

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

SECOND JUDICIAL DISTRICT

Case Type: Other Civil

Wells Fargo Bank, N.A., as an Indenture Trustee,
In Trust for Holders of IMPAC CMB Trust,
Series 2005-2, its successor and/or assigns,

Court File No. 62-CV-11-7462

Plaintiff

v.

Notice of Motion and Motion

Randall T. Chun, Peggy J. Chun, Mark Thomas
And Lisa Marie Thomas, Inter Savings Bank
FSB, Albert Atemkeng, Jerrold Hester, and
HomeValu Inc.

Defendants

TO: (check one) Plaintiff / Petitioner Defendant / Respondent

PLEASE TAKE NOTICE THAT on January _____, 2012 at 9:00 o'clock a.m

Before John F. Guthmann, Judge of the District Court, in Room _1680 located at
15 West Kellogg Blvd in the City Hall / Courthouse in the City of St. Paul, State of
Minnesota,

Jessica Villarreal, Adade Kuegah, Helima Eidl, and Mercedes Reyes Huezo, four
tenants currently living with their families in the Westminster Apartments that are the
subject of this matter (hereinafter the Tenants) will ask the Court for an Order as
follows:

MOTION

1. The Tenants are asking the Court for the following:

Intervention: To permit them to intervene in this matter to represent their
interests as tenants in the properties subject to this lawsuit (1205 and 1225
Westminster), shortening the notice requirements for intervention under Rule
24 in the interests of justice.

Receiver: In the event that the Court finds, as requested by the Plaintiff, that the situation warrants appointment of a receiver for one or more of the properties, they request that the Order appointing said receiver direct him or her to manage the properties in question (1205 and 1225 Westminster Street, St. Paul, MN) consistent with the goals and duties of an administrator under the Tenants Remedies Act (Minn. Stat. Chapter 504B), i.e., with a charge from this Court to complete all the necessary repairs in an expeditious manner and that no action to evict any tenant be undertaken during the receivership except for cause attributable to the tenant, such as non-payment of rent due, or other similar substantial lease violation.

The Tenants are making these requests of the Court for the following reasons:

Regarding Intervention: As tenants living in the properties in dispute in this matter, they have property right interests under state, federal, and human rights treaty law that deserve to be recognized and taken into account by allowing them to participate in this matter as Intervening Parties.

The Tenants' property right and interest may not rise to the level of ownership interests asserted by the named plaintiffs and defendants in this matter, but are real nonetheless, being rights to occupy their apartments in "peaceful enjoyment" and to have those apartments and common areas maintained consistent with applicable housing codes and other relevant laws.

As shown by the attached letters from the St. Paul Department of Safety and Inspections (DSI) to the Defendants' managing entity for the properties, Pelimar Properties/Peggy Chun, the properties appear to be in peril of losing their Certificates of Occupancy on January 18, 2012.

As the DSI letters show, as of December 16, 2011 and December 2011 respectively, each building (1205 and 1225 Westminster) had several hundred code violations that

must be corrected by January 18, 2012 to avoid potential loss of Certificates of Occupancy. The DSI letters each state the following:

Failure to comply may result in a criminal citation or the revocation of the Fire Certificate of Occupancy. The Saint Paul Legislative Code requires that no building be occupied without a Fire Certificate of Occupancy. The code also provides for the assessment of additional re-inspection fees.

The threatened loss of the Defendants' Certificate of Occupancy for the properties, coupled with the DSI's statement that "The St. Paul Legislative Code requires that no building be occupied without a Fire Certificate of Occupancy", places the Tenants' right to continued occupancy in direct jeopardy. Proper attention, by all parties to this matter (Plaintiff and Defendants) as well as the City of St. Paul and this Honorable Court to this threat, is required.

To date, there has been no showing to this Court that the Defendants can and will avoid loss of their Certificates of Occupancy for these properties on January 18, 2011. To-date, Defendants have not provided a repair plan/schedule approved by the DSI demonstrating that the violations identified by the DSI will be corrected in time to avoid loss of the Certificates of Occupancy, thereby subjecting their tenants to eviction by the City. The Tenants invite timely submission of such a plan/timetable by Defendants so that it can be swiftly examined in this proceeding and evaluated in terms of the January 18 deadline.

Similarly to date, while statements in its Motion and Reply Memorandum imply it, the Plaintiff has not agreed that a receiver, if one is to be appointed by the Court, will be required (as per an Order of this Court) to 1) make the repairs expeditiously; and 2) not to evict tenants from their leaseholds without cause attributable to the tenant.

