

**CHANCERY**

IN THE ~~Circuit~~ COURT OF BOLIVAR COUNTY, MISSISSIPPI

~~Eleventh Circuit~~ Court District  
**Seventh Chancery**

DEBRA PETERSON and  
UNNAMED PLAINTIFFS 1 THROUGH 50,

PLAINTIFFS

v.

CAUSE NO.: 2022-0284

SUNSET MOORE MS TC, LP,  
MILLENNIA HOUSING MANAGEMENT, LTD.,

DEFENDANTS.

**EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER AND  
PRELIMINARY INJUNCTION**

COMES NOW, Plaintiffs Debra Peterson and Unnamed Plaintiffs, by and through counsel, to file this Motion for Temporary Restraining Order and Preliminary Injunction in accordance with M.R.C.P. 65, and in support thereof would show:

1. Factual Background

Plaintiffs are tenants at Sunset Village Apartments (hereinafter "Sunset Village"), a 136 unit site-based Section 8 housing complex in Cleveland, MS. In September of this year, a thirty-year-old mother and her five year old daughter died in their apartment at Building 9 of Sunset Village due to carbon monoxide poisoning. Another tenant suffered severe brain swelling and is currently hospitalized due to carbon monoxide poisoning. The deaths and injuries suffered by these three people were the result of negligent maintenance on the part of Sunset Village who was aware of the leaking gas and failed to repair or maintain the gas lines. After testing, each building was found to have dangerous saturation levels of carbon monoxide endangering the lives of all of the tenants at Sunset Village.

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Because of the imminent danger of carbon monoxide poisoning, all tenants of Sunset Village were forced to leave their homes and relocate to a local motel. Plaintiffs have inadequate sleeping space and have no cooking facilities or refrigerators. Because they do not have refrigerators or a way to cook food, these extremely low-income families have no way to prepare meals for themselves. Peterson is disabled and has no way to store medication.

Sunset Village agreed to feed the tenants three meals a day and provide water since they were evicted from their homes. However, Sunset Village has failed to provide adequate food to the tenants and they are hungry. Sometimes they only receive one meal per day. Children are being denied adequate food. Individuals are only given one bottle of water per day. The food served to diabetic tenants is inadequate and making them ill.

In addition to evacuating Plaintiffs because of high levels of carbon monoxide in all of the buildings, Sunset Village shut off the utility services to the units. Shutting off the power to the units caused the food in Plaintiffs' refrigerators and freezers to rot. Peterson's freezer and refrigerator are full of maggots and she cannot afford to replace her food. Sunset Village is in the process of removing and replacing all of the hot water heaters, however, they have not reconnected the hot water heaters or returned utility services to the buildings. Sunset Village has also pulled out the oven and stove tops from the kitchens and in many cases have not reconnected them – although reconnection would be futile since electrical and gas utilities have not been returned to the units. Sunset Village changed the locks to the units while Plaintiffs were at the motel and allowed strangers to enter their homes without permission. Many tenants including Peterson's personal property has been stolen or tampered with and their furniture destroyed. Building materials have been left in and around the units making it unsafe for Plaintiff's children.

Peterson's unit is dangerous to enter. The unit is filled with mold. The flooring is rotted and soon to fall through completely. The only bathroom is unusable. Peterson's toilet is falling through the moldy, rotten flooring and her bathtub has separated from the walls. She has been forced to stuff towels into open pipes and holes in the flooring of her bedroom. Peterson has requested repairs to her unit multiple times, which were ignored by Sunset Village. This is just one example of the egregious uninhabitable living conditions that are widespread at the complex. Sunset Village has received 10 million dollars in federal funds in order to provide habitable low cost housing to Plaintiffs.

