

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

DISTRICT OF COLUMBIA, Petitioner/Plaintiff, v. 1309 ALABAMA AVENUE, LLC, <i>et al.</i> , Respondents/Defendants.	Civil Action No.: 16-000162 B Judge Kelly A. Higashi Next Event: May 7, 2019 at 1:30 p.m. Motions Hearing
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DISTRICT OF COLUMBIA’S MOTION FOR LEAVE TO FILE
THIRD AMENDED PETITION AND COMPLAINT

Plaintiff the District of Columbia (“District”), by its Office of the Attorney General and pursuant to SCR-Civil R. 15(a)(3), moves for leave to file its Third Amended Petition and Complaint, which adds an additional count seeking judicial dissolution of Defendant CityPartners 5914, LLC (“5914 LLC”) under D.C. Code § 29-312.20(a)(1)(B).

As explained in the attached memorandum of points and authorities, dissolution of 5914 LLC is warranted under D.C. Code § 29-312.20(a)(1)(B) because 5914 LLC has continually exceeded and abused the authority conferred upon it by law by engaging in a pattern of conduct designed to violate District law, this Court’s Orders, and the rights of the tenants at the Congress Heights Apartments (“Congress Heights”).¹ 5914 LLC was created by Defendant Geoffrey Griffis, a local real estate developer, for a single purpose: to acquire and redevelop Congress Heights. Since its formation in 2013, 5914 LLC has consistently been used by Defendant Griffis to achieve this single purpose in a manner that violates District law and the tenants’ rights. As set out in the District’s Third Amended Petition and Complaint, this

¹ Congress Heights Apartments includes four buildings located at 1309 Alabama Avenue, SE; 1331 Alabama Avenue, SE; 1333 Alabama Avenue, SE; and 3210 13th Street, SE.

continuing pattern of illegal conduct includes the following acts:

First, 5914 LLC was created in 2013 as part of a partnership between Defendant Griffis and the Sanford Capital Defendants. This partnership included a scheme to constructively evict as many tenants as possible from Congress Heights by allowing the property to decline into slum-like conditions. The ultimate purpose of this scheme was to maximize the profits of any future redevelopment by 5914 LLC.

Second, in late 2017, when Defendant Griffis's partnership with the Sanford Capital Defendants was no longer viable because of the Court's appointment of a Receiver over Congress Heights, 5914 LLC engaged in negotiations to purchase Congress Heights that 5914 LLC knew were in violation of this Court's Order granting the tenants an exclusive right to negotiate to purchase the building.

Third, on December 27, 2017, 5914 LLC engaged in an illegal purchase of Congress Heights that violated the tenants' TOPA rights and that was also an effort to frustrate the Court's Receivership.²

Fourth, after its illegal purchase of the property, 5914 LLC has continued to be used by Defendant Griffis to frustrate the remaining Congress Heights tenants from receiving rehabilitated apartments by 5914 LLC failing to promptly comply with the Court's funding Orders and by making baseless claims of negligence on the part of the Receiver.

Based on 5914 LLC's conduct, the District seeks leave to add a claim under the District's Business Corporations Code to dissolve the entity. The factors this Court should consider when evaluating a request to file an amended complaint all favor granting leave to the District to add this claim. For the convenience of the Court and the parties, a copy of the District's proposed Third Amended Petition and Complaint is attached as Exhibit A. Exhibit B is a redline comparison between the District's Second Amended Petition and Complaint and the proposed Third Amended Petition and Complaint. A proposed Order is also attached.

² The Congress Heights tenants filed a lawsuit against the Sanford Capital Defendants and 5914 LLC for violations of the tenants' TOPA rights. That matter is currently pending in D.C. Superior Court. *See Ruth Barnwell, et al. v. 1309 Alabama Avenue, LLC et al.*, 2018 CA 003477 B.

Dated: May 3, 2019

Respectfully submitted,

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/s/ Jimmy R. Rock

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SUPERIOR COURT CIVIL RULE 12-I CERTIFICATION

Prior to filing this motion, counsel for the District of Columbia contacted counsel for Defendants/Respondents CityPartners 5914, LLC; City Partners, LLC; and Geoffrey Griffis, who are the parties impacted by this requested relief, to seek consent to the relief requested in this motion. As of the date of this filing, Counsel for Respondents did not consent to the District filing a Motion for Leave to File Third Amended Petition and Complaint.

