

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH

CITY OF PORTLAND,
Plaintiff,

v.

CHARLES IHEANACHO,
CHERYL D. IHEANACHO
Defendants.

Case No.

COMPLAINT

COMES NOW Plaintiff City of Portland and alleges these claims for relief against Defendants as follows:

1.

At all times material hereto, Plaintiff City of Portland (the "City") was and is a municipal corporation, duly organized and existing under the laws of the State of Oregon.

2.

From 2002 to 2006, Defendants and the Portland Development Commission ("PDC") entered into a series of agreements that continue to be enforceable. The PDC extended loans to defendants to finance construction of two multi-family housing developments with a minimum number of affordable-income units. The first, named Buka's Place, was constructed on property located at 2705-2717 N Killingsworth Street in Portland, Oregon. The second, named Roselyn Villa, was constructed on property located at 4721 NE Killingsworth Street in Portland, Oregon.

///
///

1 3.

2 PDC was created by Portland voters in 1958. It is the City's economic development
3 and urban renewal agency. One of its core missions is to foster equity and neighborhood
4 vitality by promoting affordable-income housing construction through partnerships with
5 developers. From PDC, developers receive loan and construction development terms far
6 more favorable than traditional lending sources, loans the developer may not qualify for or
7 afford otherwise. In exchange, the developer agrees to certain responsibilities, for example,
8 to submit reports to ensure the housing is being used by qualified tenants.

9 4.

10 Defendants are one of these developers. Defendants took taxpayer-funded money
11 from PDC and developed the above properties. Defendants received and enjoy the full
12 benefit of the bargain it struck with PDC. Defendants then utterly failed in its obligations
13 under the agreements. Despite numerous and repeated attempts by the City to have
14 defendants meet even the most basic compliance terms, defendants refuse.

15 5.

16 The City suffers ongoing harm from defendants' breach. For example, defendants
17 withhold money owed to the City as defendants have repaid none of their contractually
18 obligated Cash Flow Payments. Additionally, the City cannot determine if the properties are
19 being used for their intended purpose. This carries significant and grave consequences. The
20 City's programs are funded in part through federal Housing and Urban Development
21 programs and monies, which places compliance, reporting and enforcement obligations on
22 the City. Defendant's breach of agreement jeopardizes the City's ability to continue federal
23 funding of its housing programs.

24 6.

25 The Buka's Place development was memorialized by the following documents: a
26 HOME Restrictive Agreement and Declaration; Equity Gap Contribution Agreement;

1 Promissory Note; Line of Credit Trust Deed, Security Agreement, Fixture Filing and
2 Assignment of Leases and Rents; and Regulatory Agreement, all dated September 17, 2002.
3 PDC and both defendants are parties to the Buka's Place agreements.
4

5 The Roselyn Villa development was memorialized by the following documents: a
6 HOME Restrictive Agreement and Declaration dated February 8, 2006; and an Equity Gap
7 Agreement; Promissory Note; Line of Credit Trust Deed, Security Agreement, Fixture Filing
8 and Assignment of Leases and Rents; and Replacement Cost and Capital Improvement
9 Reserve Agreement, all dated March 24, 2006. PDC and defendant Charles Iheanacho are
10 parties to the Roselyn Village agreements.

11 All documents conferred certain obligations to both defendants and City.

12 7.

13 On July 1, 2010, PDC and the Portland Housing Bureau ("PHB") entered into an
14 Assignment and Assumption Agreement, which was amended and restated December 17,
15 2010, that assigned to PHB all of PDC's right, title and interest in all documents listed in a
16 Memorandum of Amended and Restated Assignment and Assumption Agreement (attached
17 as Exhibit D). All of the agreements described in paragraphs 2 and 3 were included in that
18 assignment.

19 8.

20 Plaintiff alleges breach of the following duties/obligations related to the Buka's Place
21 development:

22 Section 2.2 of the Home Restrictive Agreement and Declaration ("Buka HOME
23 Agreement") requiring that Defendant "shall collect household income data on an annual
24 basis from all tenants and provide a report of this information to [Plaintiff] in a format and
25 schedule specified by [Plaintiff]." (Exhibit X, p. 2.)

26 Section 2.6 of the Buka HOME Agreement requiring that Defendant "do all things

1 necessary to assist Lender in carrying out its monitoring responsibilities as required by 24
2 CFR 92.504(d), which include on-site inspection of the Premises at least annually to
3 determine compliance with housing codes and the requirements of the federal HOME
4 program regulations.

5 Section 2.7 of the Buka HOME Agreement requiring that Defendant “shall maintain
6 records sufficient to meet the requirements of 24 CFR 82.508(a)(2), (a)(3), (a)(5) and (a)(6).
7 All records and reports required herein shall be retained and made accessible as provided in
8 24 CFR 92.508(c) and (c).”

