No. 06-CV-1076 and 06-CV-1077

DISTRICT OF COLUMBIA COURT OF APPEALS

KENNETH J. LOEWINGER

and

LOEWINGER & BRAND, PLLC,

Appellants,

v.

CLEMENT STOKES.,

Appellee

On Appeal from the Superior Court of the District of Columbia, Civil Division, Landlord and Tenant Branch

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BRIEF AMICUS CURIAE OF THE LEGAL AID SOCIETY OF THE DISTRICT OF COLUMBIA

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INTEREST OF THE AMICUS CURIAE

The Legal Aid Society of the District of Columbia was appointed by the Superior Court as amicus curiae to participate in the show-cause proceedings below. Legal Aid frequently represents low-income tenants who, like the tenant here, are sued by their landlords for nonpayment of rent. Legal Aid is concerned that tenants' interests will be adversely affected if receivership orders – in particular, their prohibition against a landlord's collecting rent after a receiver's appointment – could be violated with impunity by landlords and their counsel.

STATEMENT OF THE CASE

Lanier Associates, the owner of an apartment building in the District of Columbia, was subject to a receivership order prohibiting it from collecting rent from its tenants. Despite that prohibition, Lanier, through counsel Loewinger & Brand, sued tenant Clement Stokes to recover possession of his unit and collect unpaid rent. Although Loewinger & Brand purported to rely on a three-year-old oral agreement with the receiver as authority to bring the suit, the receivership order did not permit such agreements. In any event, although the receiver's grant of authority was conditioned on its counsel's being identified in the complaint and informed about the case, Loewinger & Brand failed to comply with those conditions. Kenneth J. Loewinger, a principal of the law firm, knew of the receivership order, was lead counsel to Lanier in related matters involving its tenants, identified himself to the trial court as Lanier's counsel in this case, and was described by subordinates as their supervisor on this case and others against Lanier tenants.

After an evidentiary hearing, the Superior Court (Kravitz, J.) found Lanier, Loewinger & Brand, and Mr. Loewinger in civil contempt and imposed remedies designed to assure their compliance with the receivership order and to compensate Mr. Stokes for its violation. The court later ruled that Loewinger & Brand and Mr. Loewinger had purged themselves of contempt.

1. The Order Appointing Receiver. In November 2001, the Superior Court (Diaz, J.) entered an Order Appointing Receiver for the apartment building owned by Lanier at 1773 Lanier Place, N.W. The Jason Corporation was named as the receiver. JA 0011-0016.

The Order was entered under the Prohibition of Electric and Gas Utility Service Termination to Master-Metered Apartment Building Act, D.C. Code 42-3301 et seq. JA 0012. The Act provides that, when the owner of a master-metered apartment building fails to pay its utility bills, the court, on a prima facie adequate petition of the utility company, "shall forthwith appoint a receiver to collect rents or payments for use and occupancy from the tenants thereof and to pay current electric company, electricity supplier, or gas company bills." D.C. Code 42-3303(a)(4). An owner who "collects or attempts to collect any rent" after the receiver's appointment "shall be found, after due notice and hearing, to be in contempt of court." D.C. Code 42-3303(d).

Consistent with the Act, the Order directs that Lanier "shall not collect any rents or payments for use and occupancy from the tenants" of 1773 Lanier Place, N.W. JA 0013. The Order instead grants that authority to the receiver. JA 0012. Specifically, the Order states that "the Receiver shall have the power and right to institute, in the Landlord and Tenant Branch of the Superior Court, actions for possession of the premises for nonpayment of rent against any tenant who has not timely paid his rental obligations to the receiver," and provides for Lanier's joinder in those actions as a voluntary or involuntary plaintiff. JA 0013-0014.

2. The Nonpayment Suits Against Mr. Stokes. In April 2005, while the Order Appointing Receiver remained in place, Loewinger & Brand filed a Complaint for Possession against Mr. Stokes, a tenant of 1773 Lanier Place, N.W. The caption listed the plaintiffs as "LANIER ASSOCIATES & JASON CORP." The complaint identified Loewinger & Brand as "Plaintiff's/Landlord's Attorney," and was signed by firm associate Barbara Rice, but did not identify

any attorney or address for Jason. Nor did the complaint identify Jason as a receiver or otherwise indicate that the building was the subject of a receivership order. The complaint alleged that Mr. Stokes had failed to pay rent and other fees totaling $43,680, and sought a judgment for that amount. JA 0393. The case was dismissed for want of prosecution. JA 0394.[1]

In June 2005, Loewinger & Brand filed a second Complaint for Possession against Mr. Stokes, alleging that he had by now failed to pay $45,500 in rent and other fees, and seeking a judgment for that amount. Again, the complaint listed "LANIER ASSOCIATES & JASON CORP." as the plaintiffs, identified Loewinger & Brand as "Plaintiff's/Landlord's Attorney," and was signed by a Loewinger & Brand associate, this time Omar Karram. And, again, the complaint did not identify Jason as a receiver, did not list counsel for Jason, and did not give an address for Jason. JA 0394; Complaint (Amicus Addendum A-1).

The case was stayed due to the pendency of a tenant petition to the Rental Accommodations and Conversion Division (RACD) challenging a rent increase. In September 2005, Loewinger & Brand filed "Plaintiff's Motion to Lift the Stay of Proceedings." Although the motion and supporting brief listed both Lanier and Jason in the caption, they consistently spoke of "Plaintiff" in the singular in apparent reference to Lanier, stating, for example, that "[t]he Defendant is indebted to the Plaintiff for at least $42,300." Points An[d] Authorities in Support of Plaintiff's Motion to Lift the Stay 1. The signature block identifies "Kenneth J. Loewinger" and "Omar Karram" as "Counsel for the Plaintiff." Id. at 5. The stay was later vacated. JA 0009.

3. The May 2 Status Hearing. At a status hearing in the case on May 2, 2006, attended only by Mr. Karram, Judge Kravitz questioned whether the building was subject to a court-ordered receivership. JA 0021. Mr. Karram responded in the affirmative. Id. When the court

[1] Mr. Stokes withheld rent in an attempt to secure the landlord's correction of housing code violations. See Aff. of Clement Stokes ¶ 11 (executed July 5, 2006).

then questioned whether the property owner had authority to prosecute the case, Mr. Karram represented that "the Receiver is aware of our actions and our attempts to try to settle this – settle this case" and that an unidentified judge in the receivership case "had informed us that we were not in violation of the receivership; that we were able to bring suit against the tenant." JA 0022.[2]

At the court's request, Mr. Loewinger appeared later that day to address the question of Lanier's authority to prosecute the suit. He confirmed that "I represent Lanier. Along with Mr. Kar[ra]m." JA 0029. He also confirmed that the building was in receivership. Id. Although he repeatedly stated to the court that Mr. Stokes was represented by counsel in the case (JA 0030 0032, 0036), those statements were incorrect. See JA 0408.

Mr. Loewinger maintained that Lanier's prosecution of the suit was not prohibited by the Order Appointing Receiver, because Lanier had listed Jason in the caption and intended to turn over any recovery to Jason. JA 0029-0031. He stated that "Mr. Kar[ra]m was directed, and so was Ms. Rice, to contact Jason and advise them and get their consent." JA 0030-0031.[3]

4. The Show-Cause Hearing. The court issued an order to show cause why Lanier and its counsel should not be held in civil contempt for violating the Order Appointing Receiver. On July 6 and 7, 2006, the court heard testimony on that matter from six witnesses: Mr. Loewinger; two former Loewinger & Brand associates, Mr. Karram and Ms. Rice, who signed the complaints against Mr. Stokes; Karly Jordan, the Loewinger & Brand paralegal, who prepared the complaints; Patricia Williams, Jason's receivership administrator; and Andrew Chopivsky, who was Jason's outside counsel before his disbarment in early 2004 (JA 0108).

