

STATE OF VERMONT
WASHINGTON COUNTY, SS.

FILED
Stipulation De
OCT 13 2009
SUPERIOR COURT
WASHINGTON COUNTY

STATE OF VERMONT, *SA*)
Plaintiff, *2009 OCT 22 P 2 08*)
ORDER)
v.)
JAMES THEODORE and)
JTT PROPERTIES,)
Defendants.)

Washington Superior Court
Docket No. *Wncv*
783-10-09

STIPULATION OF SETTLEMENT AND CONSENT DECREE

To resolve the allegations in the Complaint filed in the above captioned matter,
Plaintiff State of Vermont and Defendants James Theodore and JTT Properties
("Defendants"), stipulate and agree to the following:

1. Defendants have enrolled the five properties listed in Attachment A to the Complaint (hereinafter "the properties") in the Vermont Housing and Conservation Board's lead program.
2. Within one week of completion of the work at the properties by Defendants and the Vermont Housing and Conservation Board, Defendants will file with the Vermont Department of Health, Defendants' insurance carrier and with the Office of the Attorney General, a completed EMP compliance statement for each of the properties, and will give a copy of the compliance statement to an adult in each rented unit of the properties. The copy for the Office of the Attorney General shall be sent to: Robert F. McDougall, Assistant Attorney General, Office of the Attorney General, 109 State Street, Montpelier, Vermont 05609.
3. In the event Defendants wish to rent a unit which becomes vacant in any of the properties that is not EMP compliant, they shall provide advance written notice of the intent

Office of the
ATTORNEY
GENERAL
109 State Street
Montpelier, VT
05609

to rent to the Office of the Attorney General at the address listed in paragraph 2.

Defendants' advance written notice shall also: (1) verify that the interior of the specific unit to be rented is EMP compliant; (2) provide an update as to the remaining EMP work to be performed at the property; and (3) provide a date by which the entire property will be EMP compliant. Otherwise, Defendants shall not rent, or offer for rent, any unit which becomes vacant in any of the properties that is not EMP compliant until such time as the EMP work is complete and the EMP compliance statement is distributed as described in paragraph 2 above.

4. Defendants shall fully and timely comply with the requirements of the Vermont lead law, 18 V.S.A., Chapter 38, as long as they maintain any ownership or property management service interest in the properties and in any other pre-1978 rental housing in which they currently have, or later acquire, an ownership interest.

PENALTIES

5. Defendants shall pay fourteen thousand dollars (\$14,000.00) in civil penalties to the State of Vermont for the filing of false EMP compliance statements with the Vermont Department of Health.

6. Payment of the fourteen thousand dollars (\$14,000.00) civil penalty described in paragraph 5 shall be as follows:

- a. Defendants shall pay four thousand dollars (\$4,000.00) upon execution of the Consent Decree. Payment shall be made to the "State of Vermont" and shall be sent to the Office of the Attorney General at the address listed in paragraph 2.
- b. Based upon Defendants' demonstrated inability to pay the remaining ten thousand dollars (\$10,000.00) of the civil penalty in paragraph 5 at the present

time, payment of the remaining civil penalty shall be due upon sale of any of the properties listed in Attachment A of the Complaint or any other properties owned by Defendants, including but not limited to: (a) 15 Woodstock Avenue, Rutland; (b) 33 Woodstock Avenue, Rutland; (c) 129 Curtis Avenue, Rutland; (d) Mill River Apartments, Rutland; (e) 90 Barnes Street, Rutland; (f) 18 Church St., Rutland; (g) 71 Joilette Street, Rutland; (h) 340 Kelly Street, Rutland; (i) 45 Pleasant Street, Rutland; and (j) 45 ½ Pleasant Street, Rutland. Defendants may pay the civil penalty prior to the sale of any properties if they are able.

c. Until such time as the civil penalty in paragraph 5 is paid in full, the Decree, Order and Final Judgment shall be recorded as a judgment lien in accordance with 12 V.S.A. § 2901 for the remaining ten thousand dollars (\$10,000.00) on the properties and those other properties listed above. Interest on the judgment lien shall accrue at the statutory rate, however, the State agrees to waive interest for the first year following the date that the judgment lien is recorded. 12 V.S.A. § 2903. Defendants shall be responsible for any costs incurred by the State related to the recording of the judgment lien.

d. Nothing in this Consent Decree shall limit the State's authority to enforce this judgment under any other provision of law.

