning: (1) to comply strictly with the right to cure notice requirements of G.L. c. 244, §35A, SLS could not deviate from the required statutory content and template format set forth in 209 CMR §§ 56.03 and 56.04, and for that reason it included in the supplemental Letter the “right to bring a court action” language required under ¶ 22 of the mortgage; (2) the 90-Day Notice and the Letter were sent in the same package that was delivered to Cruz; (3) the 90-Day Notice includes a reference that “[e]nclosed with this notice, there may be additional important disclosures related to applicable laws and requirements . . .;” (4) the Letter states that it includes additional information that “*is intended to complement the enclosed*” 90-Day Notice; (5) the Letter includes the required “right to bring a court action” language set forth in ¶ 22 of Cruz’s mortgage; (6) the Letter was intended to be read together with the 90-Day Notice, and its provisions are *incorporated* into the 90-Day Notice; and (7) therefore,

⁵ The complete language of ¶ 22 is set forth at page 3 of this memorandum of decision.

when viewed in that manner the 90-Day Notice includes all of the required default/right to cure mortgage information in strict compliance with ¶ 22 of the mortgage.

Since neither the 90-Day Notice nor the Letter, standing alone, strictly complies with ¶ 22 of the mortgage, the issue is whether the 90-Day Notice and the Letter can be read together as one integrated mortgage-based default/right to cure notice that strictly complies with ¶ 22 of the mortgage. In other words, the question I must answer is whether as a matter of law the 90-Day Notice can be read to incorporate by reference the “right to bring a court action” paragraph set forth at page 3 of the Letter.

I conclude as a matter of law that the two documents cannot be viewed as one integrated default/right to cure notice that complies strictly with ¶ 22 of Cruz’s mortgage. To strictly comply with the requirements of Cruz’s mortgage the required mortgage-based information must be set forth in (1) the body of the § 35A default/right to cure statutory notice; or (2) if G.L. c 244, § 35A is read (as Towd Point suggests) to preclude the mortgagee from adding mortgage-based information to the statutory notice (and I do not read § 35A to be so restrictive), (a) in a separate contemporaneous mortgage-based default/right to cure notice that includes all the required ¶ 22 information (using the longer cure period set forth in the § 35A notice to avoid conflicting cure deadlines), or (b) in a separate contemporaneous *supplemental* mortgage-based default/right to cure notice that sets forth only the required ¶ 22 information that is not set forth in the § 35A statutory (provided the statutory and supplemental notices include incorporation provisions stating with precision that the statutory and mortgage-based notices should be read together as one integrated notice).

I reach this conclusion for a number of reasons. First, this conclusion is consistent with the plain language of ¶ 22 of the mortgage that states with clarity that the required information must be set forth in “the Notice,” meaning a default/right to cure notice (and not in some other document). Second, the Letter seemingly acknowledges that the 90-Day Notice was intended to be the only governing default/right to cure notice. In the first paragraph, second sentence, of the Letter it states “[i]n the event of any conflict between the terms of this letter and those contained in the 90 Day Notice, *the terms of the 90 Day Notice will control*” (emphasis added). It is the equivalent of saying “You have these rights unless you don’t.” It would be unreasonable to expect or assume that a mortgagor of average intellect reading the two documents would have the

knowledge, experience or clairvoyance necessary to determine whether a provision of the Letter conflicts with the 90-Day Notice and therefore is not to be considered a term of the notice. Third, it would be unreasonable to expect that a mortgagor of average intellect would recognize or understand that the “right to bring a court action” language – set forth as it is at the bottom of the third page of the Letter - was intended to be incorporated into and read as part of the 90-Day Notice. *Pinti* teaches us that it is the responsibility of the mortgagee/lender to set out the information required by ¶ 22 of the mortgage with clarity and precision in one default/right to cure notice.

Affording Towd Point an indulgent interpretation of the 90-Day Notice and the Letter, read together an argument might be made that SLS “substantially complied” with the notice requirements of ¶ 22 of the mortgage. However, *Pinti* requires that there must be “strict compliance” with these requirements as a precondition to the valid exercise of the statutory power of sale.

