

JUDGMENT ENTRY RECEIVED  
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CLEVELAND MUNICIPAL COURT  
HOUSING DIVISION  
CUYAHOGA COUNTY, OHIO

JUN 18 2009  
EARLE B. TURNER, CLERK

C.H.R.P.  
Plaintiff(s)

DATE: JUNE 18, 2009

-VS-

CASE NO.: 08-CVH-31391

WELLS FARGO BANK NA, et al.  
Defendant(s)

JUDGMENT ENTRY and ORDER

{¶1.} A hearing was held on CHRP's request for preliminary injunction on May 28 and 29, 2009, concluding on June 5, 2009. For the reasons set forth below, CHRP's request is granted in part and denied in part, and a preliminary injunction is hereby issued, with the terms set forth in this Judgment Entry and Order.

{¶2.} In December 2008, CHRP filed this action against Wells Fargo Bank NA.<sup>1</sup> In its third claim,<sup>2</sup> CHRP seeks a declaration that Wells Fargo's business practices in the post-foreclosure purchase, maintenance and sale of residential properties acquired through sheriff's sale constitute a public nuisance. CHRP also requests an order restraining Wells Fargo from selling residential properties without the prior authorization of this Court, and an injunction permanently enjoining Wells Fargo's business practices with respect to properties purchased at sheriff's sale.<sup>3</sup>

{¶3.} In deciding whether to grant a preliminary injunction, a court must look at four factors: (1) whether there is a substantial likelihood that plaintiff will prevail on the merits, (2) whether plaintiff will suffer irreparable injury if the injunction is not granted, (3) whether third parties will be unjustifiably harmed if the injunction is granted, and (4) whether the public interest will be served by the injunction. *KLN Logistics Corp. v. Norton*, 174 Ohio App.3d 712, 2008-Ohio-212, 884 N.E.2d 631, citing *Sinoff v. Ohio Permanente Med. Group*, 146 Ohio App.3d 732, 740, 2001-Ohio-4186, 767 N.E.2d 1251, citing *Vanguard Transp. Sys., Inc. v. Edwards Transfer & Storage Co., Gen. Commodities Div.* (1996), 109 Ohio App.3d 786, 673 N.E.2d 182. The moving party must establish a right to the preliminary injunction by showing clear and convincing evidence of each element of the claim. *Sinoff*, supra, citing *Vanguard*. No one factor is dispositive. *KLN*, supra, citing *Cleveland v. Cleveland Elec. Illum. Co.* (1996), 115 Ohio App.3d 1, 14, 684 N.E.2d 343.

<sup>1</sup> The City of Cleveland is named as a defendant as well, as it, according to CHRP, "may have some interest in the properties at issue." With respect to the request for preliminary injunction, however, CHRP seeks no relief from the City of Cleveland.

<sup>2</sup> CHRP's complaint has three claims for relief. The first two involve declaratory and injunctive relief regarding specific properties. A hearing on the first and second claims was held on June 10, 2009; no decision on those claims yet has been rendered.

<sup>3</sup> Complaint, paras. 30, 33.

### ***Likelihood of Success on the Merits***

{¶4.} First, the Court must determine whether CHRP has demonstrated by clear and convincing evidence that it is likely to succeed on the merits of its public nuisance claim.

{¶5.} To prevail on its public nuisance claim against Wells Fargo, CHRP must establish an interference with a public right and that CHRP has suffered an injury distinct from that suffered by the public at large. *Miller v. W. Carrollton* (1993), 91 Ohio App.3d 291, 295-296, 632 N.E.2d 582. The harm suffered by a public nuisance plaintiff must be different in kind, rather than different in degree, from that suffered by other members of the public exercising the public right. *Id.*, at 296. Where a public nuisance plaintiff exercises the public right extraordinarily more than the general public and where the plaintiff's reason for doing so invariably amounts to a different kind of interest in the public right, the plaintiff will satisfy the special injury rule for a public nuisance. *Brown v. Scioto Cty. Bd. Of Commrs.*, (1993) 87 Ohio App.3d 704 at 712, 622 N.E.2d 1153.

{¶6.} “[P]rivate persons may not resort to equity to prevent criminal acts unless they are threatened with irreparable injury to their property, separate and distinct from that suffered by the public generally, and the relief must be such as only equity can give \*\*\*, because a citizen whose civil or property rights are not specially injured may not usurp the duty imposed by law upon the duly constituted law enforcement officers. \*\*\* Nor does apathy or dereliction of duty upon the part of public officials accord a citizen the right to enjoin the criminal conduct.” *Pizza v. Sunset Fireworks Co., Inc.* (May 31, 1985), 6th Dist. L-84-210., citing *Widmer v. Fretti* (1952), 95 Ohio App. 7.

{¶7.} The Cleveland Housing Renewal Project (“CHRP”) is a non-profit organization that is one of a number of subsidiaries of Neighborhood Progress Incorporated (“NPI”). Other NPI subsidiaries include the New Village Corporation, which takes part in real estate development, and Land Assembly for Neighborhood Development (“LAND”), which assembles and acquires land for redevelopment in the City of Cleveland. The common mission of NPI and its subsidiaries, including CHRP, is the improvement of housing conditions in the City of Cleveland and its neighborhoods. NPI and its subsidiaries have invested tens of millions of dollars in the City and its neighborhoods in the past decade. CHRP’s Executive Director, Frank Ford, is also a Senior Vice-President of NPI.

{¶8.} CHRP is a non-profit subsidiary of NPI created primarily to exercise the legal rights of its parent corporation, NPI. CHRP’s business office, within the offices of NPI, is located in the City of Cleveland. While CHRP does not hold title to real estate in the City of Cleveland, it has prosecuted other actions, including at least four receivership actions under R.C. 3767.41 in this Court.<sup>4</sup> In one of those actions, *CHRP v. Dubuk*, CHRP was appointed the receiver for a multi-family residential building. It engaged in extensive negotiations with the City regarding demolition of the property, and contracted for asbestos removal from the property. It retains ongoing responsibility for that property under R.C. 3767.41.

<sup>4</sup> *CHRP v. Spikes*, 09-CVH-12532; *CHRP v. Hester*, 07-CVH-3182; *CHRP v. Cameron-Johnson* 07-CVH-3185; *CHRP v. Cameron-Johnson* 07-CVH-3186; *CHRP v. Dubuk*, 07-CVH-3187.

Additionally, as the testimony of Samona Johnson revealed, CHRP has expended funds to retain an expert to assess the condition of distressed properties.

{¶9.} Wells Fargo Bank, NA is a national bank that services loans, including loans secured by mortgages on residential properties in the City of Cleveland. At least a portion of the loans serviced by Wells Fargo include loans guaranteed by the Department of Veterans Affairs, loans issued under the Fair Housing Act (FHA) guaranteed by the Department of Housing and Urban Development, and loans funded through the Federal National Mortgage Association (Fannie Mae), and the Federal Home Loan Mortgage Corporation (Freddie Mac). Under the terms of some of these loans, including FHA loans, Wells Fargo is contractually obligated to purchase the properties at sheriff's sale. Wells Fargo acquires some, if not all, of its properties through sheriff's sale as a result of foreclosure.

