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6 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
7 FOR KING COUNTY

8 TRIANGLE PROPERTY DEVELOPMENT, )  
9 LLC, a Washington Limited Liability Company, )

10 Plaintiff, )

11 vs. )

12 EDWARD MURRAY, Mayor of the City of )  
13 Seattle; KATHLEEN O'TOOLE, Chief of )  
Police of the City of Seattle, )

14 Defendants. )

No. 14-2-20990-4 SEA

ORDER DENYING PLAINTIFF'S  
APPLICATION FOR WRIT OF  
MANDAMUS

15 The Plaintiff's application for writ of mandamus was heard by this Court on August 8, 2014.  
16 Plaintiff was represented by David J. Lawyer, Attorney at Law and the Defendants were represented  
17 by Patrick Downs, Assistant City Attorney. The Court considered the pleadings of the parties,  
18 counsel's arguments, and the other documents on file in this matter. Having considered the above,  
the Court has determined that:

19 The court has the authority to issue a writ to any person to compel the performance of an act  
20 that the law defines as a duty resulting from office. RCW 7.16.160. But mandamus is an  
21 extraordinary writ. An applicant for a writ of mandamus must satisfy three elements before a writ  
22 will issue: (1) the party subject to the writ is under a clear duty to act, (2) the applicant has no "plain,  
23 speedy and adequate remedy in the ordinary course of law, and (3) the applicant is "beneficially  
interested." *Euster v City of Spokane*, 118 Wn.App. 383, 402, 76 P.3d 741 (2003). Element #3 is  
not in dispute under the facts of the present case.

Judge Mariane Spearman  
516 3rd Avenue, Room C203  
Seattle, Washington 98104  
(206) 477-1647

1 The City of Seattle argues that under the City Charter, the mayor and Chief of Police have  
2 discretion to decide whether to arrest or remove a trespasser. Although Article V, Sec. 2 of the  
3 Charter provides that the “mayor shall see that the laws of the City are enforced...”, Article VI,  
4 Sec. 5, provides that the Chief of Police or any police officer *may* make arrests for any crime or  
5 violation of the laws...” Under the Charter, the mayor does not have the authority to make arrests  
6 and the Chief of Police and officers under her control have discretion whether or not to arrest the  
7 Bartons. A writ of mandamus shall not be issued to compel the performance of duties which call  
8 for the exercise of discretion. *Vangor v. Munro*, 115 Wn.2d 536, 543, 798 P.2d 1151 (1990).

9 Plaintiff must also establish that there is no other remedy available in the ordinary course  
10 of law. RCW 7.16.170. A remedy is not inadequate simply because it involves delay, expense,  
11 annoyance, or even some hardship. It must be apparent that the rights of the plaintiff will not be  
12 protected without issuance of the writ. In the present case, the Plaintiff has other adequate  
13 remedies available. The plaintiff could file an ejectment action. RCW 7.28. Or the plaintiff  
14 could seek a second writ of execution. The Sheriff’s office does have a duty to execute court  
15 orders. RCW 36.28.010(3).

16 For the foregoing reasons, Plaintiff’s application for writ of mandamus is DENIED.

17 Dated this 13<sup>th</sup> day of August, 2014.

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Honorable Mariane C. Spearman