

STATE OF MINNESOTA
COUNTY OF MEEKER

DISTRICT COURT
EIGHTH JUDICIAL DISTRICT

Case Type: Civil
(Consumer Protection)

State of Minnesota, by its Attorney General,
Keith Ellison,

Court File No. _____

Plaintiff,

vs.

Ikechukwu Michael Nwachukwu d/b/a Divine
Estates,

**MEMORANDUM IN SUPPORT OF THE
STATE'S *EX PARTE* MOTION FOR
TEMPORARY RESTRAINING ORDER
AND TEMPORARY INJUNCTION**

Defendant.

The State of Minnesota, by its Attorney General, Keith Ellison, (the "State") brings this *Ex Parte* Motion for a Temporary Restraining Order and Temporary Injunction against Defendant Ikechukwu Michael Nwachukwu d/b/a Divine Estates (hereinafter, "Nwachukwu").

INTRODUCTION

Residential tenant [REDACTED] lives in a manufactured home park owned by Defendant Nwachukwu. Beginning on March 26, Nwachukwu has disconnected water service to [REDACTED]'s residence on multiple occasions. Most recently, Nwachukwu has threatened to again turn off the water service to the home by 9:00 a.m. on April 10. Nwachukwu owns a manufactured home park located in Cosmos, Minnesota. Nwachukwu has signed a contract for deed agreement with [REDACTED] to purchase a manufactured home in the park, and to rent the lot on which the home is situated. Nwachukwu's actions are a violation of landlord tenant laws during the best of times, but an egregious and reprehensible action during the COVID-19 pandemic. Moreover, Nwachukwu's actions violate Governor Walz's Emergency Executive Order 20-14,

which forbids landlords from terminating residential tenancies during the peacetime emergency. The State seeks a temporary restraining order and temporary injunction to stop Nwachukwu from continuing to interrupt his tenants' water service or otherwise attempt to terminate his residency at the home during the pendency of the State's enforcement action.

FACTUAL BACKGROUND

██████████ ("██████████") lives in a manufactured home park owned by Ikechukwu Michael Nwachukwu ("Nwachukwu") located at 280 S. Comet Street in Cosmos, Minnesota. (██████████ Aff. ¶1.) On March 26, ██████████ looked out of his window and saw Nwachukwu near his home with a large tool. (██████████ Aff. ¶2.) ██████████ went outside to see what he was doing, and Nwachukwu stated that he was going to shut off ██████████'s water if ██████████ did not give him \$200. ██████████ gave him \$200 in cash. (██████████ Aff. ¶2.)

On March 28, ██████████ tried to flush his toilet, but it did not work. ██████████ went outside and found Nwachukwu outside his property. (██████████ Aff. 3.) Nwachukwu stated that he was shutting the water off because ██████████ had not paid the water bill. (██████████ Aff. ¶3.) Nwachukwu stated that ██████████ needed to give him \$200 more if he wanted him to turn the water back on. (██████████ Aff. ¶3.) ██████████ did not have the money right away, so Nwachukwu refused to turn the water back on. (██████████ Aff. ¶3.) ██████████ later obtained the money, and a neighbor who works for Nwachukwu turned the water back on.

██████████'s water remained on for a few days, until Nwachukwu returned on April 2, 2020 to shut ██████████'s water off again. (██████████ Aff. ¶3.) ██████████ heard Nwachukwu tell a neighbor that he was sick and tired of ██████████ living in Nwachukwu's house comfortably and then stated: "let's see how comfortable he is when he spends a few days without water." (██████████ Aff. ¶3.)

The State contacted Nwachukwu and requested that he turn the water service back on. (Goodwin Aff. ¶3) Nwachukwu turned the water back on at the property but stated that he will turn it off again on April 10, 2020 unless the City of Cosmos agrees that any unpaid fees will not be assessed against the property. (Goodwin Aff. ¶4.) As of the time of filing this Motion, Nwachukwu maintains that he will turn water off at the property if his demands are not met.

ARGUMENT

I. A TEMPORARY RESTRAINING ORDER AND A TEMPORARY INJUNCTION ARE APPROPRIATE TO ENJOIN NWACHUKWU.

A. Nwachukwu Has and Continues to Violate Governor Walz’s Executive Order 20-14 Necessitating Temporary Injunctive Relief.

