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IN THE TOLEDO MUNICIPAL COURT, LUCAS COUNTY, OHIO

Marianna Hardin, et al.,	*	Case No. CVJ-94-00160, et al.
Petitioners,	*	Judge Roger R. Weiher
vs.	*	
Henry Meyer, General Partner of Northwood Associates, Northwood Associates and Cherrywood Apartments,	*	JUDGMENT ENTRY
Respondents.	*	

* * *

The Settlement dated January 26, 1994, and file-stamped January 31, 1994, provided that Respondents shall do certain things by May 15, 1994, and by March 1, 1994, June 30, 1994, January 31, 1994, and May 1, 1994.

Respondents are required to finish work agreed to in Partial Agreement of October 28, 1993.

Respondents are required to do several other things on a regular or routine or to hire them done. Petitioners agree to cooperate. Petitioners agree to discontinue prosecution and dismiss with prejudice when have satisfactorily completed each item in the Order by the deadline--in the opinion of Jerry Brown.

On May 20, 1994, Petitioners filed a Motion for Civil Contempt alleging Respondents failed to comply with the following paragraphs

of the Settlement Agreement: ¶¶ 1, 2, 4, 5, 7, 9, 10, 11, 12, 14, 15, 17, and 18.

They seek relief as follows:

1. Compensatory damages of $10.00 per day per petitioner for continued violations of this Court Order regarding common areas, from date of violation to date of decision.

2. Compensatory damages of $10.00 per day per petitioner for continued violations of Court Order regarding individual apartment repairs.

3. Assess conditional coercive remedies, monetary and otherwise, as the Court deems necessary to ensure compliance with this Court's Orders.

4. Costs and attorney fees associated with filing of motion.

Evidentiary hearings were held pursuant to the motion by Referee Muska June 30, 1994, through September 2, 1994, (eight hearings) at which time, pursuant to the filing of an affidavit of prejudice by Respondents, she recused herself and back-up Referee Alan Michalak was appointed, and he read into the transcript of prior testimony and concluded receiving testimony from October 19, 1994, through November 8, 1994 (six hearings).

The Referee requested proposed Findings of Fact and Conclusions of Law and Recommendations by both parties. After receiving same, he then filed Findings of Fact and Conclusions of Law on January 10, 1995, which were approved by the Court and file-stamped January 12, 1995.

From this decision, Petitioners filed their objections on February 7, 1995, setting forth 94 specifications.

The Court will address first the STANDARD OF REVIEW set forth in Petitioners' objections.

After a thorough review of Civ. R. 53, the case law, the Proposed Findings of Fact submitted by Respondents, and The Findings of Fact and Conclusions of Law filed by the Referee, the Court finds Petitioners' argument well-taken.

A thorough review of the fourteen (14) transcripts, the motions, the objections, the settlement agreements, and the case law was undertaken by the Court.

At the outset it should be noted that the appellate standard for review is that the trier of fact is in the best position to determine the credibility of witnesses (Seasons Coal Co. v. Cleveland (1984), 10 Ohio St.3d 77, 80). The standard for review of a Referee's Report is different. The appropriate standard of review of a Referee's Report before the trial court allows the trial court to re-determine Referee's factual findings, and that trial court is the ultimate finder of fact; moreover, the trial court is to determine not whether Referee's Report is supported by substantial, probative, and reliable evidence, but whether the trial court finds that the Referee has properly determined factual issues and appropriately applied law to those factual findings. While the Referee is the tentative finder of fact, the trial court is the ultimate finder of fact and need not defer to the Referee's

factual findings. Coronet Insurance Company, Appellee, v. Richards, et al., Appellants (1991) 76 Ohio App.3d 578, 602 N.E.2d 735. The law in Ohio is that a Referee's Recommendation may not be adopted if it lacks Findings of Fact and support of the Referee's conclusions that are sufficient for the trial court to make an independent analysis of the case. Nolte v. Nolte (1978), 60 Ohio App.2d 227, 14 O.O.3d 215, 396 N.E.2d 807. Therefore, the Court is required by Ohio law to review the complete transcripts and to make its own Findings of Fact on each and every item in the Settlement Agreement to which the Petitioners have objected.

Next, the Court addresses the intent of the parties when the Settlement Agreement was entered into. In reading the Settlement Agreement, it fails to disclose or define the intent of the parties; therefore, one must try to arrive at that intent through external means and logic. Certainly, the testimony of the witnesses may be instructive.

In reviewing the intent, purpose, and thrust of the rent escrow statute in Ohio, O.R.C. §5321.07 et seq., it seems obvious to this Court that the broad scope of the statute is to afford tenants a method of redress against landlords who violate their statutory duty to provide tenants with housing which is safe and secure from the intrusions of crime, rodents and vermin, protected against the forces of nature, and assure living conditions which render the housing habitable.

Pursuing this overview and focusing on the question of intent in the Settlement Agreement, it logically follows that when the Settlement Agreement was entered into, the landlord recognized that the tenants had some legally recognizable basis for their complaints; otherwise, the landlord would not have entered into the Settlement Agreement which imposed several obligations on the landlord to correct the conditions alleged in the Complaint within an agreed period of time. The Court notes that both Petitioners and Respondents were represented by competent counsel who, most certainly, participated in the drafting of and presided over the signing of the final draft of the Settlement Agreement. In addition, the Court notes two things: first, a significant provision at the end of the Settlement Agreement which designates and selects Jerry Brown, a staff member for then U.S. Senator Howard Metzenbaum, as an independent arbitrator, <u>whose opinion is to be accepted by both parties in the final determination of full and timely compliance with the terms of the Settlement Agreement</u>; and second, the auxiliary verbs "shall" or "will" appear in each paragraph of the Settlement Agreement. These verbs are directive and impose a mandatory duty wherever used--unlike the auxiliary verb "may" which is permissive only and imposes no mandatory duty but places compliance within the sole discretion of the person upon whom performance or compliance is directed.

Using these criteria, the Court finds that the intent of the parties was for the landlord to provide a healthy, safe, and

habitable place for the petitioners in which to live and a recognition that the alleged complaints had merit which would be addressed by the landlord within a specified time.

We now proceed to analyze whether the landlord has sufficiently complied with the terms of the Settlement Agreement so as to defeat the "Motion for Civil Contempt Relief."

Item 1 of the Settlement Agreement states as follows:

> Respondents shall replace the common area front doors to the apartment buildings with heavy-duty locked front doors. These locks will be protected by heavy duty vandal-resistant shields. Each building will have a different lock so that keys from one building will not open any other door. Respondents shall also install an individual, vandal-resistant, weather-resistant doorbells for each apartment. Said installation shall be completed by May 15, 1994.

