

No. _____

GOOD HAVEN PREPAYMENT
COMMITTEE and DONNIE CARTER

Plaintiffs

5.

GOOD STREET CHARITABLE
FOUNDATION, a Texas Non-Profit
Corporation

Defendant

IN THE DISTRICT COURT

_____ JUDICIAL DISTRICT

DALLAS COUNTY, TEXAS

**PLAINTIFFS= ORIGINAL PETITION & APPLICATION FOR TEMPORARY
RESTRAINING ORDER, TEMPORARY INJUNCTION AND
PERMANENT INJUNCTION**

A. Discovery Control Plan

1. Discovery in this case is intended to be conducted under Level 2 under Tex. R. Civ. P. 190.3

B. Parties

2. Plaintiff, Good Haven Prepayment Committee, is an unincorporated, representative group of individuals residing and formerly residing at Good Haven Apartments (AGood Haven®) in Dallas County, Texas.
3. Plaintiff, Donnie Carter, is an individual residing in Good Haven in Dallas County, Texas.
4. Defendant, Good Street Charitable Foundation is a Texas Non-Profit Corporation, whose principal place of business is 3110 Bonnie View, Dallas, Texas 75216, and may be served with process by serving the Chairman, Felix E. Wilson, at 3110 Bonnie View, Dallas, Texas 75216.

C. Jurisdiction

5. The court has jurisdiction over Defendant because Defendant is a Texas resident. The Court has jurisdiction of the controversy under Civ. Prac. & Rem. Code ' 65.021 and because the damages are within the jurisdictional limits of the Court.

D. Venue

6. Venue is proper in Dallas County, Texas, because Plaintiffs are residents of the county, the cause of action relates to property situated in Dallas County and the cause of action accrued in Dallas County.

E. Facts

7. Good Haven, a 332 apartment unit complex, owned and managed by Defendant was financed by Below Market Interest Rate (BMIR) loans obtained from the U.S. Department of Housing and Urban Development (AHUD@) in 1964 and 1965.
8. Defendant agreed to maintain Good Haven as a low-to-moderate income property until June 1, 2005, and in order to obtain HUD financing executed a Use Agreement (AFirst Use Agreement@), a Regulatory Agreement for Non-Profit and Public Mortgages Under Section 221(d) of the National Housing Act, a Deed of Trust and a Supplemental Deed of Trust.
9. Plaintiffs are current and past residents of Good Haven. Plaintiffs each had leases with Defendant substantially similar to the one attached as Exhibit AA@. These leases were written in conformity with HUD regulations applicable to Defendant=s loan subsidy and insurance programs. The lease provided Plaintiffs with greater rights than a standard landlord/tenant lease,

- including a **A**good cause@eviction standard.
10. Until July 31, 1999, Good Haven was subject to a project-based Section 8 contract administered by HUD.
 11. On August 24, 1998, Defendant notified the HUD Texas State Office that it intended to prepay its BMIR loans. A true and correct copy of that notice is attached as Exhibit **AB**@ and incorporated by reference.
 12. On August 24, 1998, Good Street Charitable Foundation Chairman Felix Wilson signed an **A**Owner's Certification@ stating that there were no legally binding contracts in effect at the project that would render it ineligible for prepayment. A true and correct copy of that certification is attached as Exhibit **AC**@ and incorporated by reference.
 13. On December 30, 1998, Defendant notified the residents of Good Haven that it was not renewing its project-based Section 8 contract upon the contract's expiration on July 31, 1999. This was 180 days notice. A true and correct copy of that notice is attached as Exhibit **AD**@ and incorporated by reference.
 14. On February 9, 1999, Defendant requested payoff information from the Multifamily Notes Serving Branch at HUD Headquarters. A true and correct copy of that letter is attached as Exhibit **AE**@ and incorporated by reference.
 15. In March 1999, Defendant attempted to prepay the BMIR loans.
 16. On March 11, 1999, Defendant's recorded a second Use Agreement (**A**Second Use Agreement@) in the Dallas County Deed records.

