No. 23-CV-422

IN THE DISTRICT OF COLUMBIA COURT OF APPEALS

MP PPH, LLC,
APPELLANT,

V.

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

ON APPEAL FROM A JUDGMENT OF THE
SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

BRIEF FOR APPELLEE THE DISTRICT OF COLUMBIA

BRIAN L. SCHWALB
Attorney General for the District of Columbia

CAROLINE S. VAN ZILE
Solicitor General

ASHWIN P. PHATAK
Principal Deputy Solicitor General

GRAHAM E. PHILLIPS
Deputy Solicitor General

*MARCELLA COBURN
Assistant Attorney General
Office of the Solicitor General

Office of the Attorney General
400 6th Street, NW, Suite 8100
Washington, D.C. 20001
(202) 724-5693
marcella.coburn@dc.gov

*Counsel expected to argue

TABLE OF CONTENTS

TABLE OF AUTHORITIES*

Cases

---

* Authorities upon which we chiefly rely are marked with asterisks.

Statutes and Rules

Other

INTRODUCTION

MP PPH, LLC has owned the Marbury Plaza apartment complex in southeast D.C. since 2015. By 2021, the conditions at the complex were dire: Marbury Plaza was plagued with serious housing code violations affecting the health and safety of 2,500 residents. The District sued MP PPH for causing those violations and for misrepresenting to the public that Marbury Plaza was a habitable place to live. In January 2022, MP PPH consented to a court order that required it to address mold contamination, leaks, flooding, failed plumbing, a faulty HVAC system, insect and rodent infestations, broken elevators, a broken wheelchair lift, and other serious issues. The consent order required MP PPH to undertake a series of comprehensive assessments within 30 days and complete remediation based on those assessments within 120 days. But as of January 2023, many months after the final deadline had elapsed, MP PPH was in blatant violation of more than a dozen conditions of the consent order—and its tenants continued to suffer the consequences.

The District therefore moved to hold MP PPH in civil contempt. After hearing from thirteen witnesses over three days and soliciting two rounds of briefing, Judge Kravitz issued a 36-page written opinion. The court found MP PPH in contempt by clear and convincing evidence because it had repeatedly failed to comply with 14 clear and unambiguous requirements of the consent order. And given the pervasive health and safety dangers the tenants had been forced to endure, and MP PPH's

consistent refusal to spend money on critical projects, the court concluded that the best way to coerce MP PPH's compliance with the consent order and to compensate the individuals harmed by its noncompliance was to order a 50% rent abatement for all tenants of Marbury Plaza. This abatement was retroactive to the date by which MP PPH was supposed to have completed all of the consent order's requirements—June 1, 2022—and prospective until MP PPH finally came into compliance with the consent order. The court ordered potential rent abatements of 60% and 75% later in the year if MP PPH remained noncompliant. The court also ordered MP PPH to update its filings in certain nonpayment-of-rent cases in the Landlord and Tenant Branch to reflect the rent abatement.

MP PPH cannot establish either that the Superior Court clearly erred in concluding that it violated the consent order or that the court exceeded its broad discretion in fashioning appropriate sanctions. To the contrary, the Superior Court relied on an extensive record—consisting in significant part of MP PPH's own documents and witnesses—to conclude that MP PPH violated 14 different requirements of the consent order. And in crafting the simultaneously coercive and compensatory contempt sanctions, the court carefully considered the "character and magnitude of the harm threatened by [MP PPH's] continued violation, and the probable effectiveness of any suggested sanction in bringing about the desired result." *District of Columbia v. Jerry M.*, 571 A.2d 178, 190 (D.C. 1990) (quoting

United States v. United Mine Workers, 330 U.S. 258, 304 (1947)). MP PPH's grab-bag of arguments to the contrary, to the extent they are even preserved, cannot overcome the Superior Court's significant discretion in crafting sanctions and careful consideration of the egregious circumstances MP PPH's tenants endured for far too long. This Court should affirm.

STATEMENT OF THE ISSUES

1. Whether the Superior Court properly found MP PPH in contempt where MP PPH violated 14 provisions of the consent order, forcing its residents to endure unsafe and unsanitary conditions for over a year.

2. Whether the Superior Court properly exercised its discretion by imposing contempt sanctions in the form of a rent abatement to coerce MP PPH's compliance with the consent order and to compensate the individuals aggrieved by the egregious conditions at the property.

STATEMENT OF THE CASE

The District sued MP PPH in July 2021 for violations of the Tenant Receivership Act ("TRA"), D.C. Code § 42-3651.01 *et seq*., and the Consumer Protection Procedures Act ("CPPA"), *id.* § 28-3901 *et seq*. Supplemental Appendix ("SA") 1. The District promptly moved for a preliminary injunction, which the parties resolved through a consent order. App. 112. The consent order was orally entered by the Superior Court at a hearing on January 28, 2022, 1/28/22 Tr. 43; App.

15, 112, and a signed version was docketed on March 2, 2022, App. 64-71. The District moved to hold MP PPH in contempt of the consent order on January 5, 2023. App. 93. Following a three-day evidentiary hearing, the Superior Court found MP PPH in contempt and imposed contempt sanctions on April 26, 2023. App. 110. MP PPH timely filed this appeal on May 12, 2023.

STATEMENT OF FACTS

1. MP PPH Acquires Marbury Plaza In 2015.

Marbury Plaza is an apartment complex located east of the Anacostia River in the 2300 block of Marion Barry Ave SE (formerly Good Hope Road). App. 75. Built in 1968, the complex comprises two eleven-story high-rise towers and seven small garden-style buildings with a total of 674 residential units. App. 73, 76. At the time of the contempt proceedings, more than 2,500 residents of all ages lived in 582 of the units. App. 110. The rents for 122 of those units were subsidized by the District government. App. 110.

MP PPH, LLC is a limited liability company that purchased Marbury Plaza in 2015. App. 75. The company is operated by Anthony Pilavas, a New York ophthalmologist, and his wife, Helen Pilavas. App. 75; 3/15/23 Tr. 139-40. Anthony Pilavas is the managing member of MP PPH. App. 75. Through other limited liability companies, the Pilavases own apartment complexes in the Bronx,

Queens, and New Jersey, and an office building in Melville, New York. 3/15/12 Tr. 179-84.

2. The District Sues MP PPH Over The Conditions At Marbury Plaza In July 2021 And Promptly Moves For A Preliminary Injunction.

In July 2021, the District sued MP PPH and its then-property management company (Vantage Management, Inc.) alleging violations of the TRA and CPPA. SA 1. Although defendants advertised Marbury Plaza as an "exceptional . . . living experience" and the "best high-rise living in Southeast Washington, D.C.," the complaint alleged that the complex's living conditions were appalling—defendants' years of neglect had led to pervasive leaks and mold contamination, failed plumbing and electrical systems, nonfunctioning elevators and a broken wheelchair lift, insect and rodent infestations, and fire and safety hazards that endangered the complex's thousands of residents. SA 2-12.

Citing the emergent and dangerous conditions, the District promptly moved for a preliminary injunction compelling the defendants to conduct full property assessments, provide reports of those assessments, and make all necessary repairs. App. 112. Although the District filed its motion in July 2021, Judge Pasichow, who was then assigned to the case, did not schedule the preliminary injunction hearing until January 28, 2022. App. 112.

3. The District And MP PPH Agree On A Written Consent Order In January 2022.

A few weeks before the scheduled preliminary injunction hearing, the District and MP PPH reached agreement on a written consent order that would require MP PPH to assess and remediate several significant threats to life, health, and safety at the complex by certain deadlines. The parties filed the proposed consent order on January 4, 2022. SA 19 (the parties "hereby enter into this Consent Order (the 'Order') as of January 4, 2022 (the 'Effective Date')"). Judge Pasichow held a hearing on the consent order and other issues on January 28. At the hearing, MP PPH noted that it had no objections to the consent order and asked the court to enter it. 1/28/22 Tr. 9-10. The court did. 1/28/22 Tr. 43 ("Okay . . . [the parties' proposed consent order] was asking for a request to enter it. So without any objection I will."); App. 15 (docket entry from January 28 hearing stating "[t]he pending Consent Order will be GRANTED"). Later in the hearing, the court clarified that the effective date of the consent order—the date from which its deadlines would be calculated—was January 28. 1/28/22 Tr. 46 ("the effective date, which is today"). And if there were any doubt, MP PPH helpfully reiterated at the end of the hearing that "[t]he order

has literally just been entered," 1/28/22 Tr. 45, and noted procedural mechanisms "under the Court's consent order *entered today*," 1/28/22 Tr. 46 (emphasis added).[1]

In the consent order, MP PPH agreed to:

- Within 30 days, complete extermination work in all units and certain common areas; assess the plumbing, HVAC, elevators, and wheelchair lift; assess the mold in all units and common areas; assess the electrical, fire, and safety hazards in all units, common areas, and outdoor areas; and assess the sufficiency of exterior lighting. App. 66-67.
- Within 60 days, fully resolve all notices of infraction issued by the Department of Consumer Regulatory Affairs ("DCRA") and the property inspection company retained by the District ("CTI"); secure points of entry to the complex; install and maintain security cameras in all laundry rooms; ensure sufficient exterior lighting; ensure all laundry facilities were operational; and maintain adequate security personnel. App. 67-68.
- Within 90 days, complete all mold remediation. App. 68.