This item contains five (5) requirements:

1. Respondents <u>shall</u> replace common area front doors to the apartment buildings with heavy-duty locked front doors;

2. Locks <u>will be</u> protected by heavy duty vandal-resistant shields;

3. Each building <u>will have</u> a different lock so that keys from one building will not open any other door;

4. Respondents <u>shall</u> install individual, vandal-resistant, weather-resistant doorbells for each apartment;

5. Said installation <u>shall be</u> completed by May 15, 1994.

[Emphasis ours].

There is no reference to Item 1 of the Settlement Agreement in the deposition of Jerry Brown except a reference to having visited every building to inspect for the installation of the new doorbell system (see transcript of Jerry Brown, Def. Exh. QQQ, 6/30/94, p. 10). At the beginning of his testimony, he states: "my involvement is to be the final arbiter in those issues where there is disagreement between the parties as to whether a particular item has been . . . of the Settlement Agreement and Court Order . . . has been complied with satisfactorily . . ." (see transcript of Jerry Brown, Def. Exh. QQQ, 6/30/94, p. 7). [Emphasis ours].

The Court notes that the Petitioners' failure to question him as to Item 1 implies that the parties were not in disagreement as to whether that particular item had been satisfactorily complied with within time. Since they were relying on his opinion as to compliance with the Settlement Agreement provisions, interrogation should have been directed to him to seek his opinion if the parties were not in agreement.

Generally, if not raised, any objection or disagreement is waived.

Further inquiry with the other witnesses of petitioners should not have been permitted. Respondents should have objected to such testimony. Not having done so, the Court must accept and review it.

Much discussion centered around the question of whether the doors which were installed were "heavy duty" and "protected by

heavy-duty vandal-resistant shields." The Settlement Agreement is silent as to the definition of "heavy duty" and "vandal resistant." Opinions were elicited by both parties as to whether the doors installed fit their definition. The Court cannot determine from the Settlement Agreement or the testimony of the witnesses just what the parties had in mind. From the testimony of witnesses that some of the doors were damaged and forced in, one can conclude that the doors were not vandal-proof or heavy duty enough, but the standard is not defined in the Settlement Agreement. If the drafters of the agreement had something specific in mind, it should have been specified so that a court would be able to tell what was intended. The failure to do so, coupled with the testimony of Jerry Brown about this item, requires the Court to find that the Respondents exerted their best effort to live up to that portion of the Settlement Agreement and that no violation exists (see transcript of Jerry Brown, 10/27/94, pp. 175-178). It is obvious from the testimony that a great deal of vandalism took place. Some may even have been caused by tenants since sidelights were kicked in from the inside (see transcript of A. Goodall, 10/19/94, p. 16, and Neil Lader, 10/28/94, p. 57). No expert was consulted by either party to establish what kind of doors would satisfy the petitioners prior to signing the Settlement Agreement (see transcript of Raymond Pompili, 8/25/94, p. 106, and Jerry Brown, pp. 174-175). There is testimony that drug sales and use inside the buildings stopped after the doors were installed (see tran-

script Sandra Johnson, 8/25/94, pp. 20, 24 and 25) except where doors were propped open (see transcript Sandra Johnson, 8/25/94, p. 21).

The Court therefore finds that the Petitioners have failed to sustain their burden of proof as to Item 1 of the Settlement Agreement.

Item 2 of the Settlement Agreement reads as follows:

> Respondents shall repair or replace the existing exterior lighting, including lights over doors, with new bulbs, if necessary, and shall install covers which are vandal resistant. Respondents shall install new exterior lighting in the courtyard on Champlain Street with lighting like that installed in the parking lot areas on Walnut Street. Respondents shall fulfil [sic] their duties required in this paragraph by March 1, 1994.
>
> Respondents shall replace non-functioning light bulbs within 24 hours and repair damaged fixtures within a reasonable period of time from notification by tenants, security guards, or Cherrywood staff members.

This item contains three (3) requirements:

1. Respondents <u>shall</u> repair or replace exterior lighting and install covers which are vandal-resistant-- 3/1/94 deadline;

2. Respondents <u>shall</u> replace non-functioning bulbs within 24 hours;

3. Respondents <u>shall</u> repair damaged fixtures within a reasonable time from notification by tenants, guards, or staff.

[Emphasis ours].

Paragraph 1 of Item 2 sets a deadline on the installation of various items of exterior lighting to be accomplished by March 1, 1994.

The testimony of the owner and son of Z & Z Electric, David and Mark Zydorczyk, respectively, is that they were not requested to evaluate the lighting needs at Cherrywood, but were only hired to install and replace fixtures, pursuant to directions from the Respondents; that the lights and fixtures were furnished by the Respondents; and that the installation started in January of 1994 and was completed in June of 1994. (See transcript of David Zydorczyk, 10/19/94, pp. 137-9, and transcript of Mark Zydorczyk, 10/19/94, pp. 146-49, 162-64, and 166, and Pltf. Exhs. 858, 870 and 699).

Based on the unchallenged testimony of the contractors who did the installation, the Court finds that the Respondents have not complied with the first paragraph of Item 2 by March 1, 1994. The Court also finds, based on the above testimony, that the contract was fulfilled on June 30, 1994.

The Court finds that the intent of the parties is to provide safe living conditions in the exterior of the property, and safe lighting conditions on the interior of the property (see transcript of Jerry Brown, 10/27/94, p. 195).

At this point, the Court will address the requirements of the remainder of Item 2 of the Settlement Agreement, as well as Items 3 and 4 as they are all related.

Item 3 provides as follows:

> By June 30, 1994, Respondents shall inspect the north end of 716 N. Michigan Street and 727 N. Erie Street to evaluate whether the existing lighting is insufficient due to the location of the lights and the foliage on the trees. If such lighting is insufficient, Respondents shall install additional vandal-resistant exterior lighting at these locations. Respondents shall inform Petitioners of the results of their inspection and whether they intend to install additional lighting.

This item contains three (3) requirements:

1. By June 30, 1994, Respondents shall inspect the north end of 716 N. Michigan Street and 727 N. Erie Street to evaluate existing lighting as to its sufficiency due to the location of the lights and foliage on the trees;

2. If insufficient, Respondents shall install additional vandal-resistant lighting at these locations;

3. Respondents shall inform Petitioners of the results of their inspection and whether they intend to install additional lighting.

[Emphasis ours].

Item 4 of the Settlement Agreement reads as follows:

> Respondents shall replace light bulbs in interior stairwells in the apartment buildings within 24 hours of notification by tenants, security guards, or Cherrywood staff members. Respondents shall repair and replace stairwell lighting fixtures with covers within 60 days after the common area doors have been locked and a notification system installed in that building. Thereafter, non-functioning light fixtures shall be replaced within a reasonable period of time.