The applicable rule on intervention, Rule 24.01 states:

Upon timely application anyone shall be permitted to intervene in an action when the applicant claims an interest relating to the property or transaction which is the subject of the action and the applicant is so situated that the

disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

The tenants respectfully submit that their leasehold interests in the properties at issue give them "an interest relating to the property or transaction which is the subject of the action" as required by Rule 24.01.

They also submit that the second criteria stated in Rule 24.01 is also met: ". . . the disposition of the action may **as a practical matter** impair or impede the applicant's ability to protect that interest."

The Court's decision to appoint or not appoint a receiver could be accompanied by requirements directed to the Plaintiff or the Defendants that would protect the Tenants' interests in the process. Absent recognition of their interests and their participation as intervenors, protection of their interests would be as stated in Rule 24.01, "as a practical matter impair[ed] or impede[d]."

These facts are sufficient under Minn. Rules of Civil Procedure 24.01 to demonstrate that the Tenants are proper intervenors as a matter of right in this matter to express and protect their property rights, their interests in the improvement and stabilization of their households via their leasehold estates.

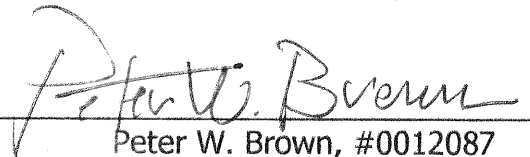
As to the timeliness of this request: The Tenants did not receive notice of this lawsuit, formally or actually, until many months after this lawsuit was begun in September 2011 and after the motions before the Court today were already scheduled. They have acted as swiftly as was possible under the circumstances. It is difficult for persons of limited economic means to learn their rights and to obtain representation. The first time they became aware of the possibility to intervene in this case was last Thursday, January 5. It appears they have moved expeditiously from

that day to this and that no current party in this matter is substantially prejudiced by their intervention.

Regarding the Receivership Requested by Plaintiff: If Plaintiff's request that the Court appoint a receiver is found warranted and is granted, the language of the Order appointing the Receiver is crucial to the Tenants' interests in the affected properties. The Tenants have an on-going right to 1) expeditious completion of repairs necessary to bring the properties into compliance with the applicable housing code to avoid the evictions threatened by the City of St. Paul and 2) to be free from the threat of eviction from their homes for any reason other than just cause, i.e., non-payment of rent due or similar substantial lease violation. The Order appointing a receiver, if any, should include language directing the receiver to conduct his/her receivership accordingly.

Dated: January 10, 2011

By:



Peter W. Brown, #0012087
3121 Portland Avenue South
Minneapolis, MN 55407
(612) 824-6533

**ACKNOWLEDGEMENT REQUIRED BY
MINN. STAT. SEC. 549.211, SUBD. 1**

The undersigned hereby acknowledges that pursuant to Minn. Stat. Sec 549.211, Subd. 2, costs, disbursements, and reasonable attorney fees may be awarded to the opposing party or parties in this litigation if the Court should find the undersigned acted in bad faith, asserted a claim or defense that is frivolous and that is costly to the other party, asserted an unfounded position solely to delay the ordinary course of proceedings or to harass; or committed fraud upon the Court.

Dated: January 10, 2012

By:



Peter W. Brown, #0012087
3121 Portland Avenue South
Minneapolis, MN 55407
(612) 824-6533

Attachment to
Notice of Motion
and Motion



CITY OF SAINT PAUL
Christopher B. Coleman, Mayor

375 Jackson Street, Suite 220
Saint Paul, Minnesota 55101-1806

Telephone: 651-266-8989
Facsimile: 651-266-8951
Web: www.stpaul.gov/dsi

December 20, 2011

PELIMAR PROPERTIES/PEGGY CHUN
1043 GRAND AVE APT 309
ST PAUL MN 55105

RE: RE-INSPECTION FIRE CERTIFICATE OF OCCUPANCY WITH DEFICIENCIES
1205 WESTMINSTER ST
Ref. # 10988

Dear Property Representative:

Your building was re-inspected for the Fire Certificate of Occupancy on December 20, 2011. Approval for occupancy will be granted upon compliance with the following deficiency list. The items on the list must be corrected immediately. **A re-inspection will be made on January 18, 2012 at 9:00 am.**

Failure to comply may result in a criminal citation or the revocation of the Fire Certificate of Occupancy. The Saint Paul Legislative Code requires that no building be occupied without a Fire Certificate of Occupancy. The code also provides for the assessment of additional re-inspection fees.

