

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, CHANCERY DIVISION**

|   |   |                 |
|---|---|-----------------|
| STEPHEN HAMMER,                         | ) |                 |
|   | ) |                 |
| Plaintiff,                              | ) |                 |
|   | ) |                 |
| -v-                                     | ) | No. 23 CH 09451 |
|   | ) |                 |
| CITY OF BLUE ISLAND,                    | ) |                 |
| and FOREST VIEW MOBILE HOME PARK, INC., | ) |                 |
|   | ) |                 |
| Defendants                              | ) |                 |

**PLAINTIFF'S MOTION FOR A PRELIMINARY INJUNCTION**

Now comes the plaintiff, STEPHEN HAMMER, by his attorneys, Legal Action Chicago, and, pursuant to 735 ILCS 5/11-102 and the court order entered on November 17, 2023, moves this Honorable Court to issue a Preliminary Injunction enjoining Defendant City of Blue Island from disconnecting the water service at the mobile park home where he resides with his two minor children. In support of this motion, Mr. Hammer states the following:

1-38. Mr. Hammer restates and realleges paragraphs 1-38 from his Amended and Verified Complaint.

Legal Standard for a Preliminary Injunction

- 39. "A preliminary injunction serves to maintain the status quo until a court decides the merits of a cause." *JL Props. Grp. B, LLC v. Pritzker*, 2021 IL App. (3d) 200305, ¶ 56.
- 40. "The status quo is defined as 'the last peaceable uncontested status which preceded the pending controversy.'" *Steel City Bank v. Village of Orland Hills*, 224 Ill. Ap. 3d 412, 417 (1st Dist. 1991) (citation omitted).

41. “The function of a preliminary injunction is not merely to contain ongoing damage *but to prevent prospective damage.*” *County of Du Page v. Gavrilos*, 359 Ill. App. 3d 629, 638 (2d Dist. 2005) (emphasis added).
42. “A preliminary injunction is proper if the petitioner establishes that (1) he has a clearly ascertained right that needs protection, (2) he will suffer irreparable harm without the preliminary injunction, (3) he has no adequate remedy at law, (4) there is a likelihood of success on the merits of the underlying suit, and (5) the benefits of granting the preliminary injunction outweigh the injury to a defendant.” *Pritzker*, 2021 IL App. (3d) 200305, at ¶ 57.

The Preliminary Injunction Will Maintain the Status Quo

43. The City has threatened to disconnect the park’s water service, but it has not yet acted on this threat.
44. Mr. Hammer, therefore, is trying to prevent prospective damage that will be caused if the City is not enjoined from disconnects the water service.
45. The preliminary injunction, therefore, will maintain the status quo.

Plaintiff has a Clearly Ascertained Right in Need of Protection

46. Mr. Hammer’s right to water service is set forth not only in his lease agreement with the owner, but in a local ordinance and three state statutes. *See* COOK COUNTY RESIDENTIAL TENANT LANDLORD ORDINANCE, §§ 42-803(A)(1) (defining “dwelling unit” to include a mobile home), 42-805(C)(1) and 805(C)(3)(h) (dwelling unit must comply with habitability standards, which include adequate amounts of hot and cold water), and 42-813 (prohibition against dispossessing tenant without authority of law by interrupting

water service); MOBILE HOME PARK ACT, 210 ILCS 115/9.4 (“An adequate supply of water of safe, sanitary quality, approved by the Department [of Public Health] shall be furnished at each park.”); MOBILE HOME LANDLORD AND TENANT RIGHTS ACT, 765 ILCS 745/14.3 (“In exigent circumstances, the park owner is responsible for providing a water supply to each household.”); and RENTAL PROPERTY UTILITY SERVICES ACT, 765 ILCS 735/1 (“Whenever, pursuant to any agreement, either written or verbal, a landlord or his or her agent is required to pay for any water, gas or electrical service, the landlord shall pay for the services to ensure that the services are available to the tenant throughout the term of the lease and shall pay for the services in a timely manner so as not to cause an interruption of the services.”).

47. The City is threatening to disconnect this service for nonpayment of the water bill even though Mr. Hammer is not financially responsible for the debt.

