
Esteven Rivera, et al.
Plaintiffs

v.

Jeffrey Butler; Elmwood Realty, LLC
Defendants

Case No. 6CA-2023-

**PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF THEIR MOTION
FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY
INJUNCTION**

PRELIMINARY STATEMENT

Plaintiffs bring this action to prevent Defendants from retaliating against them for the lawful exercise of their right protected by R.I.G.L. § 34-18-46(a)(3) and (4) to organize and become members of a tenants' union or similar organization and to exercise any other lawful rights and remedies available to them as tenants under the R.I. statutes. As set forth in the Verified Complaint and supporting affidavits and exhibits, Defendants have engaged in a series of actions designed to threaten, intimidate and retaliate against Plaintiffs for their lawful exercise of rights protected by R.I.G.L. §34-18-46, including commencing the process to involuntarily terminate their tenancy. Among other things, Defendants sent their tenants, including Plaintiffs, an electronic communication warning them that they would lose their housing if they associated with a tenant organization called Reclaim RI.¹ Making good on that threat, Defendants delivered termination of tenancy notices to Plaintiffs who were observed to be talking to or consulting with

¹ A copy of this electronic communication sent to all Plaintiffs is attached as Exhibit C to the Complaint.

tenant organizers working for Reclaim RI.

Plaintiffs seek a temporary restraining order and a preliminary injunction enjoining Defendants, their officers, agents, servants, employees, and attorneys, and any other persons who are in active concert or participation with them, from retaliating against the Plaintiffs or interfering with their right to organize with, associate with, and be members of Reclaim RI, a tenant union or similar organization. Plaintiffs request that Defendants and their agents be ordered to refrain from interfering in any way, sending threatening communications, and/or filing retaliatory evictions against Plaintiffs who associate with, communicate with, and work in a coordinated way with Reclaim RI to support and assert their rights as tenants under state law. To ensure that Defendants do not attempt to circumvent the Court's interim order, Plaintiffs also ask that Defendants be enjoined from attempting to terminate their tenancy for any reason other than non-payment of rent until this matter can be heard on the merits.

STATEMENT OF FACTS²

Reclaim RI is a non-profit corporation that exists in part to bring tenants with a common landlord together into a tenant union in order to enable them to engage in consolidated organized action to protect tenants from housing conditions that do not comply with state health and safety standards, unfair or retaliatory actions such as eviction and rental increases, and to otherwise vindicate their rights under Rhode Island law and provide mutual aid and protection.

Beginning in September 2023, two tenant organizers working with Reclaim RI—Shana Crandall and Cherie Cruz--engaged in a door knocking campaign reaching out to tenants of Elmwood Realty to engage them with the tenant union and encourage their collective action to

² The factual assertions are supported by the Verified Complaint, as well as the Affidavits of the Plaintiffs and Reclaim RI representatives.

protect their rights as tenants under state law. Through their efforts, Plaintiffs Towns, Mr. and Mrs. Rivera, and Ms. Wood learned of their rights to file code enforcement complaints with the appropriate municipal agencies concerning deficiencies in their dwellings which had not been corrected.

Reclaim's interactions with the Plaintiffs came to the attention of Defendants. In September 2023, Defendants notified Plaintiff Towns that his tenancy would terminate on November 1, 2023.

Defendants escalated their retaliation in October 2023. On or about October 13, 2023 Defendants Elmwood Realty and Butler sent a group electronic message to their tenants, including each of the Plaintiffs, calling the activities of Reclaim RI tenant organizers illegitimate and warning tenants not to talk to or engage with Reclaim RI or their tenancy would be ended, stating: "if you make a choice to engage with this Reclaim RI group, I will consider that you have now dissolved our relationship and when your tenancy is over, we will ask you to vacate." Verified Complaint ¶19, and Ex. C. Then, on October 19, 2023, Mr. Butler called Reclaim RI organizer Cherie Cruz and left her a voice mail in which he said, *inter alia*, "This is Jeff Butler from Elmwood Realty and I just want to let you know if any time you talk to any of my tenants, the tenants are gonna get a 30 day notice to vacate the premises.... And I'm putting you on notice that you talk to my tenants, they give me your name and they will be evicted.... You got two evicted last week, you got one evicted today. And all you do is emptying [sic] out my apartments and I clean them up and I re-rent them to somebody else." Complaint ¶21 And Exhibit D. Around the same time, Defendant Butler left a voice message on the phone of Reclaim RI organizer Shana Crandall with a similar message, and added for emphasis that tenants who cooperated with Reclaim would be evicted and facing homelessness. Complaint ¶22 And Exhibit E. Defendant Butler in each message

underscored the connection between the tenant organization and eviction, stating “*You got two evicted last week, you got one evicted today.*” *Id.* (emphasis added).