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[2] The testimony at the show-cause hearing refuted Mr. Karram's assertions. See JA 0408.

[3] The testimony at the show-cause hearing persuaded the court that Mr. Loewinger had not, in fact, given any such direction. See JA 0408 ("Mr. Loewinger never directed either Mr. Karram or Ms. Rice to contact The Jason Corporation and get its consent to bring this case.").

Mr. Loewinger and his former associates indicated that they were aware of the Order Appointing Receiver for 1773 Lanier Place, N.W. JA 0141, 0235-0237, 0296. They testified that they believed that they had authority from Jason to file suits to recover unpaid rent accruing from tenants of the building during the receivership. JA 0138, 0235, 0289-0290.

Neither Mr. Loewinger nor Mr. Karram testified to any personal communications with Jason concerning that purported grant of authority. Ms. Rice, however, testified that she had requested and received such authority from Jason's counsel, Mr. Chopivsky, shortly after the receiver's appointment. JA 0289-0290. Mr. Chopivsky agreed that such authority was granted during a conversation among himself, Ms. Rice, and Ms. Williams of Jason that occurred in the Moultrie Courthouse in approximately May of 2002. JA 0084, 0088, 0102.

Ms. Williams testified that Jason's grant of authority was conditioned on Loewinger & Brand's including a signature line on its pleadings for Jason's attorney (then Mr. Chopivsky) and keeping the attorney "involved and up to date on all [that] was going on." JA 0190-0191; see JA 0194-0195, 0197. Mr. Chopivsky similarly recalled that there was to be a signature line for him on all pleadings and that he was sent copies of some pleadings. JA 0088-0089, 0104. Ms. Williams testified that she was unaware of the suits filed in 2005 against Mr. Stokes until Jason was served with the order to show cause. JA 0194-0195, 0200.

Ms. Rice testified that she filed the April 2005 complaint against Mr. Stokes at the direction of Lanier. JA 0304, 0317. She stated that she did not have any discussions with Ms. Williams or anyone else from Jason about the filing of that suit, although she might have spoken with Mr. Chopivsky about a suit against Mr. Stokes "[m]aybe years and years ago." JA 0294, 0311. Nor had she made any effort to determine whether Jason was represented by new counsel once she stopped seeing Mr. Chopivsky in court. JA 0292, 0310.

Mr. Loewinger testified that he had represented Lanier on other matters involving 1773 Lanier Place, N.W., including opposing the tenants' RACD petition and negotiating with the tenants over purchasing the building. JA 0224, 0242, 0271-0272. Ms. Rice testified that Mr. Loewinger supervised her work on Lanier's landlord-tenant cases. JA 0287-0288. She recalled speaking with Mr. Loewinger about those cases "[a]bout once a month." JA 0287; see JA 0305. Mr. Karram, while denying that he had ever engaged in a substantive discussion with Mr. Loewinger about the case against Mr. Stokes, testified that Mr. Loewinger reviewed and edited the Motion to Lift the Stay and supporting brief. JA 0147-0153. Ms. Jordan, the paralegal, testified that Mr. Loewinger instructed her by e-mail to add the receiver to the most recent complaints against Mr. Stokes and another tenant, Diana Prieto, and Mr. Loewinger acknowledged giving that instruction. JA 0211, 0236.

5. The Contempt Order. The court issued a Memorandum Opinion and Order (Contempt Order) holding Lanier, Loewinger & Brand, and Mr. Loewinger in civil contempt for violating the Order Appointing Receiver. JA 0381-0421. The court recognized, consistent with this Court's decisions, that such a finding must be supported by "clear and convincing" evidence that the alleged contemnor violated a "clear and unambiguous" order. JA 0398. The alleged contemnor need not, however, be found to have acted with less than good faith. Id.

The court ruled that the Order Appointing Receiver made it "clear and unambiguous" that "Lanier Associates not prosecute nonpayment actions in the Landlord and Tenant Branch against tenants of 1773 Lanier Place, N.W. except as a co-plaintiff in actions instituted by the receiver." JA 0400. The court ruled that Lanier had repeatedly violated the Order by bringing nonpayment suits against tenants of the building without properly joining Jason as a plaintiff. Id.

The court found that lawyers from Loewinger & Brand "were intimately involved in and

directive of the contumacious conduct of their client." JA 0401. As examples of the lawyers' involvement, the court noted Ms. Rice's request to Mr. Chopivsky that Jason delegate its authority to bring nonpayment suits, Ms. Rice's and Mr. Karram's failure to include a signature line for Jason's counsel on their complaints, and their "utter disregard for the firm's agreement to keep the receiver apprised of the progress of the actions." Id.

The court rejected Loewinger & Brand's defense that it had substantially complied with the Order Appointing Receiver because it intended to turn over any recovery from the nonpayment suits to Jason and did not conceal Jason's appointment from tenants or the court. JA 0401. The court reasoned that such "token effort[s]" did not excuse the law firm's conduct in "repeatedly fil[ing] and prosecut[ing] nonpayment actions without any involvement of the receiver, in a manner directly inconsistent with one of the most, if not the most, essential provisions of the receivership order." JA 0401-0402.

As for Mr. Loewinger, the court did not credit his testimony that he was not involved in the prosecution of the nonpayment suits against Mr. Stokes and other Lanier tenants. JA 0404-0409. Instead, the court found that Mr. Loewinger "was personally involved in the direction and supervision of" those suits. JA 0409. In reaching that conclusion, the court relied, among other things, on Ms. Rice's testimony about Mr. Loewinger's supervision of her work on nonpayment suits against Lanier tenants, on Mr. Karram's testimony that Mr. Loewinger reviewed and edited the Motion to Lift the Stay, and on Mr. Loewinger's e-mails with Ms. Jordan about adding Jason to the complaints against Mr. Stokes and Ms. Prieto. JA 0405-0407.

The court concluded that civil contempt sanctions should be imposed against the contemnors for two purposes: to assure their future compliance with the Order Appointing Receiver and to compensate Mr. Stokes for his costs in defending against the unlawfully filed suit. JA 0410-

0412. The court ordered the contemnors to pay Mr. Stokes's out-of-pocket costs and his pro bono counsel's reasonable fees. JA 0414-0416. Loewinger & Brand and Mr. Loewinger were also ordered to identify any other clients with buildings in receivership and to certify that they had provided their employees and clients with a statement addressing the requirements of the receivership statute and related provisions of law. JA 0417.

6. The Purging Of Contempt. Appellants subsequently moved to discharge the civil contempt citation as to them, stating that they had entered into a settlement with Mr. Stokes for payment of his costs and attorneys' fees and had complied with the court's other directives. Points and Authorities in Support of Motion to Discharge Contempt Order 1-2. On November 13, 2006, the court entered an order "that the law firm of Loewinger & Brand, PLLC and Kenneth J. Loewinger, Esquire have purged themselves of their civil contempt of court and that they are no longer in civil contempt as of the date of this order." Order 2 (Amicus Addendum A-7).

