

PRELIMINARY INJUNCTION AND CIVIL CONTEMPT PROCEEDINGS

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**COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT**

SUFFOLK, ss.

**HOUSING COURT DEPARTMENT
CITY OF BOSTON DIVISION
CIVIL ACTION. NO.**

**ATTORNEY GENERAL FOR THE
COMMONWEALTH OF MASSACHUSETTS**
 Petitioner

vs.

██████████
 Respondent

PETITIONERS' OPPOSITION TO DEFENDANT'S EMERGENCY
MOTION TO DISSOLVE RECEIVERSHIP AND
CROSS MOTION FOR INJUNCTIVE RELIEF

The plaintiffs, Attorney General for the Commonwealth of Massachusetts, submit this opposition to plaintiffs' emergency motion to dissolve the receivership and cross motion for an injunction directing Respondent to vacate the premises, turn possession over to the receiver, and comply with all prior orders of this Court. As grounds for their opposition and cross motion, the plaintiffs state:

1. On June 30, 2007, the Court entered an order granting the Petitioners' motion to extend and modify the receivership of Jack Young over property located at ██████████, Dorchester. A copy of that order is attached hereto as exhibit 1. The receiver was appointed by the Court pursuant to M.G.L. c. 111, § 127I which states, in relevant part, that "[u]pon appointment, the receiver shall promptly repair the property and maintain it in a safe and healthful condition." M.G.L. c. 111, §127I. The powers and duties of Mr. Young as receiver were further delineated by the Court's June 30, 2000 Order, in particular paragraph 6.
2. The Respondent has blatantly violated the Court's June 30,2007 order by retaining full and exclusive possession of the premises and by his attempts to make repairs since entry of the June 30, 2007 order which fall within the receiver's express authority under the statute and the Court's June 30, 2007 Order. The Order requires that Respondent turn-over possession of the premises to the receiver, so the receiver can fulfill his statutory obligation

to"....promptly repair the property and maintain it in a safe and healthful condition." M.G.L. c.111, § 127I. The June 30, 2007 Order expressly states:

"Within 48 hours of the signing of this Order, the Respondent shall transfer to the Receiver the right to obtain all keys to the apartments and common areas of the premises...The Respondent shall provide the Receiver with reasonable advance notice prior to entering any part of the Property."

See June 30, 2000 Order, section 15. Rather than comply with this statute and Order, the Respondent took it upon himself to keep possession of the property, have his own workers on site, and refuse to grant access to the receiver. Young Aff." sections 5, 9, and 11.

3. Upon receipt of the June 30, 2007 Order, the receiver made a good faith attempt to begin the emergency repairs, secure the property from trespassers, and to make arrangements to make the repairs expected by the Court under the receivership order. See Affidavit of Jack Young, Esq., sections 9, 11. The Respondent had specific obligations under the Order, which included providing the receiver with the documentation necessary to secure the receiver's financing, contractor and other essential elements necessary to the receiver to complete his duties. See June 30, 2007 Order, section 15; Young Aff., section 6, 7. The Respondent has failed and refused to provide the documentation as required, hindering the receiver's ability to perform his duties. Young Aff., section 8. Needless to say, the Respondent failed to provide the 48 hour notice to the receiver of his intent to enter the premises as required by the June 30th Order at section 15.
4. Not only has Respondent violated the Court's June 30, 2007 order, his conduct on the premises has done more harm to an already bad situation. See Affidavit of Juan Ferriol dated September 7, 2007. He has completely gutted the interior of the property, failing to shore-up support beams and removing bearing walls on the first and second floors of the building. Ferrol Aff., section 9. He poured a concrete foundation, without submitting any of the structural plans required by the City to verify the quality and safety of the finished structure. Ferrol Aff., section 10. The Respondent failed to submit any exploratory permit, or engineer's report certifying the structural integrity of the building. Ferrol Aff., section 1. In sum, he has left the building in an unsafe condition, which poses a serious risk to the safety and health of not only the neighbors, but to his own workmen. Ferriol Aff., section 12, 15.
5. The Respondent has no excuse for violating the Court's explicit order by continuing to work on the property. Respondent has been involved in these proceedings for over a year. He is represented by counsel in these proceedings. At the June 28, 2007 hearing, the Respondent's counsel represented to the Court that the Respondent would not oppose the extension and modification of the receivership sought by Petitioners. Respondent's counsel opposed the detailed nature of the order, claiming it was excessive and unnecessary. The Petitioners sought the detail, so each party understood what their rights and responsibilities are, during the course of the receivership. Now, after entry of the order with the details proposed by the Petitioners, the Respondent has refused to comply with these express

terms. His failure to comply has hindered the court-appointed receiver's ability to perform his lawful duties. Young Aff., sections 6, 7.