Making good on Butler’s threat, Defendants on October 19, 2023, delivered a termination of tenancy notice to the Riveras. The termination notice was delivered by a group of men, which the Riveras found very intimidating.

Plaintiff Krystie Wood was similarly subjected to intimidation and retaliation. On November 7, 2023, a group of men came to her house, one of whom entered the building and asked to be allowed entry to her home. Complaint ¶31. The man misrepresented himself to be a member of the West Warwick Fire Department but could provide no credentials. Complaint ¶32. Ms. Wood had not received notice from Elmwood Realty of its intent to enter her dwelling and so she turned the men away. *Id.* She then called Ms. Cruz and Ms. Crandell of Reclaim RI for support. They arrived shortly thereafter. Complaint ¶33. Not long after the Reclaim organizers came to the property, the group of men returned to the building and once again one of the men asked to enter Ms. Wood’s dwelling. Complaint ¶35. This time the man admitted he was not a member of the West Warwick Fire Department but an employee of Elmwood Realty. *Id.* Ms. Wood once again refused to allow the man into her home. Complaint ¶36. Ms. Wood then went outside to meet Ms. Cruz and Ms. Crandell. Complaint ¶37. They had a conversation about the incident within sight of Mr. Butler and his employees, who were parked across the street. *Id.* After everyone left, Ms. Wood went out to run errands. When she returned home, she discovered a 48 hour notice to enter and a termination of tenancy notice taped to her door. Complaint ¶39.

With the termination of tenancy notices in hand, Plaintiffs remain in fear that eviction proceedings may commence against them at any time after the date set forth in the notice.

Plaintiffs have done nothing wrong. They are current on their rent. They exercised rights

established by statute to secure minimum housing conditions in their dwellings. They should not live in constant fear of losing their homes or being turned out into the street.

ARGUMENT

I. Standard for Issuance of a Preliminary Injunction

In considering whether to grant a temporary restraining order or preliminary injunction, the court must consider:

“whether the moving party (1) has a reasonable likelihood of success on the merits, (2) will suffer irreparable harm without the requested injunctive relief, (3) has the balance of the equities, including the possible hardship to each party and to the public interest, tip in its favor, and (4) has shown that the issuance of a preliminary injunction will preserve the status quo.” *Vasquez v. Sportsman’s Inn, Inc.*, 57 A.3d 323,318 (R.I. 2012) (quoting *Iggy’s Doughboys, Inc. v. Giroux*, 729 A.2d 701,705 (R.I. 1999)).

“Though variously articulated in our decisions, the criteria a hearing justice should consider in deciding whether to grant a preliminary injunction are well settled. See, e.g., *In re State Employees’ Unions*, 587 A.2d 919 (R.I.1991).” *Fund for Community Progress v. United Way of Southeastern New England*, 695 A.2d 517, 521 (R.I. 1997).

The moving party seeking a preliminary injunction must demonstrate that it stands to suffer some irreparable harm that is presently threatened or imminent and for which no adequate legal remedy exists to restore that plaintiff to its rightful position. See *Brown v. Amaral*, 460 A.2d 7, 10 (R.I.1983); *Rhode Island Turnpike & Bridge Authority v. Cohen*, 433 A.2d 179, 182 (R.I.1981); *Coolbeth*, 112 R.I. at 564, 313 A.2d at 659. The moving party must also show that it has a reasonable likelihood of succeeding on the merits of its claim at trial. See *In re State Employees’ Unions*, 587 A.2d at 925; *Pawtucket Teachers*, 556 A.2d at 557; *Coolbeth*, 112 R.I. at 566, 313 A.2d at 660. We do not require a certainty of success. *Coolbeth*, 112 R.I. at 566, 313 A.2d at 660. Instead we require only that the moving party make out a prima facie case. *Id.* at 564, 313 A.2d at 660. Having found a likelihood of success and an immediate irreparable injury, the trial justice should next consider the equities of the case by examining the hardship to the moving party if the injunction is denied, the hardship to the opposing party if the injunction is granted and the public interest in denying or granting the requested relief. *In re State Employees’ Unions*, 587 A.2d at 925.

