DISTRICT OF COLUMBIA COURT OF APPEALS

APPEAL NO. 23-CV-422

MP PPH, LLC, Appellant,

v.

DISTRICT OF COLUMBIA, *et al.*, Appellees.

APPEAL FROM THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

BRIEF FOR APPELLANT MP PPH, LLC

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DISTRICT OF COLUMBIA
COURT OF APPEALS

MP PPH, LLC,
Appellant,

Civil Action No. 2021-CA-002209-B

v.

DISTRICT OF COLUMBIA, *et al.*,
Appellee/Cross-Appellant.

CERTIFICATE REQUIRED BY RULE 28(A)(1) OF THE RULES OF THE DISTRICT OF COLUMBIA COURT OF APPEALS

The undersigned, counsel of record for Appellant MP PPH, LLC, certifies that the following listed parties and amici appeared below:

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District of Columbia, Plaintiff/Appellee
Vantage Management, Inc., Defendant
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These representations are made in order that judges of this Court, *inter alia*, may evaluate possible disqualification or recusal.

Respectfully Submitted,

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STATUTES

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STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

Whether the Superior Court of the District of Columbia abused its discretion and/or otherwise erred in issuing its April 26, 2023 Memorandum Opinion and Order Granting Plaintiff's Renewed Motion to Adjudicate Defendant MP PPH, LLC in Civil Contempt, including errors of law and factual determinations that were plainly wrong or without evidence to support them, or otherwise deficient, and rulings that violated the substantive, procedural, and Constitutional rights of the Appellant.

STATEMENT OF THE CASE

The Owner pursues this appeal from an unprecedented, extraordinary, devastating, and improper Civil Contempt Order arising out of a negotiated Consent Order. (App. 110-45.) The Civil Contempt Order, among other things, imposed a retroactive and prospective rent reduction starting at fifty percent and escalating from there (App. 142-43), going beyond the terms of the Consent Order and even the relief requested on the related Renewed Civil Contempt Motion.

This case commenced on July 1, 2021 when Appellee District of Columbia (the "District") filed its Complaint alleging violations of the Tenant Receivership Act (the "TRA"), D.C. Code §§ 42-3651.01–3651.08, and the Consumer Protection Procedures Act (the "CPPA"), D.C. Code §§ 28-3901–3913, with respect to alleged conditions at the Marbury Plaza Apartments ("Marbury Plaza"), a 674-unit residential rental Apartment Complex located in the District of Columbia at 2300-

2330 Good Hope Road, S.E. Marbury Plaza comprises two eleven story high rise towers and seven smaller "garden-style" buildings, in which a total of approximately 2,500 persons reside. The District named as Defendants the Property Owner, Appellant MP PPH, LLC (the "Owner") and the then Property Manager, Vantage Management, Inc. ("Vantage"). The Owner is a Delaware limited liability company. The case was assigned initially to the Honorable Judge Heidi M. Pasichow.

With its Complaint, the District filed an Opposed Motion for Preliminary Injunction. After Oppositions were filed, and after Vantage had been replaced as Property Manager with another firm, TM Associates, Inc. ("TM Associates"), the Owner and District negotiated and agreed on terms for a Consent Order to resolve the issues posed by the Preliminary Injunction Motion. Judge Pasichow ultimately entered the Consent Order on March 2, 2022, as part of an omnibus Order that not only entered the Consent Order, but disposed of several other pending motions. (App. 56-71.)

By separate Order dated March 30, 2022, the Superior Court granted the District leave to file a First Amended Complaint. That First Amended Complaint is the operative claim of the District in this case. (App. 72-92.) The First Amended Complaint, like the initial Complaint, is based on the TRA and CPPA, and adds Dr. Anthony Pilavas ("Dr. Pilavas"), the Managing Member of the Owner, as a Defendant. (App. 72-92.) No tenants of Marbury Plaza are named as parties to the

lawsuit. (App. 72.) The amended lawsuit included seven specific requests for relief (the same as the initial Complaint): (a) appointment of a receiver to develop and supervise the repair and rehabilitation of Marbury Plaza; (b) contribution of funds from the Defendants, in excess of rent collected, to abate claimed Housing Code violations; (c) contribution of funds from the Defendants, in excess of rent collected, to address claimed threats to health, safety, or security of the tenants or the public; (d) restitution in the form of disgorgement of rents paid; (e) civil penalties under the CPPA; (f) reasonable attorneys' fees; (f) costs; and (g) further relief deemed just and proper.[1] (App. 90-91.)

On March 25, 2022, the District filed a Motion for an Order Directing Defendant MP PPH LLC to Show Cause as to Why It Should Not Be Held in Contempt, which the Owner opposed. Recognizing certain issues (namely, tenant refusal to provide access to residential Units at Marbury Plaza and unforeseen asbestos remediation and the supply chain issues affecting the entire nation) were inhibiting the Owner's ability to complete some of the items required by the Consent Order, the Owner filed a May 5, 2022 Motion to Modify the Consent Order, which the District opposed. Meanwhile, the Owner made significant progress in addressing

[1] The District did not act on the request for appointment of a receiver until August 31, 2023, when it filed a related motion. Eventually, that request was resolved by a further Consent Order entered on February 7, 2024.

items required by the Consent Order, and filed related Monthly Reports with the Court to document those advances.

Judge Pasichow denied without prejudice both the District's Motion for an Order to Show Cause and the Owner's Motion to Modify the Consent Order by Order dated October 18, 2022. In doing so, she indicated "the Court strongly encourages the parties to engage in good-faith discussion regarding both the possible modification of the Consent Order, and the parties' attempted compliance with the Consent Order as it is entered in the March 2, 2022, Court Order." Order dated October 15, 2022 at 14. She held "it is abundantly clear to the Court that access to these units due to tenant/occupant refusal is an issue" and:

> Based upon the information before it, the Court cannot find that Defendant MP PPH has failed to comply with the Consent Order. Although Defendant MP PPH has not completed all the items within the Consent Order in the fashion or speed to which Plaintiff District would like, the Court simply cannot find by clear and convincing evidence that Defendant MP PPH has not made good faith efforts to complete these necessary repairs and upgrades. Thus, the Court denies without prejudice Plaintiff District's Motion for an Order Directing Defendant MP PPH, LLC to Show Cause as to why it Should Not be Held in Contempt.

Id. at 18.

In the same Order, the Court also gave guidance to the parties regarding the future course of the litigation:

> The Court is aware that the parties in this this case are zealously representing their [clients], despite a series of challenges. However, the Court would also like to emphasize the importance of serving the needs of all those affected by this litigation, especially the residents of Marbury Plaza, and the Court takes great care to ensure that this litigation is effectuated as smoothly

> as possible. The Court believes the parties are diligently working toward resolution of the issues within this litigation, but there is still work to do.

See id. at 20.

In the same spirit, Judge Pasichow also encouraged the Owner and the District at an October 31, 2022 Status Conference at which all of these issues were being discussed in detail to work together to jointly draft a Notice to the tenants of Marbury Plaza, which was distributed to the tenants on November 16, 2022, and provided information on the Owner's continuing efforts at mold investigation and remediation, the process being followed, information tenants could expect to receive regarding access needed to Units, and the need for tenant cooperation (including access to Units). (Eleventh Monthly Report of Defendant MP PPH, LLC Pursuant to the Consent Order Entered by the Court on March 2, 2022, filed at ¶ 8 and attachment; H'g Trans. Oct. 31, 2022 at pages/lines 9:18-28:5.)

As of January 1, 2023, the case was reassigned from Judge Pasichow to Judge Neal E. Kravitz. The District seized on the reassignment by refiling its renewed Motion for an Order Directing Defendant MP PPH, LLC to Show Cause as to Why it Should Not be Held in Contempt (the "Renewed Contempt Motion") on January 5, 2022.[2] (App. 93-109). The Owner filed a timely Opposition to the Motion, and

[2] A total of twenty-four exhibits were filed with the Motion, including a copy of the Eleventh Monthly Report and the Notice to tenants that Judge Pasichow had encouraged the District and Owner to agree on and send (refiled as Ex. 21 to the Renewed Contempt Motion).

the District filed a Reply. At a January 20, 2023 Status Conference (by which time the Court had not had the opportunity to review the Motion or Opposition that had been filed), the Court set a further Status Hearing for February 2, 2023. At that time, the Superior Court set an evidentiary hearing for March 13-14, 2023 (with the possibility of continuing through March 15, 2023 if needed), and set deadlines for prehearing identification of witnesses and exhibits.

The evidentiary hearing ended up taking all three days, on March 13-15, 2023. The District presented seven witnesses, the Owner presented six witnesses, and various exhibits were received in evidence. Three of the District's witnesses were tenants of Marbury Plaza: Barbara Cooper ("Ms. Cooper"), Francine Gladden ("Ms. Gladden"), and Sandra Bray ("Ms. Bray"). The Owner and the District filed post-hearing Briefs, and the Court held a further Hearing on April 13, 2023 for closing arguments on the District's Show Cause Motion.

Judge Kravitz issued the Contempt Order on April 26, 2023. (App. 110-45.) The Owner promptly contested the Contempt Order and the crushing relief provided therein, by indicating its intent to pursue an interlocutory appeal and immediately asking the Court to reconsider, or to clarify, vacate, alter, and/or amend the Contempt Order and to stay it pending reconsideration and the appeal. After this appeal was timely noticed on May 12, 2023, Judge Kravitz issued a terse two-page Order on May 22, 2023, denying the motions for reconsideration and for a stay. (App. 153-

54.) In doing so, he stated "[t]he court could provide a point-by-point rebuttal of the defendant's arguments but concludes that none is necessary in the circumstances," he found no "aspect of the order of April 26, 2023 warrants modification or clarification at this time," and he held he was "not persuaded that any aspect of the order of April 26, 2023 warrants modification or clarification at this time." (App. 153-54.)

On appeal, the Owner asked this Court to grant a stay pending appeal. This Court denied the motion to stay by Order dated June 9, 2023, finding the monetary penalties imposed by the Contempt Order insufficient to establish irreparable harm, with Judge Roy W. McLeese dissenting and indicating he would grant the stay and expedite the appeal. The Owner made a subsequent request for rehearing and for rehearing *en banc*, which request was denied by Order dated August 17, 2023.

Given the proceedings in the Superior Court before Judge Kravitz remain pending, further developments below relate to the Contempt Motion, the basis on which the Superior Court relied in granting it and refusing to reconsider, modify, or stay its relief, as cited herein.

In addition, due to the overbearing financial penalties imposed by the Contempt Order, the Owner has had to file a voluntary petition in bankruptcy in the United States Bankruptcy Court for the District of Columbia on August 31, 2023 under Chapter 11 of the Bankruptcy Code (seeking a reorganization), which petition remains pending. In that proceeding, the Bankruptcy Court directed that the rent abatements imposed by the

Contempt Order were unenforceable from and after December 1, 2023. *MP PPH, LLC v. District of Columbia (In re MP PPH, LLC),* 2024 WL 1087492 (Case No. 23-00246-ELG, Chapter 11, Adv. Proc. 23-10032-ELG) (Bankr. D.C. Mar. 12, 2024) (pages A-1 through A-16 hereto). The remainder of the Contempt Order's provisions remain pending and even the rent abatements remain partially unaffected (they are unenforceable as of December 1, 2023 but were in effect prior to that date and otherwise potentially viable; and some related rent credits remain such that tenants are effectively not paying rent).

On this appeal, therefore, the Owner respectfully requests the Contempt Order be reversed and vacated, that the matter be remanded for further proceedings, and that the Owner be granted such other and further relief as may be appropriate.

STATEMENT OF FACTS

A. Introduction.

This appeal involves a civil contempt proceeding arising out of a negotiated Consent Order. On April 26, 2023, the Superior Court issued the Contempt Order finding noncompliance with the Consent Order, and thereby imposed a series of untenable directives, which in significant part are incapable of being purged, including: retroactive and prospective fifty percent (50%) rent reductions for all residents, past and present, from June 1, 2022 forward, numbering over 2,500 persons (even though only three current tenants testified at the March 13-15, 2023

evidentiary hearing), and with further reductions taking effect in the future; modifications of lease rent terms on which possession of apartments was agreed on between the Owner and tenant; directives to modify other pending Superior Court proceedings over which Judge Kravitz did not preside; and other affirmative injunctive directives to the Owner. (App. 141-45.)

This sweeping relief was ordained notwithstanding that none of the tenants in question are parties to the lawsuit and the relief goes far beyond the terms of the Consent Order or what the District even asked for. The relief granted has devastated the Owner and the Apartment Complex, implicated the interests of a nonparty secured lender, the Property Manager, and the tenants, as well as longstanding District of Columbia landlord-tenant laws and procedures. The relief was imposed improperly as an immediate civil contempt penalty, without any conditional relief or opportunity to purge as the applicable procedures require under the circumstances, and was entirely disproportionate to any conduct proven and therefore further in violation of fundamental Constitutional rights (as one of many related concerns).

B. The Consent Order.

The Consent Order (App. 56-71) was negotiated between the Owner and the District and entered by Judge Pasichow on March 2, 2022. Its provisions spanned twenty paragraphs, setting forth a series of specific requirements: (1) that if the Property Manager were replaced again, the Owner would ensure that various

licensing, experience, and other qualifications were met; (2) that within thirty days, certain pest extermination work would be done (with monthly treatments to continue for at least six months thereafter and then as requested by tenants), and that the District would be provided with the current schedules for security officers at Marbury Plaza; (3) that within thirty days, an assessment would be conducted of plumbing, heating ventilation and air conditioning ("HVAC") systems, elevators and the chairlift,[3] mold, electrical hazards and fire/safety hazards, and exterior lighting; (4) that within thirty days, the Property Manager would conduct training on fair housing practices and provide tenants with protocols for dealing with certain issues; (5) that within sixty days, certain Notices of Infraction ("NOIs") issued by the Department of Consumer and Regulatory Affairs would be resolved, that certain inspection repairs in eighteen Units identified in a report by CTI District Services, Inc. ("CTI") would be completed, and that points of entry to buildings on the Property would be secured by specifically prescribed means; that security cameras be installed and maintained in laundry rooms, that exterior lighting conform with the related assessment, that laundry facilities be operational, that security personnel have hours and a schedule consistent with the existing Security Contract, and that a representative of the Metropolitan Police Department ("MPD") be permitted to

[3] Although the Consent Order refers to "chairlifts," there is actually only one chairlift at Marbury Plaza, in the tower building at 2300 Good Hope Road, S.E.

assess the adequacy of security measures; (6) within 90 days, certain mold remediation work be completed; (7) within 120 days, that HVAC issues identified in the related assessment be remediated, that plumbing issues identified in the related assessment be remediated, that defects with the elevators and the chairlift be remediated or the items replaced, that roof replacement and repair be performed, and that the pool be safe for use and enjoyment; (8) within 150 days, the Court hold a Status Conference regarding the progress and status; (9) that the Owner provide certain information, including reports and contracts, to the District, along with a monthly report to the Court, highlighting the progress being made on each item in the Consent Order, starting on January 5, 2022; (10) that repairs and replacements be funded by the Owner; (11) that solar power generation be provided on completion of the roof repair and replacement; and (12) that a letter concerning the Consent Order be sent to all tenants within five business days. (App. 65-71.)

In addition to the information to be provided by the District, the Owner was required on three weeks' prior notice or as otherwise agreed to give the District access to units and common areas at Marbury Plaza. (App. 70.) Further, if the District sought to bring to the Superior Court any Motion or request any relief related to the Owner's compliance with the Consent Order, as a precondition of doing so, the District was required to provide at least two business days' notice, unless the

District determined there was "imminent danger." (App. 70, citing D.C. Code § 42-3131.01(c)(1)(F).)