---

[1] Judge Pasichow later confirmed that she had entered the order at the hearing on January 28, explaining in an omnibus order dated March 2, 2022, that on January 28, "the proposed Consent Order . . . [was] discussed and resolved by the Court," App. 61, and that she had "granted the parties' Motion to Enter the Consent Order filed on January 4, 2022 and recited in detail below," App. 62. Perhaps out of an abundance of caution, Judge Pasichow signed the order and entered it again on March 2 as part of an omnibus order resolving other issues addressed at the January 28 proceeding. App. 56.

- Within 120 days, remediate all plumbing and HVAC issues; fix the elevator and wheelchair lift defects and engage a contractor to replace them if necessary; remediate all electrical, fire, and safety hazards, and ensure that the swimming pool was safe for the residents' use. App. 68-69.

The order also required MP PPH to "expeditiously and fully fund all repairs identified during the inspections/assessments" and "expeditiously and fully fund the replacement of any system/machinery when recommended." App. 70. MP PPH was also required to submit monthly reports detailing its progress, App. 69, which it did beginning in January 2022, App. 14.

4. MP PPH Fails To Satisfy The Required Conditions In The Consent Order By March 2022.

MP PPH failed to complete the exterminations and assessments required in the first 30 days, so the District moved for an adjudication of contempt in late March 2022. App. 114. The District also filed its first amended complaint in April, which added Anthony Pilavas as a defendant. App. 72. In response to the contempt motion, MP PPH sought modification of the consent order. App. 114. Nearly seven months after the District's motion for contempt, in October 2022, Judge Pasichow denied both the District's motion and MP PPH's motion for modification of the consent order. App. 30.

5. By January 2023, MP PPH Has Still Not Satisfied The Consent Order, So The District Again Seeks Contempt Sanctions.

By January 2023, nearly a year after the consent order was in place, MP PPH's compliance with the order was still shockingly inadequate. The District filed a renewed motion for an order adjudicating MP PPH in civil contempt. App. 114-15. The District identified 16 distinct obligations in the consent order that it believed MP PPH had flouted, including failing to remediate mold and to fix persistent problems with plumbing, leaks, HVAC, and the broken elevators and wheelchair lift. App. 114-15. MP PPH filed an opposition, *see* App. 32, 116, and the District filed a reply, *see* App. 33.

Judge Kravitz, who had been assigned to the case in late December 2022, App. 1, held a three-day evidentiary hearing in March. The court heard testimony from thirteen witnesses, including tenants, representatives of property management, contractors, and Anthony Pilavas himself. Three tenants testified about persistent floods, water damage, mold, rats, broken elevators, a broken wheelchair lift, and inoperable laundry facilities in the complex, with a focus on how conditions had worsened over the previous year despite the consent order. *See* 3/13/23 Tr. 27-68, 71-86, 116-43. Contractors testified about work they did—or did not do—at the complex, noting that they sometimes stopped work because MP PPH did not pay them or explaining that they were not engaged to do the work contemplated by the consent order in the first place. *See* 3/13/23 Tr. 94-108, 145-48, 175; 3/14/23 Tr.

5-16. Representatives of Marbury Plaza's property management company (TM Associates) and Pilavas also testified regarding the steps they took (or failed to take) to comply with the consent order. *See* 3/14/23 Tr. 55, 142; 3/15/23 Tr. 138.

The parties then filed post-hearing briefs and presented oral argument in April 2023. App. 116. The District set out in detail all the ways in which MP PPH had failed to comply with the consent order. SA 29-41. It also demonstrated that MP PPH had failed to establish either of the available defenses to civil contempt: substantial compliance and impossibility. SA 41-49. The District explained that, given the magnitude of MP PPH's noncompliance and the harm to the tenants, the Superior Court had broad authority to impose a civil contempt sanction. SA 49-52. The District specifically requested a $5,000 daily fine and a rent abatement starting at 10% if MP PPH was not in compliance within 60 days, culminating in a 50% rent abatement within 120 days and the appointment of a receiver. SA 50. But the District also noted that "the record here supports more substantive and expeditious rent reductions than those requested by the District." SA 51.

In opposing a finding of contempt, MP PPH argued that the District did not prove that it violated the consent order, that MP PPH demonstrated substantial compliance with the consent order, and that it was impossible for MP PPH to comply with the consent order. SA 57-71. In opposing the relief the District requested, MP PPH argued that a $5,000 daily fine "will further drain [MP PPH's] already

struggling income" and would be inappropriate because it "would not go to the tenants" and "w[ould] not help the tenants." SA 72. MP PPH never argued that the Superior Court lacked the factual basis or legal authority to impose a rent abatement—it just complained that reducing the tenants' rent would "deprive the property of necessary operating expenses and money to fund the work remaining" under the consent order and that, regardless, any "monetary relief [should] be for the benefit of the Property and tenants, *not* the District." SA 72-74. Even at the subsequent closing arguments, after the Superior Court expressly raised the issue of retrospective and prospective rent abatements with the District, 4/13/23 Tr. 6-8, MP PPH argued in response only that such rent abatements are "again money that is taken away from the property" and any relief should "help the tenants," 4/13/23 Tr. 15—not that a rent abatement would be legally impermissible.

6. The Court Finds MP PPH In Contempt And Imposes Sanctions.

In late April, the court issued a 36-page opinion finding by clear and convincing evidence that MP PPH violated 14 distinct provisions in the consent order. After carefully describing the terms of the consent order, the court went through each alleged violation in detail, applying the test for civil contempt and assessing whether the District had met its burden by clear and convincing evidence. For two of the alleged violations, the court found in favor of MP PPH. *See* App. 127-28 (electrical and fire safety hazard remediation), 132-33 (security

enhancements). For the remaining 14 alleged violations—relating to mold assessments, mold remediation pursuant to the assessments, plumbing assessments, plumbing remediation, HVAC assessments, HVAC remediation, mold remediation in specific inspected units, inspection repairs, laundry facilities, the swimming pool, exterminations, broken elevators, the broken wheelchair lift, and MP PPH's failure to expeditiously and fully fund repairs—the court found that the District met its burden by clear and convincing evidence. App. 119-36; *see infra* Part I.A.1 (discussing each violation in more detail).

The court then discussed the legal standard for civil contempt remedies, explaining that it has broad discretionary authority "'to grant full relief through the fashioning of appropriate remedial measures,'" which may be aimed at "'either or both of two purposes: to coerce the contemnor into compliance with the court's order, and to compensate the complainant for losses sustained.'" App. 138-39 (quoting *Loewinger v. Stokes*, 977 A.2d 903, 923 (D.C. 2009), and *Giles v. Crawford Edgewood Trenton Terrace*, 911 A.2d 1223, 1224 (D.C. 2006)).

The court concluded 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" was to order a 50% rent abatement for all tenants starting on June 1, 2022, the date by which MP PPH was to have completed all of the consent order's requirements. App. 139. That rent abatement would remain in effect until MP PPH

was in full compliance with the consent order. App. 140. If MP PPH remained out of full compliance 120 days later, the rent abatement would increase to 60%; if MP PPH was still out of compliance 180 days later, it would increase to 75%. App. 140. Consistent with the rent abatement, the court also ordered MP PPH to modify its rent ledgers and to make various filings in certain pending Landlord and Tenant Branch cases to reflect the impact of the rent abatement on the amount of rent owed. App. 142-44. And the court awarded attorney's fees to the District. App. 140.