Id., 695 A.2d at 521. See also *Gianfrancesco v. A.R. Bilodeau, Inc.*, 112 A.3d 703, 711 (R.I. 2015) (quoting *Fund for Community Progress* with approval).

Plaintiffs easily satisfy these standards, and both a temporary restraining order and preliminary injunctive relief are warranted in this case.

A. PLAINTIFFS HAVE A REASONABLE LIKELIHOOD OF SUCCESS ON THE MERITS

The burden upon Plaintiffs is to show a reasonable likelihood of succeeding on the merits of its claim at trial. This burden, while substantial, is predictive, not absolute: the moving party is not required to show a *certainty* of success but only to make out a prima facie case. *DiDonato v. Kennedy*, 822 A.2d 179, 181 (R.I. 2003) (citing *Fund for Community Progress v. United Way of Southeastern New England*, 695 A.2d 517, 521 (R.I. 1997)).

The factual allegations in Plaintiffs' verified complaint readily meet that standard. The statutory prohibition on retaliation by a landlord for tenant organizing is clear and unequivocal. If tenants are organizing together and working with a tenant union or similar organization (here Reclaim RI), then the landlord must not interfere with their exercise of their right to do so. Where a landlord does retaliate against tenants, the tenants can seek protection from the court in the form of both temporary and permanent injunction, R.I.G.L. §34-18-5, as well as recovery of treble damages, calculated as the greater of three months' rent or three times their actual damages, and attorney's fees. R.I.G.L. §34-18-34.

Defendants' retaliatory actions and statements are explicit and unambiguous. Among other things, Defendants sent their tenants, including Plaintiffs, a detailed electronic message warning them that their tenancies would be terminated if they associated with Reclaim RI, a tenant organization. All of the Plaintiffs received notices of termination of their tenancy. Simultaneously, Defendants notified the representatives of Reclaim RI that their organizing efforts would result in the displacement of any tenants who associated with them: "I've notified my tenants that if you folks bother them and they let me know or you try to help them in any

way which you're not, you're hurting them, that they will be asked to move out when their lease is up. Some are on month to month. So you're not helping the tenants at all, you're not advocating for them... You already caused two tenants to get evicted last week, another one this morning ...you are only hurting people. You are creating homelessness." Complaint ¶22 and Exhibit E; *see also* Exhibit D.

Because Plaintiffs' legal entitlement to organize free from retaliation is clearly established by statute and the actions taken against the Plaintiffs by the Defendants are, on their face and in Defendant Jeffrey Butler's own words, designed to intimidate and retaliate against those tenants who organize and become part of the tenant rights organization, plaintiffs have demonstrated a reasonable likelihood of success on the merits.

B. PLAINTIFFS ARE SUFFERING AND WILL CONTINUE TO SUFFER IRREPARABLE HARM IN THE ABSENCE OF INTERIM INJUNCTIVE RELIEF.

The electronic communication warning tenants not to talk to Reclaim RI tenant organizers and the subsequent termination of tenancy letters are designed to serve and have served an obvious purpose: the intimidation of tenants, creation of a climate of fear for tenants, and a chilling effect on tenant organizing and tenants joining Reclaim RI. The threatened harm resulting from the intimidation and climate of fear created by Defendants' statements and actions to initiate eviction proceedings alone create irreparable harm by chilling Plaintiffs in the exercise of statutory rights established by the State of Rhode Island. *Cf. Elrod v. Burns*, 427 U.S. 347, 373 (1976) ("The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.") While the First Amendment prohibits government interference with rights of free speech and association, the General Assembly has incorporated a comparable protection within the Landlord-Tenant Act to protect tenants from

comparable interference by landlords.

