No. 04-CV-1122

DISTRICT OF COLUMBIA COURT OF APPEALS

MICHELLE GILES,

Appellant,

v.

CRAWFORD EDGEWOOD/TRENTON TERRACE,

Appellee

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

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BRIEF AMICI CURIAE OF THE LEGAL AID SOCIETY OF THE DISTRICT OF COLUMBIA AND BREAD FOR THE CITY SUPPORTING APPELLANT

(Filed with the Consent of Both Parties)

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INTEREST OF THE AMICI

The Legal Aid Society of the District of Columbia was formed in 1932 to "provide legal aid and counsel to indigent persons in civil law matters and to encourage measures by which the law may better serve their needs." Legal Aid By-Laws, Art. II, Sec. 1. Legal Aid is the oldest general civil legal-services program in the District of Columbia. Housing law is among Legal Aid's principal practice areas.

Bread for the City is a private, non-profit organization that offers free food, clothing, medical care, social services, and legal assistance to impoverished residents of the District of Columbia. On a monthly basis, Bread for the City's programs serve more than 8,000 people, many of whom are homeless or at risk of losing their homes.

The Legal Aid Society and Bread for the City have participated as counsel for a party or as amici curiae in other cases in this Court involving significant issues of housing law. See, e.g., Akassy v. William Penn Apts. Ltd. P'ship, No. 02-CV-141 (D.C. Feb. 2, 2006); Scarborough v. Winn Residential, L.L.P, No. 05-CV-207 (D.C. Jan. 12, 2006); Douglas v. Kriegsfeld Corp., 884 A.2d 1109 (D.C. 2005) (en banc). Both parties have consented to the filing of this brief amici curiae.

The amici have represented many low-income tenants who, like the tenant in this case, entered into settlements of landlord-tenant suits that were incorporated into consent orders. Such orders may confer rights and impose duties on each party to the case. For example, the tenant may be directed to pay the rent in full each month by a specified date, and the landlord may be directed to make repairs or to take other actions for the tenant's benefit by a specified date. A significant incentive for litigants to agree to the entry of such consent orders is their ability to be enforced expeditiously through civil contempt proceedings in the same case. The trial court held

in this case, however, that consent orders cannot be enforced in that manner if the moving party is seeking only compensation for the opposing party's violation of the order. As a practical matter, if consent orders could be enforced in such circumstances only by filing a separate civil suit, most low-income tenants would lack the resources to enforce them at all.

ARGUMENT

The trial court's denial of the tenant's motion to hold the landlord in civil contempt rests on a fundamental misunderstanding of contempt law. The trial court ruled that the contempt motion had, in effect, been mooted when the tenant moved out of her apartment, because her only interest in continuing to press the motion was to obtain compensation for the landlord's violation of the consent order, not to coerce the landlord into compliance with that order. In the court's view, "[t]he whole purpose of a contempt proceeding is to compel compliance," "[n]ot to order compensation," so that the tenant's only available remedy for the violation for the consent order was to file a separate civil case.[1]

The trial court's restrictive notion of civil contempt is refuted by numerous decisions of the Supreme Court, this Court, and other courts, which recognize that civil contempt sanctions may be imposed solely to compensate the moving party for harm caused by the opposing party's violation of a court order. To require the filing of a new civil case in such circumstances would impose wholly unnecessary burdens on the parties and the judicial system -- burdens sufficiently substantial that many low-income parties, such as the tenant here, would have no choice but to allow their injuries from violations of court orders to go unremedied.

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[1] The trial court's analysis did not turn on any distinction between consent orders and other court orders with respect to their enforceability through the civil contempt process. This Court has refused to draw such a distinction. See, e.g., Akassy v. William Penn Apts. Ltd. P'ship, No. 02-CV-141, slip op. at 7 (D.C. Feb. 2, 2006) ("A consent judgment is an order of the court, indistinguishable in its legal effect from any other court order, and therefore subject to enforcement like any other court order.") (internal quotation marks and citations omitted).