This item contains three (3) requirements:

1. Shall replace light bulbs in interior stairwells within 24 hours of notification by tenants, security guards, or Cherrywood staff;

2. Shall repair and replace stairwell lighting fixtures with covers within 60 days after the common area doors have been locked and a notification system installed in the building;

3. Thereafter, non-functioning light fixtures shall be replaced within a reasonable period of time.

[Emphasis ours].

The Court finds that the lighting was not safe in two areas, one of which was specified in the Agreement; namely, 727 N. Erie. This is based on the testimony of Jerry Brown in which he stated ". . . lighting at 727 N. Erie is not adequate, it's pitch dark . . . It needs a light . . . and I testified so at the last hearing and have been told by management they will put one in, but it has not been installed. . . . Henry Meyer, Neil Lader and Jack Thompson all promised me they would install a light there. . . . It was made earlier this summer and was made last Thursday . . ." [Emphasis ours]. (See transcript of Jerry Brown, 10/27/94, pp. 172, 195).

The Court also finds that pursuant to the requirements of Item 3, the Respondents did not inform Petitioners of the results of any inspection they made of the north end of 716 N. Michigan Street and 727 N. Erie Street, and whether they intended to install additional lighting as no testimony was proffered establishing that they had done so.

The Court finds that the lighting contractors were not requested by Respondents to evaluate the lighting needs at Cherrywood but were only hired to install and replace fixtures, pursuant to directions from Respondents; and that the lights and fixtures were furnished by the Respondents. (See transcript of David Zydorczyk, 10/19/94, pp. 137-139, and transcript of Mark Zydorczyk, 10/19/94, pp. 146-149, 162-164, 166, and Pltf. Exhs. 858, 870 and 699).

The Court also finds that the foliage from trees in the walkways shielded lighting so as to create areas dim to dark, and that there was complete darkness at 814 Cherry toward the parking lot.

The Court also finds that the Respondents attempted to upgrade the lighting at the complex by installing high pressure sodium lights and fixtures on the exterior.

The Court also finds that the high pressure sodium lights were triggered by photo cells which continued to malfunction over a prolonged period of time by flickering on and off, thus effectively defeating the purpose for which they were installed.

As a result, the Court finds that the Respondents failed to replace light bulbs within 24 hours; that if lights malfunctioned or went out on a weekend, the matter would not be addressed until the next workday. The Court finds that reports were submitted to Respondents reporting that on May 27, 28, 29, and 30, 1994, at any given time, there were 11 buildings with lights out. The Court

also finds that the Settlement Agreement makes no exception for weekends. The Court also finds that the maintenance staff does not have access to security guard reports on weekends, and that the Respondents did not provide for a qualified electrician to be available to repair any non-functioning light within the 24-hour period provided for in the Settlement Agreement. The Court also finds that Neil Lader testified on cross-examination that it takes three to four or more days to replace non-functioning exterior lights if electrical work is required. He also testified that if a report of lights out came in on a weekend, the matter would not be addressed until the next work day. He also admitted the Settlement Agreement makes no exception for weekends.

As to Item 4, the Court finds that the Respondents replaced the lighting fixtures on the interior stairwells of the buildings and that they were changed from incandescent to fluorescent fixtures so as to make them less inviting to vandalism by tenants or outsiders. The Court also finds that the interior lights at 831 Walnut were completely out from Sunday, August 21, 1994, to August 24, 1994, a period of four days. This was based on the testimony of Sandra Johnson on August 25, 1994, which was not rebutted by Respondents. The Court notes an unsupported statement by Neil Lader that bulbs are replaced within 24 hours and that the guards normally inform his staff every evening [emphasis ours]. (See transcript Neil Lader, 10/28/94, p. 69, 97, and 176-7). If he is to be believed, then the guards had to inform his staff of the

missing, burned out, and malfunctioning lights previously testified to and reported, and Respondents should have presented evidence that those conditions were reported and corrected pursuant to the Settlement Agreement. Such evidence is lacking.

The Court further finds that work orders were submitted to Respondents for malfunctioning lights and that said work orders were not addressed within the 24-hour period, and that the failure to repair and replace non-function stairwell lighting fixtures within a four-day period does not conform to the requirements of Item 4 in that the Court finds that is not a "reasonable time" as provided for in the Settlement Agreement, nor does it provide safe living conditions. (See transcript of Rick VanLandingham, 10/27/94, pp. 3-4 and 9-21; transcript of Bernice Farris, 10/25/94, pp. 4, 59-60, 61-62 and Pltf. Exh. 863; transcript of Sandra Johnson, Pltf. Exh. 444, 8/15/94, pp. 15-17, and 40; transcript of Sandra Johnson, 10/25/94, p. 2; transcript of David Zydorczyk, 10/19/94, pp. 137-39; transcript of Mark Zydorczyk, 10/19/94, pp. 146-49, 162-64, 166 and Pltf. Exhs. 858, 870, and 699; transcript of Cheryl Mills, 10/27/94, p. 112; transcript of Bernice Farris, 10/25/94, pp. 4 and 5, and 59-62; transcript of Sandra Johnson, 8/8/94, Def. Exh. SSS, pp. 4-6 and Def. Exh. 771; transcript of Sandra Johnson, 8/25/94, Def. Exh. UUU, pp. 15-17, and 34-40; transcript of Bernice Farris, 10/25/94, pp. 59 and 62; transcript of Neil Lader, 10/28/94, pp. 69, 97, 171, and 176-79).

Based on all of the above, the Court finds that while the Respondents may have technically installed improved lighting before the deadline of June 30, 1994, the Respondents failed to comply with the requirements of Items 2, 3 and 4 of the Settlement Agreement in that they did not provide safe living conditions in the exterior lighting as the parties intended when the terms of the Settlement Agreement were agreed to and signed.

The Court again emphasizes the use of the auxiliary verb shall throughout Items 2, 3 and 4 in the Settlement Agreement, thereby placing a mandatory burden on the Respondents.

The Petitioners have sustained their burden in proving by clear and convincing evidence that the Respondents have breached the terms of Items 2, 3 and 4 in violation of the Settlement Agreement.

Item 5 of the Settlement Agreement reads as follows:

> Respondents shall have two security guards working staggered shifts, on patrol for a total of 7 hours per night. The guards shall make "key" entries at least hourly in every building unless specifically instructed by Cherrywood Apartments in the interest of security, or unless they are responding to a problem on the complex.
>
> Until three months after the common area doors are locked, guards shall lock laundry room doors upon their first visit to each building each night. The laundry room doors shall be unlocked by the maintenance staff no later than 10:00 a.m. the following day. At the end of three months, Cherrywood Apartments shall decide whether it is necessary to continue locking the laundry rooms. Respondents shall inform Petitioners about this decision when it is made.