C. The District's Renewed Contempt Motion.

On January 5, 2023, just after the case was reassigned to Judge Kravitz, with a January 20, 2023 Status Conference scheduled, the District filed its renewed "Motion for an Order Directing Defendant MP PPH, LLC to Show Cause as to Why it Should Not be Held in Contempt." (App. 93-109.) The District did not comply with the requirement to provide two business days' notice or certify that such compliance had been done or was excused by an "imminent danger." The District took the position that the "Effective Date" of the Consent Order was January 28, 2022, rather than the March 2, 2022 date it was docketed, signed, and entered, and raised six specific claims in which, it was alleged, the Owner had failed to comply with the Consent Order: (1) mold assessment and remediation; (2) assessment of leaks, hot water issues, and HVAC systems; (3) the requirement for a further six months of extermination services; (4) completion of "several security upgrades"; (5) lack of "fully functioning laundry rooms"; and (6) lack of "fully functioning chair lifts and elevators." (App. 94.)

The District cited D.C. Code § 11-944(a) and other applicable law, and that it "would welcome an evidentiary hearing on this matter to the Court can hear from tenants directly." (App. 95, 108.) The proposed order with the filing only asked that

a hearing be set for the "Defendants" (sic) to appear and show cause "why they should not be held in contempt for violating the terms of the Court's Consent Order."

At a further Status Hearing on February 2, 2023, the Superior Court set the evidentiary hearing for March 13-14, 2023 (with the possibility of continuing through March 15, 2023 if needed), and set deadlines for prehearing identification of witnesses and exhibits.

D. <u>The Evidentiary Hearing.</u>

At the March 13-15, 2023 evidentiary hearing, in Opening Statement, the District asserted fifteen violations of the Consent Order (rather than the six mentioned in the Renewed Contempt Motion, and although some – such as plumbing and HVAC issues – were encompassed in the Motion, others were not). (H'g Trans. Mar. 13, 2023 at pages/lines 8:2-10:19.) The District presented the testimony of seven witnesses as well as documentary evidence. The seven witnesses who testified for the District included only three tenants: Ms. Cooper, Ms. Gladden, and Ms. Bray. The District also called Stacy Kahatapitiya (an employee of ARC Environmental, a firm that had previously done some mold assessment work at the Property), Joseph Nichols (an employee of TRC Engineering, a firm that had previously done some assessment of the hot water and plumbing systems at Marbury Plaza), Charles Bunn (an employee of White Glove Commercial Cleaning, a firm that provides janitorial

services and general repair work at Marbury Plaza), and Dale McGuire (an employee of ACM Services, a firm that had done some mold remediation work at the Property).

The Owner called six witnesses: Noah Rabin ("Mr. Rabin") (Director of Maintenance for the Property Manager at that time, TM Associates), Aaron Sleasman (an employee of TK Elevator Corporation, the firm working on elevator replacement at the Property), Warren Dungee (TM Associates' Vice President of Operations), Antonio Picerno ("Mr. Picerno") (a representative of the Owner and building engineer involved in mold remediation and laundry room repair at Marbury Plaza, staying four days a week in one of the Units), Thomas Re ("Mr. Re") (an employee of ProService Environmental, a firm working on mold remediation and, as necessary, related work involving asbestos), and Dr. Pilavas (the Manager of the Owner).

E. The Contempt Order.

The Contempt Order was lengthy, and referred to sixteen claimed violations of the Consent Order. (App. 114-15.) Judge Kravitz first determined the Consent Order was entered on January 28, 2022 (by its terms being "orally approved" in Open Court by Judge Pasichow on that date) (App. 118-19.) He held the Owner had not "cited any case law or other legal precedent supporting its position that the judge's delay in formally docketing the order postponed its effectiveness." (App. 118-19.) Although he further stated the dispute regarding the Effective Date of the

Consent Order was "immaterial to the court's determination of whether MP PPH is in contempt," various remedies and penalties were calculated based on the January 28, 2022 date and the Owner was not credited for actions it took before that date. (App. 119, 124, 126.)

Judge Kravitz made general findings of fact that there were and had been "pervasive mold, flood, leaks, and insect and rodent infestations, along with the malfunctioning plumbing and HVAC systems and the broken elevators and wheelchair lift," that "the residents of Marbury Plaza have suffered" as a result, and that the issues "greatly diminished the value of the residents' tenancies." (App. 139.) As a result, he determined, "[t]he residents thus deserve to be compensated for their losses." (App. 139.) He referred also to "the horrid conditions in which more than 2,500 human beings have been forced to live, in violation of a court order and the District of Columbia Housing Code." (App. 141.)

Regarding claimed violations in the Consent Order advanced by the Court and the District, Judge Kravitz found the Owner in contempt as to the mold assessments, mold remediation, plumbing assessment, plumbing remediation, HVAC assessment, HVAC remediation, remediation of issues in the CTI report, laundry facilities, swimming pool, pest control, elevators, chair lift, and for failure to "expeditiously and fully fund repairs." (App. 119-37.) Judge Kravitz found that the District failed to prove its claim on just two issues, the alleged failure to perform an electrical and

fire safety hazard remediation, and the alleged failure to complete security enhancements. (App. 127-28, 132-33.)

With regard to mold assessments, Judge Kravitz found as of the entry of the Contempt Order, 33 of the 674 Units had not been assessed and that no common areas had been assessed. (App. 119-21.) He found the Owner's "recent efforts are encouraging, to be sure," but concluded the Owner was reacting to the Renewed Contempt Motion and therefore those efforts were unavailing. (App. 120.) He found less than "full and unstinting compliance" which he determined was inadequate. (App. 122, citing *District of Columbia v. Jerry M.*, 571 A.2d 178, 190 n. 28 (D.C. 1990).)

There was also a separate mold remediation issue regarding fourteen Units inspected as of the entry of the Consent Order that were to be remediated,[4] and Judge Kravitz found that completed remediation in 10 of those 14 Units was insufficient, again since he found the work was done in reaction to the Renewed Contempt Motion. (App. 128.)

Regarding the Consent Order's requirement for a full assessment of all plumbing, Judge Kravitz found clear and convincing evidence of contempt, despite the Owner's undisputed efforts to conduct three separate assessments. (App. 124-

[4] Judge Kravitz recited "April 28, 2022" as the effective date of the Consent Order in the context of the remediation for these fourteen Units. (App. 128.)

25.) The first assessment, done by U.S. Inspection Group ("USIG") was found insufficient because the USIG inspectors, although they are "licensed professionals" (the term required in the Consent Order, App. 66), "are not licensed plumbers" and, even more fatally troubling to Judge Kravitz, the assessment was somehow deficient because the Owner had it done before the Consent Order was actually entered. (App. 124.) This rendered it invalid regardless of any other considerations. (App. 124.)

Judge Kravitz took issue with the second assessment, done by TRC Engineering ("TRC") in May 2022, because it involved what he found to be a "survey" rather than a "full assessment," it was limited to a visual inspection, and no occupied Units were visited or tenants interviewed. (App. 124-25.) He also found it was done too late because, calculating the Consent Order to have been entered on January 28, 2022, it was untimely. (App. 125.) The third assessment, done by RSC Electrical & Mechanical on January 13, 2023, was found inadequate because it reflects repair work and not a "full assessment." (App. 125.)

The Owner's ability to avoid a contempt determination on plumbing remediation was doomed by the Superior Court's finding that, absent what Judge Kravitz would find to be a compliant "full assessment," compliance could not be achieved. (App. 125-26.) He also found "no plumbing remediation whatsoever has been done," notwithstanding significant evidence of ongoing and significant plumbing repairs. (App. 126.) He also referenced issues with hot water (App. 126),

but the evidence at the hearing demonstrated no ongoing issues in that regard. (H'g Trans. Mar. 15, 2023 at pages/lines 19:13-20:7.) He made a further specific finding of fact that the Owner had not "made any meaningful efforts to address the plumbing problems in the complex" and "as a result the residents of Marbury Plaza continue to suffer the consequences of the leaks, floods, and mold that inevitably follow." (App. 126.)

With respect to the HVAC assessment, Judge Kravitz found the assessments conducted by USIG and TRG to be insufficient for the same reasons he rejected their review of the plumbing systems. (App. 126). Again, without an assessment Judge Kravitz found sufficient, the Owner could not be in compliance with the requirement for HVAC remediation. (App. 127.) Significant effort and expense to replace the chillers and provide new cooling units (which was testified to in detail, H'g Trans. Mar. 15, 2023 at pages/lines 21:4-22:21) was disregarded out of hand because of a lack of the "requisite assessment." (App. 127.)

Regarding the CTI Inspection repairs affecting eighteen Units, despite evidence work was done in six of the Units, scheduled to be done in six more, and that tenants in the other six had refused access, Judge Kravitz again found a lack of "diligent and energetic efforts" to comply. (App. 129.)

With respect to the laundry facilities, there was no evidence that, within sixty days of the Effective Date of the Consent Order (whether that was determined to be

January 28, 2022 or March 2, 2022), the Owner failed to "[e]nsure that all laundry facilities in the Property are operational." (App. 68.) Instead, the evidence was that after compliance was achieved, a fire on the roof in the 2300 building resulted in the closing of the laundry rooms there. (H'g Trans. Mar. 14, 2023 at pages/lines 121:16-123:5; H'g Trans. Mar. 15, 2024 age pages/lines 12:15-14:18.) The Superior Court noted the Owner had informed the District and the Court of this in the Sixth Monthly Report of Defendant MP PPH, LLC Pursuant to the Consent Order Entered by the Court on March 2, 2022, filed on June 30, 2022, at p. 10. (App. 129-30.) Judge Kravitz nonetheless found clear and convincing evidence of contempt by a failure to render the laundry facilities operational following the fire, when insurance claim issues delayed related repairs. (App. 129-30.)

Regarding the Property's swimming pool, Judge Kravitz held the Owner in contempt based on conflicting testimony that, at best, established a delay in the past in having the pool opened during the summer of 2022. (App. 131.) The Consent Order gave the Owner 120 days to "[e]nsure that the pool at the Property is safe for use and enjoyment." (App. 69.) There was no specific evidence at the hearing as to any specific time period, after the 120-day period, the pool was not "safe for use and enjoyment." The Consent Order also had no requirement that it not be "left uncovered" in the off season or maintained in some nebulous "clean state" year round, as Judge Kravitz referenced. (App. 131.)

Regarding pest extermination, Judge Kravitz found the Owner failed to provide monthly treatments for six months and monthly treatments thereafter on request. (App. 131-32.) At the same time, he disregarded compliance achieved after the filing of the Renewed Contempt Motion (App. 131) and also stated "residents of the complex continue to be plagued by infestations of insects and vermin in their apartments." (App. 131.) The Consent Order did not require the Owner to achieve a plague-free environment, although this was part of the consideration given in issuing the Contempt Order. (App. 131-32.)

With respect to the elevators, despite ongoing work to replace all seven elevators at Marbury Plaza, Judge Kravitz held the Owner in contempt for not having done the repairs within 120 days. (App. 134-35.) Although he conceded the Consent Order is ambiguous in that regard (as it does not clearly indicate that the repairs be completed, but rather requires only "to the extent the assessment deems replacement of elevators or chairlifts to be necessary" that the Owner "engage a contractor to do that") (App. 69), Judge Kravitz penalized the Owner because its counsel "discovered the ambiguity only when preparing her response to the District's renewed motion," meaning this "was not the reason why MP PPH failed to replace the elevators by the deadline." (App. 134-35.)

Regarding the chairlift, Judge Kravitz found that the assessment recommended replacement and this had not been done. (App. 135-36.) Thus, contempt was found. (App. 135-36.)

Finally, Judge Kravitz found the Owner did not "expeditiously and fully fund all repairs identified during the inspections/assessments . . . [and] the replacement of any system/machinery when recommended by an assessor/inspector." (App. 136-37.) Contempt was based on a determination that the Owner should have paid the prior mold assessor despite a dispute with that contractor and late payments to a general maintenance contractor not implicated by the Consent Order, and a general finding that the Owner "has cut corners whenever possible." (App. 136-37.) Judge Kravitz also noted his dissatisfaction that "Mr. Pilavas" had not "invested the money necessary to maintain the premises" or comply with the Consent Order (conflating Dr. Pilavas, in his individual capacity, with the Owner entity). (App. 137.)

F. This Interlocutory Appeal.

This interlocutory appeal challenges the Superior Court's decision to grant the District's Renewed Motion for Contempt and to issue the Contempt Order. The Contempt Order has leveled unfathomable and debilitating punishment on the Owner and is an extraordinarily unprecedented effort by the Superior Court to exercise its civil contempt powers. This Court should vacate the Contempt Order,

remand the case for further proceedings, and grant Appellant MP PPH, LLC such other and further relief as may be appropriate under the circumstances.

STANDARD OF REVIEW

This Court reviews an order granting a motion for civil contempt for abuse of discretion. *In re T.S.*, 829 A.2d 937, 940 (D.C. 2003). There are two parts to the inquiry: whether the exercise of discretion was in error and, if so, whether the impact of the error (the prejudice to the affected party) requires reversal. *Johnson v. United States,* 398 A.2d 354, 367 (1979).

As to the exercise of discretion, appellate review includes a broad range of factors to review the exercise of discretion and to determine whether the Superior Court abused its discretion in rendering the Contempt Order, including whether the decision was based on errors of law, incorrect legal principles, insufficient facts, and an incorrect assessment of the evidence. *See Jones v. United States*, 263 A.2d 445, 454 (D.C. 2021); *Giles v. Crawford Edgewood Trenton Terrace*, 911 A.2d 1224, 1225 (D.C. 2006) (citing and quoting *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 405 (1990) (stating a court "would necessarily abuse its discretion if it based its ruling on an erroneous view of the law or on a clearly erroneous assessment of the evidence"); *Koon v. United States,* 518 U.S. 81, 100 (1996) (a court "by definition abuses its discretion when it makes an error of law"); *Ford v. ChartOne, Inc.*, 908 A.2d 72, 84-85 (D.C. 2006) ("When we find that a trial court's

discretionary decision is 'supported by improper means, reasons that are not founded in the record, or reasons which contravene the policies meant to guide the trial court's discretion for the purposes for which the determination weas committed to the trial court's discretion, reversal likely is called for.'") (quoting *Johnson v. United States*, 398 A.2d at 367; *Johnson v. United States*, 398 A.2d at 365 ("The court reviewing the decision for an abuse of discretion must determine 'whether the decision maker failed to consider a relevant factor, whether he relied upon an improper factor, and whether the reasons given reasonably support the conclusion.'") (citation omitted). Additionally, the Superior Court's findings of fact that served as the basis of the exercise of discretion are subject to review under the "plainly wrong or without evidence to support it" standard of D.C. Code § 17-305(a). *See Langley v. Kornegay*, 620 A.2d 865, 866 (D.C. 1993).

In this case, the unfair prejudice to the Owner is apparent from the overwhelming penalties imposed, their nature of being unable to be purged (at least in significant part), and the devastating financial consequences of the unprecedented Contempt Order that is the subject of this appeal. This is not a situation involving harmless error. *See Steinke v. P5 Sols., Inc.*, 282 A.3d 1076, 1092 (D.C. 2022). *Cf. Johnson v. United States,* 398 A.2d at 368 n. 11 (given significant impact of the Superior Court's exercise of discretion on substantive rights, reversal was required).

These issues are subject to interlocutory appeal under D.C. Code § 11-721(a)(2), given that various provisions of the Contempt Order and related rulings have the effect of granting, continuing, or refusing to dissolve or modify injunctions (D.C. Code § 11-721(a)(2)(A)) and they change or affect the possession of property (D.C. Code § 11-721(a)(2)(C)).

SUMMARY OF THE ARGUMENT

In this civil contempt proceeding appealing from an April 26, 2023 Contempt Order granting a Renewed Contempt Motion, the Superior Court abused its discretion through errors of law, incorrect legal principles, and based on factual findings that were insufficient, plainly wrong, and without supporting evidence. The District had filed suit in July 2021 claiming various housing condition and other issues at the Marbury Plaza Apartment Complex. To resolve a motion for preliminary injunction, the parties agreed to a Consent Order which was entered and docketed on March 2, 2022.