I. CIVIL CONTEMPT SANCTIONS MAY BE IMPOSED FOR PURELY COMPENSATORY PURPOSES

This Court has made clear that civil contempt may be employed in cases, such as this one, in which the moving party is seeking only compensation for the opposing party's violation of a court order. As the Court has explained, "civil contempt serves one of two purposes, either to enforce compliance with a court order or to compensate for losses sustained by reason of a party's non-compliance." In re T.S., 829 A.2d 937, 940 (D.C. 2003) (emphasis added). It is sufficient that the civil contempt motion be directed at either one of those two purposes. See Link v. District of Columbia, 650 A.2d 929, 931 (D.C. 1994) ("Civil as distinguished from criminal contempt is a sanction to enforce compliance with an order of the court or to compensate for losses or damages sustained by reason of noncompliance.") (quoting McComb v. Jacksonville Paper Co., 336 U.S. 187, 191 (1949)); District of Columbia v. Group Ins. Admin., 633 A.2d 2, 12 & n.5 (D.C. 1993) ("The purposes of civil contempt orders are to coerce compliance with the underlying order and/or to compensate the complainant for loss sustained by disobedience.") (quoting Blocksom & Co. v Marshall, 582 F.2d 1122, 1124 (7th Cir. 1978)); Bolden v. Bolden, 376 A.2d 430, 432-433 (D.C. 1977) (same).[2]

Thus, in Federal Marketing Co. v. Virginia Impressions Products Co., 823 A.2d 513 (D.C. 2003), this Court affirmed an award of civil contempt sanctions for violation of a consent decree that barred the defendant, the plaintiff's competitor, from doing business in the District of Columbia under the plaintiff's name. By the time of the contempt proceeding, the plaintiff "was

[2] Occasionally, the Court has spoken in the conjunctive rather than the disjunctive in discussing the purposes of civil contempt. See, e.g., D.D. v. M.T., 550 A.2d 37, 43 (D.C. 1988) ("Civil as distinguished from criminal contempt is a sanction designed 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."). Nothing in the context of those cases suggests that the Court intended to imply that contempt sanctions must serve both purposes in order to be imposed.

a dormant (though not defunct) corporation that had not engaged in business for at least a decade," id. at 521, so that the plaintiff's interest in pursuing contempt would have been almost entirely to obtain monetary compensation for the defendant's violation of the consent decree. Yet, neither this Court nor the trial court suggested that contempt sanctions could not be imposed in that case because they would serve an essentially compensatory purpose.

And, in T.S., the Court affirmed the denial of a juvenile's motion to hold the Department of Human Services in civil contempt for its alleged failure to feed her while she was in custody. The Court observed that the contempt motion was properly denied since the juvenile "was not, either at the time her motion was made or at the time her motion was denied, being detained by DHS" and "neither below nor on appeal, has alleged that she suffered a compensable loss for purpose of a civil contempt action." 829 A.2d 937 at 940 & n.6. Implicit in the Court's reasoning was that the contempt motion could have been viable had the juvenile alleged "a compensable loss," even if the juvenile, by virtue of her release from detention, no longer had any interest in compelling DHS to feed her.

The Supreme Court, too, has recognized that civil contempt sanctions may be imposed for purely compensatory purposes:

> Judicial sanctions in civil contempt proceedings may, in a proper case, be employed for either or both of two purposes: to coerce the defendant into compliance with the court's order, and to compensate the complainant for losses sustained. Where compensation is intended a fine is imposed payable to the complainant.

United States v. United Mine Workers, 330 U.S. 258, 303 (1947) (citing Gompers v. Bucks Stove & Range Co., 221 U.S. 418, 448, 449 (1911)). More recently, the Supreme Court reaffirmed that a contempt fine "is considered civil and remedial if it either 'coerces the defendant into compliance with the court's order, [or] . . . compensates the complainant for losses sustained.'" International Union, United Mine Workers v. Bagwell, 512 U.S. 821, 829 (1994)

(quoting United States v. United Mine Workers, 330 U.S. at 303-304 (bracketed material in Bagwell)); see Hicks v. Feiock, 485 U.S. 624, 635 (1988) (noting that the sanctions for civil contempt may be "purely remedial") (quoting Gompers, 221 U.S. at 443).