SLS had options available to provide Cruz with a default/right to cure notice that strictly comply with ¶ 22 of the mortgage. For example, there was ample space within the two-page 90-Day Notice to include the “right to bring a court action” language. For purposes of argument only, I will assume that Towd Point is correct that under the provisions of 209 MCR §§ 56.3 and 56.04 SPS was precluded from adding content or modifying the template format of the statutory notice. Nonetheless Towd Point has not pointed to any facts set forth in the summary judgment record to explain why SPS chose not to include all of the required ¶ 22 information (a) in a separate contemporaneous mortgage-based default/right to cure notice that includes all the required ¶ 22 information (using the longer cure period set forth in the § 35A notice to avoid conflicting cure deadlines), or (b) in a separate contemporaneous *supplemental* mortgage-based default/right to cure notice that sets forth only the required ¶ 22 information that is not set forth in the § 35A statutory (provided the statutory and supplemental notices include incorporation provisions stating with precision and clarity that the statutory and mortgage-based notices should be read together as one integrated notice).

Perhaps SLS chose to use the supplemental letter as a matter of administrative convenience to provide flexibility to account for differing mortgage loan/foreclosure requirements among the fifty states and differing individual mortgage instruments. However, administrative convenience does not provide sufficient justification to stray

from strict compliance with the applicable mortgage requirements. Towd Point knew or should have known prior to proceeding with the foreclosure sale that SLS's failure to set forth all of the required ¶ 22 information in one default/right to cure notice might run afoul of Massachusetts foreclosure law as interpreted by *Pinti*. In this case it did.

While I accept that a statutory Chapter 35A default/right to cure notice may incorporate information set forth in a carefully prepared supplemental letter, concepts of strict compliance and fairness require that the supplemental letter be structured so that a mortgagor of average intellect would recognize and understand that important information about their mortgage default is being provided that is part of the default/right to cure notice. The Letter sent to Cruz falls far short of meeting that standard. There is nothing in the summary judgment record to explain or justify the choice made by SPS with respect to where it placed the ¶ 22 required information in the Letter. The Letter contains multiple single-spaced paragraphs over four pages. The "right to bring a court action" language appears in the next to last paragraph on page three. To draw on a baseball metaphor the critical language is effectively seated in the upper reaches of the bleachers. Further, the Letter, reasonably construed, does not contain any language that would allow a mortgagor of average intellect to understand that the "right to bring a court action" language was intended to be read as a provision of the 90-Day Notice. There is nothing in the Letter that informs the mortgagor that the "right to bring a court action" provision is a mortgage-based right that carries the same importance as the rights set forth in the statutory-based 90-Day Notice.

I conclude as a matter of law that the 90-Day Notice did not incorporate by reference the ¶ 22 information set forth in the Letter.

For these reasons I rule as a matter of law that Towd Point did not strictly comply with the default/right to cure notice requirements set forth in ¶ 22 of Cruz's mortgage prior to acceleration and foreclosure, and therefore Towd Point did not conduct the foreclosure sale of the 35 Dwight Road property in strict compliance with statutory power of sale. Accordingly, I rule that the April 23, 2019 foreclosure sale of the 35 Dwight Road property was void *ab initio*.

Right to Possession. Because the foreclosure sale was void *ab initio*, I rule that Towd Point does not have a right to possession of on the 35 Dwight Road property that is

superior to the right held by Cruz. Accordingly, I rule as a matter of law that judgment shall enter for Cruz dismissing Towd Point's claim for possession.

ORDER FOR JUDGMENT

Based upon all the credible evidence submitted as part of the summary judgment record in light of the governing law, it is **ORDERED** that:

1. Judgment enters for Defendants on the claim for possession asserted by Plaintiff;
2. Plaintiff's claim for use and occupancy damages is dismissed without prejudice.

SO ORDERED.



JEFFREY M. WINIK
FIRST JUSTICE

March 11, 2021

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPSHIRE, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 19-CV-1016

TOWN OF HATFIELD BOARD OF)
HEALTH,)
 PLAINTIFF)
)
V.)
)
GEORGE W. EMENY,)
)
 DEFENDANT)

ORDER

This matter came before the Court on March 8, 2021 by Zoom for review of an order dated March 4, 2021. Both the Town of Hatfield (the “Town”) and the defendant (“Mr. Emeny”) appeared with counsel.