7. Post-Contempt Proceedings.

MP PPH sought reconsideration and a stay pending appeal from the Superior Court, which the court denied. App. 153. It then sought a stay from this Court, which this Court also denied. 6/9/23 Order. It then moved for rehearing and rehearing en banc of the denial, which was again denied. 8/17/23 Order.

The District moved to appoint a receiver pursuant to the TRA in August 2023, alleging that, despite the July 2021 complaint, the January 2022 consent order, and the April 2023 contempt order, MP PPH continued to pose a risk to the life, health, and safety of its residents due to MP PPH and Pilavas's ongoing failure to remediate code violations. SA 76. A week later, MP PPH filed for chapter 11 bankruptcy. A-2.[2] The bankruptcy court ruled that the "portion of the [contempt order]

[2] Citations to "A-[#]" refer to the page of the addendum to MP PPH's brief on appeal.

establishing ongoing enforcement of rent abatements beginning December 1, 2023" would violate the automatic stay applicable in bankruptcy proceedings and reserved judgment "on the same question as to any rent abatements enforced between [August 31, 2023] and November 30, 2023." A-1. "[B]ut otherwise the [11 U.S.C.] § 362(b)(4) police and regulatory exception of the automatic stay [i]s applicable." A-1; *see also* A-10 to A-11, A-15. In February 2024, the Superior Court entered a consent order appointing a receiver to address the life, health, and safety issues at Marbury Plaza. SA 88-94. The parties are currently briefing summary judgment of the CPPA claims against MP PPH and Pilavas.

STANDARD OF REVIEW

The Court may reverse a trial court's decision to hold a party in civil contempt "only upon a clear showing of abuse of discretion." *D.D. v. M.T.*, 550 A.2d 37, 44 (D.C. 1988). The trial court's factual findings are reviewed only for clear error. *In re J.O.*, 176 A.3d 144, 153 (D.C. 2018).

SUMMARY OF ARGUMENT

1. The Superior Court did not clearly err when it found MP PPH had violated more than a dozen provisions of the consent order designed to correct serious housing code violations at Marbury Plaza. These violations were established by clear and convincing record evidence, including documents and testimony from MP PPH's own witnesses. MP PPH has challenged only one of those violations on

appeal—opening the swimming pool—and even that meager argument fails to persuade. There is no serious dispute that MP PPH was properly found in contempt.

The court also did not abuse its discretion when it imposed a rent abatement as a sanction for that contempt. Fittingly, it served both purposes of a civil contempt sanction: compensation and coercion. First, because the evidence showed that MP PPH's noncompliance with the consent order had led to serious, complex-wide problems that harmed the tenants en masse, the abatement properly provided across-the-board compensation. Second, because MP PPH had flouted the consent order so extensively and for so long, the abatement properly provided a powerful incentive for MP PPH to come into compliance. The trial court did not abuse its broad discretion in deciding that 50% was an appropriate percentage to achieve this combination of compensatory and coercive aims.

2. MP PPH's potpourri of challenges to the contempt sanctions lack merit. As a threshold matter, many are forfeited. Despite having ample notice and opportunity to do so, MP PPH never challenged the rent abatement before it was imposed. Regardless, MP PPH's arguments fail.

The factual findings underpinning the contempt sanctions—that MP PPH's contempt caused unsafe and unsanitary conditions for the complex's residents for many months—are not clearly erroneous. MP PPH's attempt to poke holes in the credibility of the three tenants who testified about their experiences fails to persuade,

primarily because the record contains far more facts about the consequences of MP PPH's contempt than just the tenants' testimony, but also because MP PPH's hairsplitting is ineffective.

MP PPH's legal and process arguments fail as well. The Superior Court did not abuse its discretion by failing to hold an evidentiary hearing with all 2,500 residents, by imposing a rent abatement that compensates tenants instead of the District, by not including the contempt sanctions in the consent order, or by declining to follow a supposed "three-step" process that would give MP PPH yet another chance to flout the consent order without consequences. The Superior Court's instructions regarding the Landlord and Tenant Branch cases are similar to instructions in other contempt cases and were not an abuse of its discretion. The court also properly considered the lesser alternatives proposed by the parties and did not smuggle criminal contempt sanctions into this plainly *civil* contempt order. Nor did it violate MP PPH's constitutional rights or treat MP PPH or Pilavas unfairly on the basis of perceived wealth. The Superior Court exercised its substantial discretion appropriately, and the sanctions should be affirmed.

ARGUMENT

I. The Superior Court Properly Exercised Its Discretion In Imposing The Contempt Sanctions.

Civil contempt is a sanction "designed to enforce compliance with an order of the court and to compensate the aggrieved party for any loss or damage sustained as

a result of the contemnor's noncompliance." *D.D.*, 550 A.2d at 43. The decision whether to hold a party in civil contempt and the measure of the sanctions imposed are "confided to the sound discretion of the trial judge, and will be reversed on appeal only upon a clear showing of abuse of discretion." *Id.* at 44.

This Court's role in reviewing a trial court's exercise of discretion "'is supervisory in nature and deferential in attitude.'" *Fridman v. Orbis Bus. Intel. Ltd.*, 229 A.3d 494, 513 (D.C. 2020) (quoting *Johnson v. United States*, 398 A.2d 354, 362 (D.C. 1979)). A trial court abuses its discretion only when its decision is "'supported by improper reasons, reasons that are not founded in the record, or reasons which contravene the policies meant to guide the trial court's discretion or the purposes for which the determination was committed to the trial court's discretion.'" *Ford v. Chartone, Inc.*, 908 A.2d 72, 84-85 (D.C. 2006) (quoting *Johnson*, 398 A.2d at 367)).

Here, the Superior Court's well-reasoned decision was supported by ample evidence demonstrating MP PPH's flagrant and long-running violations of the consent order that resulted in appalling living conditions for Marbury Plaza's residents. The court's contempt sanctions—designed both to coerce MP PPH into compliance and to compensate the aggrieved tenants on whose behalf the District brought this suit—were well within its considerable discretion, and this Court should affirm.

A. MP PPH failed to comply with a consent order requiring it to remediate serious housing code violations affecting the health and safety of thousands of residents.

"To establish civil contempt, the complainant must prove that the alleged contemnor was subject to the terms of a court order, and that he or she violated it." *D.D.*, 550 A.2d at 43. "Because it is a drastic remedy, civil contempt must be proved by clear and convincing evidence." *Id.* (internal quotation marks omitted). Then, once "noncompliance with a judicial order has been factually established, the burden of establishing justification for noncompliance shifts to the alleged contemnor." *Bolden v. Bolden*, 376 A.2d 430, 433 (D.C. 1977). There are "only two recognized defenses in civil contempt proceedings: substantial compliance and inability to do that which the court commanded." *D.D.*, 550 A.2d at 44. In other words, the party "must be diligent and energetic in carrying out the orders of the court, and a token effort to comply will not do." *Id.* (citation omitted); *see also J.J. v. B.A.*, 68 A.3d 721, 724-25 (D.C. 2013).

Here, the Superior Court properly found that MP PPH had violated more than a dozen provisions of the consent order—provisions meant to force MP PPH to correct serious housing code violations that were harming its residents. On appeal, MP PPH barely disputes its contempt, and the narrow argument it does make lacks merit.

1. The evidence clearly establishes MP PPH's numerous violations of the consent order.

First, no one disputes that MP PPH was "subject to the terms of a court order." *D.D.*, 550 A.2d at 43. This was, moreover, a *consent* order. It set forth clear requirements and deadlines that MP PPH, a sophisticated, counseled party, *agreed to and asked the court to impose*. App. 65 ("MP PPH is willing, upon the terms and conditions set forth herein, to assess and remediate the Conditions.").

Second, as the District established and the Superior Court agreed, MP PPH violated nearly all of the order's provisions. The court catalogued MP PPH's violations in comprehensive detail. *See* App. 119-37. Much of that noncompliance was either undisputed or illustrated by MP PPH's *own* evidence:

- MP PPH's monthly reports and testimony of its property manager witness, Noah Rabin, showed that the mold assessments were not completed within the 30-day deadline. App. 119; *see* SA 100-01 para. 3(d) ("inspection," not full assessment, completed for only nine floors of one building by deadline); 3/14/23 Tr. 67 (72 units still not assessed for mold as of March 2023); SA 164 para. 3(d) (not identifying any common areas assessed for mold as of February 2023). In addition, Thomas Re, MP PPH's contracted mold remediator, testified that his company's solely "visual" assessments could miss, among other things, mold behind drywall, and therefore were not the "full" assessments that the consent order required. App. 120; *see* 3/15/23 Tr. 119-23, 130, 133.