The United States Court of Appeals for the District of Columbia Circuit has also expressed the understanding that "[j]udicial sanctions in a civil contempt proceeding are proper either to coerce compliance with the court's order for the complainant's benefit, or to compensate the complainant for losses sustained." Washington Metro. Area Transit Auth. v. Amalgamated Transit Union, 174 U.S. App. D.C. 285, 531 F.2d 617, 622 (D.C. Cir. 1976); see National Org. for Women v. Operation Rescue, 308 U.S. App. D.C. 349, 37 F.3d 646, 660 (D.C. Cir. 1994) (recognizing that contempt fines imposed for violating an injunction by causing property damage to women's clinics were "clearly compensatory and civil").

Nothing in the circumscribed jurisdiction of the Landlord and Tenant Branch justifies a departure from the settled understanding that civil contempt sanctions may be imposed for a purely compensatory purpose. "Proceedings for civil contempt are * * * instituted and tried as a part of the main cause." O'Hearne v. United States, 62 App. D.C. 285, 66 F.2d 933, 935 (D.C. Cir. 1933) (quoting Gompers, 221 U.S. at 445). Tenants who are sued in the Landlord and Tenant Branch may, in appropriate circumstances, recover compensation from the landlord for breach of the implied warranty of habitability. See Javins v. First Nat'l Realty Corp., 138 U.S. App. D.C. 369, 428 F.2d 1071 (D.C. Cir. 1970). In some cases, the landlord's claims against the tenant may already have been dismissed, leaving only the tenant's counterclaim for compensation to be adjudicated in the case. See, e.g., Anderson v. Abidoye, 824 A.2d 42 (D.C. 2003), appeal after remand pending, No. 05-CV-275. The award of compensation to tenants for landlords'

violations of court orders -- as for other violations of the law -- is thus well within the authority and competence of the Landlord and Tenant Branch.

In sum, the trial court proceeded from an erroneous legal premise in concluding, contrary to the authorities above, that the tenant could not press her civil contempt motion after she had moved out of the landlord's building, so that her only remaining interest in seeking contempt sanctions was compensatory. For that reason, the court's denial of the tenant's contempt motion cannot stand.

II. Civil Contempt Sanctions Must Be Available In Cases Such As This One To Assure The Just And Efficient Disposition Of Landlord-Tenant Litigation

If civil contempt sanctions could not be imposed for purely compensatory purposes, as the trial court assumed, significant adverse ramifications could result for litigants and the court system itself. The incentives for parties to resolve their disputes without trial would be reduced, because parties would have less assurance that the settlement, once incorporated into a consent order, would be readily enforceable on motion in the same case. For low-income litigants, such as most tenants sued in landlord-tenant court, if the consent order could not be enforced in that manner, it would not be enforced at all.

Each year, landlords file nearly 50,000 new cases in the Landlord and Tenant Branch. See District of Columbia Courts, 2004 Annual Report 62 (2005) (reporting new filings of 48,999 cases in 2004; 47,951 cases in 2003; 49,138 cases in 2002, 55,649 cases in 2001, and 53,970 cases in 2000). Many of those cases are resolved before trial by some sort of settlement. Of the 46,087 cases disposed of in the Landlord and Tenant Branch in 2004, for example, 24,894 were categorized as "settled/dismissed," while 30,363 were disposed of by default judgment and 118 by trial. See id. at 66. The Superior Court provides a Landlord and Tenant Mediation Program, in which parties are encouraged to participate to attempt to resolve their case before trial. See,

e.g., Superior Court of the District of Columbia, Landlord and Tenant Mediation Program, www.dccourts.gov/dccourts/superior/multi/landlord tenant.jsp (visited Feb. 14, 2006).