/s/ Jimmy Rock _____

Jimmy Rock

Counsel for District of Columbia

CERTIFICATE OF SERVICE

I, Reginald Whitaker, certify that on May 3, 2019, a copy of the foregoing Motion for Leave to File Third Amended Petition and Complaint was served electronically via CaseFileXpress to all counsel of record.

/s/ Reginald Whitaker Jr. _____
Reginald Whitaker Jr.
Assistant Attorney General

lawful authority by acting to undermine the rights of the Congress Heights tenants and otherwise violate the District's tenant protection laws and this Court's Orders.

The District's Business Corporations Code authorizes the Attorney General to seek dissolution of a District corporation that, like 5914 LLC, continues to exceed or abuse the authority conferred on it by law. *See* D.C. Code § 29-312.20(a)(1)(B). Operating as a corporation in the District of Columbia is a privilege, and this provision allows the Attorney General to seek to dissolve corporations that continuously violate the laws and public policy of the District. Here, 5914 LLC has done just that. For this reason, the District is seeking to add a count seeking judicial dissolution of 5914 LLC. As set forth more fully below, the factors this Court should consider when evaluating a request to file an amended pleading all favor granting leave to the District here. Accordingly, the District respectfully requests the Court grant it leave to amend and deem the attached TAC filed in this action.

ARGUMENT

Pursuant to SCR-Civil R. 15(a), "leave [to amend a pleading] shall be freely given when justice so requires." "Although the decision is a matter of trial court discretion, there is a 'virtual presumption' a court should grant leave to amend unless there is a good reason to the contrary." *Howard University v. Good Food Services*, 608 A.2d 116, 120 (D.C. 1992) (citing *Bennett v. Fun & Fitness of Silver Hill*, 434 A.2d 476, 478 (D.C.1981)). In deciding whether to grant leave to file an amended complaint, the Court should consider the following factors: (i) the number of requests for leave to amend, (ii) whether the request will delay trial or the completion of discovery, (iii) the existence of bad faith or dilatory motive, (iv) the merits of the amended pleading, and (v) any prejudice to the other parties. *Bennett*, 434 A.2d at 478-79. Here, an examination of each of these factors points in favor of allowing the

District to file its TAC and against upsetting the “virtual presumption” in favor of granting leave to amend.

A. The District’s Proposed Third Amended Petition and Complaint Has Merit.

The District seeks leave to amend in order to add a single new count to seek judicial dissolution of 5914 LLC. Under D.C. Code § 29-312.20(a)(1)(B), “the Superior Court may dissolve a corporation in a proceeding by the Attorney General for the District of Colombia if it is established that the corporation . . . [h]as continued to exceed or abuse the authority conferred upon it by law.” Provisions such as D.C. Code § 29-312.20(a)(1)(B) capture the general rule that judicial dissolution of a corporation is appropriate where, like here, a corporation has engaged in persistent and serious misconduct that implicates public policy. *See People by Abrams v. Oliver Sch., Inc.*, 206 A.D.2d 143, 619 N.Y.S.2d 911 (N.Y. 1994); *People ex rel. Kerner v. Blue Rose Oil Co.*, 360 Ill. 397, 196 N.E. 456 (Ill. 1935).

Here, the District’s proposed amendment is meritorious because it alleges that 5914 LLC was formed and operated as part of a scheme to evade the District’s laws protecting tenants. 5914 LLC was created for the single purpose of acquiring Congress Heights for redevelopment. TAC ¶ 146. The District alleges that, in pursuit of that purpose, 5914 LLC participated, through its principal Defendant Griffis, in a scheme with the Sanford Capital Defendants to intentionally allow the property to fall into extreme disrepair, in violation of District law, with the hope of driving out the buildings’ tenants. TAC ¶¶ 147-150. One goal of this illegal scheme was to minimize the number of remaining tenants who could frustrate or add to the expense of Defendants’ planned redevelopment project by exercising their rights under the Tenant Opportunity to Purchase Act (“TOPA”). *Id.*

