VT SUPERIOR COURT
WASHINGTON UNIT
CIVIL DIVISION

STATE OF VERMONT

SUPERIOR COURT
Washington Unit

2012 AUG 22 P 4:18

CIVIL DIVISION
Docket No. Wncv
601-8-12 Wncv

STATE OF VERMONT,
Plaintiff,

FILED

v.

41 BROOKLYN ST., LLC,
Defendant.

ASSURANCE OF DISCONTINUANCE

NOW COMES the State of Vermont, by and through Vermont Attorney General William H. Sorrell, and hereby accepts from 41 Brooklyn St., LLC ("Defendant") this Assurance of Discontinuance pursuant to 9 V.S.A. § 2459.

Background

Defendant is the owner of the following property (hereinafter "the property"):

41 Brooklyn St., Morrisville.

The property is a residential rental property constructed before 1978 and is therefore subject to Vermont's lead law, including the requirement of annual essential maintenance practices ("EMPs") that are designed to reduce childhood lead poisoning risks. 18 V.S.A. §§ 1751(19), 1759. Lead-based paint in housing, the focus of the Vermont lead law, is a leading cause of childhood lead poisoning, which can result in adverse health effects, including decreases in IQ. All paint in pre-1978 housing is presumed to be lead-based unless a certified inspector has determined that it is not lead-based. 18 V.S.A. § 1759(a).

EMPs include, but are not limited to, installing window well inserts, visually inspecting properties at least annually for deteriorated paint, restoring surfaces to be free of deteriorated paint within 30 days after such paint has been visually identified or reported to

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the owner, and posting lead paint hazard information in a prominent place. 18 V.S.A. § 1759(a)(2), (4) and (7). The Vermont lead law requires owners of rental housing to file annual compliance statements attesting to EMP performance with the Vermont Department of Health and with the owner's insurance carrier. 18 V.S.A § 1759(b). A copy of the compliance statement must be given to all tenants and to new tenants prior to entering into a lease agreement. 18 V.S.A. § 1759(b)(3) and (4).

The Vermont Consumer Fraud Act, 9 V.S.A., Chapter 63, prohibits unfair and deceptive acts and practices, including the offering for rent, or the renting of, housing that is non-compliant with the lead law.

A violation of the Vermont lead law may result in a maximum civil penalty of $10,000.00. 18 V.S.A. § 130(b)(6). Each day that a violation continues is a separate violation. 18 V.S.A. § 130(b)(6). Violations of the Consumer Fraud Act are subject to a civil penalty of up to $10,000.00 per violation. 9 V.S.A. §2458(b)(1). Each day that a violation continues is a separate violation.

The property is not currently in compliance with the Vermont lead law. Defendant has informed the State of its intention to complete the EMP work necessary at the property but does not expect that the work will be complete until October 15, 2012.

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INJUNCTIVE RELIEF

Defendant agrees to the following:

1. Defendant shall immediately ensure that access to exterior surfaces and components of the properties with lead hazards and areas directly below the deteriorated surfaces are clearly restricted as described in 18 V.S.A. § 1759(a)(3).
2. Defendant shall give priority to completion of EMPs at any of the properties where a child age 6 or under is residing.
3. Not later than **October 15, 2012** all EMP work, interior and exterior, shall be completed at the property.
4. Upon completion of the EMPs at the property, but no later than October 22, 2012, Defendant will file with the Vermont Department of Health and Defendant's insurance carrier(s), a completed EMP compliance statement for the property, and will give a copy to an adult in each rented unit of the property.
5. Upon completion of EMPs at the property, Defendant shall also provide proof of completion to the Office of the Attorney General at the following address: Robert F. McDougall, Assistant Attorney General, Office of the Attorney General, 109 State Street, Montpelier, Vermont 05609. A copy of the EMP compliance statement for the property shall be sufficient proof of completion.
6. All work performed at the property, whether by Defendant, its employees, or by hired contractors and/or painting companies, shall be performed using safe work practices consistent with 18 V.S.A. § 1760. Contractors and/or painting companies must have all necessary certifications and licenses required to perform the work. It shall be the obligation of Defendant to ensure that any contractors

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and/or painting companies it hires to perform EMP work are aware of the provisions of 18 V.S.A. § 1760, intend to use safe work practices at the property and are properly licensed and certified.