The amici, like other legal-services providers that represent low-income tenants in the Landlord and Tenant Branch, often negotiate settlement agreements on their clients' behalf. In many cases, these agreements require the landlord to take some action for the benefit of the tenant: correcting violations of the Housing Code, as in this case; moving the tenant to a different apartment; entering into a modification of the lease, such as to allow an additional individual to live in the tenant's home; or making reasonable accommodations for a tenant's or household member's disability (see Douglas v. Kriegsfeld Corp., 884 A.2d 1109 (D.C. 2005) (en banc)). Typically, the amici seek to have such settlements presented to the trial court for entry as a consent order. The principal reason for doing so is to assure that, if the landlord does not comply with its obligations under the consent order, the tenant may pursue relief through the civil contempt process in the same case.

A. THE ABILITY TO SEEK CIVIL CONTEMPT SANCTIONS AS COMPENSATION FOR LANDLORDS' VIOLATIONS OF CONSENT ORDERS IS IMPORTANT TO LOW-INCOME TENANTS

The ability to invoke the civil contempt process is especially important for the amici's clients. The amici and other legal-services organizations that represent low-income tenants operate under severe resource constraints. As a consequence, even in those cases in which free legal assistance is available to a needy tenant (a fraction of the cases in which tenants might benefit from such assistance), the assistance is generally confined to the original landlord-tenant case. The resources are not available for the filing of a separate civil suit on the tenant's behalf to enforce a consent order against the landlord. See, e.g., Editorial, Legal Services for D.C.'s Poor, Washington Post, Feb. 17, 2006, at A18 ("More than 100,000 poor people in the District have

unmet legal needs that include housing-related problems, family law and language assistance."); Lynn E. Cunningham, Legal Needs for the Low-Income Population in Washington, D.C., 5 U.D.C. L. Rev. 21, 61 (2000) ("The number of unmet legal needs [of District residents living in poverty] far exceeds the capacity of attorneys currently available to handle these needs. About 10 percent of legal needs are met, and 90 percent are unmet.").

Nor would many low-income tenants otherwise be able to bring such suits. The amount of damages involved would rarely be large enough to induce private counsel to take the case on a contingency-fee basis. Most low-income tenants would be at a severe disadvantage in attempting to represent themselves in such suits as a result of their limited education, limited English-language proficiency, or disability. As the D.C. Bar's Landlord Tenant Task Force found, "many pro se litigants" in landlord-tenant court -- the vast majority of whom are tenants -- "either do not understand their legal rights and obligations, or encounter difficulty in asserting their rights, or both." D.C. Bar Public Service Activities Corporation Landlord Tenant Task Force, Final Report 5 (August 1998) [hereinafter Task Force Report]. Those difficulties would persist in a proceeding to enforce a consent order in the Civil Actions Branch or even in the more pro se-friendly Small Claims Branch.

As a practical matter, therefore, if a low-income tenant could not enforce a consent order through a motion for civil contempt in the same case, the tenant would not be able to enforce the order at all. Consequently, if tenants were denied the opportunity to pursue civil contempt when they were seeking only to obtain compensation for the injuries they suffered as a result of the landlord's violation of a consent order, those injuries would forever go uncompensated.

Even if a tenant had the resources to pursue a separate suit in the Civil Actions Branch or the Small Claims Branch to obtain compensation for violation of a consent order, the tenant

could not expect to obtain relief as promptly as she could by filing a civil contempt motion in the existing landlord-tenant case. In the amici's experience, the first court proceeding in a Civil Actions Branch case -- the scheduling conference -- does not occur until three to four months after the case is filed. Even if the case is placed on the shortest track at the scheduling conference, the parties still must wait months before the case is finally adjudicated. See Superior Court Rules -- Civil 16 (providing for the scheduling of civil cases). To be sure, if the tenant is seeking a relatively modest amount of compensation (as is the tenant in this case), she could sue in the Small Claims Branch, where cases generally proceed to judgment more quickly than they do in the Civil Actions Branch. Even then, however, the tenant's claim is unlikely to be resolved as efficiently or as expeditiously as it could have been on a motion for contempt.