INTRODUCTION AND SUMMARY OF THE ARGUMENT

The Prohibition of Electric and Gas Utility Service Termination to Master-Metered Apartment Building Act, D.C. Code 42-3301 et seq., responds to the situation in which the landlord of such a building has failed to pay its utility bills. The Act authorizes the Superior Court, on the utility company's application, to appoint a receiver for the building. The receiver has "the authority to take such action as it deems necessary to collect all rents or payments for use and occupancy from the tenants of the apartment house in question in place of the owner." D.C. Code 42-3303(a)(4). The Act provides that "[a]ny owner * * * who collects or attempts to collect any rent or payment for use and occupancy from any tenant of an apartment house subject to an order appointing a receiver pursuant to this section shall be found, after due notice and hearing, to be in contempt of court." D.C. Code 42-3303(d).

This Court has recognized that the Act serves two important purposes: "to protect tenants living in master-metered apartment houses from loss of utility service because of a landlord's failure to pay the utility bill" and "to protect utility companies from nonpayment for services they are required to provide." Shannon & Luchs Co. v. Jeter, 469 A.2d 812, 813 (D.C. 1983). It achieves those purposes by providing a remedy to the utility company "[i]n place of the remedy of termination of service" to the tenants. Id.

This appeal arises from a property owner's and its counsel's violation of an Order Appointing Receiver entered pursuant to the Act. The Order provides that the owner "shall not collect any rents or payments for use and occupancy from [its] tenants * * * so long as the receiver remains appointed" and that "the Receiver shall have the power and right to institute, in the Landlord and Tenant Branch of the Superior Court, actions for possession of the premises for nonpayment of rent against any tenant who has not timely paid his rental obligations." JA 0012, 0013. As the trial court concluded, those provisions unambiguously prohibited the owner, though counsel Loewinger & Brand, from attempting to collect rent by suing its tenants in the Landlord and Tenant Branch for possession of their units and money judgments for unpaid rent. It is irrelevant whether the receiver consented to the property owner's prosecution of such nonpayment suits. Nothing in the Order allowed the receiver to cede its authority "to institute * * * actions for possession of the premises for nonpayment of rent" to the owner and its counsel.

Alternatively, even if the Order could be read to allow the receiver to delegate prosecutorial authority to the property owner, appellants violated the terms of the receiver's delegation. As the trial court found, although the receiver conditioned its delegation on its counsel's being identified in all of the complaints and being informed about all of the cases, appellants did not comply with those conditions in this case and others against tenants of the building. The com-

plaints filed by appellants did not list counsel for the receiver. Nor did appellants even inform the receiver of the suits. Aside from including the receiver's name in the case caption, appellants proceeded essentially as if the Order had never been issued.

Having found, by clear and convincing evidence, that the nonpayment suits were filed and prosecuted in violation of the Order Appointing Receiver, the trial court acted well within its discretion in holding both Loewinger & Brand and Mr. Loewinger in civil contempt. The court recognized that the imposition of civil contempt sanctions against both appellants would serve the twin purposes of civil contempt: to compensate the victim of their contumacious conduct and to compel their compliance with the Order and other receivership orders. The court was fully justified in citing Mr. Loewinger as well as his law firm for civil contempt, given its finding that he was personally involved in the direction and supervision of the unlawful nonpayment suits.

Because the trial court held appellants only in civil contempt, which it subsequently found to have been purged, the appeal presents a threshold question of mootness.

ARGUMENT

I. BECAUSE APPELLANTS PURGED THEMSELVES OF CIVIL CONTEMPT, THIS APPEAL IS PRESUMPTIVELY MOOT

Once a party purges itself of civil contempt – as appellants did in this case – an appeal of the contempt citation ordinarily becomes moot. Wisconsin Ave. Assocs. v. 2720 Wisconsin Ave. Coop. Ass'n, 441 A.2d 956, 968-969 (D.C. 1982) (citing Marshall v. Whittaker Corp., 610 F.2d 1141, 1145 (3d Cir. 1979)); see, e.g., In re Campbell, 628 F.2d 1260, 1261 (9th Cir. 1980) ("reaffirm[ing] the principle that the purging of a contempt order will normally terminate a case or controversy and render appeal from the order moot"). As the Third Circuit has explained, "purging the contempt eradicates any effect of a violation," because "[u]nlike a criminal conviction or involuntary commitment to a mental hospital, an adjudication of civil contempt carries

with it no possibility of collateral deprivations of civil rights or other specifically legal consequences." Whittaker, 610 F.2d at 1145.

Here, appellants obtained an order from the trial court that they "have purged themselves of their civil contempt of court and that they are no longer in civil contempt." Order 2 (Amicus Addendum A-7). In seeking that order, appellants stated that they had fully satisfied the contempt sanctions: They discharged the monetary sanctions by settling with Mr. Stokes for payment of his costs and attorneys' fees. They discharged the non-monetary sanctions by giving the required notice to employees and clients. See Points and Authorities in Support of Motion to Discharge Contempt Order 1-2. They did not move to stay those sanctions pending appeal. "[R]eversal of the [trial] court's finding of contempt will thus not provide [appellants] with any actual, affirmative relief." McDonald's Corp. v. Victory Invs., 727 F.2d 82, 85 (3d Cir. 1984).[4]

Nor is mootness avoided by the possibility that the Contempt Order might cause any continuing harm to appellants' reputations. As this Court has recognized, "the embarrassment and unpleasantness of having been found in contempt, without more, will not create a justiciable controversy," so that "an individual so adjudicated does not have the right to appeal simply to clear his or her name." D.D. v. M.T., 550 A.2d 37, 43 (D.C. 1988); see McDonald's, 727 F.2d at 86 ("Although appellant's counsel suggested that a reversal is necessary to ameliorate the 'embarrassment and humiliation' which [appellant] suffered, such consequences do not warrant an exception from the general principle that once purged, the contempt order is moot and cannot be reviewed."). Hence, at least absent any showing by appellants of any "specifically legal consequences" that could still flow from the Contempt Order, the appeal should be dismissed as moot.

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[4] In the settlement agreement with Mr. Stokes, appellants agreed that "even if the Court's finding of Civil Contempt is reversed on appeal, there shall be no repayment of such finds." Settlement Agreement 5 (attached to Appellant's Response To Order To Shaw Cause Order As To Why This Appeal Should Not Be Dismissed For Lack Of Jurisdiction).

II. THE RECEIVERSHIP ORDER PROHIBITS THE PROPERTY OWNER FROM SUING TENANTS FOR UNPAID RENT, WHETHER THE OWNER INTENDS TO RETAIN THE PROCEEDS OR TURN THEM OVER TO THE RECEIVER

Although the Order Appointing Receiver prohibits the property owner from "collect[ing] any rents" from its tenants, appellants maintain that the Order excludes, sub silentio, the sort of rent collection that they and Lanier engaged in here: namely, the property owner's prosecution of nonpayment suits against its tenants for possession and back rent, provided that the receiver is named in the caption of the complaint and is ultimately to receive any proceeds from the suits. See Appellants' Br. 16-22. Appellants' position is contrary to the text, structure, and purpose of the Order Appointing Receiver and the Act under which it was issued. It would require this Court to read exceptions into the Order that the issuing court did not put there.