On March 25, 2022 the District filed its prior similar motion for contempt, which was denied by the prior presiding judge, who also discussed the related facts and claims in great detail with the parties at an October 31, 2022 Status Conference, at which time she urged the Owner and District to work together to solve the issues. Just a few months later, the District seized on a judicial reassignment to immediately filed a Renewed Contempt Motion on January 5, 2023.

After an evidentiary hearing, basically extrapolating the inconsistent, contradictory, and contested testimony of three current tenants living in two of the nine Marbury Plaza buildings, the Superior Court estimated that deplorable conditions existed throughout the Property, in every Unit, for all tenants (past, present, and future). Bypassing the required three step process and largely providing no ability to purge, and calculating the Consent Order was entered months before it was signed and docketed, the Contempt Order, which was based on these inaccurate factual findings, immediately required fifty percent rent reductions to past, present, and future residents of Marbury Plaza, even in other pending cases assigned to, pending before, or already decided by other judges.

The relief granted went beyond that asked for by the District or provided by the Consent Order. Compliance with the subject Consent Order was disregarded or discounted if achieved before entry of the Consent Order or after the District filed its Renewed Contempt Motion. The perceived wealth of the Owner's principle was a key factor in the relief granted. The Superior Court's purpose was mainly if not completely to punish, not coerce compliance, exacting compensation for nonparties without any evidence of harm to the moving party, the District.

In these circumstances, this Court should reverse and vacate the Contempt Order, remand the case for further proceedings, and grant the Owner such other and further relief as may be appropriate under the circumstances.

ARGUMENT

I. The Nature, Purpose, and Limits of the Superior Court's Civil Contempt Power.

Under D.C. Code 11-944(a), "the Superior Court, or a judge thereof, may punish for disobedience of an order or for contempt committed in the presence of the court." In addition to the statutory power, the Superior Court has the inherent power to impose contempt to enforce compliance with the administration of the law. *Eisenberg v. Swain*, 233 A.3d 13, 22 (D.C. 2020), *cert. denied*, 141 S.Ct. 2601 (2021) (citing and quoting *Brooks v. United States*, 686 A.2d 214, 220 (D.C. 1996)).

The Contempt Order arose entirely from a proceeding involving civil contempt, not criminal contempt. The available relief for civil contempt distinguishes civil contempt from criminal contempt. If there are penalties imposed that are not conditioned on future actions to bring a party into compliance with the Court order in question, then such a process involves criminal contempt. A criminal contempt proceeding is governed by entirely different procedures for notice, opportunity to be heard, and other substantive and procedural rights and protections.

A civil contempt order, in contrast, requires future actions to bring a party into compliance, with penalties conditioned on such future conduct. *See, e.g., Bhd. of Locomotive Firemen & Enginemen v. Bangor & A. R. Co.*, 127 U.S. App. D.C. 23, 31, 380 F.2d 570, 578 (1967), *cert. denied*, 389 U.S. 327 (1967). The nature of a

civil contempt citation is to coerce compliance with a Court Order, not to punish a party for compliance that already took place or to exact penalties for imperfect compliance. *See Penfield Co. of Cal. v. Sec. & Exch. Comm'n*, 330 U.S. 585, 592–93 (1947) (noting that a fine imposed was "unconditional and not relief of a coercive nature" and was thus "solely and exclusively punitive in character.") "If it is for civil contempt the punishment is remedial, and for the benefit of the complainant. But if it is for criminal contempt the sentence is punitive, to vindicate the authority of the court." *Langley*, 620 A.2d at 866 (quoting *Gompers v. Buck's Stove & Range Co.*, 221 U.S. 418, 441 (1911)).[5] The Renewed Contempt Motion was never converted to a criminal proceeding.

II. The Superior Court Abused its Discretion in Entering the Contempt Order and by Refusing to Dissolve or Modify the Contempt Order, Given the Lack of Evidence to Support the Related Findings of Fact, and that the Related Findings of Fact Were Therefore Clearly Wrong or Without Evidence to Support Them.

The central thesis underpinning the Superior Court's Contempt Order was the sweeping determination that conditions at Marbury Plaza at the time of entry of the Contempt Order and in the years prior were harrowing and dreadful for every single

[5] In a criminal contempt proceeding, there are additional procedural requirements, including notice of the related charges and the requirement of proof beyond a reasonable doubt. Sup. Ct. Crim. Rule 42. The notice must: (A) state the time and place of the trial; (B) allow the defendant a reasonable time to prepare a defense; and (C) state the essential facts constituting the charged criminal contempt and describe it as such. *Id.*

tenant. Judge Kravitz made a series of related factual findings, referring to: "the severity of the unsafe and unsanitary conditions the residents of the complex have been forced to endure these many months"; "pervasive mold, floods, leaks, and insect and rodent infestations, along with the malfunctioning plumbing and HVAC systems and the broken elevators and wheelchair lift;" and "the horrid conditions in which more than 2,500 human beings have been forced to live." (App. 139, 141.)

From such general conclusions, Judge Kravitz leapt to an overall finding of fact that all residents of Marbury Plaza, past and current, sustained damages justifying the crippling punishment in the Contempt Order. He determined the circumstances "greatly diminished the value of the residents' tenancies" whereby "[t]he residents thus deserve to be compensated for their losses." (App. 139.) He also found it would be a "miscarriage of justice" not to punish the Owner for "flagrant and extensive violations of the implied warranty of habitability" as to the tenants. (App. 139.)

These broad general findings of fact were plainly wrong or without evidence to support them. D.C. Code § 17-305(a). Judge Kravitz acknowledged the universe of over 2,500 residents affected by the relief. (App. 110, 141.) Only three current residents, Ms. Cooper, Ms. Gladden, and Ms. Bray, testified at the hearing. No former residents testified. No evidence was offered regarding the experiences of former tenants or the value of their tenancies. Evidence of remediation and of conditions addressed was disregarded. No resident testified to any diminution in the value of their

tenancies or established "losses" for which "compensation" could be due. No evidence was offered regarding the specific circumstances of tenants other than the three who testified. Without any basis to extrapolate these tenants' testimony to all of the others, as Judge Kravitz later frankly stated, "the abatement I ordered was generalized"; "[t]here was no way for me to issue a separate abatement for each apartment"; "it was a generalized assessment that I made"; "that was my estimate"; "that was my assessment." (H'g Trans. Nov. 9, 2023 at page/lines 17:6-17:22.)

Without evidence specific to each resident, however, there was no basis for the Superior Court to make a one-size fits all determination that each and every one of them – past, present, and future – was or would be injured or damaged, regardless of his or her specific circumstances, such that each and every one of them should get a windfall. Every such claim would have to be presented by each of the persons involved to give a basis for such relief. *See, e.g., District of Columbia v. Bongam,* 271 A.3d 1154, 1157-58 (D.C. 2022). For each, there would be specific considerations of mitigation of damages, release, set-off, and other defenses; not to mention that, for matters already pursued to judicial decision, *res judicata* or collateral estoppel would apply.

The Owner pointed out that the Contempt Order was unclear on how new leases and residents would be handled. (App. 150.) These concerns were hastily rejected. (App. 153-54.) Judge Kravitz later stated that he had not thought about the question but, off the cuff, said the Contempt Order does apply even to tenants

who never resided at Marbury Plaza before, and with whom the Owner might negotiate new leases. (H'g Trans. June 8, 2023 at pages/lines 7:17-8:25, 12:5-12:11.) He explained that the Contempt Order applies in the future and said, at the time, he would not entertain further related briefing as "it's certainly not inconceivable that a month from now after this has been briefed, I would agree with you, and if you already have a 12-month lease at a 50 percent level, I mean, that's obviously problematic." (H'g Trans. June 8, 2023 at page/lines 12:5-12:11.) Inexplicably, he stated that perhaps interpreting the Contempt Order this way would be helpful: "I don't mean this at all in a flip way, but maybe it will increase the number of occupied units." (H'g Trans. June 8, 2023 at page/lines 8:23-8:25.)

Not a single shred of evidence was presented regarding the circumstances of future tenants. Judge Kravitz nonetheless found, as a matter of fact, and based on the testimony of three current tenants, no prior tenants, and no future tenants, that all tenants – past, present, and future – needed to have their leases altered to force overwhelming rent reductions that start at fifty percent (50%) would automatically go even higher at later dates, without any evidence to prove the diminution of value of their tenancies that was the basis for the rent reduction relief ordained to provide compensation for supposed losses and damages. (App. 139-40.)

Even the evidence and testimony presented by the District was inconsistent and contradictory. Ms. Cooper, for example, testified at the hearing that the last

"flood" in her Unit took place in February of "last year" (meaning 2022), then the District prompted her to change that to February 2023, but in the November 3, 2022 Declaration Ms. Cooper signed that was attached as Ex. 6 to the District's Renewed Show Cause Motion, she testified under oath that "[t]he last leak in my unit was in May 2022." (*Cf.* Renewed Contempt Motion, Ex. 6, ¶ 5 and H'g Trans. Mar. 13, 2023 at page/lines 30:1-30:13.) She also admitted that she did not draft the Declaration herself, and that she "had help" from the District. (H'g Trans. Mar. 13, 2023 at pages/lines 62:5-63:10.)[6]

Ms. Cooper's credibility was further undermined by other testimony. Mr. Picerno indicated that in his direct dealings with her, she had not raised many of the alleged issues she had testified about. (H'g Trans. Mar. 15, 2023 at pages/lines 41:1-42:25). The District itself elicited similar testimony from Mr. Picerno. (H'g Trans. Mar. 15, 2023 at pages/lines 53:18-56:17.) Although she claimed to have mold in her Unit, she professed not to know the identity of MI&T (the firm performing mold remediation) or their scope of work for her Unit. (H'g Trans. Mar. 13, 2023 at pages/lines 64:9-65:2.) Despite her claims that living at Marbury Plaza is "hell" and she does not feel safe living there, she had recently referred three friends to live there

[6] Information in the record shows Ms. Cooper could not have drafted the Declaration, as it does not resemble emails she drafted and sent *ex parte* to the Superior Court. (*See* Defendant MP PPH, LLC's Opposition to Plaintiff's Motion to Appoint a Receiver, filed September 5, 2023, at 16-19 and Ex. 3 thereto at p. 5.)

(for which she received payments from the Owner). (Trans. Mar. 13, 2023 at pages/lines 61:20-62:4, 65:15-66:1.)

Ms. Gladden's testimony was similarly incomplete, inconsistent, and contradictory. Ms. Gladden said, for example, that mold in her Unit was simply painted over. (H'g Trans. Mar. 13, 2023 at pages/lines 89:24-91:1.) Mr. Re testified in detail, however, regarding the mold remediation process being followed and all of the many steps involved in it, including setting up plastic and other protective barriers, and, if necessary, dealing properly with asbestos issues. (H'g Trans. Mar. 15, 2023 at pages/lines 92:1-95:6.) On cross-examination, the District and the Superior Court probed Mr. Re further into how mold remediation is done in compliance with applicable Municipal Regulations and how a post remediation inspection or clearance is also done. (H'g Trans. Mar. 15, 2023 at pages/lines 100:20-101:24, 103:14-104:6, 106:3-106:22.) Ms. Gladden also testified the elevators in her building were working. (H'g Trans. Mar. 15, 2023 at pages/lines 120:21-121:1.)

Ms. Gladden further testified that the chairlift worked at various times, then said it was working about a month in total during the prior year, starting in February 2023. (H'g Trans. Mar. 13, 2023 at page/lines 76:8-76:17, 77:17-77:24.) She then said that it was not working at all during 2022. (H'g Trans. Mar. 13, 2023 at page/lines 78:7-78:12.) She later testified the chairlift had not been working fully

since November 2022. (H'g Trans. Mar. 13, 2023 at page/lines 92:5-92:7.) This testimony is not credible, and was at least insufficient to rise to the required level of clear and convincing proof. Other evidence showed that the chairlift had been operational since at least November 2022, as Mr. Picerno testified. (H'g Trans. Mar. 15, 2023 at pages/lines 8:20-8:24, 39:22-40:18.) Judge Kravitz also cited Ms. Gladden as having testified to having "'[l]ots and lots of rats' in her unit" (App. 132), which is inaccurate, as that testimony related solely to the parking garage. (H'g Trans. Mar. 13, 2023 at pages/lines 123:4-124:4.)

Again, Ms. Gladden's testimony also was at odds with the "Affidavit" the District submitted from her. In that submission, Ms. Gladden swore she had "dealt with leaks across my unit since at least 2019" and "[t]he last leak I had was in my living room ceiling in June or July 2022" (not ongoing floods in all rooms and from various causes), she said the chairlift was out in 2022 except for a period during the summer and thereafter "only functioned for a few days and then stopped working again" and had not worked since (not as she testified at the hearing), and her testimony about mold being painted over related to events in April 2022, not in 2023. (*Cf.* Renewed Contempt Motion, Ex. 24, ¶¶ 7, 8, 19 and H'g Trans. Mar. 13, 2023 at pages/lines 76:8-76:17, 77:17-77:24, 78:7-78:12, 89:24-91:1, 92:5-92:7.) The District chose not even to ask Ms. Gladden about most of the allegations in the Affidavit.

Ms. Bray testified generally about issues in the garage and some of the security issues (on which the Superior Court found the District had not met its burden of proof). Ms. Bray's other testimony focused mostly regarding issues in her own Unit but also other unidentified Units and the common areas/laundry/garage. (H'g Trans. Mar. 13, 2023 at pages/lines 117:6-119:19, 123:4-126:2.) She was not paying any rent at the time and had not paid rent in over a year. (H'g Trans. Mar. 13, 2023 at pages/lines 140:25-141:12.) Her testimony on some matters changed, such as her assertion that she made certain complaints to the Property Manager six months prior, which she then abruptly changed to a claim that the complaints were in the prior one or two months. (H'g Trans. Mar. 13, 2023 at pages/lines 141:16-141:9.)

No evidence was presented that would be representative of conditions generally in the entire Apartment Complex, for the 2,500 current residents, for all of the buildings and Units. The smattering of information received in evidence was nowhere close to such a broad presentation of the living conditions. There was no evidence at all reflecting on prior tenants who had moved out in the year or so prior. Ms. Cooper, Ms. Gladden, and Ms. Bray lived in two of the nine buildings comprising Marbury Plaza (2300 Good Hope Road, S.E., one of the high rise buildings, where Ms. Gladden and Ms. Bray each live in a Unit, and 2316 Good Hope Road, S.E., one of the smaller four story garden style apartment buildings, where Ms. Cooper lives). Although Ms. Gladden did testify to one photograph

involving a third building (an unidentified Unit in an unidentified building, H'g Trans. Mar. 13, 2023 at page/lines 132:10-132:15), and there was some testimony regarding the parking garage and some common areas, the testimony hardly presented a full description of the entire Apartment Complex.

In other respects, there was insufficient evidence of noncompliance at the time of the evidentiary hearing. Judge Kravitz found that the swimming pool was not open or safe for the use and enjoyment of the residents by May 28, 2022, based on the testimony of Ms. Cooper and Mr. Rabin. (App. 131.) Ms. Cooper did testify that the swimming pool was uncovered as of March 13, 2023 (which of course was not during the summer pool season) and that it was never covered, and that the pool had only been open "[f]or about a week" the prior year. (H'g Trans. Mar. 13, 2023 at pages/lines 49:5-50:3.)[7] The Consent Order contains no requirement regarding a pool cover, and it certainly cannot stand as a clear and express direction to provide one, nor does the cited evidence establish by clear and convincing evidence a failure to substantially comply with the requirements that were imposed. Moreover, Mr. Rabin, contrary to what Judge Kravitz found, testified the pool had been opened a bit late the year prior but stayed open for the remainder of the typical season, through Labor Day. (H'g Trans. Mar. 14, 2023 at pages/lines 71:1-71:18.) The District did

[7] The Declaration the District offered from Ms. Cooper said, inconsistently, that "[s]ince I have lived at Marbury Plaza, the pool has never been available for use." Renewed Contempt Motion, Ex. 6, ¶ 13.

not even attempt to challenge Mr. Rabin's related testimony on cross examination. This hardly comes close to clear and convincing evidence of an ongoing contempt, and the Superior Court imposed relief based on a past event that had indisputably been corrected and was not continuing. The related finding of fact Judge Kravitz made was entirely in the past: "As a result of MP PPH's delay in compliance, the residents of Marbury Plaza missed most of the 2022 summer pool season, which had been scheduled to stretch from Memorial Day through Labor Day." (App. 131.) By its nature, civil contempt is capable of being purged and, at best, this item of alleged contempt had been purged if it were ever even presented.