This item contains six (6) requirements:

1. Respondents shall have two security guards working staggered shifts, on patrol for a total of 7 hours per night;

2. The guards shall make "key" entries at least hourly in every building unless specifically instructed by Cherrywood Apartments in the interest of security, or unless they are responding to a problem on the complex;

3. Until three months after the common area doors are locked, guards shall lock laundry room doors upon their first visit to each building each night;

4. The laundry room doors shall be unlocked by the maintenance staff no later than 10:00 a.m. the following day;

5. At the end of three months, Cherrywood Apartments shall decide whether it is necessary to continue locking the laundry rooms;

6. Respondents shall inform Petitioners about this decision when it is made.

[Emphasis ours].

The Court finds that Respondents did have a contract in January 1994 with Guardian Security to work the complex with two security guards, seven hours, and to do detex stops and make keyed entries into every building. That contract was terminated, and on April 1, 1994, Guardian was replaced by Universal Security to provide the same service, and in addition, they were to provide two plain clothes officers, one armed. Then on May 1, 1994, Universal was replaced by Wackenhut to provide the same service without plain clothes guards, but one of the uniformed guards would be armed. All three companies were required to make "keyed" entries in each and every building.

The Court further finds that security guards were instructed to lock each and every laundry room door each night until three months after the doors went on. Then, as of August 15, 1994, they were ordered to stop due to repeated vandalism in removing locks from the doors. (See transcript of Neil Lader, 10/28/94, pp. 85-96, 110 and 111, Exhs. II, KK and LL). The Court therefore finds that the Respondents have lived up to the first requirement of Item 5. The Court further finds that the guards did not make "key" entries at least hourly in every building; that frequently, one-half or fewer of the total buildings were entered by the security guards. The Court also finds that detex keys were missing in at least half of the buildings; that security guards only entered buildings with detex keys.

The Court also finds that key boxes were vandalized in several of the buildings, thus making it impossible for the security guards to register key entries; however, the Court further finds that because of the mandatory language incorporated into the Settlement Agreement, the landlord was under a continuing obligation to take steps to insure the integrity of the security system in providing the tenants with a safe environment in which to live.

The Court finds that the Respondents were not in compliance with the second requirement of Item 5.

The Court further finds that the laundry room doors were not locked each night until three months after the common area doors are locked. Once again, the Court finds that vandalism compromised

the security of the laundry rooms; however, the Court further finds that the mandatory language of Item #5 and the Settlement Agreement requires a continuing obligation on the Respondents to provide a safe and secure environment.

Based on the testimony, the exhibits and the credibility thereof, the Court finds that Petitioners have sustained their burden of proving by clear and convincing evidence that Respondents have not complied with the requirements of the Settlement Agreement as to Item 5. (See transcript of Neil Lader, 10/28/94, pp. 110, 111, 181-5, and 229; see transcript of Sandra Johnson, 10/26/94, pp. 2-4, 9-16, and Pltf. Exh. 931, tab 5, and Exh. 773, pp. 2-4; see also transcript of Sandra Johnson, 8/15/94, pp. 9-16, Pltf. Exh. 666; transcript of Sandra Johnson, 8/25/94, pp. 35-6 and 102-3, Pltf. Exh. 774--Survey of 6/28/94; see also transcript of Pearlie Russell, 10/19/94, pp. 90-98 and 103; transcript of Bernice Farris, Def. Exh. RRR, 7/1/94, pp. 12-14, and Pltf. Exh. 766, and transcript of Bernice Farris, 10/25/94, pp. 28-9, Pltf. Exh. 927; see also transcript of Rick VanLandingham, 10/27/94, pp. 37-43; transcript of Cheryl Mills, 10/27/94, pp. 108-10 and 127-8; see also transcript of Jerry Brown, 10/27/94, pp. 142-44 and 178).

Item 7 of the Settlement Agreement reads as follows:

> Cherrywood Apartment will alter the closure of the fuse boxes in the laundry rooms so as to make them less susceptible to improper tampering or shutoffs. This will be completed by January 31, 1994.

This item contains two (2) requirements:

1. Respondents will alter closure of fuse boxes in laundry rooms so as to make them less susceptible to improper tampering or shutoffs;

2. This will be accomplished by January 31, 1994.

[Emphasis ours].

The Court finds that the Respondents did cover fuse boxes in the laundry rooms and fastened them with one-way screws, thus making them somewhat less susceptible to tampering and vandalism. The Court further finds that the main power switch was not secured against power turnoff in the entire building. The Respondents contend it was against the law to close off the main switch, but the testimony of Captain Thomas Ian Tiggs of the Toledo Fire Department refutes that emphatically. (See transcript, Thomas Ian Tiggs, 8/11/94, pp. 151-55).

The Court finds that the Respondents were under a duty to check with the Toledo Fire Department to determine whether it was against the law to cover the main power box. That could be accomplished by a simple telephone call. The only logical reason for covering the power sources in the buildings is to protect against vandals interrupting the power in the buildings to further their nefarious purposes.

The Court therefore finds that the Respondents are not in compliance with the requirements of Item 7 of the Settlement Agreement and that the Petitioners have sustained their burden of proof.

Item 9 of the Settlement Agreement reads as follows:

> Over the next six months, Respondents will consult with tenants in Unit 728 Cherry and the southern end of 716 N. Michigan Streets regarding a problem with standing water either entering or impeding entrance to their units. If Respondents and tenants discover that standing water is entering or impeding entrance to the townhouses, action will be taken within 30 days to resolve the problem.

This item contains two (2) requirements:

1. From January 1994 through June 1994 defendant will consult with tenants in 728 Cherry and the south end of 716 N. Michigan regarding problems with standing water entering or impeding entrance to their units;

2. Within 30 days the problem will be resolved.

[Emphasis ours].

On June 30, 1994, Jerry Brown testified that the drainpipe extension at 728 Cherry, Ethel Wiggins' building, is blocked by wood beams which would cause draining water to stand or to run back toward the building.

He opined that it does not prevent or block water from coming into her apartment. (See transcript of Jerry Brown, 6/30/94, pp. 31-32 and 63-64, and Pltf. Exh. 571).

In his testimony on October 27, 1994, he was not questioned about this item so the Court assumes the problem was remedied.

On October 28, 1994, Neil Lader testified that he consulted with Ethel Wiggins at 728 Cherry and with a Tawana Nettles (he's not sure of name) at 716 N. Michigan, but did not consult with Petitioners' counsel.

As to 728 Cherry, he then defended the way they addressed the problem by running a pipe from the downspout to the sidewalk. He asserted that the ground sloped downhill from the sidewalk to the foundation and denied that the pipe they ran underground from the base of the downspout to the sidewalk went uphill. (See transcript of Neil Lader, 10/18/94, pp. 187-9). At page 234, he states that the ground was built up around the foundation so that it sloped away from the building and towards the sidewalk.

