

STATE OF INDIANA
COUNTY OF MARION

SS:

IN THE MARION SUPERIOR COURT
CAUSE NO.

THE CONSOLIDATED CITY OF
INDIANAPOLIS AND MARION
COUNTY,

Plaintiff,

v.

JPC AFFORDABLE HOUSING
FOUNDATION, INC. f/k/a
FOUNDATION FOR AFFORDABLE
RENTAL HOUSING, INC. and BERKLEY
COMMONS IN LLC,

Defendants.

COMPLAINT FOR DAMAGES AND DEMAND FOR TRIAL BY JURY

The plaintiff, the Consolidated City of Indianapolis and Marion County (the “City”), alleges as follows:

INTRODUCTION

1. This lawsuit is intended to recover public money from two bad-actor landlords. Those landlords collected utility fees from their tenants but did not pay the utility company. When the utility company cut off water to the residents living at Defendants’ apartment complexes this February, the City stepped up to restore water service to hundreds of vulnerable residents. This prevented a catastrophic loss of housing for residents who would have suffered through no fault of their own. This

lawsuit seeks to recover the public funds the City spent restoring water service at Defendants' apartment complexes.

THE PARTIES

2. The City is the statutorily created entity governing Indianapolis and Marion County, Indiana, and is fully empowered to act as provided by statute and regulation on its own behalf.

3. JPC Affordable Housing Foundation, Inc. ("JPC") is an Indiana domestic nonprofit corporation with its principal office located at 6931 Rings Road, Number 234, Amlin, Ohio. The Indiana Secretary of State lists "Foundation for Affordable Rental Housing, Inc." as the former name of the corporation. In any event, the corporation that is or was "Foundation for Affordable Rental Housing, Inc." is currently doing business in Indiana as JPC.

4. In the Marion County Assessor's public records, Foundation for Affordable Rental Housing, Inc. is the named owner of one of two parcels of real estate in Marion County at issue in this suit: parcel number 5001061, commonly referred to as 4100 Continental Court, Indianapolis, Indiana and known commercially as the Capital Place Apartments (the "Capital Place Apartments"). Based on public information posted on the website of the Indiana Secretary of State as described above in paragraph 2, JPC is the current owner of the Capital Place Apartments.

5. Berkley Commons is a domestic limited liability company with its principal office, according to Indiana Secretary of State records, located at 8201 Madison Avenue, Indianapolis, Indiana, 46227.¹

6. In the Marion County Assessor's public records, Berkley Commons is the owner of the second parcel of real estate in Marion County that is at issue in this suit: parcel number 5028297, commonly known as 8201 Madison Avenue, Indianapolis, Indiana and known commercially as Berkley Commons Apartments (the "Berkley Commons Apartments").

7. Based on their sharing common business principals and ownership as disclosed in public records, the City believes both Capital Place Apartments and the Berkley Commons Apartments (together, the "Properties") to be *de facto* under the control of the same person or group of persons.

JURISDICTION AND VENUE

8. The Court has jurisdiction over this matter because the City's claims arise under Indiana law. The Court has jurisdiction over Defendants because they own real property and regularly conduct business in Indiana.

9. Venue in this County is appropriate under Indiana Trial Rule 75(A)(2), (4), and (10) because Marion County is the location of: a) the Properties at issue, b) the principal office of Berkley Commons, c) and the offices of the City.

¹ In contrast to the Secretary of State's business registration records, the Marion County Assessor's Property Card for parcel number 5028297 states the business address of Berkley Commons as 10 Hill Street in Newark, New Jersey. Out of an abundance of caution, the City will serve both addresses.

FACTUAL BACKGROUND

10. The Properties are multi-family apartment complexes and receive water service from the Board of Directors for Utilities of the Department of Public Utilities of the City, as Trustee of a Public Charitable Trust for the Water System – all of which does business as Citizens Water. The Properties receive wastewater service from CWA Authority, Inc. (This complaint refers to Citizens Water and CWA Authority collectively as “Citizens”).

11. The relationships between Citizens and Defendants – as utility service provider and customers, respectively – are governed by a set of terms and conditions for each of the respective services (water and wastewater) provided within Marion County, Indiana (the “Terms”). Those Terms are approved and on file, as amended from time to time, with the Indiana Utility Regulatory Commission.

12. A true, accurate, and authentic copy of the applicable water service Terms is attached hereto as **Exhibit A**.

13. A true, accurate, and authentic copy of the applicable wastewater service Terms is attached hereto as **Exhibit B**.

14. Under the Terms, each Defendant agreed to pay Citizens on a monthly basis within seventeen days from the mailing date of the invoices for water and wastewater services at its respective apartment complex for which each Defendant is the account holder.

15. In other words, under the Terms, the Properties are “master metered” – meaning that Citizens provides water and wastewater services to JPC and Berkley

Commons respectively, as opposed to providing services directly to the tenants and metering and invoicing the tenants individually.

16. The residents at the Properties make regular payments to JPC and Berkley Commons, or property managers working on their behalf, for water and wastewater services at the Properties.

17. In fact, Defendants advertise to prospective tenants that water and wastewater services are included in the rent payments.

18. In sum, under their lease agreements with their tenants, Defendants are responsible for ensuring that water and wastewater services are provided to each tenant of the Properties. The tenants pay Defendants for these services, and Defendants, in turn, contract with and are responsible for timely paying Citizens to provide these utility services to the Properties.

19. For years, Defendants received water and wastewater services at their respective apartment complex, Citizens issued monthly invoices for water and wastewater services, and Defendants paid their respective invoices.