Sunset Village has served several Plaintiffs with eviction notices for failing to pay September's and October's rent. Upon information and belief, they are also noticing Plaintiffs with eviction notices for nonpayment of HUD's portion of the rent even though Plaintiffs have paid their own portions according to their rental agreements. Upon information and belief, HUD has not paid their obligated rents because the tenants who were benefiting from the subsidies rental payments were dislocated from their units. Sunset Village is also noticing Plaintiffs with eviction notices for failure to pay their electric bills for the time period they did not reside in their units, but the electricity was being used by Sunset Village's construction workers.

On October 14, 2022, Sunset Village informed the tenants of Buildings 1-9 that they were to immediately leave their motel rooms and return to their units because the cost to house the displaced Plaintiffs is too high. However, utility services have not been returned to the units making them uninhabitable and dangerous. Sunset Village admitted to Plaintiffs' counsel that Bolivar County has not inspected the gas lines or approved the site for occupancy. After the undersigned attorneys spoke with Sunset Village, they agreed that tenants would not have to return to their uninhabitable units. However, later that day and early on the morning of October 15, 2022, tenants

were again told that they could not remain in the motel and to vacate or their property would be thrown out of their rooms. Because of intervention of counsel, when tenants attempted to comply and move back to their units they were again stopped by Sunset Village and told to return to the motel. However, this escalating, worrisome behavior on the part of Sunset Village management makes this request for injunctive relief necessary to prevent Sunset Village from again forcing tenants into uninhabitable units. Likewise, Sunset Village has failed to feed Plaintiffs adequately today.

2. Legal Standard for Issuance of a Preliminary Injunction

A preliminary injunction should be issued when it is necessary to “protect the plaintiff from irreparable injury and to preserve the court’s power to render a meaningful decision on the merits.”

M.R.C.P. 65 and comment; see *Sec’y of State v. Gunn*, 75 So. 3d 1015 (Miss. 2011).

In deciding to grant a request for injunctive relief under M.R.C.P. 65(a), a Court must consider and balance four relevant factors: “(1) there exists a substantial likelihood that the plaintiff will prevail on the merits; (2) the injunction is necessary to prevent irreparable harm; (3) the threatened injury to the plaintiff outweighs the harm an injunction might do to the defendant; and (4) granting a preliminary injunction is consistent with the public interest.” *Littleton v.*

*McAdams*, 60 So. 3d 169 (Miss. 2011). “[T]he most compelling reason in favor of granting a preliminary injunction is the need to prevent the judicial process from being rendered futile by defendant’s action or refusal to act. Thus only those injuries that cannot be redressed by the application of a judicial remedy after a hearing on the merits can properly justify a preliminary injunction.” *Canal Authority of State of Florida v. Callaway*, 489 F.2d 567, 573 (5th Cir.1974).

The Court has discretion regarding whether or not to require a bond. Kaepa, Inc. v. Achilles Corp., 76 F.3d 624, 628 (5th Cir. 1996)<sup>1</sup>

3. Argument

I. Plaintiffs will likely prevail on their claims.

In their complaint, Plaintiffs have alleged claims for actual and special damages for breach of lease, breach of the implied warranty of habitability, breach of the “HAP” contract, constructive eviction, intentional and negligent infliction of emotional distress, trespass, conversion, and violations of the Residential Landlord Tenant Act and violation of the 24 C.F.R. §882.109 (Housing Quality Standards). They are likely to prevail on each of these claims.

Plaintiffs are likely to prevail on their claims of breach of lease, breach of the implied warranty of habitability, and breach of the “HAP” contract. Mississippi law requires that landlords provide a reasonably safe premises at the inception of a lease and to exercise reasonable care to repair dangerous defective conditions upon notice of their existence by the tenant. *O’Cain v. Harvey Freeman and Sons, Inc. of Mississippi*. 603 So. 2d 824 (Miss. 1991)(concurrence recognizing the implied warranty of habitability. Sunset Village also has a site-based Section 8 (“HAP”) contract with HUD, which requires Sunset Village to maintain the units in compliance with federal housing quality standards. 24 C.F.R. §982.401. Sunset Village is egregiously out of compliance with these standards.