No testimony was elicited from Ethel Wiggins or anyone from the two buildings in question relative to Item 9.

Based on the testimony of Jerry Brown, and his opinion, the Court finds that at least on June 30, 1994, the Respondents had not corrected the problem.

The Court is unable to determine from the testimony that Respondents did not consult with Ethel Wiggins within the six months as provided in the Settlement Agreement.

The Court further finds that sometime after June 30, 1994, and before October 27, 1994, when Jerry Brown testified, the problem was resolved. This conclusion is reached because Jerry Brown was not questioned regarding this provision of the Settlement Agreement.

Since no date was established as to when Respondents consulted with Ethel Wiggins and other tenants, the Court cannot determine when the 30-day provision for resolving the problem was triggered and since no date was established as to when the problem was

resolved, the Court cannot find that the Respondents failed to comply with Item 9 of the Settlement Agreement.

Therefore, the Court finds that Petitioners have not met their burden of proof. Respondents are not in contempt of Item 9.

Item 10 of the Settlement Agreement reads as follows:

> Respondents shall sweep interior stairwells every other day and shall mop interior stairwells two times per week, Monday through Friday. Respondents shall mop and disinfect stairwells within 24 hours of being notified that human waste is in the stairwell. The regular mopping and sweeping schedule may be modified after the doors, locks, and notification system have been installed in the apartment buildings. Respondents shall inform Petitioners of the mopping and sweeping schedule if it is modified.

This item contains five (5) requirements:

1. Respondents shall sweep interior stairwells every other day;

2. Respondents shall mop interior stairwells twice per week, Monday through Friday;

3. Within 24 hours of being notified that human waste is in the stairwell, Respondents shall mop and disinfect stairwells;

4. The regular mopping and sweeping schedule may be modified after the doors, locks, and notification system have been installed in the apartment buildings;

5. Respondents shall inform Petitioners of such modification.

[Emphasis ours].

The Court does find that the Respondents did sweep and mop the interior stairwells; however, the Court further finds that the stairwells were not adequately cleaned. The Court further finds

that while there was no testimony as to a notification to the Respondents of human waste in the stairwells, there was unbiased testimony that the smell of urine was present on a number of occasions. The Court also finds that the Respondents were notified of these conditions by Jerry Brown after every tour which consisted of 11 visits from March 16 through June 16, 1994. The Court also finds that the interior stairwells were hosed down with no attempt to dry them, resulting in puddles of water remaining on the stair wells. (See transcript of Jerry Brown, 6/30/94, pp. 10-13 and 48-51, and Def. Exh. QQQ; transcript of Jerry Brown, 10/27/94, pp. 137, 144 and 178-81; transcript of Rick VanLandingham, 10/27/94, pp. 28-34 and 68-70; transcript of Cheryl Mills, 10/27/94, pp. 117 and 131-2; transcript of Bernice Farris, 7/1/94, pp. 15-18, 49-50, and 60-61; transcript of Bernice Farris, 10/25/94, pp. 29-31 and 89-91; transcript of Pearlie Russell, 10/19/94, pp. 100-103, 121-2; and transcript of Sandra Johnson, Def. Exh. TTT, 8/15/94, pp. 20-26 and 103-6; and 10/26/94, pp. 42-6 and 103-4).

There was no evidence that Respondents had informed the Petitioners of any modification of any schedule for mopping and sweeping.

The Court finds from the testimony and exhibits that the Respondents have not complied with the requirements of Item 10 of the Settlement Agreement, and that Petitioners have sustained their burden of proof by clear and convincing evidence.

Item 11 of the Settlement Agreement reads as follows:

> To rid the complex of broken glass, Respondents shall use their best efforts to remove broken glass embedded in the dirt by May 1, 1994, weather permitting, such best efforts shall include, but not be limited to, raking, and vacuuming the premises with a high-powered vacuum. Respondents shall also use their best efforts to remove all loose, broken glass which is on the property including but not limited to sweeping of parking lots, near dumpsters, on the sidewalks and play areas. They agree to have maintenance people dedicated to this task on a daily basis, weather permitting.

This item contains three (3) requirements:

1. Respondents shall use their best efforts to remove broken glass embedded in the dirt by May 1, 1994, weather permitting (best efforts to include, without limitation, raking and hi-powered vacuuming);

2. Respondents shall use their best efforts to remove all loose, broken glass including, but not limited to, sweeping parking lots, near dumpsters, on sidewalks, and play areas;

3. Respondents agree to have maintenance people dedicated to this task on a daily basis, weather permitting.

[Emphasis ours].

The Court finds that the Respondents did not use their best efforts to remove and rid the complex of broken glass by May 1, 1994. (See transcript of Jerry Brown, 6/30/94, Def. Exh. QQQ, pp. 13-15, 51-56, and 75-77). In that transcript he rendered his opinion that Respondents did not use their best efforts to remove and rid the complex of broken glass by May 1, 1994. He was particularly conscious of and concerned about glass, especially in the grass, because there were so many children, and you cannot see

the broken glass that well, and some pieces which he picked up on his tour with Jack Thompson were huge. The Court notes that the Respondents did make an effort to address the glass problem at the complex, and even obtained the cooperation of the tenants in a clean-up day; however, these efforts fell short of the mandatory requirements of Item 11. The Court does find that the Respondents complied with requirement number 3 in Item 11.

Based on the testimony and opinion of Jerry Brown, supported by the cumulative testimony of Rick VanLandingham, Bernice Farris, and Sandra Johnson, the Court finds that Petitioners have sustained their burden of proof that the Respondents have not complied with requirements 1 and 2 of Item 11.

Item 12 of the Settlement Agreement reads as follows:

> Respondent shall enter into a contract with an exterminating company for the extermination of rodents from the property, interior and exterior. Respondents agree to make any repairs or modifications recommended by the contractor, such as repairing any brickwork or foundation.

This item contains two (2) requirements:

1. Respondent <u>shall</u> enter into a contract with an exterminator for the purpose of exterminating rodents from interior and exterior of property;

2. Respondent <u>shall</u> agree to make any repairs or modifications recommended by the contractor, such as repairing any brick work or foundation.

[Emphasis ours].

The Court finds that Respondents did enter into a service contract with Orkin Exterminating Company (hereinafter "Orkin")

dated August 22, 1990, supplemented by a letter from Phil Stanchin of Orkin dated June 10, 1994, which refers to roaches only (see Pltf. Exh. 726). The Court relies heavily on the testimony of Jerry Brown in which he renders his opinion that Respondents had not controlled the rodents; that he saw active rodent holes on all of his tours prior to June 30, 1994. See transcript of Jerry Brown, Def. Exh. QQQ, 6/30/94, pp. 15-22, 56-8, and Pltf. Exhs. 770 and 775. Again, he stated he toured the complex on October 20, 1994, with Neil Lader, and then later the same day with representatives of Petitioners' counsel and the tenants for a total of five (5) hours. On that tour he opined that he saw what he believed to be rodent holes.