The District’s proposed amendment further alleges that, even after this Court placed

the property in Receivership to remediate the conditions created by Defendants' scheme, Defendant Griffis continued to act, through 5914 LLC, to improperly negotiate and allegedly acquire Congress Heights in ways that violated this Court's Orders and the tenants' rights. TAC ¶¶ 151-157. For instance, in late 2017, the Court delayed funding the Receiver's rehabilitation plan on the basis of representations by the Sanford Capital Defendants that they would negotiate exclusively with tenants to purchase the Property. The Sanford Capital Defendants neglected to inform the tenants, the District, or the Court that there were negotiations already pending with 5914 LLC to transfer title to the Property through a pre-packaged bankruptcy sale. Nevertheless, in a clear and knowing violation of this Order, 5914 LLC, through Defendant Griffis, continued its negotiations with the Sanford Capital Defendants to purchase Congress Heights throughout late 2017. TAC ¶¶ 153-156. After several months of negotiations, 5914 LLC then entered into an illegal transaction for Congress Heights that culminated on December 27, 2017. This transaction was specifically designed to avoid the tenants' TOPA rights. TAC ¶¶ 154-156. Since then, 5914 LLC, as the "new" owner,⁴ has continued to be used by Defendant Griffis to throw up roadblocks to remediating the serious housing code violations at Congress Heights, including by delaying funding the Receivership in violation of this Court's Orders and making baseless claims of negligence on the part of the Receiver in an effort to slow down rehabilitation of the Property. TAC ¶ 157.

In short, the District's TAC alleges that 5914 LLC has taken advantage of the corporate form to engage in a pattern of conduct that contravenes the welfare of vulnerable

⁴ The District does not concede 5914 LLC is the legitimate owner of Congress Heights and continues to pursue its separate claim in this case for a declaratory judgment challenging that ownership.

District residents, the District's tenant protection laws, and this Court's Orders. Because 5914 LLC has persistently exceeded and abused its lawful authority, the District's proposed amendment has merit and the District should be permitted to file its proposed TAC and proceed with its claim to dissolve the corporation.

B. The Other Factors Support Granting the District Leave to Amend.

The other four factors the Court should consider in connection with granting leave to amend are also met here.

First, this is the third time the District has sought to amend its Complaint. However, this amendment is based on facts that the District developed during discovery as well as recent acts by 5914 LLC to frustrate the Receivership.

Second, permitting the District to amend its Complaint and add a single claim will not delay trial or the completion of discovery. A trial date has not been set in this matter. The District also does not envision taking substantial additional discovery on this claim.

Third, the District is not acting in bad faith or with a dilatory motive in seeking to amend its Complaint. Rather, by seeking to add this new count, the Attorney General seeks to protect vulnerable District residents from the continued unlawful acts of a District corporation. The count that the District seeks to add is also based on ongoing acts of 5914 LLC, including through the present. Additionally, by adding this count for judicial dissolution, the District seeks to utilize judicial resources in the most efficient manner as possible. Though the District could likely file a separate suit for this claim, amending the Complaint here allows the District to litigate related claims against the same parties in a Court that has familiarity with the parties, the history, and the conditions of this property. Requiring the District to litigate these claims separately would only lead to prolonged litigation between the parties and a strain on the Court's resources.

Fourth, no party will be unduly prejudiced by allowing the District to amend its Complaint. As noted above, the District does not envision taking substantial additional discovery on this claim.

CONCLUSION

For the foregoing reasons, the District respectfully requests the Court grant leave to file an amended complaint and deem the attached Third Amended Petition and Complaint filed.

Dated: May 3, 2019

Respectfully submitted,

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ORDER

This matter having come before the Court on the District of Columbia’s Motion for Leave to File Third Amended Petition and Complaint, it is this ___ day of _____, 2019,

ORDERED, that the District’s Motion for Leave to File Third Amended Petition and Complaint is hereby **GRANTED**; and

IT IS FURTHER ORDERED, that the District’s Third Amended Petition and Complaint shall be accepted for filing by the Clerk.

IT IS SO ORDERED.

Date

The Honorable Kelly A Higashi

Copies:
All counsel of record (by eService)