For a civil contempt matter, the absence of proof is particularly troubling, given that the harsh sanction of civil contempt requires proof of facts by clear and convincing evidence. *D.D. v. M.T.*, 550 A.2d 37, 43-44 (D.C. 1988) (*citing NLRB v. Blevins Popcorn Co.*, 212 U.S. App. D.C. 289, 299-300, 659 F.2d 1173, 1183-84 (1981)). The Superior Court acknowledged the heightened standard of proof on such a motion (App. 117-18) but nonetheless failed to apply it. In addition to the fact that the evidence did not come close to establishing clear and convincing evidence sufficient to punish the Owner and make related determinations as to the appropriate punishment to be leveled, when the evidence consisted merely of an isolated number of people and areas of Marbury Plaza, from which the Superior Court generalized and imposed uniform relief as to all tenants, past, present, and future.

The relief did nothing to compensate the party claiming contempt (the District), and the District offered no evidence of how it had been damaged, and the relief granted also goes beyond the remedial measures permitted "to compensate the aggrieved party for any loss or damage sustained as a result of the contemnor's noncompliance." *See D.D. v. M.T.*, 550 A.2d at 43-44.

III. The Superior Court Abused its Discretion in Entering the Contempt Order and by Refusing to Dissolve or Modify the Contempt Order, by Awarding Relief Far Outside the Scope of the Lawsuit and Underlying Consent Order.

Although the Superior Court has discretion to consider civil contempt allegations and to make related relief, another way in which that discretion is not unfettered is that the scope of the relief must be circumscribed by the pending litigation, including the Consent Order, the compliance with which Judge Kravitz stated he was focused upon. Compounding all of the many errors and related abuses of discretion in this case, the rent reductions and related lease modifications impermissibly went to nonparties and exceeded the scope of the lawsuit as framed in the governing First Amended Complaint (App. 72-92). *Multi-Fam. Mgmt., Inc. v. Hancock*, 664 A.2d 1210, 1217 n.12 (D.C. 1995) (internal citations omitted). The relief also went far outside the scope of the Consent Order (App. 56-71), which did not include a provision for the penalties that the Superior Court awarded.

Judge Kravitz did not consider that a civil contempt matter such as this must be assessed within the limitations of the four corners of the Consent Order itself (App. 65-71.) *District of Columbia v. Jerry M.*, 571 A.2d at 180, 185-86 ("Hence the orders of the trial judge regarding decentralization of the secure facilities, placements outside the District of Columbia, and the management of the YSA were beyond the scope of the four corners of the [Consent] Decree and beyond the judge's authority.") See also *Multi-Fam. Mgmt., Inc.*, 664 A.2d at 1217 n.12 ("This rule reflects the more general proposition that, even if a court has original general jurisdiction, criminal and civil, at law and in equity, it cannot enter a judgment which is beyond the claim asserted, or which, in its essential character, is not responsive to the cause of action on which the proceeding was based.") (internal citations omitted).

Nowhere in the Consent Order did the Owner assent to the claims or relief requested by the District in the First Amended Complaint or agree that the Consent Order could serve as a vehicle to impose relief in an abbreviated proceeding, without the necessity of evidence. Nor did the Consent Order open the door to wholesale slashing of rental income, including even reductions in past income (which was reduced retroactively) and future income. Nor was the Consent Order properly viewed as having been entered months before it was signed, docketed, and made

effective.[8] Using the Consent Order to grant relief referred to in the First Amended Complaint, and going far beyond even that relief requested, is far outside of the four corners of the Consent Order. *See also Fed. Mktg. Co. v. Va. Impression Prods. Co.*, 823 A.2d 513, 524-25 (D.C. 2003) (narrow interpretation of scope of consent order was appropriate).

In this case, it is obvious that Judge Kravitz consciously went outside of the contempt process and granted relief on entirely different legal grounds than had been cited to him. In that vein, he stated that the overbearing relief he was giving to past and present tenants was justified "[e]ven without a finding of civil contempt," and that based on the circumstances that "greatly diminished the value of the residents' tenancies," it "would be a miscarriage of justice" if the Owner were allowed to

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[8] Judge Pasichow herself stated plainly the March 2, 2022 date on which she entered the Consent Order. Order dated October 15, 2022 at 14 ("the Court strongly encourages the parties to engage in good-faith discussion regarding both the possible modification of the Consent Order, and the parties' attempted compliance with the Consent Order as it is entered in the March 2, 2022, Court Order.") "Few persons are in a better position to understand the meaning of a consent decree than the judge who oversaw and approved it." *See District of Columbia v. Jerry M.*, 571 A.2d at 185 (quoting *Brown v. Neeb*, 644 F.2d 551, 558 n. 12 (6th Cir. 1981)). Sup. Ct. Civ. Rule 79 requires that orders be docketed and kept by the Superior Court Clerk, and DCCA Rule 4 calculates the time periods for appeals from "the entry on the Superior Court docket." *See Dobbins v. Burford,* 799 A.2d 389, 390 (D.C. 2002). The Consent Order was not and could not have been entered orally. Prior to its entry and docketing, which took place on March 2, 2022, there was only a contract between the Owner and the District to submit the Consent Order, the District never sought to enforce it prior to the Consent Order's entry, and there is no known procedure for "contempt of contract."

charge, receive, and retain rent payments "in the face of its flagrant and extensive violations of the implied warranty of habitability." Such a determination went wholly outside of the Consent Order, basically granted judgment to nonparty tenants without any specific evidence of the relevant facts, on causes of action not asserted in the case, and indicated beyond any doubt that the Court departed completely from the appropriate parameters on the Renewed Contempt Motion.

IV. The Superior Court Abused its Discretion in Entering the Contempt Order and by Refusing to Dissolve or Modify the Contempt Order, by Awarding Relief that Interfered With and Overrode Other Pending Litigation Over Which Judge Kravitz Lacked Jurisdiction.

The Contempt Order included directives regarding other litigation. Specifically, the Superior Court ordered: (1) by May 5, 2023, a mere eight days after the Contempt Order's entry, that motions be filed in the Landlord and Tenant Branch of the Superior Court asking to quash a writ of restitution or vacate a judgment for possession in pending cases where the rent reduction would eliminate any presently owed rent obligation or, if the reduction did not eliminate the entire rent obligation, file an amended Notice to Tenant of Payment Required to Avoid Eviction (L&T Form 6) in any case where judgment for possession was entered based on a tenant's nonpayment of rent; (2) for other pending cases in which rent is still owed following imposition of the rent reduction, the Superior Court ordered that a motion for leave to amend be filed by May 19, 2023 to reduce the claim and "reflect that the amount

of rent due under the lease agreement has been reduced by 50% beginning on June 1, 2022"; (3) in cases where protective orders were entered previously, the Owner is to file a motion by May 19, 2023 "asking that the amount of the tenant's monthly protective order payment be modified, retroactive to June 1, 2022 or the effective date of the protective order, whichever is later, to reflect the 50% rent credit required by this memorandum opinion and order"; (4) that other cases be dismissed by May 19, 2023 if the rent reduction eliminates any presently owed rent obligation; and (5) that pending notices to quit or vacate be withdrawn by May 19, 2023 if the rent reduction eliminates any presently owed rent obligation. (App. 143-44.)

Judge Kravitz did not, however, preside over these other separate legal matters and they were not consolidated with this case. There is no legal authority to permit such relief. The Contempt Order also expressly affected *Bell* hearings (*see Bell v. Tsintolas Realty Co.*, 139 U.S. App. D.C. 101, 112, 430 F.2d 474, 485 (1970)) in these and other pending cases, including matters that were decided already and are thus subject to *res judicata* and/or collateral estoppel. It upsets the procedures that have been in place for over fifty years to adjudicate landlord/tenant matters in the District.

Matters involving *Bell* hearings are subject to the discretion of the presiding jurist in the Landlord and Tenant Branch in each individual case, and a co-equal Court has no right to direct or limit the exercise of that discretion. *See id.*, 139 U.S. App.

D.C. at 110, 430 F.2d at 483 ("Indeed, we promulgate no rule at all, believing that the preferable course is to leave the decision on a case-by-case basis to the discretion of the trial judge."). This Court has reaffirmed repeatedly the logic and necessity of having these issues addressed on a case by case basis, at the presiding judge's discretion, taking into account the particular circumstances of each individual case. *See Akassy v. William Penn Apts., L.P.,* 891 A.2d 291, 308 (D.C. 2006); *Dameron v. Capitol House Assocs. Ltd. Partnership,* 431 A.2d 580, 583 (D.C. 1981) ("The protective order is an equitable tool of the court requiring the exercise of sound discretion on a case-by-case basis."). The extension of authority to other cases was also evidenced by informal off-the-record interviews Judge Kravitz said he had with unidentified Magistrate Judges. (H'g Trans. Feb. 6, 2024 at pages/lines 45:14-46:4.)

The portions of the Contempt Order usurping decisions for other cases also upend the entire system of assessing landlord-tenant cases, including the recognition of the importance of ensuring and protecting the rental income that is the critical source of funding to fund operations and repair and maintenance of properties. *See, e.g., McNeal v. Habib,* 346 A.2d 508, 512 (1975): "To the extent that one tenant pays no rent for the use of particular premises, he (1) may make it financially impossible for his landlord to make needed repairs, and (2) heightens the landlord's need to increase rental charges to the paying tenants to compensate for the lost income. These consequences hardly are fair to those tenants who honor their contractual

commitments." *See also Brown v. Pearson*, 241 A.3d 265, 276 n. 48 (2020) (recognizing landlords' right to rental income). The District submitted information from Ms. Gladden stating that she had "sued my landlord in housing conditions court" in June 2022 to have certain issues fixed and that a related inspection took place in September 2022. (Renewed Contempt Motion, Ex. 24, ¶¶ 24-25.) These and all other specific facts were swept away in the wake of the Superior Court's across-the-board rent reductions.

V. The Superior Court Abused its Discretion in Entering the Contempt Order and by Refusing to Dissolve or Modify the Contempt Order, by Forgoing the Required Three-Step Process for a Civil Contempt Citation Awarding Immediate Drastic Penalties.

Assuming the Superior Court were to find the required level and quantum or proof, then a show cause order is the required first step in a three-step process. *See Morgan v. Barry*, 596 F. Supp. 897, 898-99 (D.D.C. 1984). Such a show cause order is, in fact, precisely what the District asked for in the Renewed Contempt Motion. (App. 93.) If the Superior Court found that clear and convincing proof of civil contempt of court was proven by the Owner disobeying the Consent Order, "there is the issuance of a conditional order finding contempt and threatening to impose a specified penalty unless the recalcitrant party complies with purgation conditions." *Morgan,* 596 F. Supp. at 898-99. Later, and only then, if a party found in contempt fails to "purge itself of contempt, exaction of the threatened penalty is the final

stage." *Id.* Even though the very nature of civil contempt is that it is capable of being purged, and the contemnor is required to have the opportunity to purge, Judge Kravitz barreled along in a single-minded effort to punish the Owner irrevocably and irremediably, by exacting devastating penalties that could not be avoided.

Judge Kravitz made clear that he intended the rent reductions to take immediate effect and to thereafter remain "indefinitely." (App. 140.) At other times in the proceedings below, he advised tenants "they could withhold rent on their own"; "as a matter of landlord tenant law these tenants are not obligated to pay full rent"; "[n]one of this precludes a tenant in good faith from withholding some of their rent because that's what the law is in the District of Columbia"; "None of this is intended to interfere with your right under District of Columbia law to withhold rent in an amount equal to the amount that the value of your - - of your tenancy has been diminished by these unaddressed housing code violations." (H'g Trans. Nov. 9, 2023 at pages/lines 18:3-18:6; 33:20-33:22; H'g Trans. Dec. 12, 2023 at page/line 24:11-24:25; H'g Trans. Jan. 8, 2024 at page/lines 99:5-99:15.)

Although Judge Kravitz did not specify which part of the relief he intended to be punitive and which part (if any) to be coercive, it is obvious that non-purgeable punishment was at least the major focus of the Contempt Order. He even discounted the Owner's compliance in instances where he found that the motivation was the filing of the Renewed Contempt Motion. (App. 120, 125, 128, 131.) He illogically

found that items in the Consent Order completed before its entry were unavailing. (App. 124, 126.) Criminal contempt involves the sort of punishment and vindication that the Superior Court directed; and this is not appropriate for a civil contempt proceeding. *See In re: T.S.*, 829 A.2d at 940 (citations omitted). At no time was this proceeding converted to criminal contempt, and no notice was ever given – in the Consent Order, the Renewed Contempt Motion, or otherwise – of the cruel sanctions that the Superior Court levied. *See also* Sup. Ct. Civ. Rule 83 ("No sanction or other disadvantage may be imposed for noncompliance with any requirement not in applicable law or these rules unless the alleged violator has been furnished in the particular case with actual notice of the requirement.").

The first notice to the Owner as to the relief Judge Kravitz was contemplating was when the Order issued on April 26, 2023. *See also Pincus v. Pincus*, 197 A.2d 854, 856 (D.C. 1964) ("Neither the college nor bar mitzvah expenses were expressly covered by the original decree granting support. Consequently, there was a question of fact as to whether these items were properly included under its terms. This being so, we are of the opinion that this question of fact should not have been litigated by means of a motion for contempt. Contempt can only be founded upon disobedience of some clear and express direction of the court.").

Though the Superior Court refused to follow it, this Court has condoned explicitly the three-step civil contempt procedure, especially in cases where drastic

sanctions such as those levied in this case are contemplated. *See D.D.*, 550 A.2d at 47. In *D.D.*, this Court held the three-step process was not required, because drastic sanctions were not involved, but made clear the process is required if such sanctions are involved. This Court has made that admonition frequently. *See Loewinger v. Stokes*, 977 A.2d 901, 907 (D.C. 2009) (noting that "'drastic' sanctions, up to and including conditional imprisonment and substantial fines, may be imposed upon a finding of civil contempt") (citing and quoting *D.D.*, 550 A.2d at 44 (emphasis added).) *See also District of Columbia v. Jerry M.*, 738 A.2d 1206, 1209 n.4 (D.C. 1999) ("[the Court] would consider 'more drastic and far-reaching' remedies if [appellants] continued to fail to meet their obligations under the Consent Decree").

Although Judge Kravitz did not consider conditional relief or lesser sanctions that those employed, consideration of other, lesser alternatives is a necessary part of the flexible approach required for civil contempt matters. *See Bhd. of Locomotive Firemen & Enginemen*, 127 U.S. App. D.C. at 31-35, 380 F.2d at 578-82 ("Flexibility in approach will permit consideration of the complexity of the outstanding order, possible ambiguities, the difficulties in arranging compliance and the extent of efforts to obey its terms."). *See also Pigford v. Veneman,* 307 F. Supp. 2d 51, 58 (D.D.C. 2004) (class action case cited below by the Superior Court and the District that included a Consent Order stating that "no extensions of these deadlines

will be granted for any reason"; but the Federal Court gave six additional months and took action only after such compliance was not achieved). (App. 117.)