{¶10.} CHRP has an interest in property owners maintaining their real property in the City of Cleveland in compliance with City code, and in the abatement of the nuisances posed by poorly-maintained properties. First, as a resident of the City, CHRP shares the interest of all City residents in neighborhoods consisting of well-maintained, safe dwellings. In addition, as CHRP's primary goal is the improvement of housing conditions in the City of Cleveland, it has an interest in the abatement of the nuisance posed by unrepaired properties, in part to decrease its workload, and because nuisance properties cause the deterioration of neighborhoods, as predicted by the "broken window theory."<sup>5</sup> And, CHRP's pecuniary interests may be impacted as well. As receiver, CHRP must be able to secure funding for nuisance abatement, and consulting with and retaining experts to review and estimate the cost of rehabilitation for distressed properties. Securing funding is based, in part, upon property values. Property values decrease when the property is located amidst vacant structures in disrepair. Wells Fargo's actions in not repairing properties to the standards of City code, have a disproportionate impact on CHRP, over and above the impact on other citizens.

{¶11.} Wells Fargo suggests that the neighboring community development groups, such as Fairfax Renaissance Development Corporation, Slavic Village Development Corporation, Famicos, or the Glenville Area Development Corporation, may have standing to prosecute this action, but that CHRP does not. The case for standing of the community development corporations, and, for that matter, the City of Cleveland, may be more easily made than the case for CHRP's standing. The community development corporations more actively participate in real estate development; their ability to secure financing and resell properties is impacted by the quality of properties in the neighborhood. The City, of course, has specific statutory and common law authority to bring nuisance abatement actions. That other plaintiffs may have had greater standing to bring this action does not persuade the Court that CHRP has no standing. In light of CHRP's interests as described above, the Court concludes that CHRP has established a

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<sup>5</sup> "Consider a building with a few broken windows. If the windows are not repaired, the tendency is for vandals to break a few more windows. Eventually, they may even break into the building, and if it's unoccupied, perhaps become squatters or light fires inside." "Broken Windows," James Q. Wilson and George L. Kelling, *The Atlantic Monthly*, March 1982.

sufficient showing of standing to proceed with its claim for preliminary injunction for abatement of the alleged public nuisance.

{¶12.} Next, the Court must determine whether CHRP has demonstrated a likelihood of success on the merits of its claim that certain Wells Fargo's business practices constitute a public nuisance.

{¶13.} CHRP seeks a declaration and an injunction regarding the post-foreclosure purchase, maintenance and sale of residential properties acquired by Wells Fargo through sheriff's sale. The Court will examine the practices of Wells Fargo in two parts – first, the purchase and maintenance of residential properties purchased at foreclosure sale, and, second, the sale of those properties by Wells Fargo.

{¶14.} The first part of Wells Fargo's business practice challenged by CHRP is the purchase and maintenance of the residential properties bought at foreclosure sale by Wells Fargo. CHRP alleges that Wells Fargo's business practices with respect to these properties create a public nuisance.

{¶15.} A public nuisance has been defined as the "doing of or the failure to do something that injuriously affects the safety, health, or morals of the public, or works some substantial annoyance, inconvenience, or injury to the public \* \* \*." 39 Am. Jur., 285, Nuisances, Section 8. While the Court has determined that CHRP's nuisance claim is a common law claim, and not a claim anticipated under R.C. 3767.41, that statute is instructive, in that it provides a definition of a building that is a public nuisance: "Public nuisance' means a building that is a menace to the public health, welfare, or safety; that is structurally unsafe, unsanitary, or not provided with adequate safe egress; that constitutes a fire hazard, is otherwise dangerous to human life, or is otherwise no longer fit and habitable; or that, in relation to its existing use, constitutes a hazard to the public health, welfare, or safety by reason of inadequate maintenance, dilapidation, obsolescence, or abandonment." R.C. 3767.41(A)(2)(a). The proof by CHRP that Wells Fargo's business practices constitute a public nuisance must necessarily include some proof of causation; that is, CHRP must prove that Wells Fargo caused the injury of which CHRP complains.

{¶16.} Wells Fargo takes title to properties it owns in the City of Cleveland through foreclosure and sheriff's sale. The Court cannot determine the exact number of properties owned by Wells Fargo in the City of Cleveland at the time of hearing. Michael Schramm, research data analyst and programmer for the Case Western Reserve University Center on Urban Poverty and Community Development, and one of the creators of NEO-CANDO system<sup>6</sup>, estimated that Wells Fargo owned approximately 180 residential properties in the City of Cleveland as of April 2009. Wells Fargo's Litigation Manager, Lynn Mizriah-Shindel, supplied in the course of this litigation a list of 178 Wells Fargo-owned properties in the City of Cleveland. Cleveland's Director of Building and Housing, Edward Rybka, testified that Wells Fargo owns a significant number of properties in the City; Schramm estimates that Wells Fargo owns the second-

<sup>6</sup> A description of the NEO-CANDO system is contained in this Court's ruling on Wells Fargo's Motion to Strike Testimony, journalized June 5, 2009.

largest REO -- an industry acronym for "real estate owned", or lender-owned -- portfolio in the City of Cleveland. The Court concludes, based upon this evidence, that Wells Fargo's business practice includes the routine purchase at sheriff's sale of properties in the City of Cleveland.

{¶17.} After purchase, Wells Fargo generally refers the properties to Premier Asset Services ("Premier"), a division of Wells Fargo Bank. Premier works to resell the properties, with a goal of reselling within ninety to one hundred twenty days. Premier engages in the sale of properties in bulk; a bulk package may include properties in a number of different cities. The Court concludes that Premier acts as the agent of Wells Fargo when servicing Wells Fargo properties.

{¶18.} It is the position of Premier that neither it nor Wells Fargo are permitted to make repairs to properties with federally-backed mortgages prior to the conveyance of those properties to the Federal Home Mortgage Association (Freddie Mac) or the Federal National Mortgage Association (Fannie Mae). Premier uses similar procedures with respect to properties to be conveyed to the Veteran's Administration or to the U.S. Department of Housing and Urban Development (HUD) -- if properties are to be conveyed to those entities, it is the position of Premier that repairs cannot be made, as the conveyance must be made immediately.

{¶19.} The Wells Fargo non-repair policy is not limited to houses with federally-backed mortgages; Premier's Senior Vice-President of REO, Tamara Swain, testified that should Wells Fargo, through Premier, be required to fix up properties prior to sale, Wells Fargo would have to "rethink all of its business practices," and likely would cease to buy properties at sheriff's sale. Swain acknowledged that she is aware of no written procedures provided to Premier by Wells Fargo, or drafted by Premier itself, regarding procedures to be followed upon receipt of a notice of code violations issued by the City. Wells Fargo, upon purchasing properties at sheriff's sale, limits its activity with respect to the condition of the property to securing the property against entry and cutting the grass. Wells Fargo, according to Swain, seeks to evict tenants upon purchase of the properties, as its business model does not include performing the duties of a landlord.