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<sup>1</sup> “Achilles also argues that the district court violated Rule 65(c) by not requiring Kaepa to post a bond. Rule 65(c) provides that “no . . . preliminary injunction shall issue except upon the giving of security by the applicant, in such sum as the court deems proper . . . .” In holding that the amount of security required pursuant to Rule 65(c) “is a matter for the discretion of the trial court,” we have ruled that the court “may elect to require no security at all.” Thus, the district court did not violate Rule 65(c) by failing to compel Kaepa to post a bond.”

Plaintiffs are also likely to prevail on their claims that Defendants have violated Residential Landlord Tenant Act and 24 C.F.R. §882.109 (Housing Quality Standards) by failing to maintain the units in the same condition as at the inception of the leases and refusing to make repairs to the units causing them to become completely uninhabitable. As a matter of law, the landlord has a duty to maintain the units in the same conditions and when the leases were entered into and to comply with the requirements of applicable building and housing codes materially affecting health and safety and maintain the dwelling unit. Miss. Code. Ann. §89-8- 23.

Finally, Plaintiffs are likely to prevail on their claims of intentional and negligence infliction of emotional distress, trespass, and conversion. Sunset Village changed the locks on Plaintiffs units and gave access to the units to strangers and their own construction workers committing trespass and causing emotional distress. These individuals have converted Plaintiffs' property destroying or removing Plaintiffs' furniture and electronics, eating their nonperishable food, and using the personal products – some Plaintiffs even noticing tampering with their bedding and clothes. Sunset Village recently served Plaintiffs with eviction notices for unpaid rent and electric bills incurred while they were unable to live there. Plaintiffs do not owe rent for the period of time that they were forcibly evicted due to the uninhabitable conditions caused by Sunset Village. They are not obligated to pay for electricity used by Sunset Village's own workers while Plaintiffs did not live at their units.

II. Plaintiffs have and will continue to suffer irreparable harm until the Court enjoins Defendants.

Before a preliminary injunction can be granted, “a party must show an imminent threat of irreparable harm for which there is no adequate remedy at law.” *A-1 Pallet Co. v. City of Jackson*, 40 So. 3d 563, 569 (Miss. 2010) (quoting *Ruff v. Estate of Ruff*, 989 So.2d 366, 369-370 (Miss., 2008)). In 1929, the Mississippi Supreme Court further discussed the issue of irreparable harm:

“An injury is irreparable with reference to injunction if it cannot adequately be compensated in damages or where there exists no certain pecuniary standard for the measurement of damages, it not being necessary that the pecuniary damage be shown to be great, but, on the contrary, the fact that in an action at law jury could award only nominal damages often furnishes the very best reason for interference by injunction.”

*Pitts v. Carothers*, 152 Miss. 694, 120 So. 830 (1929).

Plaintiffs will suffer irreparable harm if Defendants are not enjoined from forcing them to return to the units they were evacuated from. The conditions at Sunset Village have only gotten worse over the past few weeks, not better. Utility services are shut off to the units. Bolivar County has not inspected to ensure that the leak which killed two tenants has been fixed and Building 9 still smells strongly of gas. Sunset Village allowed strangers to enter and destroy Plaintiffs' homes and remove their personal property and appliances. Necessary appliances have not been replaced or hooked up. The units are full of mold, rotting floors, falling in ceilings. The conditions are egregious and unsafe for Plaintiffs and their families.

Plaintiffs suffer irreparable harm every day that they go hungry because Sunset Village evacuated them from their homes. Plaintiffs cannot afford to purchase food from restaurants every meal. They do not have refrigerators or cooking facilities where they can store and make their own meals. They are completely reliant on Sunset Village due to Sunset Village's own failure to maintain their homes in habitable conditions.