The import of a rule precluding tenants from seeking civil contempt in the existing landlord-tenant case for a purely compensatory purpose would not be lost on unscrupulous landlords. Such landlords would then have a strong incentive to delay the performance of their obligations under the consent order -- including, as here, the correction of unsafe or unsanitary housing conditions -- in anticipation that the situation would become so intolerable that the tenant would move out of the residence. In most cases, the landlord would then have succeeded in violating the consent order with impunity. This Court has recognized the need to sanction tenants for violation of court orders, observing that otherwise "there would be no incentive whatsoever to litigants in the Landlord and Tenant Branch to follow the court's order," Davis v. Rental Assocs., 456 A.2d 820, 831 (D.C. 1983) (upholding striking of tenant's pleadings for failure to pay a protective order), and the amici have observed that such sanctions are routinely imposed against tenants even when equitable considerations militate in the tenants' favor. The Landlord and

Tenant Branch should be equally willing to impose sanctions when, as here, the party violating the court order is the landlord.

In short, the advantages of the Landlord and Tenant Branch's "summary process" should not inhere only to landlords. See, e.g., Winchester Management Corp. v. Staten, 361 A.2d 187, 192 n.14 (D.C. 1976) (observing that the "valid and well-recognized objective" of that process is "the prompt settlement of possessory disputes"). Tenants, too, should be able to obtain prompt, efficient, and effective relief in the Landlord and Tenant Branch when a landlord fails to comply with its obligations under a consent order.

B. THE ABILITY TO IMPOSE CIVIL CONTEMPT SANCTIONS AS COMPENSATION FOR LANDLORDS' VIOLATIONS OF CONSENT ORDERS IS IMPORTANT TO THE JUDICIAL SYSTEM AS WELL

The court system would also be adversely affected by a rule that precluded a party from pursuing civil contempt for exclusively compensatory purposes. Litigants would have less incentive to agree to the entry of consent orders if significant uncertainty existed about whether they could ultimately be made whole for violations of those orders. If appreciably more landlord-tenant cases went to trial, judicial resources would be severely strained.

Moreover, if civil contempt could not be sought when a party's sole interest in enforcing a court order was compensatory, courts would be deprived of an important means of sanctioning parties who violate their orders. Nothing in a tenant's purpose for moving for contempt -- whether to coerce the landlord to act or to require the landlord to pay compensation -- affects the degree of respect to which a court order, including a consent order, is entitled. See, e.g., Gompers, 221 U.S. at 433 (noting that civil contempt sanctions, although "purely remedial," have the "incidental effect" of being "a vindication of the court's authority"); cf. Akassy v. William Penn Apts. Ltd. P'ship, No. 02-CV-141, slip op. at 7 (D.C. Feb. 2, 2006) ("A consent judgment is an

order of the court, indistinguishable in its legal effect from any other court order, and therefore subject to enforcement like any other court order.") (internal quotation marks omitted) (quoting Moore v. Jones, 542 A.2d 1253, 1254 (D.C. 1988), and Padgett v. Padgett, 472 A.2d 849, 852 (D.C. 1984)).

III. THE ENFORCEMENT OF CONSENT ORDERS MAY PRESENT DISTINCT ISSUES IN CASES, UNLIKE THIS ONE, IN WHICH ONLY ONE SIDE IS REPRESENTED BY COUNSEL

Although the trial court had no justification in law or public policy to refuse to proceed expeditiously to the merits of the contempt motion in this case, courts should proceed more cautiously when they are asked to enforce a consent order or a consent judgment against a pro se party. Here, both the landlord and the tenant were represented by counsel during the negotiations that produced the consent order. That situation is the exception rather than the rule. In the Landlord and Tenant Branch, although landlords are represented by counsel in 86% of cases, tenants are represented by counsel in only 1%. Task Force Report 5; see Lynn E. Cunningham, Legal Needs, 5 U.D.C. L. Rev. at 37 (observing that, as of 2000, "the majority of cases [in the Landlord and Tenant Branch] were 'settled' without the tenant having the benefit of counsel and without the tenants making use of the protections afforded by local law").