{¶20.} Wells Fargo's non-repair policy is reflected in the condition of the properties it owns in Cleveland.

{¶21.} In early 2009, after the filing of this case, Ford, and other individuals acting on behalf of CHRP and assigned by Ford visited seventy-eight properties currently owned by Wells Fargo, and observed and photographed the condition of the properties.<sup>7</sup> Some of the properties were vacant and boarded.<sup>8</sup> Others were open to casual entry.<sup>9</sup> Still others had broken or missing windows and signs of

<sup>7</sup> Those photographs were admitted in a black binder as Plaintiff's Exhibit 1.

<sup>8</sup> 11501 Mt. Overlook; 11010-12 Ashbury; 10724 Orville; 10918 Superior Ave; 1232 Addison; 10701 Elk; 698 E. 102; 698 E. 102; 9516 Mount Auburn; 12504 Farrington; 3536 E. 117; 11127 Mount Carmel; 6900 Hosmer; 3738 E. 50; 3457 E. 115; 9804 Aetna; 4075 E. 108; 1324-30 E. 93.

<sup>9</sup> 2321 East 87<sup>th</sup> St.; 1232 Addison; 2314 Scranton; 10701 Elk; 698 E. 102; 9909 Hampden; 10824 Gooding; 10520 Ashbury; 10307 Barrett; 8216 Simon; 1908 Walton; 3349 Woodbridge; 11127 Mount Carmel; 6900 Hosmer; 9804 Aetna; 10417 Way.

attempted entry.<sup>10</sup> Some had missing siding.<sup>11</sup> Debris was present in some yards.<sup>12</sup> Some of the houses were defaced by graffiti.<sup>13</sup>

{¶22.} Based upon these inspections, Ford concluded that approximately thirty-four of the seventy-eight properties inspected were: open, vandalized, and vacant; overgrown with grass, weeds, and foliage; littered with garbage; or had obvious structural damage or other significant defects. Twenty-four of the properties were open to casual entry. Ford's conclusions are supported by the review of City records conducted by the City's Department of Building and Housing Administrative/Title Search Officer Karen Lewis-Lopez. Lewis-Lopez reviewed the City's records, back to the year 2000, for the properties identified in the Mizriah-Shindel list. In the City's records, Lewis-Lopez found twenty-one notices of violation listing Wells Fargo as a responsible party. The conditions in those notices of violation included broken windows,<sup>14</sup> damaged or missing entry door,<sup>15</sup> leaking roofs,<sup>16</sup> missing gutters,<sup>17</sup> no functioning utilities,<sup>18</sup> deteriorated electrical fixtures,<sup>19</sup> deteriorated heating facilities,<sup>20</sup> missing sinks and sanitary facilities,<sup>21</sup> exterior walls not weathertight,<sup>22</sup> damaged foundations,<sup>23</sup> and high grass and weeds.<sup>24</sup> At least five of the structures were condemned;<sup>25</sup> at least two others were the subject of an immediate vacate order.<sup>26</sup>

{¶23.} Owners of residential structures in the City of Cleveland must maintain their properties in compliance with the City's minimum residential occupancy standards. Every dwelling must have sanitary facilities, including a water closet, bathtub or shower, and lavatory;<sup>27</sup> every dwelling must have a kitchen sink.<sup>28</sup> All plumbing fixtures must be supplied with running water from the Municipal water supply system,<sup>29</sup> must have an adequate supply of hot water;<sup>30</sup> and must be connected to a public sanitary sewer or private sewage disposal system.<sup>31</sup> Every dwelling must have approved heating facilities,<sup>32</sup> with the appropriate flue

<sup>10</sup> 8719 Beckman; 10724 Orville; 1232 Addison; 10701 Elk; 10520 Ashbury; 8216 Simon; 8114 Korman; 1086 E. 74; 3296 W. 44; 9516 Mount Auburn; 12504 Farrington; 3536 E. 117; 11127 Mount Carmel.

<sup>11</sup> 10918 Superior Ave.; 10701 Elk.

<sup>12</sup> 11010-12 Ashbury; 10701 Elk; 9909 Hampden; 10824 Gooding; 9804 Aetna; 10417 Way; 1827 E. 75; 1324-30 E. 93.

<sup>13</sup> 10724 Orville.

<sup>14</sup> 2033 West 47<sup>th</sup> St.; 3197 West 95<sup>th</sup> St.; 4224 East 89<sup>th</sup> St.; 2033 West 47<sup>th</sup> St.; 3197 West 95<sup>th</sup> St.

<sup>15</sup> 2033 West 47<sup>th</sup> St.; 3197 West 95<sup>th</sup> St.; 4224 East 89<sup>th</sup> St.; 4075 East 108<sup>th</sup> St.; 2033 West 47<sup>th</sup> St.,

<sup>16</sup> 2033 West 47<sup>th</sup> St.; 2033 West 47<sup>th</sup>

<sup>17</sup> 2033 West 47<sup>th</sup> St.; 13219 Crennell Ave.;

<sup>18</sup> 995 Evangeline Rd.; 971 East 129<sup>th</sup> St.; 3666 East 54<sup>th</sup> St.;

<sup>19</sup> 1054 East 148<sup>th</sup> St.; 4075 East 108<sup>th</sup> St.,

<sup>20</sup> 4075 East 108<sup>th</sup> St.

<sup>21</sup> 971 East 129<sup>th</sup> St.; 4230 East 98<sup>th</sup> St.; 4075 East 108<sup>th</sup> St.;

<sup>22</sup> 3829 East 72<sup>nd</sup> St.

<sup>23</sup> 4075 East 108<sup>th</sup> St.

<sup>24</sup> 4229 East 98<sup>th</sup> St.,

<sup>25</sup> 9713 Union Ave.; 8 Evergreen Pl.; 9117 Easton Ave.; 4923 Frazee Ave; 1210 East 60<sup>th</sup> St.,

<sup>26</sup> 3666 East 54<sup>th</sup> St.; 12604 Gruss Ave.

<sup>27</sup> C.C.O. 369.06 (a).

<sup>28</sup> C.C.O. 369.06(b).

<sup>29</sup> C.C.O. 369.07(a).

<sup>30</sup> C.C.O. 369.07(b).

<sup>31</sup> C.C.O. 369.07(c).

