

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

CITY OF ST. ALBANS,

Plaintiff,

v.

CIVIL ACTION NO. 22-C-189
Judge Akers

**T&C CONSTRUCTION SERVICES, LLC, a
West Virginia Corporation, and
THEODORE MILLER,**

Defendants.

ORDER

On the 8th day of April, 2022, came the Plaintiff City of St. Albans by its attorney, Timothy J. LaFon and came the Defendants T&C Construction Services, LLC and Theodore Miller by their counsel Charles Neely, Esquire. The Parties proffered their arguments applicable to the Plaintiff's Motion for Temporary and Permanent Injunction and for an Order requiring the Defendants to cease and desist operating a business at their business location located at 2843 MacCorkle Avenue, St. Albans, West Virginia 25177. In addition, the Plaintiff brought on its Motion to Convert two Municipal Court Orders awarding fines against the Defendants in a total amount of \$198,150.00 as a decretal judgment and seeking post-judgment interest.

The Court heard the arguments that the Defendants had been cited for certain violations of the City of St. Albans Municipal Building Codes, Zoning Laws and Fire Codes and that the matters had been litigated as citations before the St. Albans Municipal Court. It was established in said hearing that the Defendants had failed to properly appeal said Municipal Court Orders and the appeal period for said Municipal Court Decisions and Fines had lapsed. The Court took notice of two Orders dated August 24, 2021 by the St. Albans Municipal Court the first of which is for \$81,250.00 for violations of the Cit of St. Albans Fire Code § 150504 and one was for \$116,900.00

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KANAWHA COUNTY CIRCUIT COURT

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for the property violations applicable to the City of St. Albans Building Code and Zoning Laws. It was also established and testimony proffered that the Defendants had done nothing to rectify these violations and the same continue to this day. It was noted that one of the violations was the fact that the Defendants were operating a residential rental real estate business on the premises when the same was not zoned for said conduct in the City of St. Albans. In addition, it was noted that the Defendants were operating without a proper Certificate of Occupancy and the violations that presently exist created a danger to the tenants that were being housed on the premises illegally by the Defendants. These dangers included structural, electrical and fire code violations that created a danger to the tenants at said premises.

After hearing the arguments of counsel, it was noted that the City of St. Albans, West Virginia Ordinance 1711.05 authorizes the Mayor of St. Albans to maintain a suit to restrain by injunction the violations of the Building Code notwithstanding any other penalty for violation thereof. In addition, it was clear that the Plaintiff had established irreparable harm as the Defendants presently lease to individuals occupying the premises owned by the Defendants at 2843 MacCorkle Avenue, St. Albans, West Virginia 25177 and said tenants are in danger due to the above-mentioned Code violations.

THEREFORE, this Court does hereby **ORDER** that an immediate Temporary and Permanent Injunction is issued against the Defendants and that they should immediately **CEASE** and **DESIST** operating a residential rental premises or any other business on said premises until all violations that the Defendants have been previously cited for have been cured and there is further Order of the Court.

The Plaintiff further sought a decretal judgment for the amounts of fines levied against the Defendants and each of them at the Municipal Court proceeding. This Court does hereby conclude

that this matter has been properly litigated and the Defendants failed to avail themselves of the appropriate remedy to appeal said decision to the Circuit Court. Therefore, the levying of the fines is final, and a decretal judgment is proper. Therefore, this Court does hereby **ORDER** and award a decretal judgment against the Defendants and each of them for a total amount of \$198,150.00 plus post-judgment interest flowing from the date of this Order forward until paid in full.

The Plaintiff further sought the assistance of the Court in collecting such judgment and sought to have a judicial sale of the property located at 2843 MacCorkle Avenue, St. Albans, West Virginia 25177. The Court does hereby **GRANT** said Motion and the Court does hereby pursuant to West Virginia Code § 55-12-1 appoint Timothy J. LaFon, a practicing attorney in this jurisdiction, to be Special Commissioner to conduct a sale of the property owned by the Defendants located at 2843 MacCorkle Avenue, St. Albans, West Virginia 25177. Once sold and liquidated the Special Commissioner will have all authority pursuant to West Virginia Code § 55-12-1 to execute any Deeds and to make a report back to this Court for proper distribution of the sales proceeds including application for appropriate distributions of said proceeds, payment of any and all expenses, and payment to satisfy the above-mentioned decretal judgment.

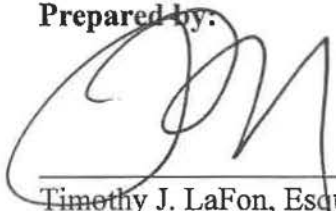
In addition, the above-mentioned Special Commissioner shall have full authority to direct by Order of this Court that all tenants and other occupants of the property located at 2843 MacCorkle Avenue, St. Albans, West Virginia 25177 shall vacate the premises within the statutory notice period of thirty days after receipt of the notice and Special Commissioner shall have full authority to accomplish this and will have the ability to return to this Court for any assistance necessary to accomplish the clearing of said property of tenants as they are there illegally. The objections of the Defendants are hereby preserved, this matter shall remain on the

Court's active docket until such time as this property has been sold and a report is made back to the Court for proper distribution and allocation of the sales proceeds.

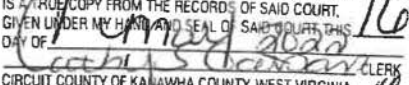
All of which is **ORDERED** this 16th day of May, 2022.


HONORABLE MARYCLAIRE AKERS

Prepared by:



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STATE OF WEST VIRGINIA
COUNTY OF KANAWHA, SS
I, CATHY S. GATSON, CLERK OF CIRCUIT COURT OF SAID COUNTY
AND IN SAID STATE, DO HEREBY CERTIFY THAT THE FOREGOING
IS A TRUE COPY FROM THE RECORDS OF SAID COURT.
GIVEN UNDER MY HAND AND SEAL OF SAID COURT, THIS 16
DAY OF May 2022

CATHY S. GATSON, CLERK
CIRCUIT COUNTY OF KANAWHA COUNTY, WEST VIRGINIA