In his testimony on June 30, 1994, he stated that he feels the Respondents are under an obligation to make the premises entirely rodent-free. (See transcript of Jerry Brown, 10/27/94, pp. 144-9, 182-4, and Pltf. Exh. 707, Item 12; transcript of Ernestine Broadway, 10/27/94, pp. 86-93 and Pltf. Exh. 857; transcript of Cheryl Mills, 10/27/94, pp. 106-8, 126-7 and Pltf. Exh. 857; transcript of Pearlie Russell, 10/19/94, pp. 83-85, 108, 109, and Pltf. Exh. 857; transcript of Doris Luster, 10/19/94, pp. 191-4, 215, and Pltf. Exh. 902; transcript of Sandra Johnson, Def. Exh. TTT, 8/15/94, pp. 50-62, and Def. Exhs. 652, 653, 654, 659, 660, 672-76, 681, 682, and 690; transcript of Sandra Johnson, Def. Exh. UUU, 8/25/94, pp. 5-9, 30 and 31; transcript of Chris Finn, 8/26/94, Def. Exh. VVV, pp. 76-90, 91-93, Pltf. Exhs. 796, 797,

770; transcript of Phil Stanchin, 8/26/94, Def. Exh. VVV, pp. 97-105, and Pltf. Exh. 800; transcript of Phil Stanchin, 8/31/94, Def. Exh. WWW, pp. 1-59, Pltf. Exh. 811 and Pltf. Exh. 801-831; transcript of Nicole Stevens, 8/31/94, Def. Exh. WWW, pp. 68-76; transcript of Chris Finn, 8/31/94, Def. Exh. WWW, pp. 85-91).

The Court finds that the contract the Respondents had with Orkin was dated 8/22/90 and provides for pest control services for roaches, ants, silverfish, rats, and mice.

The Court also finds that no new contract was signed after the Settlement Agreement, and that the only communication Orkin had from Respondent was a phone call from Neil Lader asking for extra service in April or May of 1994 to treat Cherrywood for rats.

The Court further finds that treatment was initiated; however, a letter from Phil Stanchin of Orkin in June of 1994, to Henry Meyer advised him that they would no longer treat for mice and rats on the outside of buildings for the safety of children.

The Court also finds the Respondent never requested that Orkin conduct a rodent survey at Cherrywood and Orkin did not initiate one as part of its service. (See transcript of Phil Stanchin, Def. Exh. VVV, 8/26/94, pp. 97-105, and Pltf. Exh. 800; and transcript of Phil Stanchin, Def. Exh. WWW, 8/31/94, pp. 1-59 and Pltf. Exh. 811).

The Court finds that in order to effectively exterminate rodents in both the interior and exterior of Cherrywood, the treatment should stop the rodents at the perimeter apartments by

setting traps and bait stations, and treating the sewers by suspending paraffin bait from the lid and sealing all holes around the exterior of the buildings where rodents could gain entry. The next step would be to go to the inside of the buildings and set traps.

The Court finds that that was not done. The Court also finds there are tamper-resistant bait stations which are safe.

The Court further finds that Orkin was not doing an effective job in exterior rodent control. The Court further finds that active rodent activity continued in the complex up to the date of the last hearing. (See transcript of Dr. William Jackson, 11/8/94, pp. 62-94; transcript of Jerry Brown, Def. Exh. QQQ, 6/30/94, pp. 15-22 and 56-58, and Pltf. Exh. 70 and 775; transcript of Jerry Brown, 10/27/94, pp. 144-149, 182-184, and Pltf. Exh. 707, Item 12; transcript of Ernestine Broadway, 10/27/94, pp. 86-93 and Pltf. Exh. 857; transcript of Cheryl Mills, 10/27/94, pp. 106-108, 126, 127, Pltf. Exh. 857; transcript of Pearlie Russell, 10/19/94, pp. 83-85, 108, 109 and Pltf. Exh. 857; transcript of Doris Luster, 10/19/94, pp. 191-194, 215, and Pltf. Exh. 902; transcript of Sandra Johnson, 8/15/94, Def. Exh. TTT, pp. 50-62 and Pltf. Exhs. 652-54, 659, 660, 672-76, and 681, 682, and 690; transcript of Sandra Johnson, 8/25/94, Def. Exh. UUU, pp. 5-9, 30 and 31; transcript of Sandra Johnson, 10/26/94, pp. 60-69, 109-111, Pltf. Exh. 857 and 931, Tab 8; transcript of Bernice Farris, 10/25/94,

pp. 63-70; and transcript of Bernie Crosson, 8/26/94, Def. Exh. VVV, pp. 7-54, 59-69, 73-75, and Pltf. Exh. 789, 793, and 794).

The Court finds Petitioners have sustained their burden of proof in that the Respondents are not in compliance with Item 12 of the Settlement Agreement.

Item 14 of the Settlement Agreement reads as follows:

> Respondents shall contract with an exterminating company to have the complex fogged two to three times per the contractor's recommendation and shall instruct exterminator to spray throughout each residence monthly. The complex manager shall be present four times yearly at said sprayings. Residents must cooperate by having their units ready for spraying.

This item consists of four (4) requirements:

1. Respondents shall contract with an exterminating company to have the complex fogged two to three times per contractor's recommendation;

2. Respondents shall instruct contractor to spray throughout each residence monthly;

3. Complex Manager shall be present four times yearly at sprayings;

4. Residents MUST cooperate by having their units ready for spraying.

[Emphasis ours].

The Court finds that the Respondents are in compliance with the first requirement of Item 14 by entering into a contract with Orkin to fog the complex twice per year and, in addition, to fog all vacant units prior to occupancy, as well as occupied units, if necessary, based on monthly service. (See transcript of Jerry Brown, 6/30/94, pp. 30-37, Pltf. Exh. 726).

The Court finds that the Respondents have complied with the third requirement of Item 14 that the complex manager be present four times yearly for spraying. The Court finds that having a maintenance worker for the complex accompany a representative from Orkin each time a unit is treated satisfies the requirement of the third part of Item 14. (See transcript of Chris Finn, Def. Exh. VVV, 8/26/94, pp. 76-82).

The Court finds that the Respondents were not in compliance with the first requirement of Item 14 prior to June 10, 1994, the date of the letter from Phil Stanchin. (See transcript of Jerry Brown, Def. Exh. QQQ, 6/30/94, pp. 7-37). The Court finds that, as stated earlier, the intent of the parties, as well as requirements of the Ohio Revised Code, place a duty upon the landlord to provide a healthy, safe and habitable place for the tenants in which to live.