The nature of a civil contempt proceeding is to provide remedial relief, to coerce compliance; issuance of drastic punishment is the realm of criminal contempt. *See In re: T.S.*, 829 A.2d at 940 (citations omitted); *Langley*, 620 A.2d at 866 (quoting *Gompers*, 221 U.S. at 441). Were a criminal contempt citation to be contemplated, different requirements would exist for the imposition of immediate penalties in a criminal contempt proceeding, including notice of the related charges and the requirement of proof beyond a reasonable doubt. Sup. Ct. Crim. Rule 42. Criminal contempt involves the sort of punishment and vindication that the Court has directed in this case; and this is not appropriate for a civil contempt proceeding. *See In re: T.S.*, 829 A.2d at 940 (citations omitted). At no time was this proceeding converted to one involving criminal contempt charges.

VI. The Superior Court Abused its Discretion in Entering the Contempt Order and by Refusing to Dissolve or Modify the Contempt Order, by Violating Fundamental Property and Other Constitutional Rights of the Owner.

The Contempt Order plainly violates numerous fundamental Constitutional rights. To name one for present purposes, this Court has recognized the Due Process Clause of the Fourteenth Amendment to the United States Constitution generally "prohibits the imposition of grossly excessive or arbitrary punishments on a

tortfeasor." *Daka, Inc. v. McCrae,* 839 A.2d 682, 697 (D.C. 2003) (vacating award of punitive damages at a ratio of 26:1 to the compensatory damages award). The millions of dollars of retroactive and prospective penalties here certainly are greatly disproportionate to any evidence provided to the Superior Court.

The Contempt Order also deprived the Owner of its right to the use of private property, the ability to enter into leases, and rental income. *See Lindsey v. Normet,* 405 U.S. 56, 74 (1972) (referring to the Constitutional rights of landlords: "Nor should we forget that the Constitution expressly protects against confiscation of private property or the income therefrom."); *Davis v. Rental Assocs., Inc.*, 456 A.2d 820, 827 (D.C. 1983) ("the trial court must recall 'that the Constitution expressly protects against confiscation of private property or the income therefrom'") (quoting *Lindsey*). See also, Brown, 241 A.2d at 276 n. 48 (quoting *Davis*).

VII. The Superior Court Abused its Discretion in Entering the Contempt Order and by Refusing to Dissolve or Modify the Contempt Order, by Making Determinations Based on the Perceived Wealth of the Owner and on Personal Animus Against the Owner.

The Superior Court did little to hide the fact it held disdain for the Owner's principal, Dr. Pilavas. At the outset of the Contempt Order, Judge Kravitz recounted the background of Dr. Pilavas, the involvement of he and his wife through other entities in the ownership of other commercial and residential real property complexes (App. 111), and he expressly based part of his decisions on the fact that

he thought Dr. Pilavas should tap in to "his family's wealth" and "invest additional funds" for Marbury Plaza. (App. 141.) The Contempt Order thus displayed obvious prejudice against the Owner based on the perceived wealth of its ultimate ownership. In later proceedings, the Superior Court even alluded to New York State Court litigation involving former President Donald J. Trump and compared it to the Owner's efforts to sell Marbury Plaza through the Bankruptcy reorganization. (H'g Trans. Nov. 9, 2023 at pages/lines 26:13-26:24; 35:8-35:11.)

Judicial determinations of rights and claims are to be made without regard to the parties' respective economic circumstances. *See Chambers v. Florida*, 309 U.S. 227, 241 (1940) ("all people must stand on an equality before the bar of justice in every American court."). Judge Kravitz expressly placed significant weight on perceptions of wealth, even neglecting to refer to one of the Owner's principals, Dr. Pilavas, as "Dr. Pilavas"; while acknowledging his physician status, the Superior Court referred to him as "Mr. Pilavas." (App. 111, 116, 121, 122, 137, 141.)

At the hearing, Judge Kravitz remarked that the Owner could simply "put in more money to run the property." (*See* H'g Trans., Mar. 14, 2023 at page/line numbers 154:14-154:15, 154.19-154.23.) He even went out of his way to tell the District it should ask for attorneys' fees, which they had not done. (H'g Trans., Mar. 14, 2023 at page/line numbers 13:20.) He otherwise intimated he viewed Dr. Pilavas and his wife, rather than MP PPH, LLC, as the Property Owner. (H'g Trans. Jan. 8, 2024 at

page/lines 51:2-51:5.) These actions and the related impressions that influenced the Court were repeated in other parts of the proceedings as set forth above.

There is no claim in this case, and no evidence to support some sort of corporate veil piercing. Under our law, the corporate form is to be respected absent claims and proof not shown here. *See, e.g., Childs v. Purll*, 882 A.2d 227, 239 (D.C. 2005). Contempt matters also must be approached with objectivity and caution, without emotions implicated by belief in the wealth or status of litigants. *See Joshi v. Prof'l Health Servs., Inc.*, 260 U.S. App. D.C. 154, 156 n. 2, 817 F.2d 877, 879 n.2 (1987) ("Civil contempt is an extraordinary sanction that should be imposed with caution."). These considerations infected the Contempt Order and give independent grounds for reversal. *See Johnson v. United States*, 398 A.2d at 366 ("If the error in the discretionary determination jeopardized the fairness of the proceeding as a whole, or if the error had a possibly substantial impact upon the outcome, the case should be reversed.") (citing *Tinsley v. United States*, 368 A.2d 531, 537 (D.C. 1976); *Koppal v. Travelers Indemnity Co.*, 297 A.2d 337, 339 (D.C. 1972)).

CONCLUSION

For the reasons stated above, Appellant MP PPH, LLC respectfully requests that this Court reverse and vacate the Superior Court's April 26, 2023 Contempt Order in its entirety, remand the case for further proceedings, and grant the Appellant such other and further relief as may be appropriate under the circumstances.

Respectfully submitted this 2nd day of April, 2024.

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REDACTION CERTIFICATE DISCLOSURE FORM

Pursuant to Administrative Order No. M-274-21 (filed June 17, 2021), this certificate must be filed in conjunction with all briefs submitted in all cases designated with a "CV" docketing number to include Civil I, Collections, Contracts, General Civil, Landlord and Tenant, Liens, Malpractice, Merit Personnel, Other Civil, Property, Real Property, Torts and Vehicle Cases.

I certify that I have reviewed the guidelines outlined in Administrative Order No. M-274-21 and Super. Ct. Civ. R. 5.2, and removed the following information from my brief:

1. All information listed in Super. Ct. Civ. R. 5.2(a); including:

   - An individual's social-security number
   - Taxpayer-identification number
   - Driver's license or non-driver's' license identification card number
   - Birth date
   - The name of an individual known to be a minor
   - Financial account numbers, except that a party or nonparty making the filing may include the following:

     (1) the acronym "SS#" where the individual's social-security number would have been included;
     (2) the acronym "TID#" where the individual's taxpayer-identification number would have been included;
     (3) the acronym "DL#" or "NDL#" where the individual's driver's license or non-driver's license identification card number would have been included;
     (4) the year of the individual's birth;
     (5) the minor's initials; and
     (6) the last four digits of the financial-account number.

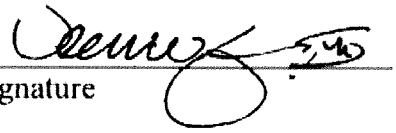
2. Any information revealing the identity of an individual receiving mental-health services.

3. Any information revealing the identity of an individual receiving or under evaluation for substance-use-disorder services.

4. Information about protection orders, restraining orders, and injunctions that "would be likely to publicly reveal the identity or location of the protected party," 18 U.S.C. § 2265(d)(3) (prohibiting public disclosure on the internet of such information); *see also* 18 U.S.C. § 2266(5) (defining "protection order" to include, among other things, civil and criminal orders for the purpose of preventing violent or threatening acts, harassment, sexual violence, contact, communication, or proximity) (both provisions attached).

5. Any names of victims of sexual offenses except the brief may use initials when referring to victims of sexual offenses.

6. Any other information required by law to be kept confidential or protected from public disclosure.



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23-cv-422

Case Number(s)

April 2, 2024

Date

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Only the Westlaw citation is currently available.
United States Bankruptcy Court, District of Columbia.

In re: MP PPH LLC, Debtor.
MP PPH LLC, Plaintiff,
v.
District of Columbia, Defendant.

Case No. 23-00246-ELG
|
Adv. Pro. 23-10032-ELG
|
Filed 03/12/2024

Chapter 11

MEMORANDUM OPINION

Elizabeth L. Gunn U.S. Bankruptcy Judge

***1** This case requires the Court to determine the extent to which the automatic stay of 11 U.S.C. § 362(a)[1] impacts the enforcement of a prepetition state court order of contempt arising out of an action under the Bankruptcy Code's police and regulatory exception of § 362(b)(4). In December 2023, the Court held a multi-day evidentiary hearing (the "Hearing") on the *Debtor's Motion to Address Procedures for Tenant Claims Issues and to Clarify the Order Resolving the Automatic Stay* (ECF No. 109) (the "Motion to Clarify"), the Debtor's *Motion for a Preliminary Injunction Pursuant to Section 105(a) of the Bankruptcy Code* (the "Motion for Preliminary Injunction"),[2] and the oppositions filed thereto. At the conclusion of the Hearing the Court issued an oral ruling finding that the portion of the state court contempt order establishing ongoing enforcement of rent abatements beginning December 1, 2023 violates the automatic stay because it represents the immediate collection of a prepetition judgment, but otherwise the § 362(b)(4) police and regulatory exception of the automatic stay was applicable. The Court deferred judgment and retained jurisdiction on the same question as to any rent abatements enforced between the Petition Date and November 30, 2023.[3] This Memorandum Opinion memorializes the Court's oral ruling and supplements the Order entered December 18, 2023.[4] To the extent there is any inconsistency between the oral ruling, Order, and this Memorandum, this Memorandum shall control.

1 Unless specified otherwise, all chapter, code, and rule references are to the Bankruptcy Code, 11 U.S.C. §§ 101–1532, and the Federal Rules of Bankruptcy Procedure, Rules 1001–9037. The Federal Rules of Civil Procedure are referred to as "Civil Rules."

2 *MP PPH LLC v. District of Columbia (In re MP PPH LLC)*, No. 23-00246-ELG, Adv. Pro. No. 23-10032 (Bankr. D.D.C. Oct. 25, 2023), ECF No. 3.

3 *See* Tr. Dec. 11, 2023, *In re MP PPH LLC*, Case No. 23-00246-ELG (Bankr. D.D.C. Dec. 12, 2023), ECF No. 166.

4 Order, *In re MP PPH LLC*, Case No. 23-00246-ELG (Bankr. D.D.C. Dec. 18, 2023), ECF No. 177.

I. Jurisdiction

This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. §§ 157(b)(2)(A), (G), and (O). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409. Findings of fact shall be construed as conclusions of law and conclusions of law shall be construed as findings of fact where appropriate. [5]

5 *See* Fed. R. Bankr. P. 7052.

II. Background

a. The Marbury Plaza Apartments

MP PPH, LLC (the "Debtor" or "MP PPH") owns a 100 percent fee simple interest in a 674-unit apartment complex located in the 2300 block of Good Hope Road SE commonly known as the Marbury Plaza apartments (the "Property"). As of the date of the Hearing, the Debtor had approximately 2,500 tenants, including both market rate and subsidized tenants throughout two main apartment towers and seven smaller outbuildings. The buildings share a common infrastructure, including such amenities as a heating and hot water plant, parking areas (including garages), an on-site convenience store, a swimming pool, laundry facilities on each floor, and a community room. Despite the multiple buildings, the Property is maintained and treated as a single complex. Shortly before the filing of this case the Debtor retained a new property management company, Noble Realty Advisors, LLC ("Noble"). In the early months of this case, the Debtor and Noble worked to repair, rehabilitate, and prepare to sell the Property to a third party. As of the date of the Hearing, the Debtor (with the assistance of Noble and its post-petition lender PP & H Realty, LLC (the "DIP Lender")) remained in control of the Property, continued to collect tenant rents, and continued to pay ongoing operating costs and capital improvement costs under the terms of the Court's orders approving the use of cash collateral and the Debtor's debtor-in-possession financing.

b. The Superior Court Action

***2** In the years since the Debtor's acquisition of the Property in 2015, it has been issued numerous violations (the "Violations") of the District of Columbia's Housing and Property Maintenance Codes. Many of the Violations remained partially or fully unresolved or unremedied as of the Hearing. As a result of the conditions at the Property including the ongoing and unremedied Violations, on July 2, 2021, the District brought suit (the "Superior Court Action") against the Debtor in the Superior Court for the District of Columbia (the "Superior Court"). [6] In January 2022, the Superior Court entered a consent order (the "Consent Order") between the Debtor and the District regarding the rehabilitation and repair of the Property. The Debtor did not timely comply with all the terms of the Consent Order, and in April 2023 after a multiple-day evidentiary hearing, the Debtor was found in contempt of the Superior Court's earlier orders (the "Contempt Order"). [7] When the Debtor's contempt was not timely purged, on August 22, 2023, the District sought the appointment of a receiver over the Property (the "Receiver Motion"). [8] Shortly thereafter, on August 31, 2023 the Debtor filed its voluntary petition under chapter 11 initiating this case. [9]

6 *District of Columbia v. MP PPH, LLC*, Case No. 2021-CA-002209-B (D.C. Super. Ct. July 1, 2021). There is extensive litigation in the Superior Court, including pending appeals. The Court does not attempt to address the entire Superior Court record herein, solely summarizing those pleadings and orders relevant to the issues pending in this case. Nothing in this Memorandum should be interpreted as a review or other renewed analysis of the matters determined in the Superior Court Action.

7 Mem. Op. & Order Granting Pl.'s Renewed Mot. to Adjudicate Def. MP PPH, LLC in Civil Contempt, *District of Columbia v. MP PPH, LLC*, Case No. 2021-CA-002209-B (D.C. Super. Ct. April 26, 2023).

8 The District of Columbia's Opposed Mot. to Appoint Receiver, *District of Columbia v. MP PPH, LLC*, Case No. 2021-CA-002209-B (D.C. Super. Ct. Aug 22, 2023).

9 Ch. 11 Vol. Pet. Non-Individual, *In re MP PPH LLC*, Case No. 23-00246-ELG (Bankr. D.D.C. Aug. 31, 2023), ECF No. 1.

In the Contempt Order, the Superior Court found "by clear and convincing evidence that MP PPH failed to comply with the provision in the consent order requiring it to expeditiously and fully fund all work called for under the consent order." [10] Specifically, as relevant in this case, the Superior Court found that:

> [T]he evidence presented in the parties' filings and at the hearing on the District's renewed motion has shown clearly and convincingly that MP PPH repeatedly failed to comply with clear and unambiguous terms of the consent order. Although in a few instances MP PPH established the existence of circumstances beyond its control, the evidence showed that, in the great majority of cases, it was MP PPH's own unwillingness to comply or to invest the money necessary for full compliance that led to its violations of the order. Because of the magnitude and longstanding nature of the violations and their profoundly negative impact on the health and safety of the residents of the Marbury Plaza complex, the court concludes, in its discretion, that MP PPH should be adjudicated in civil contempt of court. [11]

Upon the finding of civil contempt, the Superior Court continued:

> The court concludes that the best way to coerce MP PPH's compliance with the consent order and, at the same time, to compensate the victims of MP PPH's noncompliance is to order an across-the-board rent abatement for all tenants of Marbury Plaza retroactive to June 1, 2022—120 days after the court's approval of the consent order and the date by which MP PPH was to have completed all of the order's requirements. The court will order a 50% reduction in rent from June 1, 2022 to the present [April 2023], in acknowledgement of the severity of the unsafe and unsanitary conditions the residents of the complex have been forced to endure these many months. The pervasive mold, floods, leaks, and insect and rodent infestations, along with the malfunctioning plumbing and HVAC systems and the broken elevators and wheelchair lift—all of which the residents of Marbury Plaza have suffered through because of MP PPH's abject contempt for the court's order—have greatly diminished the value of the residents' tenancies. The residents thus deserve to be compensated for their losses. Even without a finding of civil contempt, it would be a miscarriage of justice for MP PPH to be allowed to retain the residents' rent in the face of its flagrant and extensive violations of the implied warranty of habitability. *See Javins v. First Nat'l Realty Corp.*, 428 F.2d 1071, 1082 (D.C. Cir. 1970) ("[T]he tenant's obligation to pay rent is dependent upon the landlord's performance of his obligations, including his warranty to maintain the premises in habitable condition.").
>
> ***3** The 50% rent abatement will remain in effect, indefinitely, from the date of this order, with the hope that its ongoing nature will coerce MP PPH's prompt compliance with the terms of the consent order while continuing to compensate the victims of MP PPH's contemptuous conduct. The abatement will be vacated upon the District's—or, if necessary, the court's—certification of MP PPH's full compliance with the consent order, but it will increase to 60% if MP PPH remains out of full compliance 120 days after the date of this order (August 24, 2023) and to 75% if MP PPH remains noncompliant 180 days after the date of this order (October 23, 2023). [12]

The rent abatement [13] mandated in the Contempt Order, by its own terms, was assessed retroactively to "compensate the tenants" of MP PPH for their losses. The continuing nature of the rent credits were then intended to "continue to compensate" the tenants with the "hope that the ongoing nature" would also coerce MP PPH to comply with the terms of the Consent Order and Contempt

Order. [14] The rent abatements were applicable both to existing tenants of MP PPH (as of April 2023) and all future tenants, until such time as the contempt was purged.