<sup>32</sup> C.C.O. 369.09.

connections.<sup>33</sup> Every dwelling must have properly installed electrical service, outlets and fixtures.<sup>34</sup>

{¶24.} The interior and exterior of residential structures must be maintained in good repair,<sup>35</sup> and capable of performing the function for which the structure was designed or intended to be used.<sup>36</sup> The foundation must be structurally sound and in good repair,<sup>37</sup> maintained to prevent the accumulation of moisture<sup>38</sup> and protected against the entrance of rodents.<sup>39</sup> Exterior walls must be weathertight.<sup>40</sup> The roof must be weathertight as well, devoid of leaks, and equipped with gutters and downspouts connected to a public sewer.<sup>41</sup> Interior walls and floors must be kept free of holes, large cracks and loose or deteriorated material.<sup>42</sup> All dwellings and the surrounding premises must be maintained free from sources of breeding, harborage or infestation by insects, vermin or rodents,<sup>43</sup> and exterior areas must be kept free of any object, material or condition which may create a health, accident or fire hazard, or which is a public nuisance.<sup>44</sup> Garages and secondary structures must be maintained in good repair, or removed from the premises.<sup>45</sup> All structures "used or designed or intended to be used, all or in part, for residential purposes"<sup>46</sup> must meet these standards. Actual occupancy of the structure is not required by the ordinances, for these standards to apply.

{¶25.} The residential occupancy standards are enforced by the City against the owner of the premises.<sup>47</sup> For purposes of enforcement of the City's Housing Code, "owner" includes the holder of title, a mortgagee in possession, as well as any other person, firm or corporation directly in control of the premises.<sup>48</sup> Purchasers at sheriff's sale, whether real persons or corporations, are not exempt from this requirement. Intent is not a requirement in proving a Building or Housing Code violation case.

{¶26.} While many of the requirements in the residential occupancy standards are mirrored in the general safety and maintenance standards in the more general Building Code, which applies to all commercial and residential structures,<sup>49</sup> the Building Code contains additional requirements. For example, broken window glass must be replaced with glass or other suitable material.<sup>50</sup> The exterior of dwellings and premises must be free from graffiti when that

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<sup>33</sup> C.C.O. 369.10.

<sup>34</sup> C.C.O. 369.12.

<sup>35</sup> C.C.O. 369.13.

<sup>36</sup> Id.

<sup>37</sup> C.C.O. 369.14(a).

<sup>38</sup> C.C.O. 369.14(b).

<sup>39</sup> C.C.O. 369.14(c).

<sup>40</sup> C.C.O. 369.15(a).

<sup>41</sup> C.C.O. 369.15(b).

<sup>42</sup> C.C.O. 369.16(a).

<sup>43</sup> C.C.O. 369.17.

<sup>44</sup> C.C.O. 369.18.

<sup>45</sup> C.C.O. 369.19.

<sup>46</sup> C.C.O. 363.04.

<sup>47</sup> C.C.O. 367.01.

<sup>48</sup> C.C.O. 363.12.

<sup>49</sup> C.C.O. 3101.10.

<sup>50</sup> C.C.O. 3101.10(c).

graffiti is visible from a right of way.<sup>51</sup> As with the Housing Code, the owner of the premises is responsible for compliance with the Building Code as well.<sup>52</sup> Neither the Housing Code nor the Building Code provides for reduced maintenance standards for unoccupied residential structures.

{¶27.} Wells Fargo argues that it should not be required to comply with the maintenance standards set forth above, as it is simply holding the vacant properties for transfer to a new owner, who presumably will rehabilitate the structure. Wells Fargo acknowledges that it either takes title to property which already is vacant, or evicts the occupants, to cause the property to become vacant. It then boards the property to secure it, cuts the grass, markets the property, and sells it, without ever bringing the property up to City code.

{¶28.} The business practice described above is inconsistent with the requirement of the City's codified ordinances.

{¶29.} The City ordinances permit the boarding of a residential structure in two circumstances. First, the owner of a building damaged by fire or other causes, if the damage cannot be repaired promptly, must either replace all damaged glass windows or doors, or board those openings securely to prevent unlawful entry, and paint the boards in a manner to harmonize with the neighboring buildings. However, no evidence in this case suggests that the houses owned by Wells Fargo were damaged by fire or other single occurrence as contemplated by this provision.

{¶30.} Second, the owner of a structure may apply for a permit to board the property pending rehabilitation. Cleveland Codified Ordinance 3103.09(c)(1) provides that, "Pending the correction of violations to the minimum standards of the Codified Ordinances of Cleveland ... the owner of a structure may secure the structure through effective boarding." The owner must apply, within three days of receiving a notice of violation, to the Department of Building and Housing for a permit to board.<sup>53</sup> The Department of Building and Housing must review the condition of the structure, determine if it can be effectively boarded, and grant or deny the owner's permit to board, setting forth special requirements, if any, necessary for compliance with minimum standards for effective boarding.<sup>54</sup> The owner must board the structure in compliance with code requirements within 3 days of the issuance of the permit.<sup>55</sup> Within 30 days of the issuance of the permit to board, the owner must apply for a rehabilitation permit.<sup>56</sup> The rehabilitation of the structure must begin within 30 days of the issuance of the rehabilitation permit.<sup>57</sup> The boarding of a structure without a permit or not in compliance with the permit, the failure to apply for a rehabilitation permit, and the failure to begin rehabilitation within the prescribed time period each may result in the declaration of the structure as a nuisance by the Director of Building and Housing and the demolition of the structure.

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<sup>51</sup> C.C.O. 3101.11(a).

<sup>52</sup> C.C.O. 3101.09(a).

<sup>53</sup> C.C.O. 3103.09(c)(1)

<sup>54</sup> Id.

<sup>55</sup> Id.

<sup>56</sup> Id.

<sup>57</sup> C.C.O. 3103.09(c)(4).

{¶31.} Neither of these permissible boarding circumstances, however, anticipates or authorizes the “moth-balling” of properties, i.e., securing them for resale without bringing them up to code. While there is substantial evidence before the Court that Wells Fargo routinely boards up the properties it purchases at sheriff’s sale, there is no evidence in the record that Wells Fargo has applied for a rehabilitation permit, or begun rehabilitation in compliance with the City’s ordinances. This Court concludes that Wells Fargo’s policy and practice of boarding but not repairing properties it purchases at sheriff’s sale violates the Codified Ordinances of the City of Cleveland.

{¶32.} Wells Fargo’s practice of boarding properties for resale without making repairs creates a threat to the health and safety of the residents of the neighborhoods in which the properties are located. Unoccupied, boarded properties pose a hazard to neighborhood residents, in that they are an attractive nuisance for juveniles and others. They pose an arson risk greater than that of the average occupied building. Unoccupied structures attract criminal activity; the City has seen such properties become the site of assaults and murders of some of the City’s most vulnerable residents – children and the elderly. These vacant structures, often a favorite target of arsonists, pose a heightened hazard to firefighters, as the interior of a vacant home often has been vandalized, and the structural integrity compromised. Vacant homes pose a serious danger to police officers, as well; these homes, often with structural damage and no utilities, leave police officers vulnerable to criminals hiding inside. Structures that are unoccupied also can act as a warehouse for arms, ammunition, and illegally obtained property. Vacant, boarded properties contribute to the decline of both property values and neighborhood appearance and pride. Both CHRP and Wells Fargo agree that vacant properties are less desirable than occupied properties.