The Court further finds that the Respondents have failed to fog some units in the complex.

The Court further finds that the Respondents and Orkin have failed to exterminate roaches in the complex, and that, in some cases, the problem has been exacerbated to the point where the infestation has become severe in some units.

The Court further finds that the infestation of roaches is so severe in some units that tenants were required to purchase spray and anti-roach chemicals to be placed around the apartment in an attempt to control the proliferation of roaches.

The Court further finds that the residents who testified in these proceedings did have their apartments ready for spraying whenever they received notice.

The Court also finds that the contractor failed to appear on the date indicated or appeared without notice. The Court also finds that the tenants could not be expected to be ready or to leave the apartment in a treatment-ready mode for a period of time beyond the day of notice since the tenants have to cook meals and be allowed to live a normal routine, especially if children are involved.

The Court further finds that in order for roach control to be effective, all apartments in a building must be accessed and treated.

The Court further finds that if roach infestation is present in an apartment which could not be treated, those roaches would migrate to other apartments in that building and render roach control treatment ineffective.

The Court further finds that the contractor was not able to gain access to some apartments due to Respondents not having key access, or tenant illness, or tenant failure to cooperate.

The Court finds, therefore, that the Respondents are not in violation of requirement number 4 in Item 14 because the testimony supports the conclusion that some residents did not cooperate.

The Court does find that as to the second requirement of Item 14, the Petitioners have sustained their burden of proof and

that the Respondents are not in compliance with that portion of Item 14 of the Settlement Agreement. (See transcript of Cheryl Mills, 10/20/94, pp. 112-131; transcript of Pearlie Russell, 10/19/94, pp. 70-83, Pltf. Exh. 854; transcript of Doris Luster, 10/19/94, pp. 194-211, Pltf. Exh. 843; see also transcript of Sandra Johnson, 8/15/94, pp. 48-50; transcript of Sandra Johnson, 8/25/94, pp. 4-30; transcript of Sandra Johnson, 10/26/94, pp. 53-60; transcript of Bernice Farris, 7/1/94, pp. 36-39; transcript of Bernice Farris, 10/25/94, pp. 45-58, and 97-98, Pltf. Exh. 925; and transcript of Nicole Stevens, Def. Exh. WWW, 8/31/94, pp. 68-79).

The Court finds that, as stated earlier, the intent of the parties as well as requirements of the Ohio Revised Code place a duty upon the landlord to provide a healthy, safe and habitable place for the tenants in which to live.

The Court finds, therefore, that the Petitioners have sustained their burden of proof and that the Respondents are not in compliance with the intent of Item #14 of the Settlement Agreement which was to rid the complex of roaches. (See transcript of Cheryl Mills, 10/20/94, pp. 112-131; transcript of Pearlie Russell, 10/19/94, pp. 70-83 and 104-108; transcript of Doris Luster, 10/19/94, pp. 194-211, Pltf. Exh. 843; transcript of Sandra Johnson, 8/15/94, pp. 48-50; transcript Sandra Johnson, 8/25/94, pp. 4-30; transcript of Sandra Johnson, 10/26/94, pp. 53-60; transcript of Bernice Farris, 7/1/94, pp. 36-39; transcript of Bernice Farris, 10/25/94, pp. 45-58, Pltf. Exh. 925 and pp. 97-98;

transcript of Bernie Crosson, 8/25/94, pp. 54-59; transcript of Chris Finn, 8/26/94, pp. 76-93; transcript of Phil Stanchin, 8/31/94, pp. 1-59 and 62-64; transcript of Nicole Stevens, 8/31/94, pp. 68-79; transcript of Chris Finn, 8/31/94, pp. 86-100).

Item 15 of the Settlement Agreement reads as follows:

> Dumpsters shall be emptied four times weekly and management staff shall be instructed to discontinue the placing of non-garbage items, such as furniture and appliances, in the dumpsters. If this does not eliminate the overflowing of the dumpsters, Respondents shall provide additional dumpster space.

This item contains three (3) requirements:

1. Dumpsters shall be emptied four times weekly;

2. Management staff shall be instructed to discontinue the placing of non-garbage items, such as furniture and appliances, in the dumpsters;

3. Respondents shall provide additional dumpster space if this does not eliminate the overflowing.

[Emphasis ours].

The Court recognizes that dumpsters become targets for non-tenants to discard their trash and garbage, and there is testimony to support that observation. The testimony also establishes that children of tenants who may not be able to reach the top of the dumpster either throw and miss or just place the garbage or trash on the ground. In a complex the size of Cherrywood there are frequent changes of tenants through eviction or voluntary moving, resulting in much trash and many items of furniture, bedding, etc., to be discarded, resulting in an accumulation and overflowing of dumpsters on occasion.

The testimony also establishes that tenants contribute to the problem by placing non-garbage items in the dumpsters. The Court finds that the Respondents have contracted with BFI to empty the dumpsters four times weekly, and that tenants have verified that BFI is performing pursuant to the contract. While the dumpsters may overflow occasionally, the Court cannot find that the Respondents are in violation of Item #15 of the Settlement Agreement.

The Court finds that the Petitioners have failed to sustain their burden of proof; therefore, the Respondents are in compliance and not in contempt as to Item 15. (See transcript of Jerry Brown, 6/30/94, pp. 7-72; transcript of Jerry Brown, 10/27/94, p. 170; transcript of Sandra Johnson, 8/15/94, pp. 36-106; transcript of Sandra Johnson, 8/25/94, Def. Exh. UUU, p. 25; transcript of Sandra Johnson, 10/26/94, pp. 51-53 and p. 106; transcript of Bernice Farris, Def. Exh. RRR on 7/1/94, pp. 28-36, pp. 55-57; transcript of Bernice Farris, 10/25/94, pp. 39-45 and 95-97; transcript of Neil Lader, 10/28/94, pp. 135-139, 99, 200, and Def. Exh. ZZ).

Item 17 of the Settlement Agreement reads as follows:

> Respondents shall provide an on-site, or neighborhood-residing maintenance person who shall be available 24 hours a day, seven days a week, and furnished with a constantly-accompanying beeper for emergency calls. Respondents shall maintain two separate telephone lines at the Cherrywood Office. The answering machine will be on and operating from 5:00 p.m. to 8:00 a.m. and 24 hours a day on weekends. The telephone number of the beeper shall be identified on the answering machine message. Respondents shall notify

tenants of the beeper number in order to reach the maintenance person.

This item contains six (6) requirements:

1. Respondents shall provide an on-site, or neighborhood-residing maintenance person who shall be available 24 hours a day, seven days per week;

2. Said maintenance person to be furnished with a constantly accompanying beeper for emergency calls;

3. Respondents shall maintain two separate phone lines at the Cherrywood Office;

4. The answering machine will be on and operating from 5:00 p.m. to 8:00 a.m. and 24 hours a day on weekends;

5. The telephone number of the beeper shall be identified on the answering machine message;

6. Respondents shall notify tenants of the beeper number in order to reach the maintenance person.

[Emphasis ours].