- MP PPH's monthly reports and its lawyer's concession showed that the mold remediation was not completed within the 90-day deadline and would not be completed until four to six months after the already untimely (and insufficient) "visual" mold assessments were completed. App. 122-24; *see* SA 113 para. 3(d) (only 30 of 674 units remediated by deadline); 4/13/23 Tr. 20 ("it's at least, probably at least four to six months" until mold remediation of units is complete). Of course, none of the common areas had been remediated because none had ever been assessed for mold. App. 123.
- Concerning the full plumbing assessment, Rabin's testimony and the testimony of Joseph Nichols, a mechanical specialist hired by MP PPH, showed that the general "inspection," one-day "survey," and "one-page letter" MP PPH submitted were not submitted within the 30-day deadline and did not satisfy the consent order's requirement for a *full* plumbing assessment by a licensed plumber. App. 124-25; *see* 3/14/23 Tr. 112-13 (Rabin's testimony confirming the general "inspection" did not meet the deadline); 3/13/23 Tr. 150-52 (Nichols' testimony confirming the one-day "survey" was not a full assessment); SA 32 (explaining myriad problems with the "one-page letter").
- Given its failure to conduct that full plumbing assessment, MP PPH necessarily failed to comply with the consent order's obligation that it "remediate all plumbing issues identified in the plumbing assessment" within 120 days of the

deadline. App. 125. In fact, MP PPH had undertaken "no plumbing remediation whatsoever." App. 126.

- Rabin's and Nichols' testimony also showed that the "inspections" did not satisfy the consent order's HVAC assessment provision either, for the same reasons explained above. App. 126.
- MP PPH's failure to comply with the HVAC assessment provision meant it also failed to "remediate all HVAC issues identified in the HVAC assessment." App. 127.
- MP PPH's monthly reports showed that the mold remediation in specified units was not completed within the 90-day deadline—in fact, the mold remediation company "did not *start* remediating the units . . . until January 2023, at least eight months after the remediations were to be *completed*." App. 128 (emphasis added); *see* SA 166-67 para. 6(a).
- MP PPH's monthly reports also "acknowledge[d] . . . that it has not made the necessary repairs in all of the units" identified in the CTI inspection report by the 60-day deadline, which included "serious housing code violations" such as "malfunctioning exhaust fans, mold, and a lack of hot water." App. 129; *see* SA 175 para. 5(b) (6 of 18 units still awaiting remediation as of April 2023, more than a year after the deadline).

- MP PPH conceded that it failed "to ensure that all laundry facilities in the complex were operational within 60 days" and "that the laundry facilities in one of the high-rise towers—home to approximately 1,000 residents—ha[d] not been operational since the issuance of the consent order." App. 129-30; *see* SA 166 para. 5(f) ("[w]ork to repair the laundry rooms damaged by fire has been delayed"); 3/14/23 Tr. 114 (Rabin's testimony confirming the laundry rooms in the 2300 building are not "available for use" and were described as "closed temporarily" in eight consecutive monthly reports).
- Rabin's testimony confirmed that the swimming pool opened late. App. 131; *see* 3/14/23 Tr. 71.
- MP PPH conceded that it failed to conduct ongoing extermination work for insect and rodent infestations in all units and selected common areas "until after the District filed its renewed motion for contempt," nearly a year after the consent order's deadline. App. 131-32; *see* SA 139-40 para. 2(a) (contending as of January 2023 that the consent order was "unclear" that all of the units must be treated continuously for six months but that it had finally engaged a company to do so); *see also* App. 66 (consent order requires extermination company to "complete the extermination work in 100% of the Property's units . . . [and] continue to provide monthly treatments of the Property's units . . . for at least (6) months").

- MP PPH's monthly reports showed that MP PPH did not *begin* the elevator replacement project until five months after the 120-day deadline and that the project would not be completed until eighteen months after the deadline. App. 134; *see* SA 135 para. 7(c) ("[e]levator modernization is scheduled to begin on November 1"); SA 156-57 para. 7(c) (elevator modernization is "projected to be completed . . . December 15, 2023"). And the testimony of Aaron Sleasman, MP PPH's elevator witness, showed that MP PPH's impossibility defense was baseless because the project could have been completed more quickly if MP PPH had been willing to spend more money. App. 135; *see* 3/14/23 Tr. 137-42.
- Despite agreeing in the consent order to replace any elevators or chairlifts as recommended by an outside assessor, MP PPH conceded that it did not replace the wheelchair lift after such a recommendation, and Rabin testified that he needed to "regularly call the repair company to service the lift." App. 135-36; SA 99-100 para. 3(c) (the company that installed the wheelchair lift determined "that the lift is not repairable" and MP PPH "is assessing a full replacement of the wheelchair lift, which may take three to four months"); 3/14/23 Tr. 115 (the wheelchair lift was never replaced), 121 ("[w]e regularly were calling [the repair company] back out to make repairs" through November 2022).
- The contractors that MP PPH engaged for mold remediation, mold assessment, and general maintenance testified that MP PPH's failure to pay them led to work

stoppages and near-stoppages, showing that MP PPH violated the requirement that it expeditiously and fully fund all repairs and replacements. App. 136-37; *see* 3/14/23 Tr. 17-19 (failure to pay mold remediator resulted in four months with no mold remediation); 3/13/23 Tr. 103-04 (similar work stoppage in December 2022 because MP PPH failed to pay mold assessor); 3/13/23 Tr. 179-82 (general maintenance contractor describes issues with nonpayment since mid-2021, was at one point owed $450,000 by MP PPH, and considered work stoppage).

The Superior Court plainly had a firm factual basis for concluding that MP PPH violated each of these provisions of the consent order, and it reasonably rejected MP PPH's defenses of substantial compliance or impossibility where they were raised.

2. MP PPH's single challenge to the Superior Court's contempt determinations lacks merit.

On appeal, MP PPH does not dispute that it was in flagrant violation of more than a dozen provisions of the consent order and that no defense applies. In particular, MP PPH does not challenge the Superior Court's contempt findings on mold assessment, mold remediation, plumbing assessment, plumbing remediation, HVAC assessment, HVAC remediation, CTI inspection repairs, laundry facilities, exterminations, elevators, the wheelchair lift, or expeditiously and fully funding all repairs and replacements. *See* Br. 26-50. MP PPH has therefore waived any

argument that it was not properly held in contempt on *all* of these provisions. *See Fells v. Serv. Emps. Int'l Union*, 281 A.3d 572, 579 & n.3 (D.C. 2022).[3]

MP PPH does insist that the consent order was not "entered" or "effective" until March 2, 2022, relying on the omnibus order from that date. Br. 24, 39 n.8. But that ignores the mountain of evidence showing that the consent order was actually entered and effective when the court approved it at the hearing on January 28 (and indeed, that the parties were prepared for it to be effective as early as January 4). *See supra* p. 6-7 & n.1. MP PPH offers no argument why it was not "subject to the terms" of the consent order at that time. *D.D.*, 550 A.2d at 43. Nor does MP PPH explain why the supposed discrepancy in the date shows that the Superior Court abused its discretion. In any event, as Judge Kravitz explained, "[e]ven if the court were to conclude that the consent order took effect on March 2, 2022, the court

[3] At most, MP PPH argues that tenant Francine Gladden's testimony about the broken wheelchair lift "was at least insufficient to rise to the required level of clear and convincing proof." Br. 33. But Gladden's testimony was not the basis of the Superior Court's determination that MP PPH violated the consent order's provision related to the wheelchair lift. As the court explained, "[i]t is uncontested that a contractor hired by MP PPH to assess the wheelchair lift recommended that the lift be replaced, and that MP PPH did not follow the recommendation." App. 136; *see* SA 99-100 para. 3(c). That obviously violated the consent order's requirement that MP PPH "engage a contractor" to "replace[] elevators or chairlifts [if the assessment deems it] to be necessary." App. 69. Even now, MP PPH does not argue that it substantially complied with that requirement.

would readily find multiple violations of the order, as MP PPH remained in extensive noncompliance more than 120 days after March 2, 2022." App. 119.