{¶33.} The Court’s conclusions are consistent with the City’s ordinances, which anticipate that property will remain boarded only for a limited period of time. They also are consistent with the legislative findings of the Cleveland City Council, which found that “[s]tructures that remain boarded for an extended period of time contribute to blight, cause a decrease in neighboring property values, create targets for arson, and lead to the cancellation of homeowners’ insurance for neighboring property owners.”<sup>58</sup>

{¶34.} Wells Fargo argues that its business practice of boarding and reselling homes is necessary for Wells Fargo to maximize the profits of its investors, and is justified because Wells Fargo is not in the business of being a landlord. Those assertions likely are true: Wells Fargo, by all indications, was created as a lending institution, and not a residential real estate holding company. Wells Fargo takes title to properties at sheriff’s sale not because of a business plan that has as its aim the acquisition of real estate; its ownership of the properties purchased at sheriff’s sale is a by-product of its lending activities. However, the boarding of properties without the submission of a rehabilitation plan and commencement of rehabilitation violates the City code. The ordinances contain no exception to the maintenance standards for those holding properties to resell

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<sup>58</sup> C.C.O. 3103.09(a)(10).

them. Wells Fargo may appeal to the Board of Building Standards should it wish a variance from the requirements of the ordinances with respect to a particular property; it may approach City Council and seek a change in the Codified Ordinances that could apply to all of properties purchased at sheriff's sale and held for resale. The Court, however, does not have the ability to exempt Wells Fargo from compliance with the City code, and will not do so in this case.

{¶35.} Wells Fargo argues that it is not permitted to repair properties it purchases at sheriff's sale, when those properties are the subject of federally-insured loans. This is not accurate. While the regulations governing the loans may require Wells Fargo to commence foreclosure within a specific period of time from the default,<sup>59</sup> or to convey title to the respective federal agency within a specified time following the sale,<sup>60</sup> the regulations cited by Wells Fargo do not preclude Wells Fargo from following the City's ordinances regarding permits, boarding and repair during the period of their ownership. While the deadlines imposed by the federal regulations may require Wells Fargo to act quickly, they are not inconsistent with the City's ordinances.

{¶36.} The Court is persuaded that CHRP has established by clear and convincing evidence that it is likely to succeed on the merits of its claim for declaratory and injunctive relief with respect to Wells Fargo's business practices regarding the purchase and maintenance of properties bought by Wells Fargo at sheriff's sale.

{¶37.} CHRP also seeks a public nuisance declaration and injunction regarding the Wells Fargo's sale of properties it purchases at sheriff's sale to non-beneficial owners, who do not make repairs upon their purchase.

{¶38.} The evidence in the record regarding this practice is less clear. CHRP has established that a large number of properties sold between December 2008 through April 2009 by Wells Fargo after purchase at sheriff's sale sold for prices only a few thousand higher than the purchase price paid by Wells Fargo. And, CHRP, in its informal inspection of properties previously owned by Wells Fargo, observed that few, if any, of the resold properties showed improvement in their conditions. While the conclusion that the subsequent purchasers of the Wells Fargo properties did few, if any, repairs after their purchase of the property from Wells Fargo may follow logically from the facts in evidence, the Court is not persuaded that CHRP has proven this outcome by clear and convincing evidence. During the preliminary injunction hearing, the names of entities to which Wells Fargo sold properties were mentioned. Those purchasers included Go Invest Wisely and Interstate Investment -- both of which organizations have criminal cases pending in this Court upon which they have been served, and for which they have failed to appear to answer charges. Due to their non-appearance, the Court is left to speculate as to the intention of these purchasers to take responsible, appropriate action with respect to their properties.

{¶39.} All of the factors cited above are evidence that Wells Fargo, after creating a nuisance by boarding its properties and failing to repair them, takes action that

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<sup>59</sup> 24 C.F.R.203.335 requires commencement of foreclosure within 9 months from date of default on FHA loans.

<sup>60</sup> 24 C.F.R. 203.365 provides for conveyance within 30 days to the Secretary of H.U.D.

ensures perpetuation of that nuisance. However, the sales cited above serve as useful examples, but are not sufficient to establish by clear and convincing evidence, the applicable standard for a preliminary injunction, that specific business practices of Wells Fargo have led to this result. CHRP having failed to sustain its burden of proof at this stage of the litigation, the Court will not issue the declaratory and preliminary injunctive relief sought by CHRP regarding transfer of the properties by Wells Fargo at this time. CHRP may attempt once again to prove its claim at the hearing on its request for permanent injunction.

{¶40.} For the reasons set forth above, the Court concludes that CHRP has established by clear and convincing evidence that it is likely to succeed on the merits of its claim that Wells Fargo's business practices regarding the purchase and maintenance of properties bought by Wells Fargo at sheriff's sale create a public nuisance.

### ***Irreparable Injury to CHRP if Injunction is Not Granted***

{¶41.} CHRP is a neighborhood based, non-profit corporation located in the City of Cleveland, with a goal of improving housing within the City of Cleveland. First, CHRP suffers injury similar to that of other residents of the City, and entities doing business here – vacant houses in disrepair pose a danger of increased crime to residents of the City. The maintenance of properties by Wells Fargo in a vacant condition, not in compliance with the minimum standards of City code, increases the volume and difficulty of the work performed by CHRP in achieving its goal of improving housing in Cleveland. The decrease in property values caused by vacant properties may make it less likely that CHRP can secure financing for its activities, including the prosecution of nuisance abatement actions filed under R.C. 3767.41. And, most importantly, Wells Fargo's actions in maintaining properties in a vacant, boarded condition thwart the goal of CHRP to improve the quality of housing in the City of Cleveland, and help to ensure that the intended beneficiaries of CHRP's activities – other residents of the City of Cleveland – will not receive the intended benefit. These effects are injuries that are irreparable, and not simply compensable by monetary damages.

### ***Harm to Third Parties if Injunction is Granted***

{¶42.} There is little likelihood of injury to third parties if the preliminary injunction is granted. Wells Fargo argues that the injunction will serve only to maintain properties in a vacant state, should it be granted under the terms contained in this Court's temporary restraining order. The Court is mindful of that danger, and attempts to address it in the conditions of the order itself. The Court is mindful, as well, of individuals like Samona Johnson, who sought to purchase the property next door to her home, for occupancy by her mother. As a result of the temporary restraining order, Johnson's mother moved elsewhere, yet Johnson still purchased the property and is in the process of repairing it. Still, the Court is persuaded that individuals in Johnson's situation are rare; Wells Fargo pointed to no other potential purchaser - with a demonstrated intention and ability to make repairs – who was unable to proceed with purchase due to the temporary restraining order. Wells Fargo could argue that all potential purchasers are harmed by the order; however there is an ample number of

properties for sale in the City of Cleveland, owned by individuals and entities other than Wells Fargo, that are available and awaiting purchase and rehabilitation. The Court concludes, then, that the potential injury to third parties if the injunction is granted is small, and justifiable.