A. The Receivership Order Makes Clear That Only The Receiver, And Not The Property Owner, May Sue Tenants For Nonpayment Of Rent

The Order Appointing Receiver directs that Lanier "shall not collect any rents or payments for use and occupancy from [its] tenants." JA 0013. One method of rent collection is, of course, the prosecution of a nonpayment suit against a delinquent tenant for possession of his or her unit and a judgment for rent in arrears. This Court recognized two decades ago that a receiver's statutory authority "to take such action as it deems necessary to collect all rents," D.C. Code 42-3303(a)(4), necessarily includes the authority to "institute a summary suit for possession in the Landlord and Tenant Branch of Superior Court as a mechanism to collect rent." Jeter, 469 A.2d at 818. Mr. Loewinger and his associates professed familiarity with the Jeter decision. JA 0141-0142, 0228-0230, 0264, 0289.

The Order also states that "the Receiver shall have the power and right to institute, in the Landlord and Tenant Branch of the Superior Court, actions for possession of the premises for nonpayment of rent against any tenant who has not timely paid his rental obligations," and spe-

cifically provides for Lanier's joinder in those actions as a voluntary or involuntary plaintiff. JA 0013-0014. No provision grants Lanier any comparable "power and right to institute * * * actions for possession of the premises for nonpayment of rent." The meaning of these provisions is plain: It is the receiver, and only the receiver, that may institute nonpayment suits.

In addition, the Order refers to the section of the receivership statute – now codified at Section 42-3303 of the D.C. Code – that authorizes the appointment of a receiver, delineates the scope of the receiver's authority, and restricts the property owner's authority. JA 0011, 0012. The statute grants the receiver "the authority to take such action as it deems necessary to collect all rents or payments for use and occupancy from the tenants of the apartment house in question in place of the owner, agent, lessor, or manager." D.C. Code 42-3303(a)(4) (emphasis added). That provision confirms that the appointment of a receiver divests the property owner of the authority that it previously possessed to sue tenants to collect unpaid rent. See Capitol Terrace, Inc. v. Shannon & Luchs, Inc., 564 A.2d 49, 53 (D.C. 1989) ("A receiver appointed under the Act replaces the landlord/owner as the sole person entitled to receive direct payments of rent.").

B. Appellants' Reading Of The Receivership Order Is Contrary To Its Text

Appellants argue that the Order Appointing Receiver may reasonably be read as not "prohibiting Lanier Associates, through its counsel, from filing suit with the Receiver's participation and consent." Appellants' Br. 16. They are mistaken. Moreover, as discussed in Section III, the premise of appellants' argument is incorrect, for the trial court found that they prosecuted the underlying suit without the receiver's knowledge, much less its "participation and consent."

The Order Appointing Receiver, by its terms, prohibits all attempts by the property owner to collect rent. It is not confined to particular methods of rent collection. Nor is it confined to the owner's collection of rent for its own account. It is fully applicable, therefore, to the owner's

attempts to collect rent for the receiver, including by bringing nonpayment suits against tenants. Nothing in the law required the Order to prohibit such litigation, in haec verba, in order for the owner and its counsel to be held in civil contempt for engaging in it. See McComb v. Jacksonville Paper Co., 336 U.S. 187, 192 (1949) (explaining that "[it] does not lie in [the contemnors'] mouths to say that they have an immunity from civil contempt because the plan or scheme which they adopted was not specifically enjoined" by an order that speaks in broad and general terms).[5]

Appellants suggest that the receiver and the property owner could, by private agreement, restore to the owner a power to collect rent that is denied by the Order Appointing Receiver. But it is ordinarily the province of the issuing court – not the parties – to decide whether a court order is to be modified. Nothing in the Order here implies any deviation from that rule. While appellants seize on language in the Order directing the receiver to "take such action as it deems necessary to collect all rents" (JA 0012), that language must be read as allowing only action consistent with the remainder of the Order and with the receivership statute, including their prohibitions against the owner's collecting rent. It does not authorize the receiver unilaterally to excise that prohibition. See Capitol Terrace, 564 A.2d at 52 (noting that a receiver "has only such power and authority as are given him by the court, and must not exceed the prescribed limits").[6]

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[5] Rule 3-I of the Rules of the Landlord and Tenant Branch, adopted while this case was pending below, states that "[n]o owner or owner's agent may file a complaint for possession of real property based, in whole or in part, on nonpayment of rent if the property is subject to a court-ordered receivership * * * , unless authorized by court order in the receivership action." As the trial court recognized (JA 0025), the new Rule merely reflects existing law. See Fitzgerald v. Fitzgerald, 566 A.2d 719, 727 (D.C. 1989) (recognizing that the exercise of the authority to promulgate court rules "is subject to existing law, both statutory and judicial").

[6] When Lanier belatedly sought court authority to modify the Order Appointing Receiver to permit it to initiate nonpayment suits, Judge Duncan-Peters ruled that the receivership statute did not permit such modification. Order Denying Request Contained In Submission Entitled Modification To Order Appointing Receiver, First Am. Title Ins. Co. v. American Mgmt. Corp. (D.C.

C. Appellants' Reading Of The Receivership Order Is Contrary To Its Purposes

Appellants' interpretation of the Order Appointing Receiver is unreasonable for an additional reason: It would undermine the purposes of the receivership statute under which the Order was issued: to protect tenants and utility companies against a property owner's neglect by placing responsibility for the collection of rent and the payment of utility bills in a disinterested property management company. See Capitol Terrace, 564 A.2d at 50-51; Jeter, 469 A.2d at 813.

The Council made the receiver "'a representative of the court,' accountable directly to the court in the performance its duties." Capitol Terrace, 564 A.2d at 51 (quoting Jeter, 469 A.2d at 815). The receiver was expected to carry out its statutory duties independently of, and perhaps even in tension with, the property owner. See Jeter, 469 A.2d at 817 ("The receiver is 'supposed to be an indifferent person as between the parties to the cause.'") (quoting In re Careful Laundry, Inc., 104 A.2d 813, 820 (Md. 1954)). A receiver would act contrary to its intended independent role, therefore, if it ceded one of its principal functions to the property owner – namely, the collection of rent from tenants through means such as the prosecution of nonpayment suits.

1. Although the Council might have chosen to leave that function with the property owner, with the expectation that its rent collections would be turned over to the receiver, the Council explicitly chose otherwise. Presumably, the Council concluded that it would be unwise to entrust the property owner with any responsibility for rent collection. There are several reasons why the Council may have reached that conclusion.

The Council may have feared that the owner of a building in receivership could be tempted to divert its rent collections to its own use, especially given the difficult financial straits of many owners in such circumstances. A tenant, having paid rent to the owner, might be subject

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Super. Ct. May 31, 2006) (Amicus Addendum A-2 to A-5). The caption of the Order contains an incorrect name for the plaintiff, which is actually Washington Gas Light Co. See JA 0011.

to a second demand for the same rent from the receiver, who would have no record of the tenant's prior payment. By denying the owner any role in the collection of rent, the Council eliminated the potential for diversion of funds away from the utility company and the receiver.

The Council may also have believed that tenants' interests would generally be better protected if rent collection was assigned solely to the receiver. Doing so eliminates a potential source of tenant confusion about the proper recipient of rent payments. Moreover, the receiver would be in a position to exercise its rent collection authority to resolve disputes between the property owner and the tenants about the amount of rent due and the condition of the property. See, e.g., Knott v. Patten, L&T No. 30208-06 (D.C. Super. Ct. Feb. 1, 2007) (Appellants' Addendum), slip op. 10 (describing the receiver's refusal to authorize nonpayment suits until the property owner made necessary repairs sought by the tenants); see generally Sally Frank, Tenants' Rights and the District of Columbia Master Meter Act, 2 D.C.L.Rev. 113, 115 (1993-1994) ("Frequently, * * * a landlord that is not paying utility bills is also failing to maintain the property in compliance with the housing code.").