The only violation of the consent order that MP PPH now disputes is whether the swimming pool was open to tenants in summer 2022. Br. 35-36 (claiming "insufficient evidence of noncompliance at the time of the evidentiary hearing"). That effort fails. A resident testified that the pool was open only for a week that summer, 3/13/23 Tr. 49-50, and MP PPH's witness did not contradict that statement—indeed, Rabin acknowledged that the pool opened late in the season, though he did not know for how long, and thought it was open through Labor Day, 3/14/23 Tr. 71. The consent order required the pool to be open by May 28, App. 68-69, a deadline that not even MP PPH contends was met. And even if the Superior Court's determination of this single violation was erroneous, it would not matter. The clear violation of 13 other health and safety provisions of the consent order remain, and as discussed *infra* Part I.B, together they amply justify the Superior Court's contempt sanctions. Indeed, the Superior Court did not even mention the swimming pool violation in explaining its choice of sanction. *See* App. 139-40.

B. The Superior Court properly imposed the rent abatement to compensate the individuals aggrieved by the egregious conditions at the property and to coerce MP PPH's compliance with the consent order.

Having found a violation of a court order, "the trial judge enjoys broad discretionary powers in designing appropriate orders for contemptuous conduct."

Jerry M., 571 A.2d at 191. "Although the sanctions the [c]ourt imposes must be adapted to the particular circumstances of the case, and . . . should be related to the [c]ourt's interest in ensuring compliance with the underlying court order, the [c]ourt 'may require the contemnor to perform affirmative acts, even though these actions were not mandated by the underlying decree,' if requiring such acts is necessary 'to coerce the contemnors into compliance with the court's order and to compensate the complainant for losses sustained.'" *Loewinger*, 977 A.2d at 923 (quoting *Jerry M.*, 571 A.2d at 191, and *W. Tex. Util. Co. v. NLRB*, 206 F.2d 442, 448 (D.C. Cir. 1953)) (citations omitted). "The measure of the court's power in civil contempt proceedings is determined by the requirements of full remedial relief," which in addition to affirmative acts may include "the payment of money." *McComb v. Jacksonville Paper Co.*, 336 U.S. 187, 193-94 (1949). In fashioning full remedial relief, "'the court must consider the character and magnitude of the harm threatened by the continued violation, and the probable effectiveness of any suggested sanction in bringing about the desired result.'" *Jerry M.*, 571 A.2d at 190 (quoting *United Mine Workers*, 330 U.S. at 304). The options available to the court are "numerous even if not unlimited." *Id.* at 191 n.29.

The Superior Court, which presided over a three-day evidentiary hearing and received both pre- and post-hearing briefing, was in the best position to determine how to compensate the individuals aggrieved by MP PPH's past noncompliance and

to coerce MP PPH's future compliance with the consent order. In carefully crafting the rent abatement and other sanctions, the Superior Court properly exercised its broad discretion to accomplish both goals "at the same time." App. 139.

Compensation. The court first considered the record evidence establishing the "character and magnitude of the harm threatened by MP PPH's continued violation" of the consent order, highlighting the "severity of the unsafe and unsanitary conditions the residents of the complex have been forced to endure these many months." App. 139. 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." App. 139.

There is ample support for that determination in the record. To start, MP PPH's violations were complex-wide. One mold remediation company found mold "in essentially every unit and/or area in which it worked." App. 98; *see also* 3/14/23 Tr. 117. Another estimated that "50 to 60 percent" of units required mold remediation. 3/14/23 Tr. 11-12. And of those units, a "significant number" would require sufficiently long-term structural work to remediate mold that tenants would have to be relocated. 3/14/23 Tr. 16; 3/15/23 Tr. 64 (estimating "at least probably 60 to 75 units that will have to be moved" for mold remediation), 67 (agreeing that

tenants were currently living in the mold-impacted units). And tenants themselves testified about mold not just in their own units, but in other units and common areas. *See, e.g.*, 3/13/23 Tr. 57, 86, 137, 143. So did MP PPH's own witnesses. *See, e.g.*, 3/14/23 Tr. 33 ("There was a corrective order issued by [the government] on the wetness and the mold inside the parking garages."). Mold contamination constitutes a "serious threat[] to the health [and] safety" of tenants that was exacerbated by MP PPH's egregious delays in assessment and mediation. *See* D.C. Code § 42-3651.02(c)(2) (defining "contamination" as a "serious threat" warranting appointment of a receiver if unabated).

Chronically deficient building-wide systems, like failing plumbing (causing persistent leaks and mold) and faulty HVAC, also harmed tenants throughout the whole complex. MP PPH's own witness testified that "[i]t was recommended that the majority of—or really all of the plumbing be replaced at the property." 3/14/23 Tr. 96. That is because a survey (not even a full assessment) from July 2022 "found pretty significant issues with the plumbing of the property." 3/15/23 Tr. 231. Another witness, who did general maintenance at Marbury Plaza, said he worked on leaks at the property "[p]retty much every day." 3/13/23 Tr. 175-76. Tenants also testified to leaks in their own units, *see, e.g.*, 3/13/23 Tr. 30, 72, 143, and in common areas, *see* 3/13/23 Tr. 137. As the Superior Court explained, because MP PPH never conducted the required full assessment of the property's plumbing, it never

conducted the required remediation either. App. 125-26. There were also longstanding issues with air conditioning, including multi-week outages in the height of summer, as well as heat and hot water failures at Marbury Plaza. 3/13/23 Tr. 146-47 (Nichols explaining problems with the broken hot water system in spring 2022); Michael Brice-Saddler, *Once a Black middle-class haven, a D.C. apartment complex falls into disrepair*, Wash. Post (June 12, 2021), https://tinyurl.com/mtdsf94h (describing an air conditioning outage that lasted a month in summer 2021); *see generally* SA 34-35. And according to MP PPH's property manager's notes on "air conditioning" in July 2022, the "[c]irculator pump in the 2330 [b]uilding [kept] shutting down." 3/14/23 Tr. 107. Again, because MP PPH never conducted the required full assessment of the property's HVAC, it never conducted the required remediation of that system either. App. 127-28.

Insect and rodent infestations were a persistent problem throughout the complex too. *See* App. 78 (DCRA inspections from 2017 to November 2021 have repeatedly found violations for mice and pest infestations); 3/13/23 Tr. 123 ("lots and lots of rats" in common areas), 124 (exterminators had only come to tenant's unit once since 2021). MP PPH's ongoing failure to remediate this "[v]ermin or rat infestation" also poses a "serious threat" to tenants. D.C. Code § 42-3651.02(c)(2).

Constantly broken elevators and nonfunctional laundry facilities also affect the quality of life for most tenants. MP PPH's seven elevators across three buildings

were in such bad shape that the assessment recommended they all be replaced. App. 134. Given that dire starting point, MP PPH's egregious delays—not beginning the replacement project until five months after the deadline, with a completion date eighteen months after the deadline, App. 134—plainly harmed its residents en masse. And MP PPH itself admitted that "the laundry facilities in one of the high-rise towers—home to approximately 1,000 residents—ha[d] not been operational since the issuance of the consent order and remain[ed] unavailable" as of the contempt order. App. 129. No laundry facilities for nearly half the residents, particularly when combined with the malfunctioning elevators, creates significant building-wide harm. Finally, the broken wheelchair lift is an unacceptable burden on residents with disabilities. MP PPH's refusal, in violation of the consent order, to replace its sole wheelchair lift and then needing to "regularly" call for service when it breaks, App. 136, imposed needless suffering on residents with disabilities and their families.

Given the severity and complex-wide nature of these harms to tenants, the Superior Court reasonably concluded that a substantial rent abatement for all tenants would properly serve the compensatory aims of civil contempt. The court was not, however, required to assess whether each of Marbury Plaza's 2,500 tenants had lost half the value of their tenancy. That is so because tenant compensation was only *part* of the purpose served by the rent abatement.

Coercion. The rent abatement also served to coerce MP PPH into compliance with the consent order. In assessing the "probable effectiveness of [the] sanction" in bringing about such compliance, *Jerry M.*, 571 A.2d at 190, the court reasonably judged that a heavy hand was necessary. MP PPH had, after all, brazenly flouted numerous provisions of the consent order for months on end. And its excuses lacked merit. In particular, the court rejected as specious MP PPH's purportedly "precarious financial condition," explaining that MP PPH's members, Pilavas and his wife, "have extensive real estate holdings—totaling more than 1,500 residential units and more than 40 office suites in at least three states and the District of Columbia—and that they have repeatedly moved more than $10 million in and out of MP PPH, seemingly whenever doing so advanced their investment purposes." App. 141.