Plaintiff Will Suffer Irreparable Harm Without the Preliminary Injunction

48. Water service is essential. This is such a basic concept—one that is enshrined in the ordinance and statutes listed above—that it requires no further discussion.
49. If the City is not enjoined from terminating Mr. Hammer’s water service, he and his family, who are innocent third-parties, will be irreparably harmed.

Mr. Hammer Has No Adequate Remedy at Law

50. “An adequate remedy at law is one which is clear, complete, and as practical and efficient to the ends of justice and its prompt administration as the equitable remedy.” *Wilson v. Wilson*, 217 Ill. App. 3d 844, 856 (1st Dist. 1991).

51. “A preliminary injunction will not be granted where the plaintiff can be adequately compensated by an award of money damages.” *Id.*
52. Though Mr. Hammer has a right to seek monetary damages for the owner’s contractual, ordinance, and statutory violations, money cannot fully redress the rights which Mr. Hammer is trying to protect.
53. Money will not adequately compensate Mr. Hammer for the harm he and his family will suffer if the City disconnects their water service, thereby rendering their mobile home uninhabitable.
54. Furthermore, Mr. Hammer cannot pursue his administrative remedies by asking the City Administrator for independent water service because the park is serviced by a single water main.
55. Mr. Hammer therefore has no adequate remedy at law.

Mr. Hammer Has a Likelihood of Success on  
the Underlying Merits of His Claim Against the City

56. “To show a likelihood of success on the merits, a party is not required to make out a case which in all events will warrant relief in the final hearing.” *Hayden’s Sport Center, Inc. v. Johnson*, 109 Ill. App. 3d 1140, 1145 (2nd Dist. 1982).
57. “The party need not establish its probable success on the merits because it only seeks to maintain the status quo until the ultimate issue is decided.” *Id.*
58. “A preliminary injunction may issue even where serious doubt exists as to the ultimate success of the complaint. All that is necessary is that the petitioning party raise a fair question as to the existence of a right claimed, lead the court to believe that he probably will be entitled to the relief prayed for if the proof should sustain his allegations, and

make it appear advisable that the position of the parties should stay as it is until the court has had an opportunity to consider the case on the merits.” *Id.*

59. Mr. Hammer alleged in his amended complaint that the City’s policy of disconnecting a tenant’s water service for nonpayment of a bill for which the tenant is not legally responsible violates equal protection and substantive due process.

60. No fewer than five federal Courts of Appeal, including the Seventh Circuit, have issued decisions supporting Mr. Hammer’s constitutional claims. *See Winston v. City of Syracuse*, 887 F.3d 553, 562-67 (2d Cir. 2017) (city’s policy of shutting off water service to tenants when landlords failed to pay water bills violated equal protection and due process because it was not a rational means of collecting the landlord’s water service debt as the person directly penalized by the shutoff was not the debtor but an innocent third-party with whom the debtor contracted); *O’Neal v. City of Seattle*, 66 F.3d 1064, 1068 (9th Cir. 1995) (“Refusing a new tenant water service because of the debt of an unrelated prior tenant is illogical” and violates the Equal Protection Clause.); *Sterling v. Village of Maywood*, 579 F.2d 1350, 1352 (7th Cir. 1978) (town’s refusal to provide water service to tenant because of overdue water bills from the landlord violated equal protection)<sup>1</sup>;

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<sup>1</sup> Even though it upheld the tenant’s equal protection claim, the *Sterling* Court rejected her due process claim on the grounds that she had no “constitutionally protected property interest in continued water service.” 579 F.2d at 1353. The court based this conclusion on its view that she had “no contractual or statutory basis for any legitimate claim of entitlement to continued water service.” The court stated that “plaintiff can point to no provision in the state’s laws or in the municipal ordinances that purports to provide her with a legitimate claim of entitlement to water service.” As noted above, however, Mr. Hammer *can* point to such ordinances and statutes, including the Cook County Residential Tenant Landlord Ordinance and the Mobile Home Landlord and Tenant Rights Act, both of which were enacted after *Sterling*.