The escalating nature of Defendants behavior in forcing Plaintiffs to return to uninhabitable units and threatening to have their property thrown out of their hotel rooms if they don't comply is outrageous and shows that their behavior is spiraling out of control. Plaintiffs are terrified for their and their children's safety. Sunset Villages' complete disregard for the safety of their tenants – which actually resulted in their tenants' deaths -- illustrates the imminent danger Plaintiffs are facing. There is no authority for calculating this irreparable damage. Plaintiffs cannot live in their

homes without utility services. Defendants are forcing Plaintiffs to choose between irreparable damage to them and their children's physical and mental health, or homelessness.

III. The harm to Plaintiffs outweighs the harm an injunction might do to Defendants.

The ongoing harm to Plaintiffs outweighs the harm suffered by Defendants should the Court grant this motion for an injunction. Neither the Defendants' rights, their persons, nor their finances, will be harmed by the issuance of this injunction. The only "real" injury that Defendants face is that they would be enjoined from unlawfully forcing Plaintiffs to return to dangerous uninhabitable apartments, attempting to unlawfully evict tenants, and ordered to provide adequate meals until the units are safe for habitation. On the other hand, Plaintiffs and their children face continuous risk to their health and safety, hunger, and the threat of homelessness

The remedy of a preliminary injunction is warranted in this case because "[t]he object and purpose of an "interlocutory injunction" is to hold and preserve in status quo the subject matter upon which the decree is to operate until court is able to finally adjudicate the rights and duties of the parties." *Rochelle v. State*, 222 Miss. 83, 75 So. 2d 268 (Miss., 1954). Weighing the irreparable harm that Plaintiffs and their children will suffer against the essentially nonexistent harm that Defendants will face, a preliminary injunction is necessary to protect Plaintiffs' rights, to maintain the status quo, and to keep the peace until this Court can resolve the dispute between the parties.

IV. A preliminary injunction is in the public interest.

Public interest necessitates that a preliminary injunction be issued to keep Defendants from forcing Plaintiffs to live in unsafe units during this litigation. As shown above, Defendants are in violating Mississippi and federal law by forcing tenants into units without utilities and adequate facilities. Defendants are part of the site-based Section 8 program, meaning that taxpayers dollars have gone to pay for people to be housed in conditions which an animal – let alone a human being

-- should be forced to live in. It is against the public interest to allow an unsafe, explosive situation to escalate when that could result in injury or death to Sunset Village tenants. Issuing a preliminary injunction serves the public interest because it would protect all parties involved and maintain the status quo until a decision is made. It is not in the public's interest to allow this situation to continue to escalate. It is in the public interest to protect citizens from unsafe housing conditions which have caused two deaths already. Therefore this preliminary injunction must be granted.

4. Prayer for Relief

WHEREFORE PREMISES CONSIDERED, Plaintiffs respectfully requests that the Court enter an order that:

1. Enjoins Defendants from attempting to evict Plaintiffs for nonpayment of rent or electric bills for time periods that Plaintiffs are unable to live in their units due to Defendants failure to provide habitable housing.
2. Enjoins Defendants from attempting to relocate Plaintiffs to their units until their water, gas, and electric utilities are restored to the units.
3. Orders Defendants to house Plaintiffs in hotel/rental units with adequate bedspace until utilities have been restored to the units.
4. Orders Defendants to provide adequate meals three times a day.
5. Orders that Defendants shall be held in contempt of Court should they violate the Temporary Restraining Order.
6. Sets hearing on Plaintiffs' request for a Preliminary Injunction for Friday, October 21, 2022 at 10:00 a.m.

Respectfully submitted this the 15<sup>th</sup> day of October, 2022.

Respectfully submitted,

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Certificate of Service

I, Desiree C. Hensley attorney for Plaintiffs certify that I have this day served the forgoing on *Motion for Temporary Restraining Order and Preliminary Injunction* to Defendants via email to:

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This the 15<sup>th</sup> day of October, 2022.

/s/Desiree Hensley

Desiree C. Hensley