DEFICIENCY LIST

1. ACCESS THROUGHOUT - ALL AREAS - SPLC 34.19 - Provide access to the inspector to all areas of the interior of the building and all exterior areas to include the garages.
2. Bldg. 1205 - 2nd Floor Laundry Room - SPLC 34.09 (3), 34.32 (3) - Repair and maintain the window in good condition.-Missing inner windows.
3. Bldg. 1205 - 2nd Floor Laundry Room - SPLC 34.09 (3), 34.32 (3) - Repair and maintain the window frame.-Repair or replace damaged inner window frame.
4. Bldg. 1205 - 2nd Floor Laundry Room - MSFC 605.1- All light fixtures shall be maintained with protective globes if originally equipped.-Install missing ceiling light fixture cover.
5. Bldg. 1205 - 2nd Floor Laundry Room - SPLC 34.10 (7), 34.33 (6) - Repair and maintain the ceiling in an approved manner.-Patch the holes and/or cracks in the ceiling.

An Equal Opportunity Employer

256. Unit E3 - Egress Window Measurement - MSFC1026.1 - Provide and maintain an approved escape window from each sleeping room. The minimum size must be 5 square feet of glazed area with a minimum of 24 inches of openable height and 20 inches of openable width. With a finished sill height not more than 48 inches. This work may require permit(s). Call DSI at (651) - 266-9090. Refer to the Escape Windows for Residential Occupancies handout for more information.

North Egress Window (Double Hung)

18 w x 26 h openable

16 w x 52 h glazed.

257. Unit E3 - Entry Hallway - MSFC 1011.2 - Remove the materials that cause an exit obstruction. Maintain a clear and unobstructed exitway.-Remove material blocking entry into unit.
258. Unit E3 - Stove - MFGC 406.5.2 - Immediately repair or replace the leaking fuel equipment piping. This work may require a permit(s). Call DSI at (651) 266-8989.- Found gas leaking behind stove during inspection. Maintenance Bob turned off gas to stove.
259. Unit E3 - Wall Thermostat - SPLC 34.12 (2), 34.35 (1) - Repair and maintain all required and supplied equipment in an operative and safe condition.-Install missing thermostat in unit.

Saint Paul Legislative Code authorizes this inspection and collection of inspection fees. For forms, fee schedule, inspection handouts, or information on some of the violations contained in this report, please visit our web page at: <http://www.stpaul.gov/cofo>

You have the right to appeal these orders to the Legislative Hearing Officer. Applications for appeals may be obtained at the Office of the City Clerk, 310 City Hall, City/County Courthouse, 15 W Kellogg Blvd, Saint Paul MN 55102 Phone: (651-266-8688) and must be filed within 10 days of the date of the original orders.

If you have any questions, email me at sean.westenhofer@ci.stpaul.mn.us or call me at 651-266-8982 between 7:30 a.m. - 9:00 a.m. Please help to make Saint Paul a safer place in which to live and work.

Sincerely,

Sean Westenhofer
Fire Inspector
Ref. # 10988

Attachment
to Notice of Motion
and Motion

DEPARTMENT OF SAFETY AND INSPECTIONS
Fire Inspection Division
Ricardo X. Cervantes, Director

Telephone: 651-266-8989
Facsimile: 651-266-8951
Web: www.stpaul.gov/dsi



CITY OF SAINT PAUL
Christopher B. Coleman, Mayor

375 Jackson Street, Suite 220
Saint Paul, Minnesota 55101-1806

December 16, 2011

PELIMAR PROPERTIES
1043 GRAND AVE APT 309
ST PAUL MN 55105

RE: RE-INSPECTION FIRE CERTIFICATE OF OCCUPANCY WITH DEFICIENCIES
1225 WESTMINSTER ST
Ref. # 11083

Dear Property Representative:

Your building was re-inspected for the Fire Certificate of Occupancy on December 12, 2011. Approval for occupancy will be granted upon compliance with the following deficiency list. The items on the list must be corrected immediately. **A re-inspection will be made on January 18, 2012 at 9:00 am.**

Failure to comply may result in a criminal citation or the revocation of the Fire Certificate of Occupancy. The Saint Paul Legislative Code requires that no building be occupied without a Fire Certificate of Occupancy. The code also provides for the assessment of additional re-inspection fees.