Temporary injunctive relief should be issued upon a showing by the State that Nwachukwu “violated” or is “about to violate” the law and when injunctive relief would fulfill the purpose of the law. *See State v. Cross Country Bank, Inc.*, 703 N.W.2d 562, 572 (Minn. Ct. App. 2005) (quoting *Wadena Implement Co. v. Deere & Co., Inc.*, 480 N.W.2d 383, 389 (Minn. Ct. App. 1992)); *accord State v. Minn. School of Business, Inc.*, 899 N.W.2d 467, 471-72 (Minn. 2017) (recognizing “[t]he conditions that must be met to grant a statutory injunction are determined by the text of the statute authorizing the injunction.”).¹

¹ Only when a law does not provide for injunctive relief are courts to evaluate the *Dahlberg* factors to determine whether sufficient grounds exist to issue a TRO or temporary injunction. *Cross Country Bank*, 703 N.W.2d at 573 (when statutes specifically provide for injunctive relief court is “not required to make findings on the *Dahlberg* factors to enjoin violation of the statute.”). Where a party “legitimately disputes” the applicability of the underlying statute authorizing injunctive relief, a district court “is not required” to grant a temporary injunction without consideration of the *Dahlberg* factors. *See State v. Int’l Assoc. of Entrepreneurs of Am.*, 527 N.W.2d 133, 137 (Minn. App. 1995) (citing *Pac. Equip. & Irrigation, Inc. v. Toro Co.*, 519 N.W.2d 911, 918 (Minn. App. 1994)). This narrow exception, however, has no application to this case because Nwachukwu cannot legitimately dispute that his conduct is not subject to Minnesota Statutes chapter 504B or Order 20-14.

Here, the State brings this law enforcement action against Nwachukwu for terminating his tenant's water service in violation of Minnesota Statutes section 504B.221 and in violation of Governor Walz's Emergency Executive Order 20-14 ("Order 20-14"). Order 20-14 expressly provides that it can be enforced by the Minnesota Attorney General's Office (AGO) pursuant to its Minnesota Statutes section 8.31 authority. Section 8.31 authorizes the AGO to obtain injunctive relief upon bringing an action to enforce and remediate violations of the unfair, discriminatory, and other unlawful practices in business, commerce, or trade. *Id.* at § 8.31, subd. 3; *accord Minn. School of Business, Inc.*, 899 N.W.2d at 472.

Accordingly, the State is entitled to a temporary restraining order (TRO) and temporary injunction (TI) by showing that: (1) Nwachukwu violated, is violating, or will violate Minnesota Statutes section 504B.221 and/or Order 20-14; and (2) the injunctive relief sought by the State would fulfill the purpose of the statute and Order.

Nwachukwu has violated and continues to violate Minnesota Statutes section 504B.221 and/or Order 20-14 by refusing to restore water service to his residential tenant. The shutting off of a utility is a constructive eviction because it interferes with the use or enjoyment of the premises. *Colonial Court Apartments, Inc. v. Kern*, 163 N.W.2d 770; (1968); *Santrizos v. Public Drug Co.*, 173 N.W. 563 (1919) ("When the beneficial enjoyment of leased premises is so interfered with by the lessor as fairly to justify an abandonment by the lessee there is a constructive eviction. It does not suppose an actual ouster or dispossession by the lessor.").

Lastly, the temporary injunctive relief the State requests undoubtedly would fulfill the purposes of Minnesota Statutes section 504B.221 and Order 20-14 by preventing further harm while the State prosecutes Nwachukwu's misconduct. *See, e.g., Philip Morris*, 551 N.W.2d at 495-96. The express purpose of Order 20-14 is to keep Minnesotans housed during the COVID-

19 pandemic for their own health as well as the health of the community. Accordingly, the court should grant the State's motion for temporary injunctive relief preventing Nwachukwu from continuing to interrupt his tenant's water service in violation of Minn. Stat. § 504B.211 and Executive Order 20-14.

B. Temporary Injunctive Relief is Necessary Before Nwachukwu Can Be Heard in Opposition, Necessitating an *Ex Parte* TRO.