In *Di Massimo v. Clearwater*, 805 F.2d 1536, 1539 (11th Cir. 1986), the Eleventh Circuit distinguished *Sterling*, and its analysis is instructive because it demonstrates why the *Sterling* court’s conclusion that the tenant had no constitutionally protected property interest in continued

*Craft v. Memphis Light, Gas & Water Division*, 534 F.2d 684, 689-90 (6th Cir. 1976) (refusing water service to new tenants because prior tenants had unpaid bills violated due process); *Davis v. Weir*, 497 F.2d 139 (5th Cir. 1974) (after landlord refused to pay water bill for which it was responsible and city shut off tenant's water service and refused to restore service until bill was paid, tenant filed suit alleging violations of due process and equal protection and properly obtained injunction against city).

61. These decisions establish that Mr. Hammer enjoys a likelihood of success on the merits of his underlying claims against the City.

The Benefits of Granting the Preliminary Injunction  
Outweigh the Harm to the City

62. “[A]ny harm an injunction would impose on the defendant is weighed against the benefit it would provide the plaintiff.” *Liebert Corp. v. Mazur*, 357 Ill. App. 3d 265, 287 (1st Dist. 2005).

63. The City has, during the course of this litigation, already recovered \$425,000 (approximately half of the water service debt) from the owner.

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water service must be revisited.

The *Sterling* court rejected the plaintiff's claim that the municipality had violated her procedural due process rights by finding that she had no contractual relationship with the City and could “...point to no provision in the state's laws or in the municipal ordinances that purports to provide her with a legitimate claim of entitlement to water service.” In the instant case,... Florida's landlord-tenant law does create such an entitlement. Florida statutes not only specifically require a landlord of a dwelling unit, other than a single-family home or duplex[,] to provide his tenants with running water, and grant a tenant the right to seek injunctive relief against the landlord but also implicitly require the landlords to furnish water to single dwellings and duplexes where the failure to do so amounts to constructive eviction.

805 F.2d at 1539. As demonstrated above, Illinois laws create the same entitlement.

64. Allowing the City to terminate the park's water service will not increase the City's chances of recovering the balance due. It will only punish Mr. Hammer and other innocent tenants who have no responsibility for this bill.
65. Mr. Hammer acknowledges that the City may suffer some financial harm—the cost of the water the City will have to continue providing to the park—if it is enjoined from disconnecting the water service.
66. That harm, however, is far outweighed by the benefits the injunction will provide to Mr. Hammer and every other resident of the park.
67. The injunction will ensure that these innocent tenants are not deprived of an essential service merely because the owner refused to satisfy a debt for which only the owner was responsible.
68. The balance of equities, therefore, weighs heavily in Mr. Hammer's favor.

This Court Should Waive the Posting of a Bond

69. "The court in its discretion, may before entering...a preliminary injunction, require the applicant to give bond in such sum, upon such condition and with such security as may be deemed proper by the court, for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained." 735 ILCS 5/11-103.
70. However, "[a] party's limited financial resources can provide good cause for requiring no bond." *Save the Prairie Society v. Greene Dev. Group, Inc.*, 338 Ill. App. 3d 800, 804 (1st Dist. 2003) (reversing, as an abuse of discretion, trial court's decision to condition

issuance of preliminary injunction on the posting of a bond the plaintiff could not afford, and directing the trial court to issue the injunction without a bond).


71. Mr. Hammer has very little income—his family survives on disability benefits, food stamps, and the part-time salary earned by the mother of his children—and he cannot afford to post bond as security for the issuance of the preliminary injunction. (He could not even afford the filing fees for the pro-se complaint and emergency motion for a temporary restraining order that he filed before securing counsel in this matter, which is why the court granted his “Application for Waiver of Court Fees.”)

72. This court should therefore issue the preliminary injunction without a bond.

**WHEREFORE**, Mr. Hammer respectfully requests that this Honorable Court:

- A. Enter a preliminary injunction enjoining the City from disconnecting the park’s water service pending the resolution of this lawsuit;
- B. Waive the posting of bond as security for the issuance of this order;
- and
- C. Grant such other relief as may be proper and just.

Respectfully submitted,



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