10 Contempt Order at 28, *District of Columbia v. MP PPH, LLC*, Case No. 2021-CA-002209-B (D.C. Super. Ct. April 26, 2023).

11 Contempt Order at 28–9, *District of Columbia v. MP PPH, LLC*, Case No. 2021-CA-002209-B (D.C. Super. Ct. April 26, 2023).

12 Contempt Order at 30–2, *District of Columbia v. MP PPH, LLC*, Case No. 2021-CA-002209-B (D.C. Super. Ct. April 26, 2023).

13 Throughout the evidentiary hearing the parties and the Court utilized the terms "rent credits" and "rent abatement" interchangeably. For consistency, the Court shall refer to the ordered reductions as "rent abatement" as utilized in the Contempt Order. The Debtor treated the imposed rent abatement in its books and records as a credit towards the individual tenants' accounts applied monthly.

14 The Court does not condone the Debtor's conduct, nor the conditions of the Property leading up to the filing of this case.

c. *The Stay Motion*

On August 31, 2023 (the "Petition Date"), the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. Upon the filing of the debtor's petition, the stay of § 362(a) became automatically and immediately effective. [15] In the initial days of this case, the Debtor sought and obtained authority to use cash collateral and approval of post-petition financing. [16] Two weeks after the Petition Date, the District filed a motion (the "Stay Motion") requesting the Court either confirm that the automatic stay of § 362(a) did not apply to the Superior Court Action or grant the District relief from the automatic stay to continue the Superior Court Action. [17] A preliminary hearing on the Stay Motion was held on October 4, 2023, after which the Court entered a Scheduling Order establishing a discovery timeline and setting a final evidentiary hearing on October 26, 2023. [18] On the eve of evidentiary hearing, the Debtor filed adversary proceeding 23-10032-ELG against the District seeking both temporary and permanent injunctive relief against enforcement of the rent credits ordered by the Contempt Order. [19]

15 11 U.S.C. § 362(a) ("a petition filed under ... this title ... operates as a stay, applicable to all entities ..."); *see also* 3 Collier on Bankruptcy ¶ 362.02 (Richard Levin & Henry J. Sommer eds., 16th ed.).

16 Order Authorizing Debtor's Interim Use of Cash Collateral & Granting Adequate Protection, *In re MP PPH LLC*, Case No. 23-00246-ELG (Bankr. D.D.C. Sept. 7, 2023), ECF No. 27; Order Authorizing Debtor's Final Use of Cash Collateral & Granting Adequate Protection, *In re MP PPH LLC*, Case No. 23-00246-ELG (Bankr. D.D.C. Sept. 18, 2023), ECF No. 40.

17 Mot. of the District of Columbia to Verify Super. Ct. Lit. Re. Debtor Is Excepted from the Auto. Stay Pursuant to 11 U.S.C. § 362(B)(4) Or, in the Alt., Mot. for Relief from the Auto. Stay Re. Continuation of Prosecution of Non-bankr. Lit. in Super. Ct., *In re MP PPH LLC*, Case No. 23-00246-ELG (Bankr. D.D.C. Sept. 7, 2023), ECF No. 34.

18 *See* Order Setting Sched. on Mot. to Determine or for Relief from Stay & Debtor's Req. for the Issuance of an Inj., *In re MP PPH LLC*, Case No. 23-00246-ELG (Bankr. D.D.C. Oct. 6, 2023), ECF No. 66.

19 Debtor's Compl. for Inj. Relief, *MP PPH LLC v. District of Columbia (In re MP PPH LLC)*, Case No. 23-00246-ELG, Adv. Proc. No. 23-10032 (Bankr. D.D.C. Oct. 25, 2023), ECF No. 1.

***4** At the hearing on October 26, 2023, the parties read into the record an agreement in principle between the Debtor, the DIP Lender, and the District resolving the Stay Motion. A consent order memorializing the agreement was entered on November

7, 2023 (the "Stay Order"). The Stay Order did not include any determination or legal finding as to the applicability of the automatic stay, instead, as relevant herein, it included: (1) the consent of the Debtor to the limited appointment of a receiver in the Superior Court Action; (2) the Debtor's agreement to fund an account of any appointed receiver for payments towards abatement of conditions at the Property; and (3) agreement to request the Superior Court to order that the rent abatement required by the Contempt Order would expire on December 1, 2023. The Stay Order further provided that if the abatement was not terminated, then the Debtor retained all rights to seek further relief in either this Court or the Superior Court. [20] As a result of entry of the Stay Order, the adversary proceeding was stayed consensually. [21]

20 Consent Order Resolving Auto. Stay Mot., *In re MP PPH LLC*, Case No. 23-00246-ELG (Bankr. D.D.C. Nov. 7, 2023), ECF No. 99.

21 Order Staying Adv. Pro., *MP PPH LLC v. District of Columbia (In re MP PPH LLC)*, Case No. 23-00246-ELG, Adv. Proc. No. 23-10032 (Bankr. D.D.C. Nov. 6, 2023), ECF No. 7.

Subsequent to the entry of the Stay Order, the District and the Debtor presented their agreement to the Superior Court; however, the requested relief was not approved by the Superior Court. As a result, on November 20, 2023, the Debtor filed its *Motion to Address Procedures for Tenant Claims Issues and to Clarify the Order Resolving the Automatic Stay Motion* (the "Clarification Motion"). [22] The Clarification Motion once again raised the question of the impact of the automatic stay on the continued enforcement of the rent abatement, or in the alternative, consistent with the terms of the Stay Order, sought the imposition of an injunction prohibiting continuation of the rent abatement as of December 1, 2023. In addition, on November 20, 2023, the Debtor filed a motion to lift the stay of the adversary proceeding and to reset a hearing on the Motion for a Preliminary Injunction. [23] Both the Clarification and Injunction Motions were filed on an expedited basis, and set for hearing on November 28, 2023. [24]

22 *See* Debtor's Mot. to Address Procedures for Tenant Claims Issues & Clarify the Order Resolving the Auto. Stay Mot., *In re MP PPH LLC*, Case No. 23-00246-ELG (Bankr. D.D.C. Nov. 20, 2023), ECF No. 109.

23 Pl.'s Mot. to Lift Stay of Adv. Pro. & Sched. Mot. for a Prelim. Inj. for an Expedited Hr'g, *MP PPH LLC v. District of Columbia (In re MP PPH LLC)*, Case No. 23-00246-ELG, Adv. Proc. No. 23-10032 (Bankr. D.D.C. Nov. 20, 2023), ECF No. 9.

24 Mot. to Expedite Hr'g on Debtor's Mot. to Address Procedures for Tenant Claims Issues & to Clarify the Order Resolving the Auto. Stay Mot., *In re MP PPH LLC*, Case No. 23-00246-ELG (Bankr. D.D.C. Nov. 20, 2023), ECF No. 110; Order Granting Mot. to Expedite Hr'g on Debtor's Mot. to Address Procedures for Tenant Claims Issues & to Clarify the Order Resolving the Auto. Stay Mot., *In re MP PPH LLC*, Case No. 23-00246-ELG (Bankr. D.D.C. Nov. 21, 2023), ECF No. 112; Mot. to Expedite Hr'g on Pl.'s Mot. to Lift Stay of Adv. Pro. & Sched. Debtor's Mot. for a Prelim. Inj. for an Expedited Hr'g, *MP PPH LLC v. District of Columbia (In re MP PPH LLC)*, Case No. 23-00246-ELG, Adv. Proc. No. 23-10032 (Bankr. D.D.C. Nov. 20, 2023), ECF No. 10; Order Granting Mot. to Lift Stay of Adv. Pro. & to Schedule Debtor's Mot. for a Prelim. Inj. for an Expedited Hr'g, *MP PPH LLC v. District of Columbia (In re MP PPH LLC)*, Case No. 23-00246-ELG, Adv. Proc. No. 23-10032 (Bankr. D.D.C. Nov. 21, 2023), ECF No. 12.

At this first hearing, the Court established that it had not previously ruled on either the issue of the extent and application of the automatic stay or whether or not to issue an injunction, [25] noted the unity of interest between the Injunction Motion and part of the relief sought in the Clarification Motion, [26] and continued both matters for an evidentiary hearing beginning the following week. [27] Ultimately, the evidentiary hearing was conducted over a three-day period on December 5, 6, and 8, 2023. [28] The Court adjourned the Hearing to December 11, 2023 at which time it issued its oral ruling memorialized herein.

25 Tr. Hr'g Nov. 28, 2023 15:21–16:13, *In re MP PPH LLC*, Case No. 23-00246-ELG (Bankr. D.D.C. Nov. 29, 2023), ECF No. 128.

26 *Id.* at 54:11–55:2.

27 *Id.* at 63:2–6.

28 *See* Tr. Hr'g Nov. 28, 2023, *In re MP PPH LLC*, Case No. 23-00246-ELG (Bankr. D.D.C. Nov. 29, 2023), ECF No. 128; Tr. Hr'g Dec. 5, 2023, *In re MP PPH LLC*, Case No. 23-00246-ELG (Bankr. D.D.C. Dec. 12, 2023), ECF No. 164; Tr. Hr'g Dec. 6, 2023, *In re MP PPH LLC*, Case No. 23-00246-ELG (Bankr. D.D.C. Dec. 11, 2023), ECF No. 161; Tr. Hr'g Dec. 8, 2023, *In re MP PPH LLC*, Case No. 23-00246-ELG (Bankr. D.D.C. Dec. 14, 2023), ECF No. 170; Tr. Hr'g Dec. 11, 2023, *In re MP PPH LLC*, Case No. 23-00246-ELG (Bankr. D.D.C. Dec. 12, 2023), ECF No. 166.

***5** In between entry of the Stay Order and the Hearing on the Clarification Motion, the Office of the United States Trustee appointed an official committee of unsecured creditors (the "Committee"). The Committee was initially appointed on October 26, 2023, withdrawn on November 6, 2023, and reappointed on November 9, 2023. [29] On November 14, 2023, proposed counsel for the Committee filed a notice of appearance in the Debtor's case. [30] As a result, the Committee was an active participant in the Hearing held on the Clarification and Injunction Motions. In addition, on November 28, 2023, the Legal Aid Society of the District of Columbia ("Legal Aid") noted an appearance [31] in this case on behalf of four of the Debtor's tenants (one of whom also was appointed to the Committee), and also played an active role at the Hearing.

29 Appointment of Unsecured Creditors' Comm., *In re MP PPH LLC*, Case No. 23-00246-ELG (Bankr. D.D.C. Oct. 26, 2023), ECF No. 92; Notice of Withdrawal of Appointment of Unsecured Creditors' Comm., *In re MP PPH LLC*, Case No. 23-00246-ELG (Bankr. D.D.C. Nov. 6, 2023), ECF No. 96; Appointment of Unsecured Creditors' Comm., *In re MP PPH LLC*, Case No. 23-00246-ELG (Bankr. D.D.C. Nov. 9, 2023), ECF No. 102.

30 Pillsbury's Notice of Appearance & Req. for Notice, *In re MP PPH LLC*, Case No. 23-00246-ELG (Bankr. D.D.C. Nov. 14, 2023), ECF No. 104.

31 Notice of Appearance and Req. for Service of Notices & Papers, *In re MP PPH LLC*, Case No. 23-00246-ELG (Bankr. D.D.C. Nov. 28, 2023), ECF Nos. 122, 123.

d. Clarification Motion: Positions of the Parties

By the Clarification Motion, the Debtor moved the Court (in a less than clear fashion) to rule on whether the automatic stay enjoins the continued enforcement of the Superior Court ordered rent abatement. Alternatively, if the automatic stay does not apply, the Debtor sought entry of a stay or injunction against the continued enforcement of the rent abatement after December 1, 2023. In either event, the relief requested was that the rent abatement terminate as of December 1, 2023. At the Hearing, the Debtor presented three alternative bases for relief: (1) a finding that the rent abatement portion of the Contempt Order is not exempt from the stay under the police and regulatory exception to the automatic stay of § 362(b)(4); (2) a finding that even if the rent abatements are exempt from the automatic stay under § 362(b)(4), the imposition of an injunction similar to the automatic stay pursuant to § 105; or, alternatively, (3) even if the rent abatements are exempt from the automatic stay, the Debtor is entitled to a preliminary injunction as to their continued enforcement as requested in the adversary proceeding under the standard for a preliminary injunction.

The District was the only party to file a written opposition the Clarification Motion. The District restated its arguments put forward in its opposition to the Stay Motion, including the applicability of the police and regulatory exception of the automatic stay to the Superior Court Action encompassing both the litigation and the terms of the Contempt Order, the *Rooker-Feldman* doctrine, and the doctrine of *Younger* abstention. [32] Legal Aid adopted the arguments in the District's brief, and at the Hearing expanded upon the question of abstention. At the Hearing, the Committee primarily focused its arguments on two fronts: (i) whether the rent collected by the Debtor was property of the estate under § 541; and (ii) if the rents were not property of the estate, then there was not a stay violation under § 362(k). However, there is no § 362(k) claim for violation of the automatic stay presently before the Court. The Court is only considering (a) whether the rent abatements are subject to or are excepted from

the automatic stay of § 362(a); or, alternatively, (b) whether the Debtor has met its burden for the imposition of an injunction under § 105 or under the more traditional preliminary injunction standard notwithstanding the applicability of the police and regulatory exception under § 362(b)(4).

32 Opp'n, *In re MP PPH LLC* (Bankr. D.D.C. Nov. 28, 2023), ECF No. 124; Suppl. Opp'n, *In re MP PPH LLC* (Bankr. D.D.C. Dec. 5, 2023), ECF No. 148.

III. Discussion

***6** The matter before the Court concerns the extent to which the § 362(b)(4) police and regulatory exception to the automatic stay applies to the Contempt Order in the Superior Court Action. Importantly, neither the Clarification Motion nor the Injunction Motion require the Court to: (i) overturn or reinterpret the Contempt Order; (ii) vacate the Consent Order; or (iii) otherwise limit any applicable state court remedies for the tenants or rights of enforcement of the District of Columbia. Furthermore, there is no question or challenge as to whether the underlying Superior Court Action itself is within the police and regulatory exception to the automatic stay. By the express terms of the Consent Order, the Debtor and the District have excluded from the current issues before the Court the impact of the Debtor's petition (and the applicability of the automatic stay) on the District's request to appoint a state court receiver.[33] Moreover, upon request of the parties, the Court does not address, and specifically reserves, a determination as to the legal impact of rent abatements for the period between the Petition Date and December 1, 2023.