At issue in this case is the fitness for habitation of a single-family residence located at 320 West Street, Hatfield, Massachusetts (the “Premises”). At a hearing on March 4, 2021, the Court was presented with evidence that the Premises had been condemned due to State Sanitary Code violations and that dangerous safety conditions existed, including an obstructed second means of egress, a lack of working smoke detectors, exposed electrical wiring and use of an unapproved and unsafe woodstove for heating. Based on representations of Mr. Emeny’s counsel that progress had been made with respect to correcting these conditions since the Town’s Health Inspector last inspected the Premises on January 5, 2021, the Court ordered that the Town conduct another interior and exterior inspection, which the Health Inspector agreed to schedule for March 7, 2021.

The Town presented the results of its March 7 inspection to the Court today. The Health Inspector noted that, among other things, the water supply had been turned off, a propane space heater was being used inside the Premises, electrical wiring was exposed and neither the second floor nor basement had working smoke and carbon monoxide detectors. In response to the Town's findings, Mr. Emeny's counsel represented that a sizeable group of volunteers had arrived at the Premises to assist Mr. Emeny and that "extreme" improvement had been made in a very short amount of time. According to Mr. Emeny's counsel, heating, electrical and plumbing contractors had been on-site and were committed to correcting the unsafe conditions; also, counsel noted that a significant amount of trash and debris had already been placed into a dumpster that had been delivered to the site.

Although the Court is heartened to hear that the community has rallied to support Mr. Emeny, the only evidence before the Court regarding the current condition of the Premises is the most recent inspection report which shows the continued presence of dangerous conditions. Based on this report, and the testimony of the Health Inspector, the Court finds that the present condition of the Premises places Mr. Emeny and any other individuals (including emergency responders) who enter the Premises at significant risk. The State Sanitary Code is intended to protect the health, safety and well-being of the occupants of housing and the general public, and the Town is within its rights to require that the Premises meet the minimum standard for fitness for human habitation. *See* 105 CMR 410.001.

Accordingly, based on the evidence before the Court today, the Court hereby orders that Mr. Emeny vacate the Premises forthwith and not reoccupy the Premises until the condemnation has been lifted by the Town of Hatfield or until further order of this Court, whichever occurs

first.¹ The Town shall reinspect the Premises on March 17, 2021 at 12:00 p.m. The parties shall return for review of this matter at **9:00 a.m. on March 18, 2021**. The hearing shall be held over Zoom using instructions previously provided by the Clerk's Office.

SO ORDERED this 17th day of March 2021.

Jonathan J. Kane
Jonathan J. Kane, First Justice

¹ Provided he obtain the necessary approvals from the Town, Mr. Emeny has the option of residing in a camper on the property while improvements are made to the Premises.

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, SS

HOUSING COURT DEPARTMENT
WESTERN DIVISION

DOCKET Nos. 18-SP-4324

THE BANK OF NEW YORK MELLON, FKA THE
BANK OF NEW YORK AS TRUSTEE FOR THE
CERTIFICATEHODERS OF THE CWABS INC., ASSER
BACKED CERTIFICATES, SERIES 2005-7,

Plaintiff

v.

GARY YARD,

Defendant

RULING AND ORDER ON
DEFENDANT'S MOTIONS TO
RECONSIDER AND STAY EXECUTION

1. The above-captioned case is before the court on the defendant's (Yard's) motions to reconsider and void judgment, and to stay use of the execution. The defendant asks the court to reconsider its decision denying Yard's motion to vacate judgment in favor of the plaintiff (the Bank), and stay use of the execution based on that judgment. For the reasons set forth herein, the motions are denied.
2. As indicated in the court's decision denying Yard's motion to vacate judgment in favor of the Bank, Yard's arguments and the alleged evidence on which they are based were available when the plaintiff moved for summary judgment, and could have been advanced by the defendant (who was represented by counsel at the time) then. The plaintiff is entitled to rely on the finality of the court's summary judgment ruling, in the absence of one of the grounds set forth in Mass. R. Civ. P. 60, none of which is applicable here.