17. On March 12, 1999, Good Haven residents were notified that Defendant could raise the rent 60 days after prepayment. No resident input was solicited. A true and correct copy of those notices are attached as Exhibits AF@ and AG@ and incorporated by reference.
18. On March 31, 1999, Good Haven residents received a notice of rent increase effective June 1, 1999. A true and correct copy of that notice is attached as Exhibit AH@ and incorporated by reference.
19. On April 6, 1999, Good Haven residents received a second notice that Defendant had opted to prepay the BMIR loans. A true and correct copy of that notice is attached as Exhibit AI@ and incorporated by reference.
20. On May 12, 1999, Good Haven residents received notice that Dallas County would attempt to provide vouchers for eligible residents. A true and correct copy of that notice is attached as Exhibit AJ@ and incorporated by reference.
21. In July 1999, Defendant changed the effective date of the rent increases to September 1, 1999.
22. Plaintiffs and Defendant agreed to a 30 day extension that would not raise the Good Haven rents until October 1, 1999.
23. Defendant required residents to surrender their perpetual leases that were in compliance with HUD regulations (Aoriginal leases@) and provided tenants greater protections in favor of new leases with fewer protections (Anew leases@).

F. Causes of Action

24. **Declaratory Judgments.** The preceding paragraphs are incorporated by reference. Plaintiffs

are persons interested under a written contract and affected by statutes and request the Court to declare the rights, status and other legal relations under the contract and statutes. Plaintiffs allege that the March 1999 attempted prepayment of Good Haven's BMIR loans is improper and requests that this Court declare the March 1999 attempted prepayment by Defendant null and void under the above-described documents and relevant law. Plaintiffs further requests that this Court restore the parties to the positions and obligations they held prior to the March 1999 attempted prepayment.

25. **Breach of Contract.** The preceding paragraphs are incorporated by reference. Defendant executed written subsidized housing contracts with the residents of Good Haven. Plaintiffs attach a substantially similar copy as Exhibit AA and incorporate it by reference. The contract provided Plaintiffs with HUD mandated rights that exceed those in a standard landlord/tenant contract including: rents tied to a certain percentage of the resident's income, a larger grace period for the payment of rents, a perpetual term renewable monthly absent material noncompliance, a "good cause" eviction standard, an opportunity to respond to proposed evictions, a specific method for the delivery of termination notices, and a requirement of specificity in termination notices. Residents of Good Haven have performed their contractual obligations. Defendant, however, has not performed its contractual obligations. Specifically, Defendant has: terminated the perpetual leases and replaced them with leases for a specific term, done away with the "good cause" eviction standard, threatened to raise rents in excess of the BMIR rates, improperly terminated the project-based Section 8 contract, and taken away the additional protections of the HUD mandated subsidy

lease by replacing or threatening to replace it with a common landlord/tenant lease (Texas Apartment Association or TAA Lease) with few protections for residents.

26. Defendant's non-performance constitutes a breach of the contract. As a result of Defendant's breach, Plaintiff incurred damages of higher rents, loss of certainty in continued housing assistance, the loss of BMIR and project-based Section 8 rent caps, the loss of a good cause eviction standards, and the loss of the perpetual lease.
27. In addition to monetary damages, Plaintiffs seek the following remedies:
 1. Rescission of the TAA leases.
 2. Reversion to the pre-March 1999 HUD-mandated subsidy leases.