### ***Whether the Public Interest is Served by Granting the Injunction***

{¶43.} The public has a strong interest in the maintenance of properties in a safe condition, whether the members of the public are occupying the properties or living near them. Vacant properties in substandard condition present a safety hazard, an arson risk, and a venue for criminal activity. The public has an interest in the safety of police, fire, and EMS emergency responders as well; vacant properties can create life-threatening situations for police and firefighters who respond to criminal activity therein. The public has a pecuniary interest in the maintenance of properties also; vacant, vandalized properties lead to the decline of neighborhoods and a reduction in property values. In addition, municipalities are forced to provide services (e.g., grass cutting, yard cleaning, demolition) to neglected properties and the taxpayers must bear this financial burden.

{¶44.} Wells Fargo argues that the imposition of an injunction limiting Wells Fargo's ability to transfer without first bringing them up to code will lead to the perpetuation of more properties in an unoccupied state. This argument is simply not persuasive. First, Wells Fargo is not precluded from following the obligations imposed on all owners by the City's Codified Ordinances and bringing their properties up to code, including an absence of boarding. Even if the need to follow the requirements of City Code imposes a financial hardship on Wells Fargo, which has not been proven, the requirements of the Code remain the same. Owner occupants often make difficult financial decisions to make necessary repairs and comply with the standards set forth in the City; a business entity such as Wells Fargo must make similar difficult financial decisions. Wells Fargo may need to reexamine its business practices and model, particularly in light of recent federal legislation that, in fact, will cause Wells Fargo to become a landlord.<sup>61</sup> Wells Fargo certainly will have issues of security to examine, as well; however, nothing requiring Wells Fargo to bring the properties up to code will lead necessarily to the properties being unoccupied for a longer period of time. Second, there is nothing in the record to suggest that transferring the properties in an unrepaired state somehow lowers the vacancy rate of those properties. The vast inventory of vacant properties in the City belies that notion. Finally, Wells Fargo's argument ignores another option for these properties – demolition. Demolition, if approved by the City, can eliminate the nuisance posed by these properties while they remain owned by Wells Fargo.

{¶45.} The Court is not persuaded, then, by the argument of Wells Fargo that an injunction prohibiting transfer of the properties if not in compliance with Code will result in a greater number of vacant properties. The Court is persuaded, however, that the public interest would be served by the granting of a carefully-

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<sup>61</sup> Protecting Tenants at Foreclosure Act of 2009. S. 896, Pub. L. No. 111-22, Eff. May 21, 2009.

crafted injunction requiring Wells Fargo to comply with the code requirements imposed on all individuals who own property in the City of Cleveland.

{¶46.} Based upon the foregoing, the Court concludes that CHRP has established by clear and convincing evidence that (1) there is a substantial likelihood that it will prevail on the merits of its claim that Wells Fargo's purchase and maintenance of properties bought at sheriff sale creates a public nuisance; (2) that CHRP will suffer irreparable injury if the injunction is not granted, (3) that no third parties will be unjustifiably harmed if the injunction is granted; and (4) that the public interest will be served by the injunction. Accordingly, CHRP is entitled to the injunction it seeks, as to the purchase and maintenance of properties. *KLN Logistics*, supra.

{¶47.} Wells Fargo argues that a preliminary injunction preventing it from conveying any interest in property it owns in the City of Cleveland is pre-empted by federal law. Wells Fargo bases this argument on two grounds: first, that federal statute and regulations require it to dispose of real estate as quickly as possible, and second, that certain federal agency regulations require Wells Fargo to transfer covered properties within a short and specified time period after foreclosure.

{¶48.} As to the first argument, Wells Fargo notes that the National Bank Act ("NBA") on one hand authorizes it to purchase properties at foreclosure sale, but on the other prohibits it from holding title to such properties for more than five years.<sup>62</sup> Wells Fargo also notes that federal regulations require it to dispose of such properties "at the earliest time that prudent judgment dictates." 12 C.F.R. 34.82(a). It fears that an injunction could possibly conflict with this federal law in the event that it served to bar Wells Fargo from conveying properties either within the five-year period or when its prudent judgment dictates. Despite its fears, however, Wells Fargo fails to offer any examples any properties at risk of creating this conflict. Not only that, but the terms of the injunction offer Wells Fargo a simple solution—if a property must be conveyed, Wells Fargo can meet the terms of the injunction by remedying code violations in order to gain court approval for the transaction.

{¶49.} Wells Fargo's second argument pertains specifically to properties covered by loans insured by governmental or quasi-governmental entities such as the Department of Housing and Urban Development ("HUD"), the Department of Veterans' Affairs ("VA"), Fannie Mae, and Freddie Mac. With respect to these loans, Wells Fargo argues that it is obligated to convey the subject property to the respective entity within a specific amount of time after acquiring marketable title by purchase at foreclosure sale. By enjoining it from conveying any property without the Court's approval, Wells Fargo argues that the requested injunction will prevent it from complying with these entities' regulations—and for that reason the injunction is in conflict with and pre-empted by federal law.

{¶50.} In support of its position that the requested injunction is pre-empted by federal law, Wells Fargo cites *Watters v. Wachovia Bank N.A.*<sup>63</sup> to show not only

<sup>62</sup> 12 U.S.C. § 29.

<sup>63</sup> (2007), 550 U.S. 1, 127 S.Ct. 1559.

that “federal control shields national banking from unduly burdensome and duplicative state regulation,”<sup>64</sup> but also that states “may not curtail or hinder a national bank’s efficient exercise of any other power, incidental or enumerated under the NBA.”<sup>65</sup> The Supreme Court in *Watters*, however, explicitly acknowledged that states can regulate national bank activities without running afoul of federal law— “[s]tates are permitted to regulate the activities of national banks where doing so does not prevent or significantly interfere with the national bank’s or the national bank regulator’s exercise of its powers.”<sup>66</sup> “Federally chartered banks,” according to the Court, “are subject to state laws of general application in their daily business to the extent such laws do not conflict with the letter or the general purposes of the NBA.”<sup>67</sup> More specifically, the Court recognized that “national banks’ “acquisition and transfer of property [are] based on State law.”<sup>68</sup> The requested injunction falls within the safe zone carved out by the U.S. Supreme Court. The requested injunction is a state law of general application—in fact, the general thrust of Plaintiff’s claim is that Wells Fargo is subject to the same nuisance standards as any other property owner in the City. Further, the interference such an injunction will cause fails to rise to the level of the regulation<sup>69</sup> about which the Supreme Court was concerned. Wells Fargo’s pre-emption argument, then, is without merit.

### ***The Injunction***

{¶51.} CHRP having established its entitlement to a preliminary injunction, the Court sets forth the following terms. In setting these terms, the Court bears in mind both the conduct about which CHRP has met its burden on the preliminary injunction claim, and the need to draw the injunction as narrowly as possible.

{¶52.} In making its decision on the scope and terms of this injunction, the Court considered a number of factors, including the following.