DEFICIENCY LIST

1. Access Throughout - All Areas - SPLC 34.19 - Provide access to the inspector to all areas of the interior of the building and all exterior areas to include the garages.
2. All Units - Electrical Panel Doors - NEC Electrical Panel Doors - Repair or replace all electrical panel doors in all units. Electrical panel doors falling off, hinges not working.
3. All Units - Panel Schedules - NEC 408.4 Circuit Directory or Circuit Identification.- Install missing breaker schedules in all electrical panel doors in all units.
4. Basement Laundry Room - Baseboard Heaters - SPLC 34.12 (2), 34.35 (1) - Repair and maintain all required and supplied equipment in an operative and safe condition.-Repair and replace damaged baseboard heaters in laundry room.
5. Bldg. 1225 - 2nd Floor Ceiling - MSFC 907.10.2 - Contact a qualified fire alarm contractor to test and provide code required fire alarm system audibility.-Horn and strobe not secured to 2nd floor ceiling.

An Equal Opportunity Employer

- 304. Unit E2 - Kitchen - SPLC 34.12 (2), 34.35 (1) - Repair and maintain all required and supplied equipment in an operative and safe condition.-The burners are not igniting on the gas range. The oven door is not operating correctly. Repair/replace the gas range.
- 305. Unit E2 - Living Room - SPLC 34.09 (3), 34.32 (3) - Repair and maintain the window in good condition.-The window does not open fully. The window does not close and lock.
- 306. Unit E2 - Living Room - SPLC 34.10 (7), 34.33 (6) - Repair and maintain the ceiling in an approved manner.
- 307. Unit E3 - Bathroom - SPLC 34.11, SBC 2902.1, SPLC 34.17, MPC 415.0220 - Repair or replace and maintain the plumbing fixture to an operational condition.-Repair/replace the missing/inoperable sink stopper.
- 308. Unit E3 - Egress Window - MSFC1026.1 - Provide and maintain an approved escape window from each sleeping room. The minimum size must be 5 square feet of glazed area with a minimum of 24 inches of openable height and 20 inches of openable width. With a finished sill height not more than 48 inches. This work will require permit(s). Call DSI at (651) - 266-9090. Refer to the Escape Windows for Residential Occupancies handout for more information.

Living Room (Double-hung)
17h x 27w Openable
38h x 25w - Glazed

Note: This is a new egress window that has been installed without permit.

- 309. Unit E3 - Entry Door - MSFC 703 - The fire door must not be obstructed or impaired from its proper operation at any time.-The fire door is not automatically closing and latching.
- 310. Unit E3 - Kitchen - SPLC 34.12 (2), 34.35 (1) - Repair and maintain all required and supplied equipment in an operative and safe condition.-The burners on the gas range are not igniting. Repair/replace the gas range.
- 311. Unit E3 - Living Room and Hallway - MSFC 1011.2 - Remove the materials that cause an exit obstruction. Maintain a clear and unobstructed exit way.-The tenant installed a partition consisting of an aquarium, shelving, and milk crates. This creates an exit obstruction. There are also shoes stored in the hallway causing an exit obstruction. Maintain a clear and unobstructed exit way.
- 312. Unit E3 - Refrigerator/Freezer - SPLC 34.12 (2), 34.35 (1) - Repair and maintain all required and supplied equipment in an operative and safe condition.-The refrigerator/freezer is right next to the gas range and has sustained damage to the side from the flame produced by the gas range. Replace the damaged refrigerator/freezer.

Saint Paul Legislative Code authorizes this inspection and collection of inspection fees. For forms, fee schedule, inspection handouts, or information on some of the violations contained in this report, please visit our web page at: <http://www.stpaul.gov/cofo>

You have the right to appeal these orders to the Legislative Hearing Officer. Applications for appeals may be obtained at the Office of the City Clerk, 310 City Hall, City/County Courthouse, 15 W Kellogg Blvd, Saint Paul MN 55102 Phone: (651-266-8688) and must be filed within 10 days of the date of the original orders.

If you have any questions, email me at sean.westenhofer@ci.stpaul.mn.us or call me at 651-266-8982 between 7:30 a.m. - 9:00 a.m. Please help to make Saint Paul a safer place in which to live and work.