20. However, in or around Spring 2021, the Defendants stopped paying Citizens' full invoices for water and wastewater services provided for the Properties.

21. On or around February 17, 2022, after months of demands and negotiations, Citizens disconnected water service at the Properties because the Defendants had failed to pay over \$1 million owed and invoiced under the Terms and had failed to make reasonable arrangements to pay the past due amounts.

22. On February 18, 2022, the City notified Citizens that it would wire Citizens \$850,000 to purchase a share of Citizens' contract rights under the Terms to collect past due amounts for water and wastewater services Citizens provided to the Properties in exchange for Citizens immediately reconnecting water services to the Properties.

23. On February 24, 2022, the City and Citizens memorialized the agreement by executing an Assignment Agreement.

24. A true, accurate, and authentic copy of the Assignment Agreement is attached hereto as **Exhibit C**.

25. The City paid Citizens \$850,000 in accordance with the Assignment Agreement and holds the right under that agreement to collect that portion of the Defendants' past-due accounts.

COUNT I: BREACH OF CONTRACT AGAINST JPC

26. The City incorporates and re-alleges the preceding allegations as if fully set forth herein.

27. JPC entered into a contract with Citizens for water and wastewater services at the Capital Place Apartments in exchange for payment for such services. *See Exs. A, B.*

28. JPC breached the contract by failing to pay amounts owed to Citizens when due.

29. As of February 24, 2022, the past due amounts owed for water and wastewater services provided by Citizens at the Capital Place Apartments totaled \$705,497.90.

30. Under the Assignment Agreement, the City purchased Citizens' contract rights under the Terms to collect a portion of the past due amounts owed by JPC for water and wastewater services provided by Citizens to the Capital Place Apartments. The portion assigned to the City totals \$425,208.13.

31. All conditions precedent to the City's enforcement of the obligations under the Terms and Assignment Agreement have been performed by the City or have been excused, and the City has not excused the JPC of its breach.

WHEREFORE, the City requests judgment in its favor and against JPC on Count I in the amount of \$425,208.13 and for all other just and proper relief.

COUNT II: BREACH OF CONTRACT AGAINST BERKLEY COMMONS

32. The City incorporates and re-alleges the preceding allegations as if fully set forth herein.

33. Berkley Commons entered into a contract with Citizens for water and wastewater services at the Berkley Commons Apartments in exchange for payment for such services. *See Exs. A, B.*

34. Berkley Commons breached the contract by failing to pay amounts owed to Citizens when due.

35. As of February 24, 2022, the past due amounts owed for water and wastewater services provided by Citizens at the Berkley Commons Apartments totaled \$704,807.25.

36. Under the Assignment Agreement, the City purchased Citizens' contract rights under the Terms to collect a portion of the past due amounts owed by Berkley Commons for water and wastewater services provided by Citizens to the Berkley Commons Apartments. The portion assigned to the City totals \$424,791.87.

37. All conditions precedent to the City's enforcement of the obligations under the Terms and Assignment Agreement have been performed by the City or have been excused, and the City has not excused Berkley Commons of its breach.

WHEREFORE, the City requests judgment in its favor and against Berkley Commons on Count II in the amount of \$424,791.87 and for all other just and proper relief.

COUNT III: ACCOUNT STATED AGAINST JPC

38. The City incorporates and re-alleges the preceding allegations as if fully set forth herein.

39. Citizens sent invoices to JPC setting forth the charges incurred for JPC's use of water and wastewater services provided by Citizens to the Capital Place Apartments.

40. JPC has never disputed the invoices or invoice amounts.

41. JPC has failed to pay the amounts set forth in the invoices provided by Citizens.

42. As of February 24, 2022, the account stated by Citizens to JPC for past due amounts owed for water and wastewater services provided by Citizens at the Capital Place Apartments totaled \$705,497.90.

43. Under the Assignment Agreement, the City purchased Citizens' contract rights under the Terms to collect a portion of the past due amounts owed by JPC for water and wastewater services provided by Citizens to the Capital Place Apartments. The portion assigned to the City totals \$425,208.13, which includes accounts stated.

WHEREFORE, the City requests judgment in its favor and against JPC on Count III in the amount of \$425,208.13 and for all other just and proper relief.

COUNT IV: ACCOUNT STATED AGAINST BERKLEY COMMONS

44. The City incorporates and re-alleges the preceding allegations as if fully set forth herein.

45. Citizens sent invoices to Berkley Commons setting forth the charges incurred for Berkley Commons' use of water and wastewater services provided by Citizens to the Berkley Commons Apartments.

46. Berkley Commons has never disputed the invoices or invoice amounts.

47. Berkley Commons has failed to pay the amounts set forth in the invoices provided by Citizens.

48. As of February 24, 2022, the account stated by Citizens to Berkley Commons for past due amounts owed for water and wastewater services provided by Citizens at the Berkley Commons Apartments totaled \$704,807.25.

49. Under the Assignment Agreement, the City purchased Citizens' contract rights under the Terms to collect a portion of the past due amounts owed by JPC for water and wastewater services provided by Citizens to the Capital Place Apartments. The portion assigned to the City totals \$424,791.87, which includes accounts stated.

WHEREFORE, the City requests judgment in its favor and against Berkley Commons on Count IV in the amount of \$424,791.87 and for all other just and proper relief.

DEMAND FOR TRIAL BY JURY

The City requests that this matter be set for trial by jury.

Respectfully submitted,

/s/ James R. A. Dawson

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