The court also found that 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." App. 138. MP PPH had repeatedly failed to pay its contractors, leading to work stoppages on critical projects like mold remediation, and "cut corners whenever possible." App. 137. It also failed to make a "diligent and energetic" effort in carrying out the consent order; on most provisions, it barely made "a token effort to comply." *D.D.*, 550 A.2d at 44. The court reasonably concluded that a stiff sanction was needed to break through this intransigence. Given the combination of

this need to forcefully coerce MP PPH and the goal of compensating the injured tenants, the 50% rent abatement was not an abuse of the court's broad discretion.

II. MP PPH's Challenges To The Contempt Sanctions Lack Merit.

Instead of meaningfully disputing the fact or extent of its contempt, MP PPH attacks the sanctions Judge Kravitz imposed and, at times, Judge Kravitz himself. MP PPH complains that the 50% rent abatement and other sanctions are unsupported by the facts, unavailable under the law, or were not imposed in accordance with procedure.

As a threshold matter, many of MP PPH's arguments against the contempt sanctions are forfeited because they were not timely raised to the trial court. The District's post-hearing brief proposed an escalating rent abatement beginning at 10% and increasing to 50% if MP PPH did not comply with the consent order. SA 50-52. MP PPH had the chance to respond in its brief, yet it made no argument that such an abatement was legally barred for any reason. SA 72-73. And after the Superior Court asked the District during closing arguments whether it could impose both retrospective and prospective rent abatements (to which the District said yes), MP PPH failed to address rent abatement in its closing argument at all. 4/13/23 Tr. 6-8, 13-23. MP PPH's newfound arguments that the rent abatement was fundamentally improper, *see infra* Parts II.B, C, and D, are therefore forfeited. *L.S. v. D.C. Dep't*

on Disability Servs., 285 A.3d 165, 172 n.9 (D.C. 2022) ("Arguments not raised in the trial court are normally spurned on appeal." (internal quotation marks omitted)).

If the Court chooses to reach those arguments, however, they all fail. The Superior Court's order is lawful under its "broad discretionary power . . . to grant full relief through the fashioning of appropriate remedial measures." *Loewinger*, 977 A.2d at 923.

A. The factual findings underpinning the contempt sanctions are not clearly erroneous.

MP PPH first claims that the Superior Court's sanctions rest on "general" findings of fact about the appalling conditions at Marbury Plaza applicable to all 2,500 residents that could not possibly have been supported by just three residents' testimony. Br. 28-29. Therefore, MP PPH urges, the court's conclusions about the conditions are "plainly wrong or without evidence to support them." Br. 28.

But MP PPH's premise is flawed. The Superior Court's sanctions were not based only on the three residents' testimony. Of course, the three residents provided helpful context and highlighted their personal (though not unique) experiences living at Marbury Plaza. As detailed above in Part I.B, however, the record is replete with *additional* evidence—much of it from MP PPH's own witnesses and its own filings—establishing that the widespread violations of the consent order degraded the entire complex. Based on that robust record, the Superior Court made the commonsense factual finding that Marbury Plaza's residents as a whole have been

"forced to endure" "sever[ely] unsafe and unsanitary conditions" for many months, including "pervasive mold, floods, leaks, and insect and rodent infestations, along with the malfunctioning plumbing and HVAC systems and the broken elevators and wheelchair lift." App. 139. That finding is neither plainly wrong nor unsupported. And it applies just as much to future tenants as it does to former and current tenants. Br. 29-30. If MP PPH did nothing to fix the pervasive issues at its property, future residents would equally suffer from its egregious housing violations. And allowing MP PPH to mistreat future tenants with impunity would completely undermine the Superior Court's authority and the purpose of the contempt sanction.

In light of the other record evidence justifying the Superior Court's decision, MP PPH's attempts to undermine the three testifying tenants' credibility fall flat. *See* Br. 30-34. In any event, much of MP PPH's nitpicking of dates and personal experiences is unpersuasive on its own terms. It was not "inconsistent" or "contradictory," Br. 30, for Barbara Cooper to say in a November 2022 declaration that her apartment had last flooded in May, Br. 31, and then to update the court in March 2023 that it had flooded again the month before, 3/13/23 Tr. 30. Nor is Cooper's credibility remotely impeached by the fact that she did not draft her own declaration. Br. 31 & n.6. It is also a stretch to call Gladden's testimony about the chair lift "inconsistent" or "contradictory." Br. 32-33. Gladden, who uses a scooter, explained in her November 2022 declaration that the chair lift was frequently broken

and was briefly repaired in the summer of 2022, but had not worked since then. SA 185. She then explained at the evidentiary hearing in March 2023 that by the end of February, the lift had started working again, even though it had been broken for most of the year before. 3/13/23 Tr. 77-78. When MP PPH's lawyer asked Gladden the ambiguous question whether "the chair lift has not been working fully since November 2022," Gladden agreed, 3/13/23 Tr. 92, though she easily could have understood the question to refer to the time before the recent fix she had just testified about. Finally, MP PPH's effort to imply that Sandra Bray "changed" her testimony, Br. 34, collapses after one glance at the transcript. Bray testified that she reported seeing rats in the trash at her "last meeting" with property management, which she thought might have been "[p]robably somewhere . . . in between three to six months" ago. 3/13/23 Tr. 141. When MP PPH's lawyer moved on to the next question, Bray explained she was "still trying to deal with that [last] question" because she knew she had reported the rats at the "last meeting," and then realized that the last meeting was "a month ago, maybe two months ago," not three to six months ago. 3/13/23 Tr. 142. MP PPH's characterization of this as an "abrupt change[]" from "six months" is unpersuasive. Br. 34.

B. The Superior Court did not need testimony from all 2,500 tenants.

MP PPH next attacks the Superior Court's decision to impose the rent abatement without hearing testimony from each of Marbury Plaza's 2,500 residents

about the diminution in value of their tenancies. Br. 27-30. According to MP PPH, the law requires "evidence specific to each resident," and "[e]very such claim would have to be presented by each of the persons involved in order to give a basis for such relief." Br. 29 (citing *District of Columbia v. Bongam*, 271 A.3d 1154, 1157-58 (D.C. 2022)).

Bongam does not require such an absurd result. *Bongam* is not about a court's civil contempt authority at all and never even uses the word "contempt." *Bongam* instead clarified how the District's wage theft law interacts with the burden-shifting framework in Fair Labor Standards Act cases. In particular, *Bongam* held that "the question of employee status is part of the complainants' burden in establishing a prima facie case under the [District's wage theft statute]," that "it was proper to require evidence probative of the central issue of whether the non testifying complainants were employees," and that an employee must produce "sufficient evidence to show the amount and extent of [their] work as a matter of just and reasonable inference, which the court should utilize to calculate approximate damages." *Bongam*, 271 A.3d at 1163, 1165 (internal quotation marks omitted).

Those rules have no application here. The trial court did not award damages under any statute, let alone a wage theft statute that requires individualized proof of employment status or the amount of pay wrongfully withheld. The court instead exercised its considerable discretion, following a contempt finding, to "grant full

relief through the fashioning of appropriate remedial measures." *Loewinger*, 977 A.2d at 923. If the only purpose of this relief were compensatory, perhaps there might be a better argument that more precise evidence of the tenants' damages would be required. But as noted, the sanction here had both compensatory *and coercive* components. *See* App. 139; *Giles*, 911 A.2d at 1224 ("a trial court may exercise its civil contempt power for either *or both* of two purposes," coercion or compensation (emphasis added) (internal quotation marks omitted)). Under these circumstances, there is no basis to require individualized proof of every tenant's damages. After all, "mathematical exactitude is not required" of contempt sanctions: "so long as a sanction is reasonably proportionate to the offending conduct, the trial court's quantification of it ought not to be disturbed." *Goya Foods, Inc. v. Wallack Mgmt. Co.*, 344 F.3d 16, 20 (1st Cir. 2003).

C. The Superior Court did not abuse its discretion by imposing a rent abatement that compensated the residents instead of the District.

