

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

HOUSING COURT DEPARTMENT  
EASTERN DIVISION  
DOCKET No. 24H84CV000402

**BOARD OF TRUSTEES OF THE BROWNSTONE AT COPLEY/  
WEST NEWTON STREET CONDOMINIUM TRUST,  
Plaintiff,**

vs.

**MICHAEL F. COLLINS, individually and as TRUSTEE OF THE MICHAEL F. COLLINS  
TRUST and SCHANWAT WILAILAK,  
Defendants**

**FINDINGS OF FACT, RULINGS OF LAW, AND ORDER ON CONTEMPT**

Plaintiff filed a Civil Contempt Complaint against Defendants. Plaintiff served Defendant Michael F. Collins, individually and as trustee (“Defendant Collins”), with a Civil Contempt Summons (Court Paper No. 26). Plaintiff attempted, but was unable, to serve Defendant Schanwat Wilailak properly under Mass.R.Civ.P. 65.3. (Court Paper No. 26). Plaintiff alleges violation of a Court Order dated October 25, 2024 (Court Paper No. 14). Neither Defendant appeared for hearing on the merits of Plaintiff’s Civil Contempt Complaint on January 15, 2025 and Plaintiff elected to proceed against Defendant Collins only. Mary Denker testified on Plaintiff’s behalf at trial, where counsel represented Plaintiff.

1. Findings of Fact. Plaintiff commenced the underlying action on August 2, 2024 seeking among other things a Declaratory Judgment that the Defendant, Collins had perpetually and habitually violated various rules and regulations of the condominium, including but not limited to unauthorized rentals, renting less than the entirety of the unit, and maintaining a nuisance in the unit. Plaintiff sought an injunction that Defendants be prohibited from accessing or living in their condominium, as their “flop house” had gotten so out of control, that the 28 other families living in the condominium could no longer sleep and feared for their safety.

2. On October 25, 2024 the Court issued a Permanent Injunction Order enjoining and restraining Defendants from (i) entering any unit in the building at 231 W. Newton, Boston, Massachusetts (“the Condominium”) other than their own; (ii) engaging in any nuisance or annoyance which interferes with the peaceful possession or proper use of the Condominium by its residents; (iii) loitering in the Condominium’s interior and exterior common areas or otherwise being in the common areas for reasons other than ingress and egress into their Unit; (iv) renting or leasing their unit without permission obtained pursuant to the applicable rules and regulations of the Condominium (Court Paper No. 14). The Court denied Plaintiff’s request for Defendants to pay Plaintiff’s attorney fees, but the Court ordered that Defendants’ failure to abide by the October 25, 2024 Court Order may result in further sanction, including but not limited to, paying all attorneys’ fees from commencement of this action through the date of the Court’s subsequent findings (Id.)

3. The October 25, 2024 Order was served on the Defendants by constable on October 29, 2024.

4. Ms. Denker testified as to the following violations of the October 25, 2024 Court Order:

a. On October 30, 2024, seventy-one (71) different people were observed and recorded entering and exiting the Defendants’ condominium unit to buy, sell or use drugs and engage in prostitution. Three (3) of those individuals spent an hour loitering in the downstairs common area. There was an altercation between two (2) of those individuals, who appeared intoxicated, in the common area at 6AM, and two individuals were observed sleeping on the common area stairway in the early morning for at least two hours.

b. On October 31, 2024 , fifty-one (51) different people were observed and recorded entering and exiting the Defendants’ condominium unit to buy, sell or use drugs and engage in prostitution.

c. On November 1, 2024, fifty-nine (59) different people were observed and

recorded entering and exiting the Defendants' condominium unit to buy, sell or use drugs and engage in prostitution. The common area hallway was littered with trash, scooters, bicycles and luggage for most of the day.

d. On November 2, 2024, thirty-eight (38) different people were observed and recorded entering and exiting the Defendants' condominium unit to buy, sell or use drugs and engage in prostitution.

e. On November 3, 2024, forty-seven (47) different people were observed and recorded entering and exiting the Defendant's condominium unit to buy, sell or use drugs and engage in prostitution.

f. On November 4, 2024, sixteen (16) different people were observed and recorded entering and exiting the Defendants' condominium unit, upon information and belief to buy, sell or use drugs and engage in prostitution.

5. Since the service of October 25, 2024 Court Order police have raided the Defendants' condominium unit on two occasions, each resulting in the Defendants being arrested along with several of their visitors and guests.

6. After the service of the October 25, 2024 Court Order Mary Denker observed the odor of feces in the common areas above the Defendants' condominium unit.

7. Upon investigating the odor Ms. Denker found feces and urine in the common areas where guests and/or invitees of the Defendants were sleeping (Photograph -Exhibit 1).

8. Ms. Denker also observed pillows and other items left in the common areas by guests and/or invitees of the Defendants (Photograph - Exhibit 2).

9. Ms. Denker also observed guests and/or invitees of the Defendants sleeping in the common areas adjacent to her Unit, which is directly below the Defendants' Unit (Photograph - Exhibit 3).