{¶53.} First, the testimony at the hearing established that Wells Fargo does not make an effort to maintain its properties in compliance with the standards of the City’s Building and Housing Codes; Wells Fargo’s current business model does not include pulling permits to board properties, submitting rehabilitation plans, or making repairs necessary to meet the maintenance standards set forth in the code. This is not, CHRP has established, a matter of Wells Fargo through mistake or inadvertence failing to comply with the code with respect to a small portion of its inventory; instead, this is a conscious decision by the owner of more than 100 properties in the City of Cleveland not to comply with the Code because of the costs it will incur.

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<sup>64</sup> *Id.* at 1566-67.

<sup>65</sup> *Id.* at 1567-68.

<sup>66</sup> *Id.* at 1567.

<sup>67</sup> *Id.* (citation omitted).

<sup>68</sup> *Id.* (citation omitted).

<sup>69</sup> In *Watters*, the Supreme Court held that Michigan could not subject national banks to a state regulatory scheme and require those banks to register with the state. The challenged state regulation was clearly targeted at national banks and subjected them to a much broader burden than does the requested injunction in the present case.

{¶54.} Second, without restraining the transfer of properties unless Wells Fargo brings them up to the standard of City code, the only remedy available to CHRP would be a financial penalty for contempt of court. It would be difficult to ascertain an appropriate penalty with respect to costs potentially incurred by CHRP, as they are difficult to quantify. And, the loss to the public would be substantial, and not compensable in money damages. Should Wells Fargo's properties transfer while not in compliance with the City code, there is a real possibility that the new owners would be unavailable for code enforcement purposes – Go Invest Wisely and Interstate Investment, referred to above, provide good examples of this. In addition, given the length of time some neighborhoods have suffered the effects of the boarded, vacant properties owned by Wells Fargo, the delay in locating new owners and securing code compliance from them is unjustifiable, if it can be prevented.

{¶55.} Third, Wells Fargo accurately asserts that the City of Cleveland does not have a point-of-sale inspection. Therefore, it is not illegal per se to transfer properties which are not in compliance with City code. The Court is mindful of City Council's decision not to enact a point-of-sale ordinance, and is not, through this order, attempting to legislate such a requirement into effect.

{¶56.} Fourth, the Court considered the statutory code enforcement scheme enacted by Cleveland City Council. The purpose of the Building Code is to "provide minimum standards to safeguard life or limb, health, property and public welfare.<sup>70</sup>" The purpose of the Housing Code is to "establish minimum standards necessary to make all dwelling structures safe, sanitary, free from fire and health hazards and fit for human habitation and beneficial to the public welfare; establish minimum standards governing maintenance of dwelling structures in safe and sanitary condition; fix responsibilities for owners and occupants of dwelling structures with respect to sanitation, repair and maintenance; establish additional standards for rented or leased dwellings and rooming occupancies; authorize the inspection of dwelling structures; establish enforcement procedures; authorize the vacation or condemnation of dwelling structures unsafe or unfit for human habitation; and fix penalties for violations.<sup>71</sup>" These Codes, then, establish standards for residential structures in the City of Cleveland, and procedures to be followed to ensure that those standards are met. It is the conclusion of this Court that these provisions apply to Wells Fargo, with respect to property it owns, as they do to all other property owners.

{¶57.} Fifth, the Court has considered that the Wells Fargo-owned properties are in various stages of maintenance and boarding; others are the subject of notices of violation or condemnation. The status of each property determines what is necessary to bring the property into compliance with the City's Building and Housing Codes.

{¶58.} This injunction shall remain in effect from the date of journalization of this order, until such time as CHRP's request for permanent injunction has been tried, and a decision issued by this Court, or until further order of this Court. It is

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<sup>70</sup> C.C.O. 3101.01(b)

<sup>71</sup> C.C.O. 361.02

the intention of this Court, in issuing this preliminary injunction, to require Wells Fargo simply to comply with the requirements of the City's Building and Housing Codes, as is required of every other owner of residential property in the City of Cleveland.

{¶59.} The following order applies to all residential property located in the City of Cleveland currently held in the name of Wells Fargo Bank N.A., either in its individual capacity or as trustee, and governs the conduct of Wells Fargo and all persons acting in concert with Wells Fargo, including servicers, realtors, and other agents retained by or acting at the direction of Wells Fargo.

{¶60.} Wells Fargo, within fourteen days of the date of journalization of this order, shall file with the Court and serve upon counsel for all other parties, a list of all properties it owns in the City of Cleveland. The list shall include the street address, permanent parcel number, date of acquisition, whether the property is boarded, whether a notice of violation has been issued, whether a condemnation notice has been issued, and whether such notices have been closed out by the City indicating the conditions have been corrected. The City of Cleveland is to cooperate fully and promptly to assist Wells Fargo in determining whether notices of violation or condemnation have been issued, and in providing copies of such notices if necessary; however, the ultimate responsibility for providing this information lies with Wells Fargo. An updated property list shall be filed and served by Wells Fargo every fourteen days.

List

{¶61.} With respect to properties for which no notices of violation or condemnation have been issued, and which are not boarded, but which are not in compliance with City code standards, Wells Fargo shall immediately take action to bring those properties up to minimum code standards, securing permits when necessary. Those properties shall be brought into full compliance with City code standards within 30 days of the filing of the list identified in para. 53, above. Compliance may consist of repair or demolition. Any permits required for repair or demolition must be sought and obtained by Wells Fargo prior to the commencement of work. The City of Cleveland Department of Building and Housing is to work to the best of its ability to respond to Wells Fargo's requests for permits as quickly as possible.

Comply w/ code w/i 30 day

{¶62.} With respect to properties for which a condemnation notice has been issued, but not closed out, Wells Fargo shall comply immediately with the notice, which requires repair or demolition within a specified period of time. The failure to comply with the notice may be considered to be contempt of court.

Contempt

{¶63.} With respect to properties for which a notice of violation was issued prior to the purchase of the property by Wells Fargo, Wells Fargo shall comply with C.C.O. 367.04(d), and begin to comply with the notice, and within ten (10) days of the date of transfer, or ten days of the date of the filing of the property list described in para. 53, above, notify the Director of Building and Housing, in writing, of the actions that will be taken to comply. The Director shall then establish a reasonable time for Wells Fargo to comply with the notice.

10 days to begin for viol prior to purch

*permit*

{¶64.} With respect to any boarded structure on residential property, Wells Fargo, within 30 days of the date of filing of the list identified in para. 53, shall either remove the boards and bring the property into compliance with City code, or, if that cannot be accomplished, apply for a permit to board the structure, under C.C.O. 3103.09(c). Boarding must be "effective boarding" as defined in the Cleveland Codified Ordinances, both in method and materials,<sup>72</sup> and must be completed within three days of issuance of the boarding permit.<sup>73</sup> The City of Cleveland Department of Building and Housing is to work to the best of its ability to respond to Wells Fargo's requests for permits as quickly as possible. In addition, the Court will require that Wells Fargo cause the boards on any property to be painted a neutral color, or to use another form of artistic boarding, so as to minimize the effects of boarding on the surrounding neighbors. C.C. O. 3101.10(f). Within thirty days of the issuance of the permit to board, or within such time as extended by the Director of Building and Housing,<sup>74</sup> Wells Fargo shall apply for a rehabilitation permit. Wells Fargo then must comply with the terms of the permit and perform the necessary rehabilitation or demolition within the time prescribed.