In half a sentence, MP PPH asserts that "the rent reductions and related lease modifications impermissibly went to nonparties." Br. 37 (citing *Multi-Fam. Mgmt., Inc. v. Hancock*, 664 A.2d 1210, 1217 n.12 (D.C. 1995)). The Court should disregard this point as insufficiently developed. *See Wagner v. Georgetown Univ. Med. Ctr.*, 768 A.2d 546, 554 n.9 (D.C. 2001). It is also wrong. *Multi-Family Management* is not about contempt, and the portion that MP PPH cites is a partial concurrence by a single judge. The concurrence questioned whether the trial court

had equitable authority to order part of a rent abatement to be paid to a nonparty federal housing agency. *Id.* at 1217-19 & n.12 (Ferren, J., concurring). It in no way suggests that the court lacks authority to order rent abatements to be paid to residents as a sanction for civil contempt where, as here, the Attorney General in his *parens patriae* role has sued on behalf of those residents. Nor would such a rule make any sense given that one purpose of civil contempt is compensation to those aggrieved.

In fact, the Supreme Court rejected an argument similar to MP PPH's decades ago in *McComb*, a case brought by the Administrator of the Wage and Hour Division of the U.S. Department of Labor in which the district court ordered payment of unpaid wages to nonparty employees as a contempt sanction. As the Court explained: "The fact that the Administrator is the complainant and that the back wages go to the employees is not material. It is the power of the court with which we are dealing—the power of the court to enforce compliance with the injunction which the Act authorizes, which the court has issued, and which respondents have long disobeyed." 336 U.S. at 194-95 (footnotes omitted). The Court had "no doubts concerning the power of the [district court] to order respondents, in order to purge themselves of contempt, to pay the damages caused by their violations of the decree." *Id.* at 193. So too here.

MP PPH's skeletal objection to nonparty relief rings especially hollow given that, in the Superior Court, it opposed the District's proposed $5,000 daily fine on

the ground that it "will not help the tenants." SA 72; 4/13/23 Tr. 14-15. In MP PPH's view, apparently, there can be no relief for the nonparty tenants *and* no relief for the District, even in the face of MP PPH's blatant contempt. That would render the consent order a nullity and leave the Superior Court powerless to enforce its orders.

D. The consent order does not limit the Superior Court's authority to impose these contempt sanctions.

MP PPH next asserts that "the scope of the relief must be circumscribed by pending litigation, including the Consent Order," and that the sanctions are impermissible because the consent order "did not include a provision for the penalties that the Superior Court awarded." Br. 37; *see* Br. 37-40. This puzzling line of argument lacks any basis in law. MP PPH cites no authority, nor is the District aware of any, for the proposition that the only permissible sanctions for contempt are ones described within the order that was violated. In fact, *Jerry M.* (cited at Br. 38) illustrates that the rule is the opposite. "The trial court does not require a party's permission before it may impose sanctions on that party in order to induce compliance with the trial court order." 571 A.2d at 191. "The [contemnor's] contention that the trial judge's sanctions impose an obligation on [it] without its consent misses the mark. The [contemnor] has already consented to be bound by the Consent Decree as an order of the Superior Court." *Id.*

Likewise without merit is MP PPH's complaint that the Superior Court impermissibly "[used] the Consent Order to grant relief referred to in the First Amended Complaint" through an "abbreviated proceeding." Br. 38-39. The contempt ruling did not adjudicate the merits of the District's CPPA and TRA claims, nor did it grant all of the relief the District seeks for those claims. That the contempt sanction overlaps to some extent with the relief the District seeks on the merits is irrelevant. Neither logic nor legal authority suggests that such overlap forecloses a contempt sanction that is otherwise appropriate. And neither the contempt proceedings nor this case as a whole have been improperly "abbreviated" in any way.

Even less persuasive is MP PPH's contention that "Judge Kravitz consciously went outside of the contempt process and granted relief on entirely different legal grounds than had been cited to him." Br. 39. MP PPH bases this aspersion on a single sentence in the contempt order: "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." App. 139-40. Although accurate, the sentence is dictum. The court *found* contempt, and the express basis for its order was its "broad discretionary authority" to remedy that contempt. App. 138; *see* App. 138-40. For the reasons explained, the court did not abuse that discretion.

E. The instructions regarding pending Landlord and Tenant Branch cases are appropriate.

The contempt order does not include improper "directives regarding other litigation." Br. 40; *see* Br. 40-43. The order requires only that MP PPH, the contemnor, withdraw, dismiss, or make updated filings in certain pending nonpayment-of-rent cases in the Landlord and Tenant Branch to reflect the rent abatement. App. 143-44. The contempt order puts no obligation or restriction on any other litigant or judge. And there is apt authority for ordering MP PPH to update particular filings in the Landlord and Tenant Branch in light of the rent abatement: this Court's decision in *Loewinger*, 977 A.2d 901. There, the trial court (as here, Judge Kravitz) adjudicated property owner Lanier Associates in civil contempt for violating "the clear and unambiguous directives" of a receivership order that prohibited it from prosecuting actions for nonpayment of rent in the Landlord and Tenant Branch. *Id.* at 908-10. Among other "non-monetary sanctions aimed at enforcing full compliance with the receivership order," the court ordered Lanier Associates to "maintain its position . . . that its pending nonpayment action against [a tenant] . . . should be dismissed" and required "counsel for Lanier Associates . . . to appear at the [upcoming] hearing and argue in favor of dismissal." *Id.* at 925. This Court not only affirmed Judge Kravitz's "thorough and scholarly opinion," it adopted it as its own. *Id.* at 906.

The sanctions here are no different. Contrary to MP PPH's pronouncements, the sanctions do not "upset[]" or "upend" any procedures, direct a judgment in any individual case, or constrain the authority of any other judges. Br. 41-42. Rather, they merely require MP PPH to promptly and accurately update its filings in pending cases to reflect the rent abatement. That may, much as in *Loewinger*, require MP PPH to move to dismiss actions where no rent is presently owed for the period covered by MP PPH's original complaint. *See* App. 144. But that is hardly a troubling imposition. Plaintiffs in nonpayment-of-rent cases are already obligated by the court rules to bring rent ledgers or other documents establishing payment history to every hearing and to produce all materials on request. *See* Super. Ct. L&T R. 10(b)(1). It is difficult to understand MP PPH's argument that, for instance, requiring it to amend a filing to note that a tenant now owes less rent prevents the Landlord and Tenant Branch from considering "the particular circumstances of each individual case." Br. 42. It just ensures that the relevant court knows the *current and complete* "particular circumstances" of each case. MP PPH surely does not mean to suggest that it would fail to disclose to the Landlord and Tenant Branch a material change in the amount of rent due absent the court's order.

Tellingly, despite having made this same argument a full year ago during the stay briefing, *see* 5/16/23 MP PPH Mot. to Stay Appeal 9-12, MP PPH is still unable to point to any particular landlord-tenant case that has been disrupted by this

"directive." And the contention that Judge Kravitz's "extension of authority to other cases" is "evidenced by informal off-the-record interviews Judge Kravitz said he had with unidentified Magistrate Judges" is meritless. Br. 42 (citing 2/6/24 Tr. 45-46). In the cited transcript pages from the February 2024 hearing, Judge Kravitz merely relayed what he had "heard . . . from magistrate judges who sit in landlord tenant court" about MP PPH's legal positions. 2/6/24 Tr. 46. Hearing about other judges' cases is not an exercise of "authority" over them.

F. The court did not abuse its discretion by not following a "three-step process."

MP PPH asserts that there is a "Required Three-Step Process" for imposing civil contempt sanctions. Br. 43 (section heading). According to MP PPH: (1) the court issues a show-cause order; (2) if it finds contempt, it must first issue a *conditional* contempt order that merely *threatens* a specified sanction; and (3) only if the contemnor remains noncompliant (for some undefined period), the court can actually impose the sanction. Br. 43-44 (citing *Morgan v. Barry*, 596 F. Supp. 897 898-99 (D.D.C. 1984)). MP PPH complains that the Superior Court flouted this process by actually imposing sanctions in the April 2023 contempt order without first merely threatening them. *See* Br. 44-45.