7. In addition to the payment of civil penalties described in paragraphs 5 and 6, Defendants shall expend at least seven thousand five hundred dollars (\$7,500.00), including the actual cost of materials and the actual (or if the work is done by employees of Defendants, the reasonable) cost of labor, on any or all of the following lead hazard

reduction improvements at any of the properties or in any other pre-1978 rental housing in which Defendants currently have, or acquire, an interest:

- a. Replacement of painted windows;
- b. Replacement of painted doors;
- c. Covering of painted exterior walls with siding; and
- d. Replacement or covering of interior or exterior (including porch) floors and stairs with permanent carpeting or other permanent floor covering;

provided that the building component in question was installed and first painted before 1978; *and further provided that* Defendants may submit for prior approval other potential lead hazard reduction improvements (e.g. soil coverage) to the Office of the Attorney General, which shall have complete discretion to determine whether the improvements count toward the required expenditure.

8. The expenditures described in paragraph 7 above shall reflect work performed between June 1, 2009, and December 31, 2009. Defendants shall provide written documentation of the expenditures to the Office of the Attorney General at the address provided in paragraph 2. The expenditures described in paragraph 7 above shall be independent of any expenditure resulting from the enrollment of the properties in the Vermont Housing and Conservation Board's lead program.

9. In the event that Defendants wish by agreement with the Office of the Attorney General to extend any of the dates above, such request must be made by Defendants at least 10 days in advance of the dates specified in this Consent Decree.

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09 State Street
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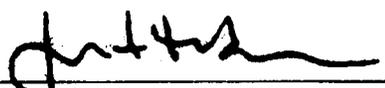
OTHER RELIEF

10. This Consent Decree is binding on Defendants, however, sale of any of the properties may not occur unless all obligations in paragraphs 2 and 5 through 8 have been completed or this Consent Decree is amended in writing to transfer to the buyer or other transferee all remaining obligations and the judgment lien created by this Consent Decree and recorded is discharged with respect only to the sale of any such properties. However, nothing in this Consent Decree in any way affects the obligations of future owners of any of the properties under Vermont law, including under the Vermont lead law.
11. Transfer of ownership of any of the properties shall be consistent with Vermont law, including the provisions of 18 V.S.A. § 1767 specifically relating to the transfer of ownership of pre-1978 rental housing.
12. This Consent Decree shall not affect marketability of title except as provided in paragraph 10 above.
13. Nothing in this Consent Decree in any way affects Defendants' other obligations under state, local, or federal law.
14. In addition to any other penalties which might be appropriate under Vermont law, any future failure by Defendants to comply with the terms of this Consent Decree shall be subject to additional penalties of no less than one thousand dollars (\$1,000.00) per violation of the Consent Decree per day for each day the violation exists.

STIPULATION

Defendants James Theodore and JTT Properties acknowledge receipt of and voluntarily agree to the terms of this Consent Decree and waive any formal service requirements of the Complaint, Consent Decree, and Decree, Order and Final Judgment.

DATED at Rutland, Vermont this 9th day of October, 2009.


James Theodore, individually and on behalf
of JTT Properties

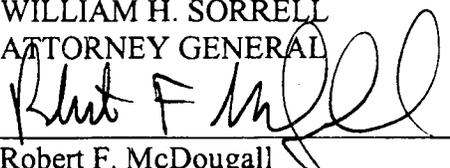
ACCEPTED on behalf of the State of Vermont:

DATED at Montpelier, Vermont this 13th day of October, 2009.

STATE OF VERMONT

WILLIAM H. SORRELL
ATTORNEY GENERAL

By:


Robert F. McDougall
Assistant Attorney General
Office of the Attorney General
109 State Street
Montpelier, Vermont 05609
802.828.3186

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DECREE, ORDER AND FINAL JUDGMENT

This Consent Decree is accepted and entered as a Decree, Order and Final Judgment of this Court in the matter of: *State of Vermont v. James Theodore and JTT Properties*, Docket No. 783-10-09 WJCV.

This Decree, Order and Final Judgment may be recorded as a judgment lien in accordance with 12 V.S.A. § 2901 in the amount of ten thousand dollars (\$10,000.00) as provided in paragraph 6 of the Consent Decree.

SO ORDERED.

DATED at Montpelier, Vermont this 15 day of October, 2009.



Washington Superior Court Judge
Crawford

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