{¶65.} For properties which fall into more than one of the categories described above, and which categories have conflicting time periods for repair, demolition, or other action, the shortest time period shall apply.

*No transfer under \$40K*

{¶66.} To ensure compliance with the preliminary injunction and the codified ordinances of the City of Cleveland, Wells Fargo shall not transfer the title to properties, through sale or gift, absent demonstrated compliance with the terms of this order. This restriction shall not apply to properties the sale price for which exceeds \$40,000.00.<sup>75</sup>

*permission*

{¶67.} To transfer a property during the period of this preliminary injunction, Wells Fargo, at least ten business days prior to transferring any property located in the City of Cleveland, may file a communication with this Court, requesting permission to transfer the property. In its communication, Wells Fargo must identify with specificity the property sought to be transferred - by address, permanent parcel number, and legal description. Any communication filed by Wells Fargo must be served upon the Court, counsel for CHRP and the City of Cleveland via electronic mail contemporaneously with the paper filing. Wells Fargo must attach evidence of permits secured, repairs made, documents from the City granting extensions of time for rehabilitation or repair, and all other papers showing compliance with this order. CHRP or the City of Cleveland may file its objection to the transfer within five business days prior to the proposed transfer, indicating with which provision of this order or the City's ordinances it believes Wells is not in compliance. The Court will issue its ruling on the request

<sup>72</sup> C.C.O. 3103.09(c)(2).

<sup>73</sup> C.C.O. 3103.09(c)(1).

<sup>74</sup> C.C.O. 3105.06(b).

<sup>75</sup> CHRP has argued for an exception from the injunction for properties whose sale price exceeds \$40,000.00, arguing that properties selling for prices in excess of \$40,000.00 are less likely to be vacant and in disrepair. Wells Fargo offered no alternative or lower valuation to accomplish the same result. As it the Court's intent to draw the injunction as narrowly as possible to accomplish its intent, the Court will honor CHRP's request and exempt from the injunction any single residential property for which the sale price is in excess of \$40,000.

and objection no later than ten business days after the filing by Wells Fargo. The issue before the Court with respect to the request and objection will be whether Wells Fargo has complied with the requirements of City code with respect to the property. The Court may request replies from CHRP or the City of Cleveland, and may hold a hearing on the request for permission to transfer, if a hearing request is filed by any party, or if the Court deems it necessary. If the Court determines that Wells Fargo is in compliance with the Code and this order with respect to the property, the Court will order that the transfer may proceed. No transfer shall proceed absent order of the Court. The Court may require Wells Fargo, the new owner, or both to deposit a bond with the Court prior to transfer, to ensure compliance with any abatement plan.

*Demolition*

{¶68.} The parties may believe that the transfer of one or more properties may be accomplished consistent with the Court's intent to require compliance with City code, while not requiring repair by Wells Fargo. One example of this would be transfer to an entity with a valid demolition contract for the property. In the event that the parties agree that transfer of a property without repair or demolition is appropriate, CHRP, Wells Fargo and the City of Cleveland may petition the Court jointly for the release of the property from the terms of the injunction. The Court may require Wells Fargo, the new owner, or both to deposit a bond with the Court prior to transfer, to ensure compliance with the abatement plan.

*Inform purchaser*

{¶69.} In any proposed transfer of property owned by Wells Fargo during the period of this preliminary injunction, Wells Fargo must demonstrate to the Court, prior to transfer, that it has complied with C.C.O. 367.04(c), and has informed the prospective purchaser of any notice of violation, notice of condemnation, or notice of the City's intention to demolish or effectively board. In addition, Wells Fargo shall notify the prospective purchaser of the pendency of this lawsuit, and the existence of this preliminary injunction.

{¶70.} When it issued the temporary restraining order in this case, the Court put the burden on Wells Fargo to demonstrate compliance with City code prior to transferring the property. Wells Fargo argued that, in addition to objecting to the injunction as a whole, it was unreasonable to put the burden on Wells Fargo. After careful consideration, the Court concludes that the injunction only is feasible if Wells Fargo is responsible for acting when it wishes to transfer a property. To require CHRP or the City of Cleveland to bear the burden of monitoring the properties and proposed transfers permits Wells Fargo to shift its responsibility for supervising its inventory and complying with City code.

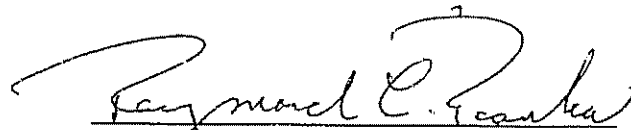
{¶71.} Wells Fargo may argue that the injunction crafted herein restricts the sale of the properties while the Court determined that CHRP did not meet its burden of proof on the issue of transfer of the properties. This to some extent is true; however, permitting Wells Fargo to continue to transfer its properties without adherence to the City code in the maintenance of those properties would render the injunction without teeth. Wells Fargo could simply transfer the properties without repair - consistent with its current business practice - and evade the City's review of the properties and enforcement of the Code. And, though CHRP sought an injunction to limit the transfer of properties to beneficial owners, it did

not meet its burden of proof on that claim. Therefore, provided that Wells Fargo complies with the terms of this injunction, it may sell the properties in question to any new owner it chooses.

**Bond**

{¶72.} The preliminary injunction granted herein requires Wells Fargo to comply with the requirements of the Codified Ordinance of the City of Cleveland – the same compliance which is required of owner-occupants and investor-owners throughout the City. In fact, it is conceivable that, through timing and orders of extension that could be granted by the Department of Building and Housing, Wells Fargo may transfer a property in need of repair, while still in compliance with the Code and this injunction. As this order essentially requires only compliance with City Code, the Court believes that no additional bond is necessary to protect the interest of Wells Fargo. Accordingly, the bond previously posted shall remain on deposit, but no additional bond shall be required.

{¶73.} The Court will set a date for a case status conference by separate order. Meanwhile, the Court encourages all three parties to this action – CHRP, Wells Fargo, and the City of Cleveland, to continue their discussions about the possible resolution not only of this case, but the broader issues and concerns that they share. All three entities have the potential to contribute their knowledge and experience to resolve issues involving lenders and property conditions that decrease the quality of life in the City of Cleveland. Should the three entities – and their intelligent, innovative counsel – work collaboratively, the Court is certain that positive results could be achieved. The Court, as it has indicated previously to the parties, remains ready to offer its resources, including an experienced ADR Specialist who is a long-practicing attorney, along with its expertise, should the parties believe it would be helpful in resolving the issues raised by this case.

  
JUDGE RAYMOND L. PLANKA

A copy of this judgment entry was sent via electronic mail to counsel for the parties on 09 / 18 / 09.

  
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