In addition, the Council may have believed that the receiver would be more capable than the property owner at collecting the rent needed for timely payment of the utility company. A receivership order is entered only after the property owner has been significantly derelict in paying its utility bills. Such dereliction may reflect the property owner's lack of competence or diligence in managing its business affairs. It might seem inimical to the utility company's interest in securing prompt payment of its bills to assign the task of collecting rent to such an owner.

2. The same concerns are presented by allowing the owner of a building in receivership to prosecute nonpayment suits – even with the receiver's acquiescence – as by allowing the owner to pound on tenants' doors to demand the rent. An owner who has been less than diligent

in its payment of utility bills may lack the resources, initiative, or competence to assure that non-payment suits are properly filed and prosecuted. Such an owner might, for example, enter into settlements with tenants that were unacceptable to the receiver. Moreover, tenants may become confused when, after having been told to pay their rent to the receiver (as were the tenants of 1773 Lanier Place, N.W.), they are then served with a complaint stating that "the landlord asks the Court for * * * judgement [sic] for rent, late fees, other fees, and costs" in a specified amount and signed only by "Plaintiff's/Landlord's Attorney" (as was Mr. Stokes). Complaint (Amicus Addendum A-1) (emphases added); see JA 0389-0390. Even if the owner intends to turn over the proceeds from the suit to the receiver (as was asserted here), the interjection of the owner between the tenant and the receiver increases the risk that those proceeds will not be promptly transferred and accurately credited, to the detriment of the tenant and the utility company.

Allowing property owners to prosecute nonpayment suits would also facilitate the unlawful diversion of rental funds. An unscrupulous owner could proceed much as Lanier, through Loewinger & Brand, did here: not informing the receiver of the case; not including the receiver's counsel or even its address on the complaint, so that the receiver would not receive court notices, orders, and pleadings; and not doing anything to alert the court that the case involved a receivership (since a judge could not be expected to recognize as much merely by the inclusion of "JASON CORP." in the caption). If the owner ultimately obtained a monetary judgment from the tenant, the owner might be able to get away with pocketing the funds unbeknownst to the receiver. The tenant then might be subject to a demand by the receiver for the same rent.

Such schemes would be particularly likely to succeed in cases that do not ultimately go to trial. Often, tenants pay up before the initial return date, thereby causing the suit to be dismissed before a judge has a chance to examine it, and possibly be alerted to the existence of the receiv-

ership. A similar absence of judicial scrutiny could exist for cases that are disposed of by consent judgment praecipe or by default judgment followed by the tenant's redemption of the tenancy under Trans-Lux Radio City Corp. v. Service Parking Corp., 54 A.2d 144 (D.C. 1947). Accordingly, there would be no occasion for inquiry in large categories of cases into whether the tenant's payments were being made to the correct party, i.e., the receiver as opposed to the property owner. The owner's conduct as described in Knott, slip op. 19-20, suggests that concerns about unlawful diversion of funds are not purely theoretical.

III. EVEN IF THE RECEIVERSHIP ORDER PERMITTED THE RECEIVER TO DELEGATE AUTHORITY TO PROSECUTE NONPAYMENT SUITS TO THE PROPERTY OWNER, APPELLANTS DID NOT COMPLY WITH THE TERMS OF THE RECEIVER'S DELEGATION

As explained above, the Order Appointing Receiver provided no authority for Jason to nullify portions of that Order, especially its assignment to Jason alone of the responsibility for collecting rent, including through nonpayment suits. Even if the Order could be read as permitting Jason to delegate that authority, however, Loewinger & Brand did not adhere to the terms of Jason's delegation. Appellants' prosecution of the underlying nonpayment suit cannot, therefore, be said to have been authorized by the receiver's agreement. Hence, even under appellants' own (countertextual) construction of the Order as allowing the receiver and the owner to "cooperate" in the prosecution of nonpayment suits (Appellants' Br. 27), appellants failed to comply with it.

The trial court found that Mr. Chopivsky, as counsel for Jason, and Ms. Rice, as counsel for Lanier, entered into an "informal agreement" allowing Lanier to file nonpayment suits against tenants of 1773 Lanier Place, N.W. JA 0392. In accordance with the testimony of Ms. Williams, Jason's receivership administrator, the court found that the receiver's consent to that arrangement extended "only so long as the complaints listed The Jason Corporation as the receiver and had a signature line for Ms. Chopivsky, and only so long as Lanier Associates or its

counsel kept The Jason Corporation apprised of the progress of all such cases." Id.; see JA 0190-0197. The court further found that appellants failed to comply with either condition in this case and other cases. Those findings are amply supported by the record.

1. Although the trial court found that the parties' agreement required that any complaints in nonpayment suits against Lanier tenants contain a signature line for Jason's counsel (JA 0392), Loewinger & Brand did not include such signature lines on the complaints in any of the four nonpayment suits filed in 2005 against Lanier tenants (two against Mr. Stokes and two against Ms. Prieto). Although appellants seek to dismiss this repeated failure on their part as a triviality (Appellants' Br. 19-20), the court was justified in concluding otherwise.

For one thing, Jason must have considered the inclusion of a signature line for its counsel to be important, since that was a condition of Jason's consent to its delegation of litigation authority to Lanier and Loewinger & Brand. JA 0197. Moreover, without any identification in the complaint of Jason's counsel, neither the court nor the defendant could be expected to serve Jason with notices, orders, and pleadings. If Lanier and Loewinger & Brand intended to conceal the litigation from Jason (although there was no finding that they did), omitting a signature line on the complaints for Jason's counsel would have facilitated their doing so.

There is another reason why Loewinger & Brand's omission of a signature line for Jason's counsel was significant: Rule 9(b) of the Rules of Procedure for the Landlord and Tenant Branch directs that "[n]o corporation shall appear as a plaintiff in this Branch except through a member in good standing of the Bar of this Court." As a result of Loewinger & Brand's failure to identify any counsel for Jason on the complaints in these nonpayment suits, Jason was not effectively made a party to them. As the trial court found, "Lanier Associates, acting through Loewinger & Brand, PLLC, thus prosecuted the suits on its own, in direct violation of the letter

and intent of the receivership order." JA 0397.

That was not because of any ignorance of Rule 9(b). Mr. Loewinger acknowledged his understanding that, under the terms of Rule 9(b), "the only way in which a corporation * * * can file an appearance as a plaintiff is through a lawyer." JA 0246-0247. Mr. Karram and Ms. Rice also stated that they were aware of the rule. JA 0140, 0291. They recognized as well that they represented only Lanier, not Jason. JA 0142, 0247-0248, 0290. Loewinger & Brand's appearance as counsel for Lanier could not, therefore, have satisfied Rule 9(b) as to Jason.

2. A second condition of Jason's delegation of litigation authority was that its counsel would be informed about any nonpayment suits that were filed. JA 0194-0195, 0197. The trial court found, in accordance with Ms. Williams's testimony, that Loewinger & Brand did not inform Jason of the recent nonpayment suits against Mr. Stokes. JA 0393-0394; see JA 0194-0195. That testimony was corroborated by Ms. Rice and Mr. Karram.