9 Section 2.9 of the Buka HOME Agreement requiring that the “Premises shall meet all
10 relevant requirements of 24 CFR 92.250 through 92.258, inclusive” having to do with
11 housing quality standards and rental agreement language.

12 Section 2.2 of the Equity Gap Contribution Agreement (“Buka Equity Gap
13 Contribution Agreement”) requiring that Defendant “shall collect household income data on
14 an annual basis for all tenants and provide a report of this information to the Commission in a
15 format and schedule specified by the Commission.”

16 Section 2.5 of the Buka Equity Gap Contribution Agreement requiring that Defendant
17 “shall maintain records sufficient to meet the requirements of this Agreement. All records
18 and reports required herein shall be retained and made accessible to Commission upon prior
19 reasonable notice to Borrower.”

20 Section 2.6 of the Buka Equity Gap Contribution Agreement requiring that Defendant
21 “shall report annually, in a form approved by the Commission, the combined annual
22 operating performance of Property. This report shall calculate the Property’s net income.”

23 Section 3 of the Buka Equity Gap Contribution Agreement requiring that, on the first
24 day of May of each year during the Permanent Loan Period, Defendant “shall pay to PDC
25 one-half of Excess Cash Flow ... in addition to the payments required under Sections 1 and 2
26 of the Note. Borrower shall provide to PDC a financial statement (PDC may require an

1 audited financial statement) at Borrower's expense, which will be used to determine Excess
2 Cash Flow."

3 Section 3.1 of the Regulatory Agreement ("Buka Regulatory Agreement") requiring
4 that "the Owner or Owner's agent shall obtain, complete, and maintain on file income
5 certifications for each Qualified Tenant, dated immediately prior to the initial occupancy of
6 such Qualified Tenant in the Project, in substantially [a] form set forth in Exhibit B" of the
7 Regulatory Agreement.

8 Section 5 of the Buka Regulatory Agreement requiring that Defendant "submit to the
9 PDC or its designee such reports as the PDC may reasonably require to demonstrate
10 compliance with the terms of" the Regulatory Agreement.

11 Section 11 of the Buka Regulatory Agreement lists a series of remedies available to
12 Plaintiff if Defendant "defaults in the performance or observance of any covenant,
13 agreement or obligation of the [Defendant] set forth in this agreement, and if such default
14 remains uncured for a period of 30 days after the notice thereof shall have been given by the
15 [Plaintiff] to the [Defendant], then [Plaintiff] shall declare an 'Event of Default' to have
16 occurred ... and, at its option, may take any one or more of the following steps, such election
17 not to be exclusive:

18 a) "by mandamus or other suit, action or proceeding at law or in equity, require the
19 [Defendant] to perform its obligations and covenants ... or enjoin any acts or things which
20 may be unlawful or in violation of the rights of [Plaintiff] ... and pursue Money Damages.

21 b) "have access to and inspect, examine and make copies of all of the books and
22 records of the [Defendant] pertaining to the Project, or

23 c) take such other action at law or in equity as may appear necessary to enforce the
24 obligations, covenants, and agreements of the [Defendant] ... including but not limited to
25 petition for the appointment of a Receiver who shall have a right to enter the Project upon
26 appointment."

1 Section 12 of the Buka Regulatory Agreement states that “In the event of a violation
2 of any of the provisions hereof, the PDC or any entity succeeding to the PDC’s functions
3 may institute and prosecute any proceeding at law or in equity to abate, prevent or enjoin any
4 such violation or attempted violation, or to recover monetary damages caused by such
5 violation or attempted violation, such damages to include but not be limited to all costs,
6 expenses including but not limited to all reasonable attorneys’ fees which may be incurred by
7 the PDC or any other party in enforcing or attempting to enforce this Agreement following
8 any Event of Default on the part of the [Defendant] ... whether the same shall be enforced by
9 suit or otherwise, together with all such costs, fees and expenses which may be incurred in
10 connection with any amendment to this Agreement or otherwise at the request of the
11 [Defendant].

12 9.