33 Similar to the question of the applicability of the automatic stay discussed herein, in the Consent Order the Court did not issue a *ruling* on the question of the applicability of the automatic stay or any other provision of the Bankruptcy Code on the sought appointment of a state court receiver after the filing of the Petition. By entering the Consent Order, the Court approved the agreed resolution between the parties based upon each party's independent business judgment.

Thus, the questions before the Court in the Clarification Motion are: 1) whether the continuation of the rent abatement established by the Contempt Order after December 1, 2023 falls within the police and regulatory exception to the automatic stay of § 362(b)(4); and 2) if the automatic stay does not apply, whether the Court should nevertheless impose a stay as to the continued application of the rent abatement under § 105. Alternatively, and only if the Court does not rule for the Debtor on the Clarification Motion, the Injunction Motion seeks entry of a preliminary injunction against the continued application of the rent abatement. Because the Court finds for the Debtor on the Clarification Motion, it does not reach the Motion for a Preliminary Injunction.

a) Preliminary Challenges

Before addressing the merits as to applicability of the automatic stay, the Court will address the various jurisdictional and other threshold arguments raised by the parties in both their pleadings and at the Hearing.

i) The Court has Jurisdiction Over the Clarification Motion

The District and Legal Aid argue that this Court either lacks jurisdiction or should abstain from determining if the automatic stay is applicable to bar the continued enforcement of the rent abatement terms of the Contempt Order. The principal challenge is that the Court lacks jurisdiction under the *Rooker-Feldman* doctrine to consider the matter. In this Circuit,

> *Rooker-Feldman's* jurisdictional bar protects the Supreme Court's certiorari jurisdiction under Section 1257 of Title 28 of the United States Code. It ensures that the United States Supreme Court is the only federal court to hear appeals from judgments rendered by the highest court of a state (or, as here, the District of Columbia). Operationally, the *Rooker-Feldman* doctrine "is confined to cases of the kind from which the doctrine acquired its name: cases brought by [i] state-court losers [ii] complaining of injuries caused by state-court judgments rendered before the [federal] district court proceedings commenced

and [iii] inviting district court review and rejection of those judgments." The Supreme Court has repeatedly emphasized that the doctrine is "narrow," applicable to bar only complaints that meet those listed conditions. [34]

The jurisdictional bar of the Doctrine applies only to final state court judgments, not interlocutory orders. [35] As a civil contempt order in a pending proceeding, the Contempt Order is an interlocutory order, making the *Rooker-Feldman* doctrine inapplicable to the question of whether this Court has jurisdiction over the Clarification Motion. [36]

34 *Croley v. Joint Comm. on Judicial Admin.*, 895 F.3d 22, 28 (D.C. Cir. 2018) (internal citations omitted).

35 *See William Penn Apts. v. D.C. Court of Appeals*, 39 F. Supp. 3d 11, 17 (D.D.C. 2014) ("Since *Exxon Mobil*, courts have interpreted *Exxon Mobil* to have abrogated *Richardson's* holding in that the post-*Exxon Mobil Rooker-Feldman* doctrine applies only to final decisions after the state proceedings ended and does not apply to appeals of interlocutory orders. ... '[S]tate proceedings have ended' for the purposes of the *Rooker-Feldman* doctrine: First, when the highest state court in which review is available has affirmed the judgment below and nothing is left to be resolved[.] ... Second, if the state action has reached a point where neither party seeks further action[.] ... Third, if the state court proceedings have finally resolved all the federal questions in the litigation, but state law or purely factual questions (whether great or small) remain to be litigated[.]) (internal citations omitted).

36 *See SEIU Local 32BJ v. Preeminent Protective Servs.*, 997 F.3d 1217, 1221 (D.C. Cir. 2021). ("[A] civil contempt order against a party in a pending proceeding is not appealable as a final order under 28 U.S.C. § 1291." *Byrd v. Reno*, 180 F.3d 298, 302 (D.C. Cir. 1999)).

***7** The Clarification Motion does not require the Court to consider the bona fides of the Contempt Order. The question before this Court is whether the ongoing enforcement of the judgment portion of the order (the rent abatement) is subject to an exception of the automatic stay. As a result, the issue herein does not require the Court evaluate whether the Superior Court reached the correct result under state law. [37] There may be overlapping legal issues between the determination of the scope of the police and regulatory exception to the automatic stay and the Superior Court Action, but that does not mean that this Court is required to reject or review the analysis or findings of the Superior Court in the Contempt Order. [38] The inquiry herein does not implicate the *Rooker-Feldman* doctrine.

37 *See Phila. Entm't & Dev. Partners, LP v. Dep't of Revenue (In re Phila. Entm't & Dev. Partners, LP)*, 879 F.3d 492, 501 (3rd Cir. 2018).

38 *See id.*

Alternatively, the District and Legal Aid assert that this Court should abstain from exercising jurisdiction under the *Younger* doctrine. Originating from the 1971 Supreme Court case *Younger v. Harris*, the doctrine is grounded in the principles of comity and federalism, and stands for the proposition that federal courts generally should refrain from enjoining or otherwise interfering in ongoing state court proceedings. [39] The Doctrine applies when a federal court is asked to stay enforcement of a state court judgment in lieu of the movant following applicable state law appellate procedures. That is not the situation in this case. The Clarification Motion does not request that the Court enjoin either the Contempt Order or the Superior Court Action. Instead, the question is whether the continued immediate enforcement of the rent abatement is stayed by § 362.

39 *Younger v. Harris*, 401 U.S. 37, 44–45 (1971); *see also Mender v. Sosa (In re LR Builders, Inc.)*, No. PR 07-016, 2007 Bankr. LEXIS 4270, at *20 (B.A.P. 1st Cir. Oct. 31, 2007) ("*Younger* stands for the proposition that federal courts should abstain from hearing challenges to the constitutionality of state criminal statutes when the challenger is being prosecuted in a state court for violating the statute.").

The question of the uneasy intersection of the *Younger* doctrine and the automatic stay was considered in depth by the United States Bankruptcy Court for the Southern District of New York in the case of *Go West Entertainment.*[40] In that case, the bankruptcy court held "[t]here is no authority that the principle of *Younger* abstention is implicated by the application of the automatic stay where a debtor has filed under chapter 11 for the express purpose of obtaining a stay and filing an appeal after an adverse determination in State court."[41] This Court agrees. In this case, the Court is asked to interpret a core provision of the Bankruptcy Code—the applicability of, and possible exceptions to, the automatic stay. The Court is not asked to determine the merits of the Debtor's pending appeal of the Superior Court Action. The Court has jurisdiction over the Clarification Motion, and there is no basis for abstention under the *Younger* doctrine.

40 *Go West Entm't v. N.Y. State Liquor Auth. (In re Go West Entm't)*, 387 B.R. 435 (Bankr. S.D.N.Y. 2008).

41 *Id.* at 444; *see also In re LR Builders, Inc.*, No. PR 07-016, 2007 Bankr. LEXIS 4270, at *21 ("Moreover, the Appellants fail to recognize and discuss the implications of the Bankruptcy Clause of the Constitution, U.S. Const. art. I, § 8, cl. 4, the Supremacy Clause, U.S. Const. art. VI, cl. 2, or the automatic stay, 11 U.S.C. § 362, which stayed their prosecution of their counterclaim in the Ponce Superior Court.").

ii) The Debtor's Rents are Property of the Debtor's Estate

The question of whether the apartment rents collected by the Debtor are property of the estate (and thus subject to § 362) was raised by the Committee. There is no doubt or dispute that the Property, which is owned by the Debtor, is property of the bankruptcy estate under § 541(a)(1). There is also no doubt or dispute that the rents at issue come directly "of or from" the Property. Thus, under the unambiguous language of § 541(a)(6), the rents collected are of or from property of the estate and are themselves property of the estate.[42]

42 *In re Amaravathi Ltd. P'ship*, 416 B.R. 618, 623–24 (Bankr. S.D. Tex. 2009).

***8** The rents in this case are assigned to the DIP Lender (the "Assignment") as collateral for the loan on the Property.[43] The characterization of the rents as property of the estate under § 541 includes rents subject to a lien, provided that the debtor did not lose its prepetition title to the rents.[44] The effect of the Assignment on the Debtor's interest in the rents is governed by applicable state law—in this case New York law.[45] Under New York law, an absolute assignment of rents is rarely recognized, and a creditor's right to collect rents does not divest a debtor of all of its interests in the rents.[46] Therefore, even though the Debtor's rents are assigned to the DIP Lender, they remain property of the estate, and are subject to the provisions of the Bankruptcy Code that govern the treatment of rents and the treatment of property of the estate.

43 Emergency Mot. for Interim & Final Orders Authorizing Use of Cash Collateral & Granting Adequate Prot. at 12, *In re MP PPH LLC*, Case No. 23-00246 (Bankr. D.D.C. Aug. 31, 2023), ECF No. 3–3.

44 *Kirk v. Texaco (In re Texaco, Inc.)*, 82 B.R. 6789, 679–80 (S.D.N.Y. 1988).

45 Emergency Mot. for Interim & Final Orders Authorizing Use of Cash Collateral & Granting Adequate Prot. at 18, *In re MP PPH LLC*, Case No. 23-00246 (Bankr. D.D.C. Aug. 31, 2023), ECF No. 3–3.

46 *See In re S. Side House, LLC*, 474 B.R. 391, 403–05 (Bankr. E.D.N.Y. 2012) ("Under New York law, the right to enforce an assignment or collect the rents does not confer title.").

b) Scope and Extent of the Automatic Stay and its Exceptions

Having dispensed with each of the jurisdictional and other threshold arguments, the Court now turns to the question of the applicability of the automatic stay and the police and regulatory exception to the ongoing rent abatements.

i) Police and Regulatory Power Exception

The filing of a chapter 11 petition "operates as a stay, applicable to all entities," of certain actions that could otherwise be undertaken against the debtor, including "any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate."[47] The stay is not unlimited and is subject to the exceptions enumerated in § 362(b). As stated *supra*, the exemption in question in this case is § 362(b)(4), which states that the filing of a petition "does not operate as a stay ... of the commencement or continuation of an action or proceeding by a governmental unit ... to enforce such governmental unit's or organization's police and regulatory power" generally referred to as the "police and regulatory exception."[48] The Debtor does not challenge, and the Court agrees, that the underlying causes of action that comprise the Superior Court Action (violations of the Tenant Receivership Act, D.C. Code §§ 42-3651.01–3651.08 (the "TRA"), and the Consumer Protection Procedures Act, D.C. Code §§ 28-3901–3913 (the "CPPA")), squarely fall within the scope of the police and regulatory exception. Through this exception, the Superior Court Action is not stayed, and the Superior Court retains the authority to continue to conduct proceedings and issue orders on the TRA and CPPA causes of action.

47 11 U.S.C. § 362(a).

48 11 U.S.C. § 362(b)(4).

The right of state courts to enter orders through the police and regulatory exception to the automatic stay is also not without limits. Upon the filing of a bankruptcy petition, a debtor's assets fall under the control of the bankruptcy court and constitute a fund that all creditors are entitled to share. Allowing a post-petition enforcement pursuant to the police and regulatory exception of a money judgment would give the governmental unit preferential treatment over other creditors.[49] Thus, "anything beyond the mere entry of a money judgment against a debtor is prohibited by the automatic stay."[50] Stated otherwise, the police and regulatory "extends to permit an injunction and enforcement of an injunction, and to permit the entry of a money judgment, but does not extend to permit enforcement of a money judgment."[51] Accordingly, post-petition "seizure of a [debtor's] property to satisfy the judgment obtained by a plaintiff-creditor" does not fall within the police and regulatory exception.[52] If the government wishes to pursue collection of a money judgment, including a judgment issued post-petition pursuant to the police and regulatory exception, it must first obtain relief from the automatic stay.[53]

49 *NLRB v. Sawulski, 158 B.R. 971, 978 (E.D. Mich. 1993)* (citing H.R. Rep. No. 595, 95th Cong., 1st Sess. 343 (1977), *reprinted in* 1978 U.S.C.C.A.N. 5787, 5963, 6299).

50 *SEC v. Brennan*, 230 F.3d 65, 71 (2d Cir. 2000).

51 S. Rep. No. 989, 95th Cong., 2d Sess. 52 (1978), reprinted in 1978 U.S.C.C.A.N. 5787, 5838; H.R. Rep. No. 595, 95 Cong., 1st Sess. 343 (1977), reprinted in 1978 U.S.C.C.A.N. 5963, 6299.

52 *Sawulski*, 158 B.R. at 978 (citing *NLRB v. Edward Cooper Painting, Inc.*, 804 F.2d 934, 943 (6th Cir. 1986)); *Penn Terra Ltd. v. Dep't of Env't Res.*, 733 F.2d 267, 275 (3d Cir. 1984).

53 *See NLRB v. 15th Ave. Iron Works, Inc.*, 964 F.2d 1336, 1337 (2d Cir. 1992).

***9** If the Superior Court had issued a fine against the Debtor, it would clearly be a pecuniary order establishing a liquidated money judgment. However, instead of a fine, the Superior Court chose to impose the rent abatements with the hope that "ongoing nature will coerce MP PPH's prompt compliance with the terms of the consent order while continuing to compensate the victims of MP PPH's contemptuous conduct."[54] However, on a practical level, the abatement is a pecuniary fine payable not to the government of the District of Columbia, but to be immediately enforced and collected from MP PPH each month and credited to

the tenants.[55] The fact that the Contempt Order is self-effectuating is a red herring; the Contempt Order is a continuing exercise of control over property of the bankruptcy estate to satisfy a judgment in the Contempt Order. The immediate enforcement of the rent abatement is the post-petition enforcement of a money judgment that violates the automatic stay and is not excepted from the stay under § 362(b)(4).

54 Mem. Op. & Order Granting Pl.'s Renewed Mot. to Adjudicate Def. MP PPH, LLC in Civil Contempt at 32, *District of Columbia v. MP PPH, LLC*, Case No. 2021-CA-002209-B (D.C. Super. Ct. April 26, 2023).

55 As discussed above, the Contempt Order directed the Debtor to abate (reduce) the rent it was charging its tenants by a set percentage. The abatement was effectuated by the addition of a rent credit to each tenant on a monthly basis equal to the applicable percentage. In some cases, as a result of the retroactive abatements in April 2023, tenants maintained an ongoing credit balance eliminating the requirement to make any ongoing payment (i.e., their accumulated credits were greater than the portion of the rent due each month). The credits were treated as an ongoing payment of the applicable portion of the rent by the applicable tenant.

The Court's exercise of its jurisdiction over property of the estate need not frustrate the District's underlying actions. This Court does not propose to step into the shoes or second-guess the Superior Court's determinations as to the current health and safety status of the Property. By enjoining the ongoing effect of the rent abatement, this Court merely acts to ensure that the Debtor does not lose property of the estate with value to all creditors, the protection of which is essential to the reorganization process in chapter 11. The Court does not step upon either the Superior Court's adjudicatory functions or its ultimate authority to determine if the Debtor has satisfied the District's housing and consumer protection laws.

c) Contempt Proceedings and the Automatic Stay

The District and Legal Aid argue that notwithstanding the immediate collection nature of the rent abatements because such obligations arise from a contempt order they are nevertheless excepted from the automatic stay, even if not under the police and regulatory exception. In general, contempt orders that uphold the dignity of the issuing court (generally referred to as criminal contempt orders) are excepted from the automatic stay.[56] Whereas contempt orders used to compel future compliance or to compensate a party for losses sustained (generally referred to as civil contempt orders) are subject to the automatic stay absent another exception.[57] While a court can look beyond a label applied to a contempt proceeding, if the contempt proceeding is intended to coerce compliance and compensate for losses, it is for a civil purpose.[58] In other words, if the contempt could be purged at any time, a contempt proceeding is civil in nature and subject to the automatic stay.[59] The Contempt Order clearly states that its goals and purpose are to coerce prompt compliance while compensating the tenants and is a civil contempt order subject to the automatic stay.[60]

56 *Sawulski*, 158 B.R. at 975.