G. Application for Temporary Restraining Order

28. Plaintiffs seek an injunction prohibiting Defendant from taking any action inconsistent with Plaintiffs original leases or in violation of the First Use Agreement, such as:
 1. Raising rents on any of the units at Good Haven;
 2. Requesting additional security deposits from any current or future residents of Good Haven;
 3. Displacing any existing Good Haven residents for any reason other than HUD a good cause reasons;
 4. Amending, altering, revising, replacing, or changing any existing a house rules or other rules governing resident conduct in addition to the lease agreements;

5. Amending, altering, revising, replacing, or changing any HUD-approved leases for present or future residents;
 6. Imposing or enforcing new written or unwritten conditions of tenancy, including rules, fees, eligibility guidelines, or other measures inconsistent with HUD approved guidelines prior to March 1, 1999;
 7. Evicting, or threatening eviction for any resident for a defect in paperwork, such as eligibility processing or recertification;
 8. Requesting any resident action that would result in the resident waiving his or her rights under the prior Use Agreement or other restrictions applicable to the project prior to March 1999; or
 9. Making any adverse credit, tenant history or other report about any tenant for failure to comply with conditions of tenancy imposed on or after March 1, 1999.
29. It is probable Plaintiffs will prevail against Defendant because Defendant did not have the contractual right to unilaterally prepay its BMIR loans, Defendant made false statements to HUD to obtain prepayment, and Defendant has not taken the necessary steps in order to qualify for prepayment. For these reasons Defendant's prepayment is null and void.
30. If Plaintiffs' application is not granted, harm is imminent because Defendant is improperly terminating the original leases, assessing charges for rent in excess of the contractual amount, threatening to collect rents to which it is not entitled beginning October 1999, charging rents to local housing assistance providers in excess of the contractual limits as they existed on or before

March 1, 1999, and has unilaterally ended a good cause@eviction protections.

31. If Plaintiffs' application is not granted, harm is irreparable because Plaintiffs are low-income residents who cannot afford the higher rents Defendant is attempting to collect and as such are subject to homelessness or displacement. Plaintiffs can also be denied a good cause@eviction standard to which they are entitled. This will result in improper eviction filings that will substantially damage resident rental records. Further, these are Plaintiffs' homes and once lost from low-income housing stock in the area, are lost to the community forever.
32. Plaintiffs have no adequate remedy at law because damages are incalculable and will not adequately compensate residents for the above harms.
33. There is insufficient time to serve notice on the Defendant and to hold a hearing on the application because Defendant's agreement to partially abate adverse action expires at midnight, September 30, 1999.
34. Plaintiffs should only be required to post a nominal bond as they are indigent and the temporary restraining order is required to preserve their homes, analogous to Tex. Civ. Prac. & Rem. Code ' 65.041.

H. Request for Temporary Injunction

35. Plaintiffs ask the court to set their application for TRO for hearing, and after hearing the application, issue a temporary injunction against Defendant.

I. Request for Permanent Injunction

36. Plaintiffs ask the Court to set their application for TRO and request for temporary injunction for

hearing for a full trial on the issues in Plaintiffs= application, and after the hearing, issue a permanent injunction against Defendant.

J. Prayer

37. For these reasons, Plaintiffs ask the Court to grant a temporary restraining order, temporary injunction and permanent injunction. After trial Plaintiffs ask the Court to declare the rights, status and other legal relations of the parties under the contract and applicable law, and grant Plaintiffs such remedies for Defendant=s breach of contract as are appropriate, including costs of suit.

Respectfully Submitted,

Hillary A. Brooks
State Bar No. 00793395
Lewis Kinard
State Bar No. 11428420

Legal Services of North Texas
1515 Main Street
Dallas, Texas 75201
Tel. (214) 748-1234
Fax. (214) 748-1159

Attorneys for Plaintiffs

Verification

STATE OF TEXAS '
COUNTY OF DALLAS '

On this day, Donnie Carter appeared before me, the undersigned notary public, and after I administered an oath to her, upon her oath, she said she read the foregoing and the facts stated in it are within her personal knowledge and are true and correct.

Donnie Carter

SWORN TO and SUBSCRIBED before me by Donnie Carter on October 5, 1999.

Notary Public in and for the State of Texas