3. Substantively, Yard appears to be arguing that there were defects with respect to the operative pooling and servicing agreement into which his mortgage was assigned. Alleged violation of the pooling and serving agreement terms renders the assignment voidable, not void, signifying that Yard does not have standing to challenge title on this basis. *Strawbridge v. Bank of New York Mellon*, 91 Mass. App. Ct. 827, 832 (2017); see also *Jenne v. Aurora Loan Servs. LLC*, No. 13–MISC–477489, at *16 (Mass. Land Ct., June 26, 2014) (Foster, J.) (“A mortgagor lacks standing to void an assignment for a violation of a pooling and servicing agreement because a violated pooling and serving agreement is capable of ratification or confirmation by one with authority to do so.”).

4. Yard also appears to argue that the court lacks subject matter jurisdiction because the case was brought in the wrong name. While the factual basis for Yard’s argument is somewhat unclear, the court is satisfied that the assignments of Yard’s mortgage vested title in the named plaintiff. The plaintiff herein is Bank of New York Mellon, F/K/A Bank of New York Trust for the Certificateholders CWABS, Inc., Asset-Backed Certificates, Series 2005-7 (the Trust). The original mortgage identified American Wholesale Lender (AWL) as the mortgagee. AWL was at all relevant times a d/b/a of the entity identified on the note as the lender—Countrywide Home Loans, Inc. (“Countrywide”). A “d/b/a” is not a separate legal entity, *Fried v. Wellesley Mazda*, 2010 Mass. App. Div. 36, 37 (2010), such that the real party in interest was at all time the lender, in whose favor Yard executed the note that was secured by the mortgage. MERS assigned the mortgage to the Trust on May 9, 2008, which it had the legal authority to do as nominee for the original mortgagee. *Sullivan v. Kondaur Capital Corp.*, 85 Mass. App. Ct. 202, 209–10 (2014).

5. **ORDER:** Based upon the foregoing and the arguments set forth in the Bank's opposition to Yard's motions, the motion to reconsider and the motion to stay use of the execution are denied.

So entered this 12th day of March, 2020.


Dina E. Fein
First Justice (Recall)

cc: Clerk's Office

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE No. 20-CV-66

CITY OF SPRINGFIELD, CODE
ENFORCEMENT DEPARTMENT,

Plaintiff,

v.

SPRINGFIELD GARDENS 49-59, L.P., FORT
PLEASANT HOLDINGS, LLC, and DAVID
PERKINS,

Defendants.

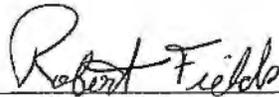
ORDER

After hearing on March 11, 2021, on Springfield Gardens 49-59, L.P.'s motion to intervene and for access to install/inspect smoke and carbon monoxide detectors, at which the city and the moving party appeared but for which the tenant, David Perkins, did not appear, and at which a representative from the Tenancy Preservation Program (TPP) appeared, the following order shall enter:

1. The motion to intervene is allowed as the moving party is now the owner and in control of the subject premises.
2. Given the averments by the landlord that they have attempted many times to make arrangements with the tenant for access to inspect, and have the Fire Department inspect, the smoke and carbon monoxide detectors but have not been able to have such access, the motion for access is allowed---and said access shall be effectuated subject to the terms of this order.
3. Because the landlord shared its concern [REDACTED] [REDACTED] a referral was made to TPP to assist the parties in coordinating access for the inspection of the smoke and carbon monoxide detectors.
4. TPP has agreed to coordinate with the parties and, among other things, be present just outside the tenant's unit with a laptop or tablet with an American Sign Language (ASL) interpreter on the screen to assist, as the tenant is deaf.
5. It is the court's hope that by having TPP present with an ASL interpreter available at the time the landlord and Fire Department arrive at the premises for the inspection, it will make it easier for the tenant and for all concerned.
6. The landlord shall serve a copy of this order to the tenant forthwith.
7. Thereafter, the landlord shall notify the tenant with at least 24 hours advance written notice of the date and time of the inspection with the Fire Department. The tenant shall not unreasonably deny access to this inspection.
8. This matter shall be scheduled for further hearing on **March 25, 2021 at 12:00 p.m. by Zoom.** The Clerk's Office shall provide written instructions on how to participate by Zoom. The Clerk's Office shall also schedule an ASL interpreter

for said hearing. If any party has questions about Zoom or if any party would like to use the Zoom Room physically located at the courthouse, please call the Clerk's Office at 413-748-7838 or TTY at 413-735-6070.