7. If Defendant anticipates not being able to fully comply with the deadlines for EMP compliance solely due to delays relating to contractors and/or painting companies hired to perform the EMP work, Defendant may request an extension of the deadline from the Attorney General's Office. Such request shall be made as soon as the delay is recognized and must include an approximate date by which the work shall be complete.

8. In the event that Defendant wishes by agreement with the Office of the Attorney General to extend any of the dates above for reasons not relating to delays caused by contractors and/or painting companies hired to perform the EMP work, such request must be made by Defendant at least 10 days in advance of the dates specified in this Assurance of Discontinuance.

9. Defendant shall fully and timely comply with the requirements of the Vermont Lead Law, 18 V.S.A., Chapter 38, as long as it maintains any ownership interest in the property or in any other pre-1978 residential housing in which it currently has or later acquires an ownership interest or provides property management services (unless by property management contract the Defendant is explicitly not responsible for EMPs).

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PENALTIES

10. Defendant shall pay civil penalties of five thousand ($5,000.00). Payment shall be due October 31, 2012, and payment made to the "State of Vermont" and shall be sent to: Robert F. McDougall, Assistant Attorney General, Office of the Attorney General, 109 State Street, Montpelier, Vermont 05609.
11. If Defendant complies with the EMP requirements of this Assurance of Discontinuance set forth in paragraphs 1 through 6 above, the penalties provided in paragraph 10 shall be waived by the State of Vermont.
12. The filing of the EMP compliance statements for the properties by October 22, 2012, as described in paragraphs 4 and 7, shall be considered compliance with the requirements of this Assurance of Discontinuance. If, however, it is determined that the filed EMP compliance statements are not accurate, the State may pursue the penalties in paragraph 10 in addition to any other appropriate action under the Vermont lead law.

OTHER RELIEF

13. This Assurance of Discontinuance is binding on Defendant; however, sale of the property may not occur unless all obligations set forth herein have been completed or this Assurance of Discontinuance is amended in writing to transfer to the buyer or other transferee all remaining obligations.
14. 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 target housing.
15. This Assurance of Discontinuance shall not affect marketability of title.

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16. Should Defendant fully transfer or sell its ownership interest in the property after completing all obligations set forth herein, its obligations with respect to that property under this Assurance of Discontinuance are extinguished. However, nothing in this Assurance of Discontinuance in any way affects the obligations of future owners of the property under Vermont law, including under the Vermont lead law.
17. Nothing in this Assurance of Discontinuance in any way affects Defendant's other obligations under state, local, or federal law.
18. Any future failure by Defendant to comply with the Vermont lead law at the property referenced in this Assurance of Discontinuance, or any violation of the terms of this Assurance of Discontinuance, shall be subject to additional penalties of no less than $10,000.00 per violation per day for each day the violation exists.

Signature

By signing below, Defendant acknowledges and agrees that the facts contained in the section entitled "Background" are true and voluntarily agrees to and submits to the terms of this Assurance of Discontinuance.

DATED at Morrisville, Vermont this 18th day of Aug., 2012.

Jean Wickart

Jean Wickart, as agent for 41 Brooklyn St., LLC

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109 State Street
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Acceptance

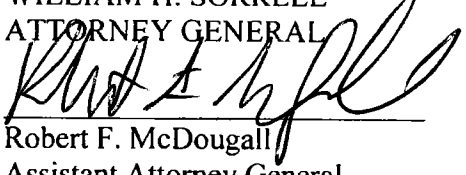
In lieu of instituting an action or proceeding against Defendant, the Office of the Attorney General, pursuant to 9 V.S.A. § 2459, accepts this Assurance of Discontinuance.

ACCEPTED on behalf of the State of Vermont:

DATED at Montpelier, Vermont this 22nd day of August, 2012.

STATE OF VERMONT

WILLIAM H. SORRELL
ATTORNEY GENERAL

By: 

Robert F. McDougall
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