

STATE OF MINNESOTA  
COUNTY OF PINE

DISTRICT COURT  
TENTH JUDICIAL DISTRICT

Case Type: Civil  
(Consumer Protection)

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

Court File No. \_\_\_\_\_

Plaintiff,

vs.

Howard W. Mostad,

Defendant.

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

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 Howard W. Mostad.

**INTRODUCTION**

Defendant Howard W. Mostad ("Mostad") rents a home to tenants located at 9679 Grindstone Lake Road in Sandstone Minnesota. On April 2, 2020, Mostad entered their home against their wishes and interrupted their electricity service by removing the fuses from their electrical panel. Mostad's action is a violation of landlord tenant laws during the best of times, but an egregious and reprehensible action during the COVID-19 pandemic. Moreover, Mostad's action violates 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 Mostad from continuing to interrupt

his tenants' electricity or otherwise attempt to terminate their residency at the home during the pendency of the State's enforcement action.

### FACTUAL BACKGROUND

██████████ (“tenants”) rent a home from Howard W. Mostad at 9679 Grindstone Lake Road in Sandstone Minnesota. (Affidavit of ██████████.) On April 2, 2020, Mostad entered their home against their wishes and interrupted their electricity service by removing the fuses from their electrical panel. (*Id.*) He did so because he did not want them to remain in the home and because he asserts that they did not pay their electricity bill. (*Id.*; Affidavit of Katherine Kelly.)

The State of Minnesota is currently in the midst of the COVID-19 pandemic and the tenants are quarantining at home in response to Governor Walz's peacetime emergency stay-at-home order, Executive Order 20-20, and because the tenants' four-year-old daughter has medical needs that make her especially vulnerable to COVID-19. (██████████ Aff.)

As of the time of filing this Motion, Mostad has not restored tenants' electricity and they are without electricity, heat, or hot water. As Ms. ██████████ states, “My daughter is telling me that she is cold. We have nowhere else to go and cannot risk exposing my daughter to other people.” The State contacted Mostad and requested that he turn the electrical service back on but he refused. (Kelly Aff.)

### ARGUMENT

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

**A. Mostad 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 Mostad “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.”).<sup>1</sup>

Here, the State brings this law enforcement action against Mostad for terminating his tenants’ electrical 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) Mostad 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.

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<sup>1</sup> 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 Mostad cannot legitimately dispute that his conduct is not subject to Minnesota Statutes chapter 504B or Order 20-14.

Mostad has violated and continues to violate Minnesota Statutes section 504B.221 and/or Order 20-14 by refusing to restore electricity to his tenants. A bedrock of Minnesota landlord-tenant law is that landlords, not tenants, are responsible for ensuring that the homes they rent have utilities. 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 Mostad’s misconduct. *See, e.g., Philip Morris*, 551 N.W.2d at 495-96. Order 20-14 express purpose 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 Mostad from continuing to interrupt his tenants’ electrical service during the duration of the tenants’ tenancy.

**B. Temporary Injunctive Relief is Necessary Before Mostad 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 Mostad 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 Mostad 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 tenants at issue are currently sheltering in place with a child that is medically vulnerable but are without electricity at a time when snow is still falling in Minnesota. Each day that Mostad is not enjoined from his illegal actions causes his tenants harm and potentially affects the public health if they are forced out of their homes 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 Mostad from preventing his tenants from receiving electricity. Accordingly, the Court should grant the State's Motion for a TRO and schedule a TI hearing at the earliest practical time.<sup>2</sup> 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.")

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<sup>2</sup> 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.").

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

As discussed *supra* the State has established that Mostad's termination of electrical services to his tenants 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.

**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 3, 2020

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**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/ Katherine Kelly  
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KATHERINE KELLY