So entered this 12th day of March, 2021.



Robert Fields, Associate Justice ^(RM)

Cc: Court Reporter
Lucy Martinez, Re: ASL Interpreter

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE No. 21-CV-127

ANGEL M. TORRES,
Plaintiff,
v.
EUNICE DOCKERY,
Defendant.

ORDER

After hearing March 11, 2021, on the landlord's motion for access to the tenant's unit, at which only the landlord appeared, the following notice shall enter:

1. The landlord is seeking access into the tenant's unit to install smoke and carbon monoxide detectors. He is also seeking an order that the tenant cease using her washing machine due to leaks.

2. The court continued the hearing to the date noted below to give the tenant more time to appear at the court hearing and represent her side of things, and share any concerns she may have about what the landlord is seeking.
3. The continuance is also appropriate given that the landlord has tested positive for COVID and needs to quarantine until March 21, 2021 and would not be able to access the unit any earlier.
4. This matter shall be scheduled for March 19, 2021 at 12:00 p.m. by Zoom. The Clerk's Office shall provide written instructions on how to participate by Zoom. If any party is unable to join the hearing by Zoom they may contact the court and make arrangements to come to court and use one of its Zoom Rooms. The Clerk's Office can be reached at 413-748-7838.

So entered this 17th day of March, 2021.



Robert Fields, Associate Justice ^{Am.}

Cc: Court Reporter
Mariann Gonzalez, Housing Specialist

**COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT**

BERKSHIRE, ss.

**HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 20-CV-673**

**TOWN OF LANESBOROUGH BY AND)
THROUGH ITS FIRE INSPECTOR,)**

PLAINTIFF)

V.)

DURGA PROPERTY HOLDINGS, INC.,)

DEFENDANT)

**ORDER ON DEFENDANT’S
MOTION TO DISMISS PURSUANT
TO MASS. R. CIV. P. 12(b)(1)**

This matter came before the Court on March 11, 2021 by Zoom on Defendant’s motion to dismiss the complaint pursuant to Mass. R. Civ. P. 12(b)(1) for lack of subject matter jurisdiction and Mass. R. Civ. P. 12(b)(6). This Order addressed only the issue of subject matter jurisdiction. The Rule 12(b)(6) motion shall be addressed at the time the Court hears Plaintiff’s motion for a preliminary injunction.

Plaintiff seeks relief in this case for alleged violations of the Massachusetts State Fire Code, 527 CMR 1.00 (the “Fire Code”) at Defendant’s property located at 655 Cheshire Road, Unit 1, Lanesborough, Massachusetts (the “Property”). The Property is a stand-alone commercial mall. Defendant contends that the Housing Court lacks jurisdiction to hear this matter because the Property is strictly commercial in nature and “has absolutely no relation or proximity to residential housing.” The Court disagrees and adopts the reasoning set forth in Plaintiff’s opposition to the motion to dismiss.

More specifically, the Court finds that G.L. c. 148, § 34D confers jurisdiction on the Housing Court in this case regardless of whether this matter is within the scope of Housing Court jurisdiction set forth in G.L. c. 185C, § 3. Pursuant to G.L. c. 148, § 34D (which was enacted *after* G.L. c. 185C), the Housing Court has the jurisdiction and equitable powers to enforce lawful orders related to fire prevention “notwithstanding any other general or special law to the contrary.” By its plain language (and, moreover, in the context of G.L. c. 148 as a whole) G.L. c. 148, § 34D applies to commercial property as well as residential property. In fact, the legislation enacting this provision, Stat. 2004, c. 304, also enacted Chapter 148A, pursuant to which the Housing Court is given jurisdiction to hear appeals from municipal officials and clerk magistrates related to enforcement of the Fire Code without regard to the residential or commercial nature of the property.