Ms. Rice testified that, before she filed the first nonpayment suit against Mr. Stokes in 2005, she made no attempt to confirm with Mr. Chopivsky or Jason that the prosecution agreement remained in effect three years later. JA 0310-0311. She proceeded unilaterally even though she had not seen Mr. Chopivsky in court for some time (presumably, since his disbarment in early 2004), was unsure whether he still represented Jason, and had not received any communications from him or Jason about the prosecution of nonpayment suits. JA 0292, 0310-0311. Nor did she recall causing the complaint to be served on Mr. Chopivsky or Jason. JA 0313.

Mr. Karram, for his part, testified that he filed the second complaint against Mr. Stokes solely in reliance on Ms. Rice's representations as to Jason's consent. JA 0137-0139. (Ms. Rice recalled no such discussion. JA 0293, 0306.) He made no attempt to confirm Jason's consent. JA 0137-0138. He did not serve the complaint on Mr. Chopivsky or Jason. JA 0394-0395.

In sum, even if one were to accept appellants' assertion that "the Receivership Order did not specifically bar an attempt by landlord's counsel and the receiver to cooperate on litigation" (Appellants' Br. 27), appellants engaged in no "cooperat[ion]" with the receiver in the underlying nonpayment suit against Mr. Stokes or other suits filed against Lanier tenants in 2005. Appellants instead proceeded as if the receivership had no significance.

IV. THE TRIAL COURT APPROPRIATELY EXERCISED ITS DISCRETION IN HOLDING BOTH MR. LOEWINGER AND HIS LAW FIRM IN CIVIL CONTEMPT

Appellants argue that, even if they violated the Order Appointing Receiver by prosecuting nonpayment suits against Mr. Stokes and other tenants of 1773 Lanier Place, N.W., the trial court committed reversible error in holding them in civil contempt. See Appellants' Br. 27-35. They are wrong. "There can be no question that courts have inherent power to enforce compliance with their lawful orders through civil contempt." Shillitani v. United States, 384 U.S. 364, 370 (1966). This Court has recognized that "the decision whether to hold a party in civil contempt is confided to the sound discretion of the trial judge, and will be reversed on appeal only upon a clear showing of abuse of discretion." D.D., 550 A.2d at 44.

As an initial matter, the receivership statute expressly contemplates contempt citations against property owners and their agents in the circumstances presented here:

> Any owner, agent, lessor or manager who collects or attempts to collect any rent or payment for use and occupancy from any tenant of an apartment house subject to an order appointing a receiver pursuant to this section shall be found, after due notice and hearing, to be in contempt of court.

D.C. Code 42-3303(d) (emphasis added). The statute's use of the mandatory term "shall" implies, at a minimum, the Council's preference for the imposition of civil contempt for violation of receivership orders. See JA 0410. The Council was not addressing only violations committed with a wrongful intent, for it provided additional penalties, including incarceration, for a "mali-

cious or wilful violation." D.C. Code 42-3304.

The trial court concluded that the imposition of civil contempt sanctions against appellants would serve both of the permissible purposes of civil contempt: "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." JA 0397 (quoting D.D., 550 A.2d at 43-44); see JA 0413. The court ruled that that Mr. Stokes was entitled to compensation for the costs that he incurred in defending himself in the unlawfully prosecuted suit as well as for the reasonable fees of his pro bono counsel at the show-cause proceedings. JA 0414-0416; see Link v. District of Columbia, 650 A.2d 929 (D.C. 1994) (ruling that contempt sanctions may include any costs incurred by a party in securing an adjudication of civil contempt, including attorneys' fees even if the party's counsel did not charge for its services). The court also imposed modest non-monetary remedies to assure the contemnors' compliance with the receivership order in this case and other cases. See, supra, pp. 7-8 (describing sanctions); JA 0413-0417.

1. Although appellants dispute that civil contempt was warranted to secure their compliance with the Order Appointing Receiver (see Appellants' Br. 27-31), they do not dispute that civil contempt was warranted to compensate Mr. Stokes for the Order's violation. As this Court recently confirmed, civil contempt may be employed solely to compensate a party for the violation of a court order. Giles v. Crawford Edgewood Trenton Terrace, 911 A.2d 1223, 1224-1225 (D.C. 2006). Accordingly, even if there were any merit to appellants' contention that civil contempt citations were not necessary to compel the cessation of their contumacious conduct, they would survive as necessary to compensate the victim of that conduct.[7]

[7] Appellants do not challenge to the particular contempt sanctions imposed. They agreed not to appeal the monetary sanctions in the settlement with Mr. Stokes. Settlement Agreement 5. In any event, appellants already discharged those sanctions. See Section I, supra.

Moreover, the trial court's conclusion that civil contempt sanctions were required to assure that appellants would not continue to violate receivership orders was "supported by substantial reasoning based upon a factual foundation in the record." In re A.S.C., 671 A.2d 942, 947 (D.C. 1996). First, the court found that "the evidence shows that Mr. Loewinger and the lawyers of his firm have known all along that the receivership order prohibited Lanier from prosecuting nonpayment actions against tenants of 1773 Lanier Place, N.W." JA 0411. That evidence included the acknowledgement by Ms. Rice, contained in a May 2002 court filing in the consolidated nonpayment suits against other Lanier tenants, that "only a receiver may collect rents from and file suits for possession for a property under receivership." Id. (emphasis added). Second, the court found that appellants had "ignored the most essential terms of the agreement reached with The Jason Corporation in May 2002 and prosecuted this suit without any involvement by the receiver." JA 0412. Third, the court found that Loewinger & Brand personnel – and Mr. Loewinger, in particular – "made repeated statements on the record that have been proven to be inaccurate," thereby casting doubt on whether they "will comply with the receivership order in this or any other case without the coercive sanctions of a civil contempt adjudication." Id.

Appellants err in asserting that, if the court had accepted Mr. Loewinger's offer at the May 2 hearing to dismiss the underlying suit without prejudice, "the case would have ended there without the need for a show cause hearing or contempt citations." Appellants' Br. 28. A mere dismissal of this suit would not have assured that appellants would comply with the Order Appointing Receiver in the future; indeed, Mr. Loewinger did not even offer to dismiss the similarly unlawful suit against Ms. Prieto, another Lanier tenant. Nor would a dismissal have compensated Mr. Stokes for the costs that he incurred due to appellants' violation of the Order.

2. The trial court was well within its discretion in concluding that Mr. Loewinger, as

well as Loewinger & Brand, should be adjudicated in civil contempt. The court found, by clear and convincing evidence, that Mr. Loewinger "was personally involved in the direction and supervision of all of the Landlord and Tenant actions brought by Loewinger & Brand, PLLC against tenants of 1773 Lanier Place, N.W. and, in particular, in the firm's decision to file and prosecute this nonpayment action against Mr. Stokes." JA 0409. As a consequence, Mr. Loewinger's responsibility for the violation of the receivership order was quite different, both qualitatively and quantitatively, from that of, for example, the firm's other principal, Michael Brand.

The trial court extensively analyzed the evidence as to Mr. Loewinger's own involvement in the nonpayment suits against Mr. Stokes and other tenants. JA 0404-0409. Among other things, the court relied on Ms. Rice's testimony that Mr. Loewinger had been actively engaged throughout her tenure at the law firm in representing Lanier in agency proceedings and settlement discussions, that she kept him updated approximately monthly, at his request, on the nonpayment suits against Lanier tenants, and that she heard him direct Mr. Karram to add Jason to the latest complaints against Mr. Stokes and Ms. Prieto. JA 0405. The court gave several reasons for finding that Mr. Loewinger was not credible in denying any extensive personal role in this case, including his e-mails to the paralegal reflecting that he "was personally involved in the fashioning of the complaint," his editing of "the most complex motion in the case," and his erroneous statements at the May 2 hearing. JA 0406-0408.