10. Individuals have also been observed going to the Defendants condominium unit and breaking the exterior window of the Condominium building after service of the October 25, 2024 Order (Photograph Exhibit “4”).

11. Furthermore, invitees and/or guests of the Defendants have constantly left trash and/or personal items in the Condominium’s common areas (Photograph - Exhibit 5).

12. After service of the October 25, 2024 Order the Defendants disconnected the kitchen garbage disposal and left it to overflow while also breaking the shower mixer valve for the second time in one month, both resulting in continuous water to leaking and penetrating into Unit 2 below as owned by Mary and Brad Denker.

13. As a result of this water leaking in their condominium unit, Mary Denker observed that the hardwood floor was buckling with mushrooms growing on floor, water running out of light switches in kitchen and hall, ceiling stains, leaking water onto the floor, paint bubbling, peeling kitchen walls, a musty smell, and warping of kitchen cabinets. Water also leaked into another unit (Unit 1 owned by Scott and Ashley Forest) where it was noted that water stained a newly painted ceiling, and water was dripping from a recessed light onto the floor (Photographs – Exhibits 6 and 7).

14. The water infiltration into her condominium unit caused Mary Denker to remove and replace a large portion of ceiling in dining, kitchen, and hall, as well as having to remove and replace interior kitchen wall and cabinets due to mold growing and warping (Photographs - Exhibits 8, 9, and 10).

15. Through the date of the Contempt Trial, Plaintiff incurred attorney’s fees and costs in the amount of \$26,765.50. (Affidavit of Norman F. Orban – Exhibit 11). The Court has reviewed the affidavit itemizing Plaintiff’s legal fees, and the hourly rate charged, and finds them appropriate for the complexity of this matter.

2. Rulings of Law. The purpose of civil contempt is remedial: its aim is to coerce the performance of a required act by the disobedient party for the benefit of the aggrieved complainant. *In re Birchall*, 454 Mass. 837, 847-48 (2009). To constitute civil contempt, there must be a clear and undoubted disobedience of a clear and unequivocal command, proven by clear and convincing evidence. Where the disobedience is doubtful, there cannot be a finding of contempt. *Id.* at 851-52. *Martinez v. Lynn Housing Authority*, 94 Mass. App. Ct. 702, 705 (2019).

The Rules and Regulations included with the Condominium's Declaration of Trust provide in relevant part that:

"5. No noxious, offensive or unlawful activity shall be carried on in any unit or in the Common Elements nor shall anything be done therein, either willfully or negligently, which is or may become a nuisance to the other Unit Owners or occupants, and all valid laws, ordinances, codes, regulations, rules and orders of any authority having jurisdiction thereover shall be observed. No Unit Owner shall make or permit any continuous or unreasonably loud noises or sounds by himself, his family, employees, agents, visitors, or licensees, nor do or permit anything to be done by such persons that will adversely affect the rights, comforts, or convenience of other Unit Owners. No Unit Owner shall sweep or throw or permit to be swept or thrown from his Unit, or from the doors or windows thereof, any dirt of other substance." and

"19. Each Unit Owner or occupant assumes responsibility for his own safety and that of his agents, servants, employees, invitees, licensees or visitors."

Section 8B(12) of the Condominium's Master Deed provides in part that "no Unit shall be rented, leased or licensed to other than a Permitted Tenant, as defined below, unless otherwise approved by instrument in writing duly executed by the Trustees."

General Laws Chapter 183A Section 4 provides in part that:

"Each unit owner shall be entitled to the exclusive ownership and possession of his unit, subject to the provisions of this section and of sections seventeen, eighteen and nineteen; provided, however, that:

(1) No unit shall be devoted to a use prohibited in the master deed or any lease which is submitted to the provisions of this chapter...

(3) Each unit owner shall comply with the by-laws and with any administrative rules and regulations adopted pursuant thereto, as either of the same may be amended from time to time, and with the lawful covenants, conditions and restrictions set forth in the master deed or in the deed to his unit and with each lease which is submitted to the provisions of this chapter...”

M.G.L. c. 183A § 6(a)(ii) provides in relevant part:

If any expense is incurred by the organization of unit owners as a result of the unit owner’s failure to abide by the requirements of this chapter or the requirements of the master deed, trust, by-laws, restrictions, rules or regulations, or by the misconduct of a unit owner, or his family members, tenants, or invitees, the organization of unit owners may assess that expense exclusively against the unit owner and such assessment shall constitute a lien against that unit from the time the assessment is due, and such assessment shall be enforceable as a common expense assessment under this chapter. The organization of unit owners may also assess any fees, attorneys’ fees, charges, late charges, fines, costs of collection and enforcement, court costs, and interest charged pursuant to this chapter against the unit owner and such assessment shall constitute a lien against the unit from the time the assessment is due and shall be enforceable as common expense assessments under this chapter.