Accordingly, for all of the foregoing reasons, this Court has jurisdiction to hear this matter and Defendant’s motion to dismiss pursuant to Rule 12(b)(1) is DENIED.

SO ORDERED this 12th day of March 2021.



Jonathan J. Kane, First Justice

cc: Court Reporter

Prior to today's hearing, Defendants obtained short-term rental assistance through the RAFT program, and as a result, they were able to pay their entire rental arrears (including the month of March 2021), leaving only a balance of \$170.00 in court costs owing. Despite the payment of rental arrears, Plaintiff contends that it is entitled to evict Defendants because they failed to comply with the payment terms of the December 28, 2020 Court order and because they did not have a zero balance when considering the unpaid court costs. Further, Plaintiff argues that even if the Defendants had a zero balance, the provision of G.L. c. 239, § 3 that prohibits use of an execution in a non-payment of rent case when the money judgment has been paid is inapplicable because the Defendants had agreed to move out and a court-ordered reinstatement of the tenancy would be an impermissible amendment of the Agreement of the Parties. *See Boston Housing Authority v. Cassio*, 428. Mass. 112, 114 (1998) (agreement for judgment could not properly be amended without consent of both parties).

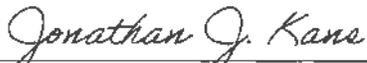
One of the primary purposes of the federal- and state-funded short-term rental assistance programs is to prevent tenants from being evicted during the COVID-19 pandemic, so it would be inequitable to allow Plaintiff to accept payment of the rental arrears (over \$8,000) and still move forward with the eviction. By accepting the funds, Plaintiff is obligated to allow Defendants to remain in the subject premises for a period of time so long as they pay their monthly rent/use and occupancy as it becomes due. Accordingly, the following order shall enter:

1. Plaintiff's motion for leave to use the execution is denied without prejudice.
2. Defendants shall pay \$170.00 (the balance of court costs owing) no later than 5 p.m. on March 17, 2021.
3. Defendants shall pay (and Plaintiff shall accept) monthly rent/use and occupancy of \$900.00 beginning in April 2021. Payments are due the first day of each month, but it

shall not be considered late if it is received by Plaintiff by the fourth day of each month.

4. If Plaintiff has not filed a motion for leave to re-issue and use the execution by September 10, 2021 based on a violation of this Order, Plaintiff's counsel shall file a satisfaction of judgment and this case shall be dismissed.

SO ORDERED this 17th day of March 2021.



Jonathan J. Kane, First Justice

cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 20-SP-1117

**BEACON RESIDENTIAL
MANAGEMENT LP, ET AL.,**

PLAINTIFFS

V.

**HUDSON COLLINS AND
BRANDY LEE FUNK,**

DEFENDANTS

**ORDER ON DEFENDANTS'
MOTION FOR CONTINUANCE**

This for-cause summary process matter came before the Court by Zoom on March 17, 2021 for a hearing on Defendants' motion to continue until the pending criminal charges against Defendant Hudson Collins ("Mr. Collins") are resolved. All parties were represented by counsel.

By way of background, Plaintiffs allege that Defendants violated a material term of their lease as a result of certain conduct that occurred on May 27, 2020 that resulted in criminal charges being brought against Mr. Collins. Plaintiffs terminated Defendants' lease and commenced the instant action. Trial is scheduled for March 31, 2021. Defendants seek a continuance until Mr. Collins' criminal proceeding is resolved because they contend that Mr. Collins will be unable to testify in his own behalf in this case without the risk of waiving his privilege and protection against self-incrimination set forth under the Fifth Amendment to the Constitution and the Massachusetts Declaration of Rights.