Appellants acknowledge that Mr. Loewinger was the supervisor of Ms. Rice, Mr. Karram, and Ms. Jordan with respect to the nonpayment suits against Mr. Stokes and other Lanier tenants. See Appellants' Br. 31-32. Appellants further acknowledge that Mr. Loewinger instructed those subordinates on how to file those suits on Lanier's behalf despite the appointment of a receiver. Id. Accordingly, if one assumes that the Order Appointing Receiver barred Lanier

from filing those suits (an assumption that appellants continue to resist), Mr. Loewinger bears significant, if not principal, responsibility for Lanier's and Loewinger & Brand's violation of the Order. Although appellants point to Mr. Loewinger's professed lack of intent "to evade or disobey the Receivership Order" (id. at 32 n. 15), this Court has made clear that a party's innocent intent is no defense against civil contempt. D.D., 550 A.2d at 44; cf. JA 0411-0412 (finding that Mr. Loewinger knew that the Order prohibited Lanier's prosecution of nonpayment suits).

3. Appellants' claim of a conflict between Judge Kravitz's decisions in this case and in Knott v. Patten is without merit. See Appellants' Br. 34-35. In Knott, the court's decision not to hold the lawyer in civil contempt turned on the fact that she was not aware of the receivership order, which had been concealed from her by her client, the property owner (who was held in contempt). Knott, slip op. 27-28; see D.D., 550 A.2d at 50 (recognizing the relevance of an alleged contemnor's "notice" of a court order). In contrast, Mr. Loewinger did not deny that he was well aware of the receivership order against Lanier from approximately the time of its entry in 2001. That crucial factual distinction justifies the differing outcomes in the two cases.

CONCLUSION

If the Court concludes that this appeal is not moot, the Court should affirm the adjudications of civil contempt against both appellants.

Respectfully submitted.

Barbara McDowell (#414570)
Legal Aid Society of the District of Columbia
666 Eleventh Street, N.W., Suite 800
Washington, D.C. 20001
PH: (202) 628-1161

Counsel for Amicus Curiae

ADDENDUM

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION, LANDLORD AND TENANT BRANCH
BLDG. B, 409 E STREET N.W., RM. 110
(Police Memorial Entrance)
Washington, D.C. 20001 Telephone 879-1152 L & T. 021144-05

FILED
LANDLORD & TENANT
JUN 27 2005
Superior Court
of the District of Columbia
Washington, D.C.

LANIER ASSOCIATES & JASON CORP.
Plaintiff/Landlord
1773 LANIER PL.,NW #1B
Address
WASHINGTON, DC 20009
Zip Code

vs.

CLEMENT STOKES
Defendant/Tenant # 23
1773 LANIER PL.,NW
Address
Washington, D.C. 20009
Zip Code

COMPLAINT FOR POSSESSION OF REAL ESTATE

DISTRICT OF COLUMBIA, ss:

TONYA DAUGHTERY being first duly sworn, states: ☐ He or she is the landlord and/or ☐ licensed real estate broker or ☒ the landlord's authorized agent of the house, apartment or office located at 1773 LANIER PL.,NW # 23, 20009, Washington, D.C.
The property is in the possession of the defendant, who holds it without right.
The landlord seeks possession of the property because:

A. ☒ The tenant failed to pay: $ 45,000.00, total rent due from 05/01/01 to 06/30/05; $ 500.00 late fees; and/or $ 0.00 other fees *(Specify)* _____
The monthly rent is $ 900.00. The total amount due to the landlord is $ 45,500.00.
Notice to quit has been: ☐ served as required by law ☒ waived in writing.

B. ☐ Tenant failed to vacate property after notice to quit expired. *(copy attached)*

C. ☐ For the following reason: *(explain fully)*. _____

Notice to quit is: ☐ not required ☐ waived in writing ☐ other _____

Therefore, the landlord asks the Court for:
☒ judgement for possession of the property described
☒ judgement for rent, late fees, other fees and costs in the amount of $ 45,500.00
☒ an order of the Court that all future rent be paid into the Registry of the Court until the case is decided.

Subscribed before me this 23 day of Jun 2005.

KARLY R. JORDAN
NOTARY PUBLIC DISTRICT OF COLUMBIA
My Commission Expires August 31, 2006

Notary Public

Plaintiff / Landlord or Agent

SUMMONS – TO APPEAR IN COURT

AUG 15 2005

YOU ARE HEREBY SUMMONED AND REQUIRED TO APPEAR ON _____ AT 9:00 A.M. PROMPTLY, in Landlord and Tenant Court, Courtroom 110 Bldg. B, 409 E Street N.W. (Police Memorial Entrance) to answer your landlord's complaint for possession of the premises listed in the above complaint. If you live on the premises and you are not named as a tenant you must come to court if you claim a right to possession of the premises.

CONVOCATORIA – DE COMPARENCIA AL TRIBUNAL

A USTED SE LE ORDENA Y EXIGE QUE COMPAREZCA EL AUG 15 2005 A LAS 9:00 A.M. al Tribunal de Arrendadores y Arrendatarios, Sala 100 Edificio B. 409 E Street N.W. (Ingreso por el Monumento a la policia) a contestar la demanda entabalda por ocupacion de la propriedad aqui citada. Si usted vive en esa propiedad sin que se le mencione como inquilino, debe presentarse al Tribunal para reclamar cualquier derecho de ocupacion que tenga sobre la misma.

Loewinger & Brand, PLLC
Plaintiff's / Landlord's Attorney
Abogado del demandante / Arrendador
471 H Street N.W., Washington, D.C. 20001
Address/Direccion Zip Code/Codigo Postal
(202) 789-2382
Phone No./Telefono
K.J. Loewinger 034520; M.E. Brand 202085
A. Asaka 459223
B.A. Rice 452627
A.B. Pearson 479617
F.D. Shelton 475067
N. Stevens 466355
Unified Bar No./No de Aficacion Sociedad de Abogados

498443

CLERK OF THE COURT
SECRETARIO DEL TRIBUNAL

Costs of this suit to date are
Costos del jucio hasta la fecha
$ 23.37

Case: 2005 LTB 021144
00015625943
DK1: LTBNPR

9-0849-4 wd303

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

FIRST AMERICAN TITLE INSURANCE COMPANY,	*	
Plaintiff,	*	Judge Duncan-Peters
	*	Calendar 16
v.	*	
AMERICAN MANAGEMENT CORPORATION,	*	
and	*	
LANIER ASSOCIATES,	*	
Defendants.	*	

ORDER DENYING REQUEST CONTAINED IN SUBMISSION ENTITLED MODIFICATION TO ORDER APPOINTING RECEIVER

This matter comes before the Court upon consideration of the Plaintiff's submission entitled Modification to Order Appointing Receiver. All parties allegedly have consented to the Modification.

The submission, which purports to "modif[y] nunc pro tunc" the Court's November 13, 2001 Order Appointing Receiver (the Honorable Rafael Diaz presiding), is not in the form of a motion and, therefore, must be denied. See Modification at 1.