Sincerely,

Sean Westenhofer
Fire Inspector
Ref. # 11083

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

SECOND JUDICIAL DISTRICT

Case Type: Other Civil

Wells Fargo Bank, N.A., as an Indenture Trustee,
In Trust for Holders of IMPAC CMB Trust,
Series 2005-2, its successor and/or assigns,

Court File No. 62-CV-11-7462

Plaintiff

v

PROPOSED ORDER

Randall T. Chun, Peggy J. Chun, Mark Thomas
And Lisa Marie Thomas, Inter Savings Bank
FSB, Albert Atemkeng, Jerrold Hester, and
HomeValu Inc.

Defendants

This matter came on for hearing before the undersigned Judge of District Court

on _____, 20____, on the Tenants' Motion Requesting Shortened Notice Period for
Intervention, Intervention, and Related Orders

Upon reviewing the files, affidavits and proceedings herein, and being duly advised,

IT IS HEREBY ORDERED THAT:

1. The notice periods established under Rule 24 for notification of intent to intervene and for Motions to Intervene are abbreviated in the interests of justice.
2. The Intervenors' Motion to intervene in this matter is granted.
3. **[If the Court is not persuaded to grant the Plaintiff's Motion for Appointment of a Receiver]**
In view of the upcoming re-inspection date (January 18, 2012) for the properties at 1205 and 1225 Westminster and potential loss of the Defendants' Certificates of Occupancy for the properties with

harsh impacts to the Intervening Tenants and the other tenants in the buildings, Defendants shall, within 48 hours, file with the Court and serve on all parties to this matter by e-mail and post conspicuously in the front hallway of each property (main door entryway) a written plan/timetable for accomplishment of the corrective actions detailed in the St. Paul Department of Safety and Inspections regarding 1205 Westminster (dated December 16, 2011) and 1225 Westminster (dated December 20, 2011), with a prominent indication the degree to which the Defendants' plan/timetable has been approved by the St. Paul Department of Safety and Inspections.

Or in the alternative - - -

[If the Court is persuaded to grant the Plaintiff's Motion for Appointment of a Receiver]

The Receiver shall, within 48 hours, file with the Court and serve on all parties to this matter and post conspicuously in the front hallway (main door entryway) of each property a written plan/timetable for accomplishment of the corrective actions detailed in the St. Paul Department of Safety and Inspections regarding 1205 Westminster (dated December 16, 2011) and 1225 Westminster (dated December 20, 2011), with a prominent indication the degree to which the Receiver's plan/timetable has been approved by the St. Paul Department of Safety and Inspections.

4. In addition, throughout the exercise of the receivership, the Receiver shall 1) complete all required repairs expeditiously and maintain the property to required standards; 2) not evict tenants from the property except for good cause, i.e. non-payment of rent or other similar lease violation.

DATED:

JUDGE OF DISTRICT COURT

Peter W. Brown, Attorney

3121 Portland Avenue South
Minneapolis, MN 55407
612-824-6533
peterb3121@hotmail.com

January 9, 2012

Will R. Tansey, Attorney
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Dorsey & Whitney, PPA
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Minneapolis, MN 55402-1498

Albert Atemkeng, Pro-Se
Jerrold Hester, Pro Se
Home Valu, Inc., Pro Se

Gentlemen:

Re: Notice of Intervention, Notice of Motion and Motion, and Proposed Order
Court File No. 62-CV-11-7462

Notice of Intervention: Rule 24.03 of the Rules of Civil Procedure provides that persons desiring to intervene shall file and serve on all parties to the action a notice of intervention. This letter constitutes that notice. The rule also provides that in the absence of objection by an existing party to the action within 30 days after service thereof upon the party, such intervention shall be deemed to have been accomplished.

Notice of Motion and Motion and Proposed Order: Due to the exigent circumstances facing my clients, four tenants facing potential eviction on January 18, 2012 due to housing code enforcement actions against the properties by the City of St. Paul, we will be asking the Court at the January 11, 2012 motion hearing in this matter for orders detailed in the Notice of Motion and Motion and in the Proposed Order (also attached). Hard copies of the Notice of Motion and Motion and in the Proposed Order are hereby served upon you. Copies have also been sent to you at all known e-mail addresses of attorneys representing parties to promote swift and expeditious communication in this regard.

Sincerely,

Peter W. Brown, Attorney for the Four Intervening Tenants
612-824-6533

Attachments: Notice of Motion and Motion
Proposed Order