The decision of whether to grant a continuance lies within the sound discretion of the judge. *See Commonwealth v. Super*, 431 Mass. 492, 496 (2000), quoting *Commonwealth v. Miles*, 420 Mass. 67, 85 (1995). In this case, Defendants are not simply seeking a brief extension of time to prepare for trial but an indefinite continuance until after the criminal proceedings in a different court is concluded. Such a delay would cause undue prejudice to Plaintiffs, not only because it could delay this eviction case for months (or quite possibly years), but also because the actions of Defendants, if proven at trial, could jeopardize the health and safety of other tenants in the development where Defendants reside.¹ It is in the public interest that this summary process case move forward without further delay, particularly given that summary process is intended to provide for the “just, speedy and inexpensive determinate of every summary process action. *See* Rule 1 of the Uniform Summary Process Rules.²

The Court is satisfied that adequate safeguards are in place to prevent Mr. Collins from inadvertently incriminating himself in the criminal matter being tried in a different court. He has competent counsel to advise him of his right to exercise his privilege against self-incrimination and to ask the Court, if appropriate, to limit the number and scope of questions he is asked at trial.³ Because this is a jury-waived trial, to the extent that Mr. Collins invokes his constitutional rights, there is little risk that the factfinder will be unduly influenced by his refusal to answer questions.

¹ In its opposition, Plaintiffs indicate that the development has 347 residential units.

² To the extent that Defendants assert that the balance of equities favors them because they have children with special needs, they are not precluded from seeking equitable relief at or after the trial.

³ Although it is not the basis for the Court’s decision to deny the instant motion, testimony given in this action might not be admissible in Mr. Collins’ criminal case. *See* Mass. G. Evid. §511(c)(3) (2020) (a waiver by testimony of a defendant or witness in criminal proceeding is limited to the proceeding in which it is given and does not extend to subsequent proceedings).

For the forgoing reasons, Defendants' motion is DENIED.

SO ORDERED this 19th day of March 2021.

Jonathan J. Kane
Jonathan J. Kane
First Justice

cc: Court Reporter

following INTERIM ORDER and schedule the matter for an in-person evidentiary hearing:

Pending further order of this Court or agreement of the parties, it is hereby ORDERED:

1. Each party shall respect the right of the other to the peaceful enjoyment of their respective homes;
2. Neither party shall engage in any harassment, intimidation or threatening behavior toward the other;
3. Ms. Kelly shall restore access to all of the amenities enjoyed by Ms. Lakota prior to February 8, 2021, including the laundry machines, the garage and storage areas.
4. The Premises shall be secured with a working lock that meets code standards and Ms. Kelly shall not enter the Premises (except in the case of a bona fide emergency) without permission of Ms. Lakota, which permission shall not be unreasonably denied.
5. Ms. Lakota shall remove interior locks within the Premises unless she has provided Ms. Kelly with a key for use in emergencies.
6. Ms. Lakota should be provided with a separate mailbox for the Premises.
7. The parties shall return for an in-person evidentiary hearing, at which time the Court will consider extending this order or entering a permanent injunction. The hearing shall take place in the Housing Court in Springfield on **April 5, 2021 at 9:00 a.m.** Any exhibits the parties which to present to the Court (documents, photographs, videos) must be received by the Court no later than 4:00 p.m. on April 1, 2021. Materials not received by that time may not be considered by the Court.
8. The \$90.00 fee for injunctions (G.L. c. 262, § 4) is waived.

The parties are advised that the evidentiary hearing shall address only the relationship of the parties and is not a hearing to determine rights of possession (which requires a summary process action) or claims to monetary damages (which, except for claims for rent that can be included in summary process, must be brought in a separate legal action or pursuant to a complaint for damages filed in this case).

SO ORDERED this 19th day of March 2021.

Jonathan J. Kane
Jonathan J. Kane
First Justice

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 19-CV-705

CTL REALTY, LLC,

Plaintiff,

v.

DAISY ARROYO and JELONI TRIPLETT,

Defendants.

ORDER

After hearing on March 10, 2021 on the landlord's motion for an injunctive order requiring the tenant, Daisy Arroyo (tenant), to immediately vacate the premises, at which the landlord appeared through counsel, the tenant appeared with LFD counsel, and the defendant former tenant, Jeloni Triplett, appeared *pro se*, the following order shall enter:

1. It is more likely than not that the leak complained of in this motion was caused when the tenant took a bath in the bathtub---an act that was prohibited by previous agreements and order.
2. That said, the court has not been made certain as to how the leak occurred, whether it was caused by the tenant letting water pour over the sides of the bathtub or if water leaks as a result of stopping up the drain for a bath.
3. **Preliminary Injunctive Relief Standard:** A party seeking preliminary injunctive relief must show that success is likely on the merits, irreparable harm will result if the relief is denied, that the risk of irreparable harm to the moving party outweighs any similar risk to the opposing party, and any risk of harm to the public's interest. See *Doe v. Worcester Public Schools*, 484 Mass. 598 (2020).
4. If the injunctive relief being sought by the landlord is allowed, the tenant will be forced to vacate the premises, potentially leaving her homeless or doubled up in the midst of a global pandemic, which may result in health and safety risks as well great difficulty in securing housing in the future. See, *Rental Property Management Services v. Hatcher*, 479. Mass. 542 (2018) (quoting: "...eviction and the loss of one's home...are especially distressing, and where the mere record of an eviction proceeding can serve as a long-term barrier to a tenant when he or she seeks future housing, regardless of the legal outcome").
5. Given the requirements of this order noted below designed to prevent any future leaks and given that the tenant is required to vacate the premises by agreement filed in the accompanying summary process matter (20-SP-1182) by June 1,

2021, the court shall deny the extreme remedy being sought by the landlord and, instead, issue the following injunctive order:

- A. The tenant shall not use the bathtub for taking a bath or filling it with water for any reason and is restricted to using the bath/shower stall for showers only.
- B. The tenant shall not place the stopper in the bathtub for any reason.
- C. The landlord shall re-caulk the tub and the bathroom baseboard to further prevent unintended water from leaking into the downstairs unit when the shower is in use.

So entered this 22nd day of March, 2021.



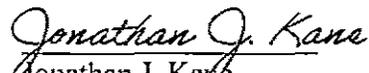
Robert Fields, Associate Justice (Am)

Cc: Rebecca Bodner, Esq. (LFD)

Based on my observation of Mr. Gringauz in other cases before me and based on his written submissions to this Court, it is apparent to me that he understands the implications of his actions, is not confused or indifferent, and that he is simply convinced that he is entitled to a trial by a jury. Accordingly, I am continuing this matter to give Mr. Gringauz the opportunity to consult with counsel to better understand his rights. He is encouraged to contact Community Legal Aid at (855) 252-5342 immediately.

Trial shall be continued to **April 6, 2021 at 11 a.m.** Mr. Gringauz is ordered to appear in person at the Housing Court at 37 Elm Street, Springfield, Massachusetts. If Mr. Gringauz fails to appear for trial, or if he appears and refuses to participate, a default judgment may enter against him at that time. If Mr. Gringauz intends to file a motion for leave to file a late answer and jury demand, he shall serve the motion on Plaintiff's counsel and file it with the Court in advance of the new trial date. Both parties shall ensure that all documents, photographs or videos that they intend to offer as evidence are received by the Court no later than 4:00 p.m. on April 2, 2021.

SO ORDERED this 22nd day of March 2021.


Jonathan J. Kane
First Justice

cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampshire, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 19-SP-4881

DAVID TRAN,

Plaintiff,

v.

PATRICK and CLAUDINE VEISTROFFER,

Defendants.

ORDER FOR ISSUANCE
OF THE EXECUTION

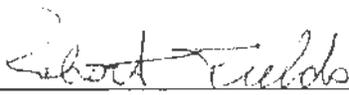
After hearing by Zoom on March 9, 2021, at which all the parties appeared with respective counsel, the following order shall enter:

1. The plaintiff's motion for issuance of the execution is allowed for the reasons stated on the record. The judgment having already entered by agreement on December 16, 2019, the execution for possession shall issue forthwith.
2. There shall be a stay on the use of the execution until after May 1, 2021. As discussed on the record, however, the plaintiff may make arrangements with the

sheriff and/or constable and even have the defendants served in advance of May 1, 2021 but he may not actually levy on the execution until after May 1, 2021.

3. The defendants shall pay their March, 2021 use and occupancy payment forthwith and thereafter pay April, 2021 use and occupancy by the first week of April, 2021—if they are still in occupancy in April, 2021.
4. The motion by Attorney Bass to withdraw as counsel is allowed and the defendants shall proceed *pro se* until subsequent counsel appears.

So entered this 22nd day of March, 2021.



Robert Fields, Associate Justice h.m

CC: Michael Doherty, Clerk Magistrate