The problem for MP PPH is that no authority required the Superior Court to use this three-step process. MP PPH fails to identify a single case where this Court has held that this process must be followed. Quite the contrary: this Court has

endorsed civil contempt sanctions of $1,000 per day for prospective noncompliance, *see Jerry M.*, 571 A.2d at 183 n.16, and awarded hundreds of thousands of dollars to remedy past noncompliance, *see Fed. Mktg. Co. v. Va. Impression Prods. Co.*, 823 A.2d 513, 518, 520 (D.C. 2003), without any mention of this supposedly required three-step process. The most MP PPH can muster is dicta by this Court that it had "no quarrel" with the premise that this warning-shot process would be "appropriate" if a judge "ordered that the [contemnor] be imprisoned until such time as she [complied] and promised not to transgress again." *D.D.*, 550 A.2d at 47. It would be "appropriate to stay" such a "draconian remedy," the Court advised, "until the [contemnor] had an opportunity to comply." *Id.*

That dicta does not invalidate the Superior Court's contempt sanction here, where nothing akin to imprisonment has ever been at issue. Once again, advance warning of possible monetary sanctions—as opposed to notice of the terms of the underlying order—is not required. MP PPH had ample notice of the consent order it agreed to, plenty of time to comply, and multiple opportunities to brief and present evidence on whether it violated the order and, if so, the appropriate sanctions, including the rent abatement it now challenges. Nothing more was needed. In short, by late April 2023, MP PPH was not entitled to a *further* grace period or the chance to avoid compensating the tenants for harms already inflicted by MP PPH's contempt. *See generally McComb*, 336 U.S. at 193 ("Respondents are not unwitting

victims of the law. Having been caught in its toils, they were endeavoring to extricate themselves. They knew full well the risk of crossing the forbidden line.").

The Court should also reject MP PPH's argument that the Superior Court abused its discretion by not considering "other, lesser alternatives" as a first step. Br. 46. The court *did* consider lesser alternatives—it considered the District's original $5,000 per-day fine proposal and MP PPH's proposal for contempt with no consequences. App. 138; *see* 4/13/23 Tr. 2-3, 6-9, 13-15. But in exercising its judgment about "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," the trial court decided those proposals would be insufficient. App. 139. Instead, it imposed serious but reasonable sanctions in light 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," as well as the evidence of "MP PPH's own unwillingness to comply or to invest the money necessary for full compliance." App. 138. That choice was not an abuse of discretion.

G. The Superior Court did not impose criminal contempt sanctions.

At various points MP PPH appears to argue that the Superior Court imposed punitive *criminal* contempt sanctions rather than coercive and compensatory *civil* contempt sanctions. *See, e.g.*, Br. 44-47. That argument has no support in the record

or the law. To start, MP PPH distorts the record by claiming that the rent abatement was supposed to remain in place "indefinitely," which it links with criminal contempt. Br. 44 (quoting App. 140). But the contempt order's *very next sentence* says that "[t]he abatement will be vacated upon . . . certification of MP PPH's full compliance with the consent order." App. 140. That is classic civil contempt. And the sanction did not somehow become criminal just because the Superior Court, in a hearing occurring many months *after* the contempt order, advised the tenants of their right to withhold rent on their own. *Contra* Br. 44.

Nor does the severity of the sanctions suggest that this was secretly criminal contempt—for civil contempt, too, may be "drastic." *D.D.*, 550 A.2d at 43. The key question is whether the contempt is punitive or remedial. If the contempt sanction either is compensatory or may be purged on compliance with an order, it is remedial. *See id.*; *see Int'l Union, United Mine Workers v. Bagwell*, 512 U.S. 821, 829 (1994) (an opportunity to purge is required to make a contempt sanction civil only where the relief is "not compensatory"). Here, as the Superior Court made clear, the rent abatement—which *is* in part compensatory—would end if MP PPH finally complied with the consent order. App. 140. That MP PPH cannot get back *past* portions of the abatement does not make the sanction impermissibly punitive; a party likewise cannot get back daily civil contempt fines once it finally complies with an order. "To treat an act of disobedience as having become insulated from contempt sanctions

because it has been completed would have the effect of countenancing *seriatim* violations. [This Court] cannot accept the proposition that a judge's authority to ensure compliance with a court order is so ephemeral." *D.D.*, 550 A.2d at 45-46.

MP PPH also claims that the Superior Court "illogically" failed to count as compliance actions that MP PPH took months before the consent order was entered. Br. 44-45 (citing App. 124, 126). But MP PPH is a sophisticated, represented party that agreed to the consent order. That order required MP PPH to conduct plumbing and HVAC assessments within a certain number of days. App. 124, 126. MP PPH failed to do that. It is not "illogical[]" or an abuse of discretion not to give MP PPH credit for actions required by the consent order that it did not take.

MP PPH also argues that the Superior Court wrongly "discounted" its compliance where the court determined that its compliance was motivated by the filing of the contempt motion rather than any effort to comply with the consent order. Br. 44 (citing App. 120, 125, 128, 131). But in reality, there was no compliance to discount.[4] The Superior Court was well within its discretion to determine that MP

[4] MP PPH failed to act on the mold assessments until "many months after the deadline." App. 120. It did not even begin mold remediation "until at least eight months after the remediations were to be completed," with no evidence "even suggest[ing] diligent and energetic efforts," App. 128. The non-compliant plumbing survey was also "more than ten months after the deadline." App. 125. And MP PPH conceded that it did not complete ongoing extermination work within 30 days of the consent order, even as Marbury Plaza residents continued "to be plagued by infestations of insects and vermin" more than a year after the deadline. App. 131.

PPH's belated efforts were not "substantial compliance"—a "narrow" defense, *Loewinger*, 977 A.2d at 916, in which MP PPH must "obey [the consent order] honestly and fairly" and "take all necessary steps to render it effective," *id.* (quoting *Jerry M.*, 571 A.2d at 190 n.28). Waiting eight months to a year to conduct critical assessments and remediation that were supposed to be done within 30-90 days, and only then because the District moved for contempt, is no such thing. Indeed, MP PPH's too-little, too-late efforts *support* the court's decision to impose a substantial rent abatement to coerce compliance.

H. MP PPH's "constitutional" arguments are forfeited and meritless.

In two threadbare paragraphs, MP PPH asserts that the contempt order was an abuse of discretion because it "plainly violates numerous fundamental Constitutional rights." Br. 47-48. The Court should disregard these perfunctory assertions as fatally undeveloped. *See Wagner*, 768 A.2d at 554 n.9. In any event, given the record evidence of the conditions at Marbury Plaza and MP PPH's longstanding recalcitrance, these *coercive and compensatory* sanctions do not transgress the Due Process Clause's prohibition on "grossly excessive or arbitrary *punishments*" for tortfeasors. *Daka, Inc. v. McCrae*, 839 A.2d 682 697 (D.C. 2003) (emphasis added). Nor do they impermissibly "deprive [MP PPH] of its right to the use of private property, the ability to enter into leases, and rental income." Br. 48. Given that

courts may put people in jail for civil contempt, the notion that a rent abatement is beyond the constitutional pale is not plausible.

I. MP PPH's arguments about discrimination on the basis of perceived wealth and corporate veil-piercing are forfeited and meritless.

MP PPH's arguments that the Superior Court discriminated against Pilavas because of his perceived wealth or that it improperly pierced the corporate veil are likewise fatally perfunctory and undeveloped. *See* Br. 49-50. And regardless, neither MP PPH nor Pilavas were treated unfairly (much less comparably to the black criminal defendants in *Chambers v. Florida*, 309 U.S. 227 (1940) (cited at Br. 49)). That the court considered the fact that MP PPH's managing member had previously "moved more than $10 million in and out of MP PPH," App. 141, is plainly relevant to rebut MP PPH's argument that any contempt sanction "will further drain MP PPH, LLC's already struggling income," SA 72, and in no way demonstrates animus against Pilavas. MP PPH's argument that the court improperly pierced its corporate veil also lacks merit. Corporate veil piercing entails a court disregarding the corporate form to hold shareholders individually liable. *See Vuitch v. Furr*, 482 A.2d 811, 815 (D.C. 1984). The Superior Court did no such thing here: it held in contempt and imposed sanctions on MP PPH only, not Pilavas.

CONCLUSION

This Court should affirm the Superior Court's contempt sanctions.

Respectfully submitted,

BRIAN L. SCHWALB
Attorney General for the District of Columbia

CAROLINE S. VAN ZILE
Solicitor General

ASHWIN P. PHATAK
Principal Deputy Solicitor General

GRAHAM E. PHILLIPS
Deputy Solicitor General

/s/ Marcella Coburn
MARCELLA COBURN
Assistant Attorney General
Bar Number 1616416
Office of the Solicitor General

Office of the Attorney General
400 6th Street, NW, Suite 8100
Washington, D.C. 20001
(202) 724-5693
marcella.coburn@dc.gov

June 2024

CERTIFICATE OF SERVICE

I certify that on June 17, 2024, this brief was served through this Court's electronic filing system to:

Vernon W. Johnson, III
Kathryn Bonorchis
Gwynne L. Booth
Natasha N. Mishra

/s/ Marcella Coburn
MARCELLA COBURN