57 *See Ampersand Publ'g, LLC v. NLRB*, No. 1:21-mc-0140 (GMH), 2023 WL 6879887, at *7, 2023 U.S. Dist. LEXIS 186906, at *25–6 (D.D.C. Oct. 18, 2023) (citing *Cobell v. Norton*, 334 F.3d 1128, 1145 (D.C. Cir. 2003)); *see, e.g.*, *United States v. Bayshore Assocs., Inc.*, 934 F.2d 1391 (6th Cir. 1991) ("[T]he purpose of civil contempt is to coerce an individual to perform an act or to compensate an injured complainant. Whereas, the purpose of criminal contempt is punitive—'to vindicate the authority of the court.' " (internal citations omitted) (quoting *Gompers v. Bucks Stove & Range Co.*, 221 U.S. 418, 441 (1911)); *In re Just Brakes Corp. Sys., Inc.*, 108 F.3d 881, 885 (8th Cir. 1997) ("[T]he judicial power to punish for criminal contempt of a court order is carefully distinguished from the power to remedy a violation of that order through civil contempt.").

58 *Ampersand*, 2023 WL 6879887 at *8.

59 *See, e.g., In re Wohleber*, 596 B.R. 554, 570 (B.A.P. 6th Cir. 2019) (citing *Rook v. Rook (In re Rook)*, 102 B.R. 490, 494 (Bankr. E.D. Va. 1989)).

60 *See* Debtor Ex. C at 30, *In re MP PPH LLC*, Case No. 23-00246-ELG (Bankr. D.D.C. Dec. 4, 2023), ECF No. 140–3 ("The court concludes that the best way to coerce MP PPH's compliance with the consent order and, at the same time, to compensate the victims of MP PPH's noncompliance is to order an across-the-board rent abatement for all tenants of Marbury Plaza retroactive to June 1, 2022.").

d) Extension of the Automatic Stay Pursuant to § 105

***10** Notwithstanding the finding that the rent abatement in the Contempt Order is not exempt from the automatic stay, the Court alternatively finds that the evidence would support the issuance of an injunction similar to the § 362(a) automatic stay under § 105 to terminate the ongoing enforcement of the rent abatements. Although § 105(a) does not give a bankruptcy court a blank check from which to "create substantive rights that are otherwise unavailable under applicable law" or act as "a roving commission to do equity," the section does permit the bankruptcy court to take actions necessary to "protect the integrity of the bankrupt's estate" and enjoin actions that "might impede the reorganization process."[61] This includes, in exceptional circumstances, issuing an injunction effectively extending the stay under § 362 to enjoin actions that are otherwise excepted from the automatic stay.[62]

61 *FiberTower Network Servs. Corp. v. FCC (In re FiberTower Network Servs. Corp.)*, 482 B.R. 169, 182 (Bankr. N.D. Tex. 2012) (quoting *Bear v. Coben (In re Golden Plan of Cal., Inc.)*, 829 F. 2d 705, 713 (9th Cir. 1986)).

62 *Id.*; *see, e.g., Mirant Corp. v. Potomac Elec. Power Co. (In re Mirant Corp.)*, 378 F.3d 511, 523 (5th Cir. 2004) (quoting *In re Cajun Elec. Power*, 185 F.3d 446, 457 n.18 (5th Cir. 1999)); *Commonwealth Oil Ref. Co. v. EPA (In re Commonwealth Oil Ref. Co.)*, 805 F.2d 1175, 1188 n.16 (5th Cir. 1986) (listing cases from numerous jurisdictions).

In a bankruptcy case, a movant seeking an injunction under § 105(a) must establish: (a) likelihood of a successful reorganization (also stated as likely to prevail on the merits); (b) likelihood of irreparable harm to the debtor's estate (also stated irreparable injury); (c) the balance of equities or equities between the debtor and its creditors favors the movant; and (d) an injunction is in the public interest (serves the public interest).[63] Each prong must be satisfied and the movant has the burden to show each factor weighs in favor of the injunction.[64] Even if the automatic stay did not apply to the immediate enforcement of the rent abatement, the Court finds that the Debtor met its burden as to each of the requirements for the issuance of an injunction against the continued immediate enforcement of the rent abatement.

63 *Aamer v. Obama*, 953 F. Supp. 2d 213, 217 (D.D.C. 2013) (citing *Winter v. NRDC, Inc.*, 555 U.S. 7, 20 (2008)); *see also Bestwall LLC v. Those Parties Listed on Appendix A (In re Bestwall LLC)*, 606 B.R. 243, 253 (Bankr. W.D.N.C.), *affirmed Bestwall LLC Official Comm. of Asbestos Claimants (In re Bestwall LLC)*, 271 F.4th 168 (4th Cir. 2023).

64 *See Davis v. Pension Benefit Guar. Corp.*, 571 F.3d 1288, 1292 (D.C. Cir. 2009).

i. The Debtor has a Realistic Likelihood of a Successful Reorganization

Assessing the likelihood of success on the merits "does not involve a final determination of the merits, but rather the exercise of sound judicial discretion on the need for interim relief."[65] The likelihood of success refers to if the Debtor is likely to succeed in this case in terms of a successful reorganization, "not that the Debtor is likely to overturn" the Contempt Order.[66] With the testimony of the Debtor's witnesses, it is clear to the Court that there is reasonable opportunity for the Debtor to succeed in this case. The Debtor's reorganization in this case centers around the sale of the Property to pay its creditors, potentially in full.[67] The Debtor is motivated to sell the Property and at all times during this case has worked diligently towards that

outcome—including employing a property management company experienced in distressed properties, capital improvements, and overseeing ongoing repairs and maintenance obligations. The Debtor concedes that the rehabilitation work is not complete, and that there remain tenant complaints and other ongoing issues with the conditions of the Property. The Court finds that without the termination of the ongoing enforcement of the rent abatement, there is no evidence that the Debtor is unwilling or otherwise unable to sell the Property. Thus, this factor clearly weighs in favor of the Debtor.

65 *Nat'l Org. for Women, Wash. D.C. Chapter v. Soc. Sec. Admin. of the Dep't of Health & Human Servs.*, 736 F.2d 727, 733 (D.C. Cir. 1984).

66 *Bestwall LLC*, 606 B.R. at 254; *FiberTower*, 482 B.R. at 183 (citing *Go West*, 387 B.R. at 440); *accord Wilner Wood Prods. Co. v. Maine Dep't of Env. Prot.*, 128 B.R. 1, 4 n.4 (D. Me. 1991)).

67 Section 1129(a)(11) specifically contemplate that a liquidating plan can be a successful result of a chapter 11 case if the liquidation is proposed in the plan.

ii. Failure to Enjoin Continuation of the Rent Credits Would Irreparably Harm the Debtor

***11** There are three main principles that apply when determining whether an alleged harm is irreparable: (i) "the injury must be both certain and great; it must be actual and not theoretical;" (ii) the movant must "substantiate the claim that irreparable injury is 'likely' to occur"; and (iii) the moving party must establish causation. [68] Furthermore, "[r]ecoverable monetary loss may constitute irreparable harm only where the loss threatens the very existence of the movant's business." [69] This case was filed to provide the Debtor the opportunity to rehabilitate and sell the Property in order to pay its creditors.

68 *Dallas Safari Club v. Bernhardt*, 453 F. Supp. 3d 391, 398–99 (D.D.C. 2020) (citing *Wis. Gas Co. v. FERC*, 758 F.2d 669, 674 (D.C. Cir. 1985)).

69 *Wis. Gas Co. v. FERC*, 758 F.2d 669, 674 (D.C. Cir. 1985) (citing *Washington Metropolitan Area Transit Commission v. Holiday Tours, Inc.*, 559 F.2d 841, 843 n.2 (D.C. Cir. 1977)).

The Debtor has established that the continuing enforcement of the rent abatement would cause an irreparable harm to the bankruptcy estate. The Property has a potential fully occupied monthly rental revenue of $800,000 without the rent abatement. [70] With the rent abatement in place, the Debtor has a potential monthly rent recovery of approximately $330,000. [71] The Debtor has minimum expenses of $600,000 per month just to operate the Property without any improvements, repairs, or scheduled maintenance, and is operating at a distinct deficit. [72] Furthermore, the Court finds the testimony of the Debtor's expert credible that no potential buyer would complete a purchase of the Property with the rent abatement in place and that the existence of such credits might further restrict a potential purchaser's ability to acquire sufficient funding to close a purchase.

70 Tr. Hr'g Dec. 5, 2023 at 118:11–13, *In re MP PPH LLC*, Case No. 23-00246-ELG (Bankr. D.D.C. Dec. 12, 2023), ECF No. 164.

71 Tr. Hr'g Dec. 5, 2023 at 144:15–19, 118:14–16.

72 Tr. Hr'g Dec. 5, 2023 at 144:5–8.

The collection of rent and use of the same towards the operation of an apartment complex is the very existence and core of the Debtor's business. In this case, while there is post-petition financing in place, the budget itself anticipated additional rental income for December. [73] The combination of the inability to fund post-petition operating expenses and significant impacts on a potential sale establishes that the ongoing enforcement of the rent abatement is a direct threat to the Debtor's reorganization and this factor weighs in favor of an injunction. [74]

73 Order Authorizing Debtor's Interim Use of Cash Collateral & Granting Adequate Protection, *In re MP PPH LLC*, Case No. 23-00246-ELG (Sept. 7, 2023), ECF No. 27; Order Authorizing Debtor's Final Use of Cash Collateral & Granting Adequate Protection, *In re MP PPH LLC*, Case No. 23-00246-ELG (Sept. 18, 2023), ECF No. 40.

74 *See In re Northbelt, LLC*, 630 B.R. 228, 280-82 (Bankr. S.D. Tex. 2020) (discussing income stream from SARE properties in connection with plan feasibility); *In re Brandywine Townhouses, Inc.*, 524 B.R. 889, 893-94 (Bankr. N.D. Ga. 2014) (same).

iii. Balance of the Equities Supports the Debtor

The Court must balance the potential harm to the Debtor's estate with the potential impact of issuance of an injunction on the District and the Debtor's tenants. The Debtor filed this case to rehabilitate and market the Property, and the Court is satisfied that the Debtor filed this case for the legitimate purpose of addressing its debt. The continued immediate enforcement of the rent abatement significantly hinders the Debtor's inability to operate, including its ability to complete essential and emergency repairs to the Property or to work otherwise to purge its contempt under the Contempt Order. The tenants are living in an apartment complex that is somewhere between the condition present in April 2023 and a fully "purged" status. The evidence is, at best, conflicting on the current state of the Debtor's progress towards purging its contempt. The Court was presented with a significant amount of evidence on the past and present condition of the Property, [75] but the ultimate determination on the purging of the Contempt Order is not one for this Court.

75 *See* Exs. 1–44, *In re MP PPH LLC*, Case No. 23-00246-ELG (Bankr. D.D.C. Oct. 25, 2023), ECF Nos. 89–1 to – 34; Exs. D, E, *In re MP PPH LLC*, Case No. 23-00246-ELG (Bankr. D.D.C. Oct. 25, 2023), ECF No. 87–4 to –5.

***12** The tenants immediately and directly benefit from the rent abatement. But an injunction of the immediate enforcement of the rent abatement does not eliminate the Superior Court's order to provide the tenants with rent abatement, it simply delays the collection of such abated amounts. Furthermore, the rent abatement in the Contempt Order is not the sole recovery mechanism for the benefit of or on behalf of the tenants, [76] and the tenants otherwise retain all of their individual state court rights and rights to file claims in this case. [77] Furthermore, the District is not prevented from seeking a determination or liquidation of damages against the Debtor in the Superior Court Action. The entire purpose of this case is greatly hampered by the ongoing enforcement of the abatement while the District and tenants retain all their legal rights (including the accumulation of ongoing credits), thus the balance of the equities clearly weighs in favor of the Debtor.

76 The Superior Court Action was not brought by the tenants, but they are direct beneficiaries of the proceeding. The tenants' ability to exercise their rights under applicable District of Columbia law has not been challenged by the Debtor at any time.

77 In the Motion to Clarify, the Debtor indicated that counsel that participated in this Court during the Hearing had indicated an intent to intervene in the Superior Court Action. *See* Debtor's Mot. to Address Procedures for Tenant Claims Issues & Clarify the Order Resolving the Auto. Stay Mot., *In re MP PPH LLC*, Case No. 23-00246-ELG (Bankr. D.D.C. Nov. 20, 2023), ECF No. 109. It does not appear that such motion was filed. However, even if intervention was granted, any actions taken by the tenants in such action without relief from the automatic stay would be a violation of the stay as the tenant's actions in that matter are not covered by the police and regulatory exception to the automatic stay provided to the District. *Lac du Flambeau Band of Lake Superior Chippewa Indians v. Coughlin*, 599 U.S. 382, ____, 143 S. Ct. 1689, 1696 (2023) (examining the definition of "governmental unit"); *In re 1736 18th St, N.W., Ltd. P'ship*, 97 B.R. 121, 123 (Bankr. D.D.C. 1989) (discussing the exception found in § 362(b)(4) as being inapplicable to cases brought by tenants); *In re Laskaratos*, 605 B.R. 282, 306 (Bankr. E.D.N.Y. 2019) (noting that for an individual to subsume the rights of a governmental actor, there would be required an indication that the individual was so directed).

iv. The Public Interest Supports an Injunction

Courts have previously held that injunctions that can assist in the facilitation of a reorganization serve the public interest. [78] As established by the Debtor, its ability to successfully reorganize by selling the Property is impaired by the enforcement of the rent abatement. Furthermore, the impact on the District's ability to continue to pursue their police and regulatory power would be marginal, as the relief requested in enjoining the immediate enforcement of the rent abatement is limited in scope. The relief sought by the Debtor would simply prohibit the District from enforcing such amounts outside of the bankruptcy process. The requested injunction does not allow the Debtor to escape any alleged liability, it merely defers when such amounts are collected from the Debtor. Thus, the Court finds the public interest in preserving a bankruptcy estate and promoting the reorganization of businesses outweighs the public interest in the immediate enforcement of the rent abatement.

78 *See, e.g., SAS Overseas Consultants v. Benoit*, No. Civ. A. 99-1663, 2000 U.S. Dist. LEXIS 1208, 2000 WL 140611, at *5 (E.D. La. Feb. 7, 2000); *Venzke Steel Corp. v. LLA, Inc. (In re Venzke Steel Corp.)*, 142 B.R. 183, 185 (Bankr. N.D. Ohio 1992); *Lazarus Burman Assocs. v. Nat'l Westminster Bank U.S.A. (In re Lazarus Burman Assocs.)*, 161 B.R. 891, 901 (Bankr. E.D.N.Y. 1993).

e) Preliminary Injunction

The Hearing also included the Debtor's Motion for Preliminary Injunction in the adversary proceeding. However, because of the finding that the rent abatement is not included in the police and regulatory exception or, in the alternative, that the issuance of an injunction under § 105(a) is proper, the Motion for Preliminary Injunction is moot, and the Court need not and does not address it herein.

IV. Conclusion

***13** For the reasons stated herein, the Court finds that the continued enforcement of the rent abatement established in the Contempt Order is not excepted from the automatic stay under the police and regulatory exception of § 362(b)(4), and is therefore stayed pursuant to § 362(a). However, due to the Consent Order, the Court limits its ruling at this time to those rent abatement procedures beginning December 1, 2023 and reserves the question of any abatement activity between the Petition Date and November 30, 2023. The balance of the Contempt Order, including the calculation or entry of a money judgment against the Debtor, are excepted from the automatic stay pursuant to the police and regulatory exception of § 362(b)(4).

[Signed and dated above.]

All Citations

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