13 Plaintiff alleges breach of the following duties/obligations related to the Roselyn
14 Villa development:

15 Section 3.6 of the Home Restrictive Agreement and Declaration (Roselyn HOME
16 Agreement) dated February 8, 2006, requires that “the income of each tenant must be
17 determined initially in accordance with 24 CFR 92.203(a)(1)(i). In addition, each year
18 during the Affordability Period the Owner must reexamine each tenant’s annual income in
19 accordance with one of the options in 24 CFR 92.203 selected by PDC. An owner of a
20 multifamily project with an affordability period of 10 years or more who re-examines
21 tenant’s [sic] annual income through a statement and certification in accordance with 24 CFR
22 92.203(a)(1)(ii) must examine the income of each tenant, in accordance with 24 CFR
23 92.203(a)(1)(i), every sixth year of the Affordability Period. Otherwise, an owner who
24 accepts the tenant’s statement and certification in accordance with 24 CFR 92.203(a)(1)(ii) is
25 not required to examine the income of tenants in multifamily or single-family project [sic]
26 unless there is evidence that the tenant’s written statement failed to completely and

1 accurately state information about the family's size or income." (Exhibit B, p. 5.)

2 Section 6 of the Roselyn HOME Agreement requires that Defendant "shall comply
3 with the on-site inspection requirements of 24 CFR 92.504(d).

4 Section 6.2 of the Roselyn HOME Agreement requires that Defendant "must allow
5 PDC to perform on-site inspections of rental housing occupied by tenants receiving HOME-
6 assisted tenant based rental assistance to determine compliance with the property standards of
7 24 CFR 92.251."

8 Section 7.1 of the Roselyn HOME Agreement requires that Defendant "shall maintain
9 records sufficient to meet the requirements of 24CFR 92.508 including the requirement of
10 subsections (a)(2) for program records, (a)(3) for project records, (a)(5) for financial records,
11 (a)(6) for program administration records, and (a)(7) for records concerning other Federal
12 requirements."

13 Section 7.2 of the Roselyn HOME Agreement requires that Defendant "shall submit
14 to PDC each Fiscal Year such reports as PDC may reasonably require to demonstrate
15 compliance with the terms of this Agreement, including:

- 16 a) Summaries of leasing activity, including vacancies and turnover,
17 b) A completed electronic tenant survey form which includes the following
18 information:

- 19 (1) Current rents charged for all units, including each HOME unit,
20 (2) Date of last tenant income certification, and
21 (3) Tenant population served, including family size, ages of children, and
22 ethnicity,

- 23 c) Lists of any deposits or fees charged to tenants,
24 d) Affirmative marketing certifications, and
25 e) A completed electronic operating statement.

26 Section 11.1 of the Roselyn HOME Agreement requires that Defendant "shall

1 exercise its best efforts to comply with the requirements of this Agreement and shall correct
2 any noncompliance within thirty (30) days after such noncompliance is first discovered by
3 the [Defendant], or would have been discovered by the exercise of reasonable diligence, or
4 within thirty (30) days after the [Defendant] receives notice of such noncompliance from
5 PDC or its successors or assigns. Such period for correction may be extended if the Owner is
6 exercising due diligence to correct the noncompliance.”

7 Section 12.1 of the Roselyn HOME Agreement states that it shall be an event of
8 default under the Roselyn HOME Agreement if Defendant “fails to perform or abide by any
9 covenant, condition, agreement or obligation in this Agreement, and such failure, to the
10 extent curable, is not cured within thirty (30) days after written notice from PDC specifying
11 the default or, if such breach cannot with due diligence be cured within such period, if
12 [Defendant] shall fail within such thirty (30) day period to commence cure of the failure and
13 thereafter diligently prosecute to completion such cure (which cure in any event shall occur
14 within sixty (60) days after the default notice).”

15 Section 13 of the Roselyn HOME Agreement states that upon the occurrence of an
16 event of default and at any time thereafter, PDC may, at its option:

17 13.1 “By mandamus or other suit, action or proceeding at law or in equity, require
18 [Defendant] to perform its covenants, conditions, agreements, and obligations in this
19 Agreement, or to abate, prevent, or enjoin any acts or things which may be unlawful or in
20 violation of the rights of PDC in this Agreement;”

21 13.3 “have the right to access, inspect, examine, and make copies of all of the books
22 and records of the [Defendant] pertaining to the Project;”

23 13.6 “petition for the appointment of a Receiver who shall have the right to enter the
24 Project upon appointment.”

25 Section 5 of the Regulatory Agreement (“Roselyn Regulatory Agreement”) provides
26 that, “On the first day of the third month after the end of the Owner’s Fiscal year, Owner

1 shall provide ... such reports as PDC may reasonably require to demonstrate compliance
2 with the terms of this Agreement, including but not limited to summaries of leasing activity,
3 rents charged for each unit including Designated Units, tenant income verifications, lists of
4 any deposits or fees charged to any tenant including Qualified Tenants, and copies of all
5 leases, rental agreements, and notices given hereunder.”