6. The Respondent has proven in the past his unwillingness, and confirms by his present actions his inability, to meet his obligations. The fact that the house, after 7 years, remains vacant and is in greater danger of collapse today is proof.
7. Furthermore, the Respondent had ample opportunity prior to entry of the June 30, 2007 order to retain control over the remedial stages of this matter, by complying with the Court's earlier orders. He failed to do so, choosing to ignore those earlier orders. Following a hearing on August 7, 2006, this Court entered an order on September 3, 2006 which allowed the Respondent to retain custody and control of the property, but directing the Respondent to repair the Property in accordance with specific terms set forth in that September 3, 2006 Order. These terms included: (1) restoring the premises to a habitable condition; (2) requiring Respondent to comply with all applicable state building, fire, electrical, sanitary and plumbing codes; (3) obtaining necessary permits to perform this work; (4) repair and restoration which included, without limitation, an exhaustive list of defects presented to the Court by Petitioners, and which had been the subject of number violations cited by the City in the past and which continued, unabated; (5) recertification of the Property for occupancy; (6) work to proceed on a "constant and daily basis and without delay;" (7) appointment of a receiver to oversee the Respondent's work at the Property, in accordance with the terms of the Order; and (8) submission of progress reports by the Respondent to Petitioners as work proceeded. The Respondent failure to comply with that order resulted in the entry of this Court's June 30, 2007 Order, transferring the custody and control of the premises to the receiver to remedy the problems.
8. Even the Respondent's efforts to do the repairs after entry of the June 30, 2007 order, in violation of this Court's June 30, 2007 order, failed. He still refuses to comply with his obligations to obtain the necessary engineering and structural analysis, he performed work in violation of code, and has left the Main Street community in Dorchester with a structurally unsafe and dangerous nuisance with which to contend. Ferriol Aff., section 15, 1 6; see also July 26, 2006 and June 2, 2007 Affidavits of Juan Ferriol, attached hereto as exhibits 2 and 3, respectively.
9. The Respondent attempts to convince the Court that the cosmetic repairs made to the exterior, and displayed in pictures, proves that he is capable of completing this job successfully. The fact is, there has been no change in the condition of this property since the Court entered the June 30, 2007 Order. Juan Ferriol's Affidavits confirm that the only change by Respondent to the property was making it more dangerous. See Ferriol Affidavit, section 8; Exhibit. 2, sections 14, 15-22; Exhibit.3, sections 8, 12, 16, 21-23. In fact, the roof, and most of the windows and siding displayed in the pictures submitted by Respondent in support of his motion were done prior to June 2, 2007. Exhibit. 3, section 12. It was the remaining hazards which prompted the Petitioners to seek extension and modification of the receivership order in June, 2007. Now, that same hazard has been aggravated by Respondent's blatant violation of this Court's June 30, 2007 order to turn control of the property over to the receiver for lawful repairs. Young Aff., section 13.

10. The Petitioners, therefore, respectfully request that the Court deny Respondent's motion to dissolve the receivership.
11. The Petitioners respectfully request that the Court grant their cross motion for injunctive relief, pursuant to M.G.L. c.111, §127I, c.185C, §3 and the Court's equity powers, directing the Respondent to:
 - a. Comply with M.G.L. c.111, § 127I and all prior orders of this Court; and
 - b. Cease any and all construction or other work on the subject property, while this receivership is in effect.

Respectfully submitted,

By the Petitioner

MARTHA COAKLEY
ATTORNEY GENERAL

By Her attorney

Matthew Q. Berge (BBO#)
Assistant Attorney General/Trial Div.
ADDRESS
ADDRESS
TELEPHONE

DATED: _____

I hereby certify that I have this date, _____, served upon [REDACTED] a true copy of the foregoing document, by delivering a copy by hand to his office at [REDACTED], Boston, Massachusetts 02108.

Matthew Q. Berge

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

SUFFOLK, ss.

HOUSING COURT DEPARTMENT
CITY OF BOSTON DIVISION
CIVIL ACTION. NO.