The Court finds that until around May 24, the Respondents were not in compliance with the Settlement Agreement as to Item 17 in that there were no responses when phone calls were made after hours through the use of the answering machine, and it was not until after the Respondents entered into a contract with Seaway Communications on May 20, 1994, that tenants were able to have 24-hour communication for emergency purposes.

The Court, therefore, finds that the Petitioners have sustained their burden of proof in establishing that the Respondents were not in compliance with the terms of Item 17 between the date of the Settlement Agreement and May 20, 1994.

The Court also finds that the Respondents have been in compliance with the terms of the Settlement Agreement insofar as Item #17 is concerned, after May 20, 1994. (See transcript of Jerry Brown, Def. Exh. QQQ, 6/30/94, pp. 37-41; transcript of Sandra Johnson, 10/26/94, pp. 72 and 74; and transcript of Neil Lader, 10/28/94, pp. 141-147, Def. Exh. CCC).

Item 18 of the Settlement Agreement reads as follows:

> Respondents shall complete Petitioner's request for ordinary repairs within 30 days from notice of the request, and shall complete Petitioner's request for urgent repairs within 24 hours from notice of the request. Petitioners may be charged in accordance with their leases for any future damages caused by them.

This item contains three (3) requirements:

1. Respondents shall complete petitioner's request for ordinary repairs within 30 days from notice of the request;

2. Respondents shall complete Petitioner's request for urgent repairs within 24 hours from notice of the request;

3. Petitioners may be charged in accordance with their leases for any future damages caused by them.

[Emphasis ours].

The Court finds that the Respondents have not complied with the requirements of Item 18 in that they have failed to provide for ordinary repairs within 30 days, and that urgent repairs were not effectuated within 24 hours from notice of the request, especially during the period between the signing of the Settlement Agreement and May 20, 1994, when they contracted for an answering service.

The Court finds that there were many items of repair that stretched over several months which were reported to have been repaired to Jerry Brown, and which he found had not been repaired when he reinspected the apartments on June 16 and again on October 20, 1994.

The Court therefore finds that the Petitioners have sustained their burden of proof and that the Respondents have not complied with the requirements of the Settlement Agreement as to Item 18. (See transcript of Jerry Brown, 6/30/94, Def. Exh. QQQ, pp. 22-32, and pp. 37-63, Pltf. Exhs. 519, 523, 525, 641 and 645, Def. Exh. A; transcript of Jerry Brown, 10/27/94, pp. 149-163, Pltf. Exhs. 894, 903, 577, and 919; transcript of Cheryl Mills, 10/27/94, pp. 101-105 and 125; transcript of Pearlie Russell, 10/19/94, pp. 85-89 and 109-124, Pltf. Exhs. 644 and 645, and 854 ¶ 6; and transcript of Doris Luster, 10/27/94, pp. 173-191 and p. 207, Pltf. Exhs. 843, 859, 903, 897, 844, 894, 896).

CONCLUSIONS OF LAW

Contempt may be classified as either civil or criminal in nature, with the distinction turning on the "character and purpose of the punishment." Brown v. Executive 200 Inc. (1980), 64 Ohio St.2d 250, 253. In civil contempt cases, the punishment is "remedial or coercive," while in criminal contempt, it "operates ... as punishment for the completed act of disobedience and to vindicate the authority of the law and the court." Id. at 253, 254.

The burden of proof in civil contempt cases is clear and convincing evidence. Id. at 253.

It is well-established that "[T]he power of contempt is inherent in a court, such power being necessary to the exercise of judicial functions . . . ." Denovchek v. Board of Trumbull Cty. Commrs. (1988), 36 Ohio St.3d 14, 15.

The showing of an enjoined party's failure to obey a Court Order is prima facie evidence of civil contempt. State ex rel. Cook v. Cook (1902), 66 Ohio St. 566, 570; see State ex rel. Delco Morain Div., General Motors Corp. v. Industrial Commission of Ohio (1990), 48 Ohio St.3d 43, 44; Board of Education of Brunswick City School District v. Brunswick Education Association (1980), 61 Ohio St.2d 290, 295.

The Court recognizes that criminal activity and vandalism find large apartment complexes ready targets, especially in public housing. In no case was this more clearly demonstrated than in Lucas Metropolitan Housing Authority which supervises a number of large public housing complexes in and around Lucas County, Ohio. The situation had gotten so bad that HUD (Housing and Urban Development) classified LMHA as not in compliance with HUD regulations relating to the health, safety, and welfare of its tenants, resulting in the cutting off of some federal funding and placing the entire operation in a "critical" status.

As a result, the management and the Board of Directors of LMHA were changed and an aggressive approach was taken toward policing

the complexes and meeting with the residents. This resulted in watch captains being appointed in each of the buildings within a complex, along with a tenant's committee to serve as watchdogs for vandalism and criminal activity. In addition, LMHA hired off-duty Sheriff's Deputies to patrol the complexes, resulting in the arrest of persons engaging in criminal and other illegal activities, including drug dealing. As a consequence, HUD has now restored LMHA to its "most preferred" status and has identified it as an exemplary public housing authority.

Cherrywood is also a publicly-supported housing complex under a classification known as Section 8 housing. This classification guarantees the landlord the majority of the monthly rent in order to provide suitable housing for low income residents who pay a small fraction of the monthly rent. This program was designed to provide an incentive to investors to provide affordable housing for low income citizens. That incentive also carries with it an obligation to provide those residents with safe, sanitary, and habitable housing.

The Court finds that the Respondents have failed to secure the tenants' health through aggressive rodent and roach control, as well as inadequate cleaning and sanitation of the common areas, coupled with the compromise of security through inadequate policing of illegal activities and vandalism, along with the failure to respond to repairs of defects within the apartments of Petitioners, as well as failure to respond to malfunctioning of the exterior and

interior lights thereby compromising the safety of the residents. This resulted in a loss of enjoyment of the premises to the Petitioners for which the Court award6 the sum of Fifteen Dollars ($15.00) per day per Petitioner from the date of breach of those provisions of the Settlement Agreement with which the Court finds the Respondents have **failed** to comply to the date that the Petitioner6 may have vacated the complex.

The Court also directs that the **escrowed** funds be distributed to the Petitioners to satisfy the Judgment in proportion to the amount they have paid in.

The Court further awards **reasonable** attorney fees to the Petitioners as well as costs.

This matter is to be set for further hearing to determine the reasonable attorney fees, as well as to allow the Respondent to purge himself of contempt.

February 14, 1997
DATE

JUDGE ROGER R. WEIHER