M.G.L. c. 183A § 6(b) provides:

The unit owner shall be personally liable for all sums assessed for this share of common expenses including late charges, fines, penalties, and interest assessed by the organization of unit owners and all costs of collection including attorney’s fees, costs, and charges.

M.G.L. c. 183A § 6(c) provides in relevant part:

A lien under this section shall be enforced in the manner provided in sections five and five A of chapter two hundred and fifty-four. Such lien is prior to all other liens and encumbrances on a unit except (i) liens and encumbrances recorded before the recordation of the master deed, (ii) a first mortgage on the unit recorded before the date on which the assessment sought to be enforced became delinquent, and (iii) liens for real estate taxes and other municipal assessments or charges against the unit. This lien is also prior to the mortgages described in clause (ii) above to the extent of the common expense assessments based on the budget adopted pursuant to subsection (a) above which would have become due in the absence of acceleration during the six months immediately preceding institution of an action to enforce the lien and to the extent of any costs and reasonable attorneys’ fees incurred in the action to enforce the lien.

Where G.L. 183A ¶ 6(a)(ii) and (b), specifically provide for plaintiffs’ attorney fees for enforcing the condominium master deed and rules and regulations, it is within the Court’s discretion to award attorney’s fees. See Brough v. Juniper Cap. Fin. Corp., 57 Mass.App.Ct. 1108 (2003) (Rule 1:28 Decision). G.L. 183A § 6(a)(ii) authorizes the award of attorney’s fees once a Court finds a violation of the governing documents. See Governor’s Park Condo. Ass’n v. Amadi, 100 Mass.App.Ct. 1114

(2021)(M.A.C. Rule 23.0 Decision). The Court finds Defendants violated the condominium master deed and rules and regulations through Defendants actions as described in the October 25, 2024 Order. Although the Court declined to grant attorney's fees at that time, given the totality of Defendants' action both before and after the October 25, 2024 Order, the Court will now award attorney's fees as described herein.

3. Plaintiff proved by clear and convincing evidence that Defendants disobeyed the terms of the Court's October 25, 2024 order. "Clear and convincing proof involves a degree of belief greater than the usually imposed burden of proof by a fair preponderance of the evidence, but less than the burden of proof beyond a reasonable doubt imposed in criminal cases. It has been said that the proof must be 'strong, positive and free from doubt', and 'full, clear and decisive.'" Stone v. Essex County Newspapers, Inc., 367 Mass. 849, 871 (1975) (citations omitted). In other words, "[t]he burden of persuasion, therefore, in those cases requiring a showing of clear and convincing proof is sustained if evidence induces in the mind of the trier a reasonable belief that the facts asserted are highly probably true, that the probability that they are true or exist is substantially greater than the probability that they are false or do not exist." Callahan v. Westinghouse Broadcasting Co., 372 Mass. 582, 588 (1977).

4. I find and rule that Defendant Collins is in contempt of this Court's October 25, 2024 order.

5. Accordingly, it is **ORDERED** that:

A. Judgment shall enter in favor of Plaintiff in its complaint for contempt against Defendant Collins. The Court further orders:

1. Effective at 9:00 AM and after 72 hours have passed from Plaintiff's service of this Order on Defendant Collins, Defendant Collins is hereby prohibited, enjoined, and restrained from, and shall cease, desist, and refrain from entering onto or remaining in 231 W. Newton #3, Boston,

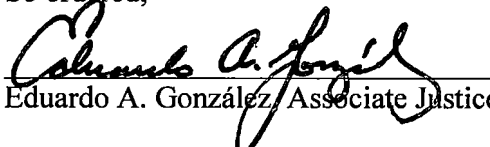
Massachusetts (the “Premises”) and the Property located at 231 W. Newton, Boston, Massachusetts. Defendant may continue to store his belongings in the Premises so long as she continues to pay his monthly condominium fee obligations to the Plaintiff, until there is a further order of this Court or an Appellate Court.

2. Defendant may retrieve his personal property from the Premises, if he gives at least 48 hours’ written notice to Plaintiff and makes arrangements to be accompanied at all times on the property by reasonable supervision, which may include a police officer, private security officer, or representative of Plaintiff.
3. Plaintiff is authorized to change the locks to the Premises, subject to the terms of this Order and after the time frame described in paragraph 5(A)(1) above has elapsed. If Plaintiff elects to change the Premises’ locks, Plaintiff must make best efforts to provide a new key to Defendant Schanwat Wilailak, who is not found in contempt but also lives in the Premises.
4. Plaintiff shall serve Defendant with a copy of this Order by constable or deputy sheriff.

B. To purge himself of contempt, Defendant must: (1) Pay Plaintiff its attorney’s fees and costs accumulated through the date of the Contempt Trial, in the amount of \$26,765.50; and (2) file a request for status hearing in this case for the contempt to be purged. Plaintiff may file a stipulation of Defendant’s compliance with this Order if it seeks to avoid incurring fees to attend the status conference.

Dated: March 21, 2025.

So ordered,

  
Eduardo A. González, Associate Justice