ATTORNEY GENERAL FOR THE)
COMMONWEALTH OF MASSACHUSETTS)
Petitioner)
vs.)
██████████)
Respondent)

COMPLAINT FOR CIVIL CONTEMPT, RULE 65.3

I. PARTIES

1. The plaintiff in this case, the Attorney General, is also the plaintiff in *Attorney General v. ██████████*. Chelsea District Court Civil Acton No (), an action seeking enforcement of the State Sanitary Code against defendant ██████████ ("██████████"). The Attorney General filed his petition in the underlying Sanitary Code enforcement proceeding on or about August 15, 20087, and the Court grantee a Preliminary Order against Lewis on August 26, 2008.
2. The defendant in this case, ██████████, the owner of property at ██████████, Chelsea is al the defendant in Civil Action No.(), described in the preceding paragraph.

II. JURISDICTION

1. The district Court as the court which issued the Preliminary Order at issue, is the appropriate court for hearing this complaint for civil contempt. Mass. R. Civ. P. 65.3(b). The District Court ha equitable jurisdiction in the underlying Sanitary Code enforcement proceeding under G.L. c. 111, §127I and c. 218, §19C.

III. FACTUAL ALLEGATIONS

1. On August 26, 2008, Judge Robert A. Comet sitting in the Chelsea District Court, signed a Preliminary Order in the underlying Civil Action No. (). A true copy of the Order is attached to this complaint (Exhibit A). In relevant part, the Order included the following mandate:

"10. The Respondent [REDACTED] is hereby ordered to complete the repairs to the Property (9 Main Street) listed below with 21 days (i.e., September 16), and to provide a written report to the City of Chelsea Inspectional Services Department and petitioner Attorney General of all repairs completed within two days of the completion of repairs:

- a. Bringing all exterior porches and stairs into complete compliance with the State Sanitary and Building Codes ("the Codes"), making them safe and secure;
- b. Bringing all electrical and plumbing facilities into compliance with the Codes.

All repairs shall be performed by licensed contractors to the extent required by the Building Code, and [REDACTED] shall obtain all necessary permits from the City prior to any repair work.'

"11. [REDACTED] is prohibited from allowing any person, including himself, to reside at the Property until the City has granted him a valid Certificate of Occupancy."

2. The provisions of the Preliminary Order quoted in section 4 of the complaint are mandatory, clear and unequivocal.
3. Between August 26, 2008, the date this court signed the Preliminary Order, and October 8, 2008, the Director of the City of Chelsea Inspectional Services Department and subordinate building inspectors inspected the property at [REDACTED], Chelsea on several occasions and spoke either with [REDACTED] an agent of his named [REDACTED] or both. As of October 8, 2008, [REDACTED] was in knowing, direct violation of this court's Order, section 10, as he had still not: brought "all exterior porches and stairs into complete compliance" with the Codes; brought "all electrical and plumbing facilities into complete compliance" with the Codes; or obtained the necessary permits from the City of Chelsea prior to completing repairs. Affidavit of Stephanie Bode Ward Exhibit B.
4. Between August 26, 2008 and October 8, 2008, [REDACTED] knowingly and directly violated this court's Order, section 11, by residing at the property without having obtained a certificate of occupancy from the City of Chelsea. Affidavit of Stephanie Bode Ward, Exhibit. B.

IV. PRAYER FOR RELIEF

1. In accordance with rule 65.3(c)(5), the Attorney General asks this court's approval for the issuance of a summons and complaint, directing [REDACTED] to appear in court and answer this complaint on October 14, 2008 at 9 AM, a date previously scheduled by the court for a report on the progress of repairs at [REDACTED].
2. The Attorney General asks this court to:
 - a. award him reasonable attorney's fee for the time spent preparing and arguing this contempt complaint (see Lyon v. Bloomfield, 355 Mass. 738, 744 (1969));
 - b. require [REDACTED] to pay into an escrow fund under the control of either the clerk of this court or the City of Chelsea, the sum of \$1000 which sum shall be deposited no later than October 17, 2008 and which shall be released back to [REDACTED] only if he: (i) immediately ceases living at the property (until such time as he may obtain a valid certificate of occupancy), and (ii) obtain the necessary plumbing and electrical permits by October 21, 2008;
 - c. direct that the \$1000 deposited in escrow shall be released to the City of Chelsea in the event that [REDACTED] fails to meet the two conditions described in paragraph b., above, such sum representing reasonable damages suffered by the plaintiff Attorney General and City of Chelsea;
 - d. grant such other relief as appears just and equitable.

Respectfully submitted

MARTHA COAKLEY
ATTORNEY GENERAL

By

Mathew Q. Berge. BBO
Assistant Attorney General
Address
Address
Phone

DATE: _____