

FRANKLIN COUNTY MUNICIPAL COURT
ENVIRONMENTAL DIVISION
COLUMBUS, OHIO

FEB 16 2023

LORI M. TYACK, CLERK
By _____
Deputy Clerk

STATE EX REL KLEIN,
Relator-Plaintiff,

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CASE NO. 2022 EVH 060061

V.

JUDGE STEPHANIE MINGO

PAXE LATITUDE LP, ET AL.,
Respondents-Defendants.

DECISION AND ENTRY FOR CONTEMPT

This matter came before the Court for a Contempt Hearing on February 13 and 14, 2023. Relator-Plaintiff State Ex Rel Columbus City Attorney Zach Klein (“Plaintiff” or “the City”) was represented by attorney Steve Dunbar, Respondent-Defendants Paxe Latitude LP (“Paxe”) and Intergra Affordable Management, LLC (“Integra,” and collectively with Paxe as “Defendants”) were represented by attorneys Josh Kahane and Michael Cassone, and Interested Party Lument Commercial Mortgage Trust, as successor in interest to OREC Structured Finance Co., LLC (collectively, “Lument”) was represented by attorneys Stuart Parsell and Steven Tigges. Also in attendance were attorneys Melissa Benson and Graham Bowman from the Legal Aid Society of Columbus representing some of the tenants at the subject property. The Franklin County Treasurer was represented by attorney Mary Johnson.

On January 4, 2023 the parties entered into an Agreed Judgment Entry (“the January 4, 2023 Order”) that was adopted by the Court. This entry laid out several terms for the parties to abide by in an effort to transfer the subject property located at 521, 525, and 529 Sawyer Blvd., Columbus, Ohio, Parcel number 101-288512, commonly referred to as Latitude Apartments or Latitude Five25 and formerly known as Sawyer Towers (“the Property”). The January 4, 2023 Order established a Compliance Hearing on February 13, 2023 to determine if Defendants were in Compliance with the Order.

On January 24, 2023, Lument filed a Motion for Contempt alleging that Defendants violated Paragraph 1(a) (“on or before January 6, 2023 Paxe shall enter into a Purchase Sale Agreement... reasonably acceptable to Lument”) and Paragraph 1(b) (“on or before January 6, 2023 Paxe shall deposit in a Repair Reserve Account held with and administered by Lument \$500,000”). The following day, January 27, 2023 the City also filed a Motion for Contempt and Request for Hearing.

The City alleged that Defendants were in violation of several of the provisions of the January 4, 2023 Order. Specifically, the City averred that Defendants violated Paragraph 1 (“sale of the property”), Paragraph 2 (“continuation of utilities”), Paragraph 4 (“Paxe shall obtain all necessary permits for work completed in order to comply”), Paragraph 6 (“Paxe shall reimburse all costs incurred for temporarily housing displaced tenants”), and Paragraph 9 (this dealt with “abatement of January rent” although little to no testimony was provided at the hearing as to the alleged violation of Paragraph 9). The February 13, 2023 Compliance Hearing was converted to a Contempt Hearing to take testimony on the contempt motions filed by Lument and the City.

On the morning of the hearing (although a Copy was circulated via email late Friday February 10, 2023), Defendant Paxe filed a Memorandum in Support of Response in Opposition to Motions for Contempt and Motion Pursuant to Ohio R.Civ.P. 59 or 60. During the two-day hearing, the Court heard sworn testimony from thirteen witnesses and several exhibits were duly admitted. It should be noted that Defendants objected to much of the testimony and exhibits on the grounds of relevance.

Defendants specifically objected to testimony and exhibits related to events occurring prior to the January 2023 Order, most notably the catastrophic waterline ruptures that occurred the weekend of Christmas 2022 (Saturday the 24th and Sunday the 25th). This led to the evacuation of

the buildings, the emergency relocation of the tenants, and the need to make immediate repairs and rehabilitation plans to address the sequence of damage that was caused after the waterlines ruptured. Most of Defendant's objections were overruled, and the Court heard testimony regarding events that preceded the January 4, 2023 Order. Such testimony was given proper weight by the Court in regard to the present motions for contempt. Based on the elicited testimony and the exhibits duly admitted, the Court hereby renders the following Decision finding Paxe to be in **CONTEMPT** of the January 2023 Order.

I) The Court Finds Defendant Paxe Latitude LP in Contempt of Court

1. Paxe Violated Paragraph 1 of the January 4, 2023 Order.

Paragraph 1 of the January 4, 2023 Order contained several subsections. However, the crux of the entire provision was that Paxe shall sell the Property. This never happened. Paxe failed to provide a Purchase and Sale Agreement ("PSA") to Lument (1a). Paxe failed to post with Lument a \$500,000 non-refundable deposit (1b). Paxe failed to close on the sale of the property by January 31, 2023 (1d) or by the extended deadline of February 10, 2023 (1e). Therefore, the Court FINDS Defendants to be in CONTEMPT of Paragraph 1 of the January 2023 Order.