6 Section 10 of the Roselyn Regulatory Agreement requires the Defendant to “exercise
7 [his] best efforts to comply with the requirements of the Agreement and [to] correct any
8 noncompliance ... within thirty (30) days after the Owner receives notice of such
9 noncompliance from ODC or its successors or assigns.”

10 Section 11 of the Roselyn Regulatory Agreement states that it shall be an event of
11 default under the Regulatory Agreement to “fail [] to perform or abide by any covenant,
12 condition, agreement, or obligation in this Agreement, and such failure, to the extent curable,
13 is not cured within thirty (30) days after written notice from PDC ...”

14 Section 12 of the Roselyn Regulatory Agreement states that, upon occurrence of an
15 event of default and at any time thereafter, the Bureau may, at its option:

16 12.1 “By mandamus or other suit, action or proceeding at law or in equity, require
17 [Defendant] to perform [his] covenants, conditions, agreements, and obligations in this
18 Agreement, or to abate, prevent, or enjoin any acts or things which may be unlawful or in
19 violation of the rights of PDC in this Agreement;”

20 12.2 “have the right to access, inspect, examine, and make copies of all of the books
21 and records of the [Defendant] pertaining to the Project;”

22 12.3 “petition for the appointment of a Receiver who shall have the right to enter the
23 Project upon appointment.”

24 10.
25
26

First Claim for Relief

(Breach of Contract)

11.

The City re-alleges paragraphs 1 through 6 above.

12.

The City and Defendant were parties to multiple contracts. (Exhibit A.)

13.

The contracts between the City and Defendant included adequate consideration, including but not limited to the covenants described above in paragraphs 5 and 6 and Plaintiff's loans to Defendant in the amounts of \$55,000 for the Buka's Place development and \$45,000 for the Roselyn Villa Development, and Plaintiff's equity gap contributions to Defendant in the amounts of \$329,317 for the Buka's Place development and \$351,977 for the Roselyn Villa development.

14.

The City performed all conditions precedent under the contracts, by dispensing the loan and equity gap funding for both developments, notifying the Defendant of his breaches, and providing the Defendant adequate opportunity to cure the breach.

15.

Defendant breached the covenant in the contract requiring production of financial reports, program records, and "cash flow" payments, designation of HOME units, and submission to on-site inspections.

16.

The City has provided Defendant with notice of his default and an opportunity to cure such default.

17.

As a result of Defendant's breach of the contracts, the City suffered the loss of its

1 ability to ensure the existence of affordable housing and HOME units. The City is also at risk
2 of forfeiture from the Federal government, which imposes affordability requirements and the
3 monitoring and enforcement of these requirements, and liability for the repayment of that
4 funding if these requirements are determined through an audit to not be satisfied.

5
6 Under _____ of the Regulatory Agreements, the City is entitled to _____.

7 WHEREFORE, Plaintiff City of Portland prays for relief as follows:

- 8 (a) Granting Plaintiff a judgment against Defendant ordering specific
9 performance under the Regulatory Agreements;
- 10 (b) Granting Plaintiff all right and remedies on default under its contracts,
11 including but not limited to:
- 12 (c) Acceleration of the entire remaining unpaid balance of principal,
13 unpaid accrued interest;
- 14 (d) Initiation of foreclosure proceedings against the properties, and use
15 proceeds of sale towards obligations due, costs and expenses.
- 16 (e) Collecting rents directly from tenants of the properties;
- 17 (f) Allowing plaintiff's representatives to enter and take possession of the
18 properties;
- 19 (g) Appointment of a Receiver to enter and take possession of, and
20 manage, the properties;
- 21 (h) Granting Plaintiff a judgment against Defendant for Plaintiff's costs and
22 disbursements incurred herein, including attorneys' fees; and
- 23
24
25
26

1 (i) Granting Plaintiff such further relief as the Court deems just and equitable;
2

3 Dated this _____ day of September, 2016.
4
5
6

7 _____
8 by Simon Whang, OSB No. #035282
9 Deputy City Attorney for City of Portland
10 Email: simon.whang@portlandoregon.gov
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing COMPLAINT on:

Celia A. Barlow
Attorney at Law
5257 NE MLK Jr. Blvd, Suite 101
Portland, OR 97211
Attorney for Defendant

on September ___, 2016, by causing a full, true and correct copy thereof, addressed to the last-known address (or fax number) of said attorney, to be sent by the following method(s):

- by **mail** in a sealed envelope, with postage paid, and deposited with the U.S. Postal Service in Portland, Oregon.
- by **hand delivery**.
- by **facsimile transmission**.
- by **email**.

by Simon Whang, OSB No. #035282
Deputy City Attorney for City of Portland
Email: simon.whang@portlandoregon.gov
Fax: (503) 823-3089