Further, a motion seeking modification of the November 13, 2001 Order must set forth good cause for granting the request. The current request, including the affidavit from Mr. Andrew Chopivsky, does not do so. For example, it does not explain why a private attorney (*i.e.*, attorney Barbara Rice or any other attorney representing Lanier Associates) should be permitted to file suit and prosecute

landlord and tenant actions premised on the failure to pay rent. Nor does the request explain why Mr. Chopivsky was entitled to cede to the Defendant the authority the Court had granted to the court-appointed receiver.[1]

Likewise, while it appears that the attorney for the Defendant is Omar Karram (his signature is basically illegible), the only attorney who has entered an appearance on behalf of Lanier Associates is Ms. Barbara Rice. There is no praecipe entering Mr. Karram's appearance and, until such a praecipe is filed, Mr. Karram is without authority to petition the Court for relief. See Super. Ct. Civ. R. 101(b). Further, there is no indication that The Jason Corporation, the court-appointed receiver, has consented to the requested modification.

Finally, the Court will not approve the modification because the law does not permit such a modification. The statute clearly prohibits the owner, without exception, from collecting rent. The statute provides that:

> Any owner, agent, lessor or manager who collects or attempts to collect any rent or payment for use and occupancy from any tenant of an apartment house subject to an order appointing a receiver pursuant to this section shall be found, after due notice and hearing, to be in contempt of court.

D.C. Code § 42-3303(d). Nothing in the statute permits the Court to allow the receiver to abdicate the receiver's responsibility "to take such action as it deems necessary to collect all rents or payments for use and occupancy from the tenants of the apartment house in question *in place of the owner, agent, lessor, or*

[1] An affidavit from Mr. Chopivsky accompanies the proposed modification to order appointing receiver. That affidavit contains the case number 05LTB 21144. The instant submission was filed on May 17, 2006, twelve days after the Honorable Neal E. Kravitz filed his May 5, 2006 Order to Show Cause in case number 05LTB21144. His Order to Show Cause is related to the issues regarding the duties and authority of the court appointed receiver that are addressed in the instant order.

manager." D.C. Code § 42-3303(a)(4) (emphasis added). Nor does the statute permit the owner to circumvent the statutory prohibition on collecting rents, with or without safeguards to ensure that the money is ultimately delivered to the receiver. A receivership order that permitted the landlord to collect rent would be contrary to the clear requirements of the statute.

The Court of Appeals has interpreted D.C. Code § 42-3303(d) (formerly D.C. Code § 43-543(d)), to mean that "for as long as the apartment buildings remained in receivership, the landlord would be precluded from bringing suit to obtain any rent which may be abated in the action." Shannon & Luchs Co. v. Jeter, 469 A.2d 812, 817 (D.C. 1983). This prohibition extends to the filing of complaints for possession of real estate in the Landlord and Tenant Branch of the Superior Court where the claim is based on the tenant's failure to pay rent.

> Permitting the landlord ... to sue [for possession of the property], however, would result in the infringement of the tenant's right. Even when no money judgment is sought in a suit for possession, the court is required to make a determination of the amount of arrears to provide the tenant the opportunity to stay enforcement of any judgment for possession through exercise of his equitable right of redemption. Thus, if the landlord of an apartment house which has been placed under receivership brought suit for possession against a nonpaying tenant, the tenant would be denied the right to redeem by the payment of arrearages because under § 43-543 (d) the landlord would be held in contempt if he accepted such payment.

Id. at 815 (internal citations omitted).

If the owner is of the view that the receiver is not collecting rent from tenants in compliance with the receivership order, the owner's remedy is to petition the court for an accounting, for "there is no reason to suppose that courts will turn a deaf ear to legitimate grievances by the landlord about the receiver's

stewardship." Capitol Terrace, Inc. v. Shannon & Luchs, Inc., 564 A.2d 49, 53-54 (D.C. 1989).

For these reasons, it is this 31st day of May 2006,

ORDERED that the Plaintiff's submission entitled Modification to Order Appointing Receiver is hereby **DENIED**. It is

FURTHER ORDERED that, in order to monitor this case, a status hearing on this matter is set for 2:30 p.m. on June 28, 2006 in Courtroom 516.

Stephanie Duncan-Peters
Stephanie Duncan-Peters
Associate Judge
(Signed in Chambers)

Copies to:

MAILED From Chambers MAY 31 2006

Lewis I. Winarsky, Esq.
Washington Gas Light Co.
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Washington, D.C. 20080

DOCKETED In Chambers MAY 31 2006

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Loewinger & Brand, P.L.L.C.
471 H Street, N.W.
Washington, D.C. 20001

Karen A. Bower, Esq.[3]
1701 16th Street, N.W., Suite 320
Washington, D.C. 20009

Patricia Williams and Wayne Carol
4420 Connecticut Avenue, N.W., Room 200
Washington, D.C. 20008

---

[2] Ms. Rice has not withdrawn her appearance. It is not clear whether Mr. Karram, who failed to provide the Court with his address, telephone number or Unified Bar number (see Rule 101 (b)), is appearing as co-counsel or seeking to substitute his appearance for hers.

[3] Since Ms. Bower has represented The Jason Corporation in other matters and Mr. Chopivsky was disbarred by Order dated February 19, 2004 (see In the Matter of J. Andrew Chopivsky, 843 A.2d 737 (2004)), the Court is sending Ms. Bower a copy of this Order. A copy of the Order also is being sent to Patricia Williams, administrator for the court-appointed receiver and Wayne Carol, President of the court-appointed receiver.

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division – Landlord and Tenant Branch

LANIER ASSOCIATES, et al., Plaintiffs	)	
v.	)	Case No. 05 LTB 21144
	)	Judge Neal E. Kravitz
CLEMENT STOKES, Defendant	)	

ORDER

The Court issued an order on July 27, 2006 adjudicating Lanier Associates, the law firm of Loewinger & Brand, PLLC, and Kenneth J. Loewinger, Esquire in civil contempt of court for their prosecution of this nonpayment action in violation of the receivership order in *Washington Gas Light Company v. Lanier Associates*, Civil Action No. 01-8264. The Court imposed certain remedial civil contempt sanctions as part of its order of July 27, 2006 and then, in light of a subsequent agreement reached by the parties, issued an order on September 27, 2006 directing the respondents, as a final contempt sanction, to pay $50,000.00 in reasonable attorney's fees to the defendant by September 28, 2006.

The case is now before the Court on the motion of Loewinger & Brand, PLLC and Kenneth J. Loewinger, Esquire to discharge the contempt order as to them. The respondents contend that they have complied in full with the Court's orders of July 27, 2006 and September 27, 2006 and that they are no longer in civil contempt of court. The respondents report that all of the other participants in the contempt proceedings either consent to or take no position regarding the relief requested in the motion.

The Court accepts as true the respondents' assertion that they have satisfied all of the sanctions imposed by the Court and that they have otherwise complied in full with the Court's orders of July 27, 2006 and September 27, 2006.

Accordingly, it is this 13 day of November 2006

ORDERED that the respondents' motion is **GRANTED IN PART**. Specifically, it is

ORDERED, ADJUDGED, AND DECREED that the law firm of Loewinger & Brand, PLLC and Kenneth J. Loewinger, Esquire have purged themselves of their civil contempt of court and that they are no longer in civil contempt as of the date of this order. *See D.D. v. M.T.*, 550 A.2d 37, 50 (D.C. 1988).

Neal E. Kravitz, Associate Judge
(Signed in Chambers)

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DOCKETED In Chambers NOV 13 2006
MAILED From Chambers NOV 13 2006

CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of the foregoing Brief of Amicus Curiae Legal Aid Society to be delivered by first-class mail, postage prepaid, this 29th day of June, 2007, to:

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Amber L. Husbands
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Samuel M. Shapiro
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