2. Paxe Violated Paragraph 2 of the January 4, 2023 Order.

Paragraph 2 of the January 4, 2023 Order required Paxe to enter into written modification agreements with certain utility providers extending the payment deadlines for payment in full. Based on the testimony provided, the Court FINDS that although Paxe initially entered into some agreements and made initial deposits, those agreements became invalid when Paxe failed to render payment the following month. Specifically, the Court FINDS that Defendants failed to bring current their accounts with American Electric Power (outstanding electricity bill for \$135,000) and

Columbus Department of Public Utilities (water bill still outstanding for \$180,000). Therefore, the Court FINDS Defendants to be in CONTEMPT of Paragraph 2 of the January 4, 2023 Order.

3. Paxe Violated Paragraph 4 of the January 4, 2023 Order.

Paragraph 4 of the January 4, 2023 Order required Defendants to comply with certain Emergency Orders and Orders to Correct that were issued by the City of Columbus departments of Code Enforcement and Building and Zoning Services. Included was a provision that “Paxe shall obtain all necessary permits for work completed in order to comply with said orders.” Extensive work was necessary inside the Property. The widespread water damage requires intense remediation efforts that involve removing portions of the ceilings, walls, and carpeting throughout the large residential towers. This requires permits from the City of Columbus for much of the work and from the Ohio Environmental Protection Agency (“EPA”) for some of the work due to the presence of asbestos. The Court FINDS that Defendants failed to obtain those necessary permits and knew or should have known that such permits were necessary and that there was a likely potential for asbestos materials to be disturbed during this remediation work.

Further, the Court FINDS that not only did Defendants fail to obtain those permits, but the agents and contractors of the Defendants acted in a way not in compliance with the law or standard industry practices when dealing with asbestos or even potentially dealing with asbestos. The Court FINDS that this abject failure to properly handle those materials led to dangerous asbestos fibers being released into the environment, including the common areas and the personal living spaces of the tenants. This inexcusable neglect likely means that many possessions belonging to the tenants, especially “soft items,” cannot be decontaminated and will likely be lost forever. The Court FINDS that Defendants are the direct and proximate cause of these losses and are legally

responsible for the tenants' losses due to their negligent and contemptuous actions. Therefore, the Court FINDS Defendants to be in CONTEMPT of Paragraph 4 of the January 4, 2023 Order.

4. Paxe Violated Paragraph 6 of the January 4, 2023 Order.

Paragraph 6 of the January 4, 2023 Order required Paxe to reimburse all costs incurred for temporarily housing displaced tenants of the Property after it was evacuated on December 25, 2022. This included costs for hotel rooms, bus passes, and food services. Responsive and commendable efforts were made by the Community Shelter Board ("CSB") in conjunction with the City of Columbus, Franklin County, and various non-profit organizations that consolidated their time, efforts, and resources to help with the large volume of suddenly displaced individuals. To date \$750,000 has been allocated by the Franklin County Board of Commissioners and \$950,000 is being allocated by Columbus City Council to pay for these efforts.

The Court also heard testimony that this \$1,700,000 may perhaps be sufficient for the short-term housing and feeding of the displaced tenants, however, another significant investment is going to be required to address the midway and long-term needs associated with permanently relocating those tenants. Those costs may include but are not limited to replacement of lost furnishings and other household goods, food costs, ongoing transportation, storage, and moving costs. The Court FINDS that as of the issuance of this Entry, not one cent of reimbursement or fronted costs for the temporary housing has been made by Defendants. The Court FINDS that Defendants are responsible for those costs. To be clear, Defendants shall be responsible for the \$1,700,000 already allocated as well as future costs that may be incurred in an effort to stabilize the housing dilemma that has been completely upended by Defendants' neglect. Therefore, the Court FINDS Defendants to be in CONTEMPT of Paragraph 6 of the January 4, 2023 Order.

II) The Court Orders the Following Sanctions

Based on the Findings above the Court hereby ORDERS, ADJUDGES, and DECREES the following contempt sanctions upon Defendants:

1. Pursuant to Paragraph 12 of the January 4, 2023 Order, the Court hereby ORDERS that the stay in the Common Pleas foreclosure case is to be lifted forthwith. Further, the Court ORDERS that Lument is entitled to an automatic **appointment of a Receiver** of Lument's choice in that foreclosure action. The Receiver shall have each and every power and authority conferred upon receivers by the laws of Ohio including, but not limited to, O.R.C. 2735 and Civ.R. 66.
2. The Court ORDERS Paxe to deposit a contempt **FINE of \$2,500,000** to be posted as a BOND with the Franklin County Municipal Clerk of Courts on or before March 3, 2023. This bond shall be used to compensate the (now former) tenants of the Property. This compensation will include but is not limited to refunding any January 2023 rent payments that were made, compensation for any unrecoverable personal property, reimbursement for reasonable out-of-pocket expenses incurred by tenants as a result of displacement, attorney fees incurred by Legal Aid in assisting tenants, and may include a reasonable amount for pain and suffering caused by displacement as allowable under Ohio law. The amount owed in compensation may be more or less than \$2,500,000. Upon motion, the Court may consider adjusting the amount to be posted by Paxe. A process for determining individual tenant claims for disbursement will be established by the Court at a later date. The parties may also work out a settlement (either with

current ownership or the future Common Pleas Receiver) for this Court's review and acceptance.

3. The Court ORDERS Defendants to pay a contempt **FINE of \$1,130,000** certifiable to the City of Columbus by March 13, 2023 (this includes the outstanding water bill of \$180,000).
4. The Court ORDERS Defendants to pay a contempt **FINE of \$750,000** certifiable to Franklin County by March 13, 2023.
5. The Court ORDERS Defendants to pay the **full balance of any and all utility bills** owed from the Property by April 13, 2023.

III) Conclusion

Paxe does not deny that the property has not sold and therefore the January 4, 2023 Order was in fact violated. However, Paxe urged the Court to exercise its discretion to modify the January 4, 2023 Order arguing that the appearance of asbestos and mold at the property were not known at the time the January 4, 2023 Order was entered into. However, it is clear to the Court that the owners and agents of the owners knew of, or at the very least should have known, about the possibility of both mold and asbestos at the property when they agreed to the January 4, 2023 Order. Additionally, the testimony makes it clear that any moisture leading to the growth of mold or disturbance of asbestos materials that potentially released fibers into the environment are the direct result of Defendants' own negligence. Defendants' arguments fail to meet the standards found in Civ.R. 59 or Civ.R. 60, and Defendant's motion to modify the January 4, 2023 Order is hereby **DENIED**.

The devastating and traumatic upending of the lives of the tenants of Latitude Five²⁵ was completely preventable. The initial public nuisance finding at the start of this court case was completely preventable. The subpar conditions that have plagued the Property prior to this court case were completely preventable. The initial code violations and public nuisance conditions were a direct result of the severe and gross neglect of ownership and management. The catastrophic rupture of the waterlines in December 2022 was a direct result of the severe and gross neglect of ownership and management. The traumatic emergency evacuation of the tenants on Christmas Day 2022 was a direct result of the severe and gross neglect of ownership and management. The mishandling of asbestos materials was a direct result of the severe and gross neglect of ownership and management.

The seismic efforts to prevent this catastrophic failure and to assist those unfortunate displaced tenants on a cold Christmas night were not done by ownership or management. Instead, those efforts were taken on by Columbus City Code Enforcement, various other City departments, and local non-profit organizations. But those Herculean efforts become a Sisyphean task when mired by the ongoing neglect and abject failures of the Defendants. It is in the best interest of all of those involved that Paxe no longer have control of this property and a Receiver is appointed over the Property so this case can move forward in a responsible and accountable manner.

Based on the discussion above the Court hereby GRANTS the City's Motion for Contempt and Lument's Motion for Contempt. The Court hereby DENIES Paxe's Motion Pursuant to Ohio Civ.R. 59 or 60. The Court hereby ORDERS that the stay in the Court of Common Pleas foreclosure be lifted forthwith and that a Receiver be appointed in that case. The Court hereby ORDERS fines totaling \$4,380,000 be paid by Defendants as outlined above. The \$2,500,000

associated with compensating tenants for their losses shall have priority over all other fines. The Court hereby ORDERS Defendants to pay any and all outstanding utility bills.

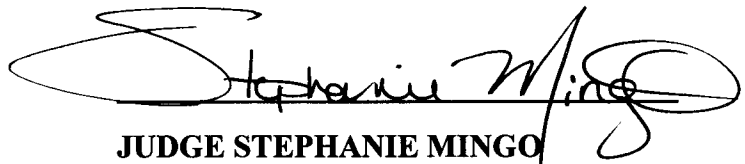
This case shall come before the Court for a Status Conference on May 11, 2023 at 12pm in courtroom 15A. To allow the parties to provide sufficient updates about the appointment of a receiver, ongoing abatement and rehabilitation efforts of the property, and tenant compensation.

THIS IS A FINAL APPEALABLE ORDER

Pursuant to Ohio Civ. R. 58, the Clerk is hereby directed to serve upon all parties not in default notice of this Judgment and its date of entry upon the journal.

IT IS SO ORDERED

2-16-23
DATE


JUDGE STEPHANIE MINGO