The function of a TRO and TI is to preserve the status quo until the matter is adjudicated on the merits. *Prolife Minnesota v. Minnesota Pro-Life Committee*, 632 N.W.2d 748, 753 (Minn. Ct. App. 2001) (discussing purpose of TRO); *Metro. Sports Facilities Comm'n v. Minn. Twins P'ship*, 638 N.W.2d 214, 220 (Minn. App. 2002) (discussing purpose of temporary injunction). In order to obtain temporary injunctive relief before Nwachukwu can be heard in opposition (*i.e.* an *ex parte* TRO), the State must show that:

- (1) It clearly appears from specific facts shown by affidavit or by the verified complaint that immediate and irreparable injury, loss, or damage will result to the applicant before the adverse party or that party's attorney can be heard in opposition, and
- (2) the applicant's attorney states to the court in writing the efforts, if any, which have been made to give notice or the reasons supporting the claim that notice should not be required.

Minn. R. Civ. P. 65.01.

Immediate and irreparable injury will result if the State is required to wait until Nwachukwu can be heard in opposition to the State's request for injunctive relief authorized by Minnesota Statutes section 8.31 and Order 20-14. The tenant's home is not habitable without running water to cook, clean, and flush the toilet. The tenant has been forced from his home because of this. Each day that Nwachukwu is not enjoined from his illegal actions causes his tenant irreparable harm and potentially affects the public health because he continues to be forced out of his home during the pandemic. *See F.T.C. v. World Wide Factors, Ltd.*, 882 F.2d

344, 347 (9th Cir. 1989) (injunction requiring compliance with the law during pendency of litigation imposes no hardship).

The State has met all required elements for a TRO enjoining Nwachukwu from preventing his tenants from receiving water service. Accordingly, the Court should grant the State's Motion for a TRO and schedule a TI hearing at the earliest practical time.² Minn. R. Civ. P. 65.01 (If a TRO is granted without notice to an opposing party, "the motion for a temporary injunction shall be set down for hearing at the earliest practicable time...and when the motion comes on for hearing, the party who obtained the [TRO] shall proceed with the application for a temporary injunction.")

C. The State is Likely to Succeed on the Merits of its Case.

As discussed *supra* the State has established that Nwachukwu's termination of water services to his residential tenant violates Minnesota Statutes section 554B.221 and Order 20-14. Thus, the State has established that it is likely to succeed on the merits of its claims.

² Despite the requirements for security set forth in Minn. R. Civ. P. 65.03(a) and Minn. Stat. § 570.041, subd. 1, the State is entitled to temporary injunctive relief without the giving of a security or bond. *See* Minn. Stat. § 574.18 ("No undertaking or bond need be given upon any appeal or other proceeding instituted in favor of the state . . ."); *State v. Nelson*, 189 Minn. 87, 89-90, 248 N.W. 751, 752 (1933) (recognizing the term "proceeding" includes "every proceeding before a competent court in the due course of the proper administration of justice and which is to result in any determination.").

CONCLUSION

For all of the above reasons, the State respectfully requests that the Court grant its *Ex Parte* Motion for a Temporary Restraining Order and Temporary Injunction and award the State the entirety of the relief it seeks, as detailed in its accompanying proposed order.

Dated: April 9, 2020

KEITH ELLISON
Attorney General
State of Minnesota

/s/ Michael Goodwin
MICHAEL GOODWIN
Assistant Attorney General
Atty. Reg. No. 0390244

JASON PLEGGENKUHLE
Assistant Attorney General
Atty. Reg. No. 0391772

445 Minnesota Street, Suite 1200
St. Paul, Minnesota 55101-2130
Telephone: (651) 757-1456
Telephone: (651) 757-1147
michael.goodwin@ag.state.mn.us
jason.pleggenkuhle@ag.state.mn.us

Attorneys for Plaintiff, State of Minnesota

MINN. STAT. § 549.211 ACKNOWLEDGMENT

The party on whose behalf the attached document is served acknowledges through its undersigned counsel that sanctions, including reasonable attorney fees and other expenses, may be awarded to the opposite party or parties pursuant to Minn. Stat. § 549.211 (2019).

/s/ Michael Goodwin

MICHAEL GOODWIN