Without "the guiding hand of counsel at every stage of the proceedings against him," Powell v. Alabama, 287 U.S. 45, 69 (1932), a tenant may enter into a settlement without understanding its terms, or without understanding the other options that may be available to him, including a trial at which he can raise defenses and counterclaims. The processes of the Landlord and Tenant Branch do not adequately protect against such uninformed settlements.

At the court's morning roll call, tenants are encouraged to work out settlements with their landlord's lawyer before their case is called for hearing later in the day. Tenants, especially those with limited education or English-language proficiency, may believe that they have little or

no choice but to sign a consent judgment for possession, under which the landlord agrees to stay the eviction so long as the tenant makes rent payments according to a specified schedule. The landlord's lawyer has no obligation during this process to advise the tenant about his rights. The tenant may not have received this information from anyone else.

In many such cases, for example, the landlord's lawyer secures the pro se tenant's consent to the entry of a consent judgment for possession, which is stayed so long as the tenant makes payments of rent according to an agreed-upon schedule. The tenant may not understand that he is thereby forfeiting his right to raise defenses -- such as retaliation or breach of the warranty of habitability -- if he falls behind in rent payments and the landlord returns to court to enforce the judgment. Under Rule 11-1 of the Superior Court Rules for the Landlord and Tenant Branch, such consent judgments may be entered by a clerk, without the parties' ever appearing before a judge. Although the Rule requires the clerk to ascertain that the tenant "understands the nature and consequences of his or her agreement," the amici have observed that this inquiry is often perfunctory and inadequate to inform tenants of the rights that they are relinquishing by entering into the agreement.

In the amici's view, the Landlord and Tenant Branch should proceed with care in enforcing consent judgments or consent orders against parties who were not represented by counsel at the time that they purportedly gave their consent. Such cases require a searching inquiry into, among other things, what the pro se party understood the agreement to be, whether the party's ability to give an informed consent to the agreement was impaired by factors such as disability or limited comprehension of English, and whether the agreement is objectively unconscionable under all of the circumstances. See Akassy, No. 02-CV-141, slip op. 7 (observing that a consent judgment is not only a court order but is "also a contract that should generally be enforced as

written, absent a showing of good cause to set it aside, such as fraud, duress, or mistake") (quoting Camalier & Buckley Inc. v. Sandoz & Lamberton, Inc., 667 A.2d 822, 825 (D.C. 1995), and Moore, 542 A.2d at 1254).

Here, however, given that the consent order was the product of negotiations in which both parties were represented by counsel, the trial court could proceed more expeditiously to enforcing the consent order as written, subject to the limited defenses available in civil contempt proceedings. See, e.g., D.D. v. M.T., 550 A.2d 37, 44 (D.C. 1988) ("We know of only two recognized defenses in civil contempt proceedings: substantial compliance and inability to do that which the court commanded.")[3]

[3] At the hearing on the tenant's contempt motion, even before learning that the tenant had moved out of the landlord's building, the trial court stated that it would not consider the merits of the motion that day, but would at most enter a second order directing the landlord to make repairs. In the circumstances of this case, the trial court was not justified in refusing to act on the tenant's motion, given the clarity of the landlord's obligations under the consent order and the landlord's admitted failure to have complied with those obligations. In different circumstances, such as when a party was not represented by counsel when the consent order was entered, a court could well be justified in giving the party a second opportunity to comply.

CONCLUSION

The trial court's order denying the tenant's civil contempt motion should be reversed and the case should be remanded for a hearing on that motion.

Respectfully submitted.

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I hereby certify that I caused a true and correct copy of the foregoing Brief Amici Curiae of The Legal Aid Society of the District of Columbia and Bread for the City to be delivered by first-class mail, postage prepaid, the 21st day of February, 2006, to:

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