Moreover, the loss, or threatened loss, of one’s personal dwelling can only be understood as a grave, irreparable injury. The Court may take judicial notice of the current housing crisis in Rhode Island, which has manifested in low housing stock and soaring rental costs,³ and also of the permanent stigma created by the mere filing of an eviction against a tenant. Termination of a tenancy—even assuming that one can find a *comparable* apartment in a *comparable* location at a *comparable* cost—is not a net sum zero, since the individual must disrupt their life, incur moving expenses, and displacement. Indeed, Defendants are well aware of the hazardous climate for Rhode Island tenants, themselves warning the Reclaim RI representatives that they could easily replace the tenants and that all that would be accomplished was “creating homelessness” for the tenants. Plaintiffs are acutely aware and afraid of this possibility because they live on fixed or limited incomes. Plaintiffs Esteven and Sylvia Rivera both receive their income from Supplemental Social Security Insurance which provides them with approximately \$1,410 per month. Aff. of Esteven Rivera ¶14. Plaintiff Krystie Wood currently has no income and relies on her Housing Choice Voucher to pay the entirety of her rent. Aff. of Krystie Wood ¶5. Plaintiff Jordan Towns has very little household income. Aff. of Jordan Towns ¶18. The improper, unlawful, and retaliatory eviction threatened by Defendants creates a substantial likelihood that

³ “Rhode Island has a housing shortage that has led to unprecedented increases in rents and home prices. Homelessness grew in Rhode Island by nearly 50 percent from 2020 to 2022, according to the U.S. Department of Housing and Urban Development’s ‘Point in Time’ data.” “Housing Supply and Homelessness in Rhode Island,” Rhode Island Foundation (4/24/2023), <https://rifoundation.org/news/housing-supply-and-homelessness-in-rhode-island>, accessed 12/18/2023.

See also accompanying 183-page report, <https://assets.rifoundation.org/documents/RI-Foundation-Coalition-x-BCG-Final-Report-June-2023-vF-1.pdf>, accessed 12/18/2023. (“Rhode Island faces a housing supply shortage which has resulted in a worsening affordability challenge that impacts all people in the state, especially those with low and moderate incomes.”) *See also* n. 4, *infra*.

Plaintiffs will become homeless within 30 days.

In *Fund for Community Progress v. United Way of Southeastern New England*, 695 A.2d 517 (R.I. 1997), the court discussed the nature of the irreparable harm that the moving party must show in support of a Motion for Preliminary Injunction. The harm must be actual, not speculative or future and it must be the kind of harm that cannot easily be remedied at the conclusion of litigation. The Fund for Community Progress was granted a preliminary injunction because the harm they alleged, that the United Way, by using the Fund for Community Progress logo and identity in the United Way annual charitable campaign materials without their permission, actively misled people, creating confusion that was not quantifiable in a way that could be remedied through a later economic damage award but was significant and harmful to the Fund for Community Progress building its relationship with its own donor base.

The ability for Plaintiffs to join in common cause with other tenants to assert their rights, supported by tenant organizers from Reclaim RI, is exactly what the anti-retaliation provisions of R.I.G.L. §34-18-46(a)(3) and (4) are designed to protect. The immediate and pernicious chilling effect of the Defendants' threats and termination of tenancy letters has undermined and, on an ongoing daily basis, continues to undermine, the ability of Plaintiffs to organize with other tenants to gain the support and leverage of acting collectively to protect their rights under the law. Since the Defendants' warning was sent to all tenants cautioning them against talking to Reclaim RI tenant organizers, and termination of tenancy letters were sent to Plaintiffs who did talk to Reclaim RI, many tenants have expressed fear of losing their homes and are afraid to engage in any discussions or activities with tenant organizers or Reclaim RI. With rents in Rhode Island skyrocketing and the supply of apartments, especially affordable apartments, at an all-time low,⁴

⁴ See Housing Works RI, *2023 Housing Fact Book*, 2 (2023) (RIHousing's 2022 Rental Survey noted the statewide average for a 2-bedroom apartment as \$1,996, which would require an income

Plaintiffs in this case, and other tenants of Elmwood Realty properties, have been presented with an illegal and impermissible ultimatum by their landlord: either forego exercising a right guaranteed to them by state law, or face eviction. For these tenants, the threat from Mr. Butler and Elmwood Realty is clear and simple: talk to Reclaim RI and become homeless. This harm is immediate, ongoing and has no adequate remedy at law because the intimidation and fear of housing insecurity occasioned by the Defendants' threats make it impossible for the Plaintiffs to consult with and participate in Reclaim RI tenant organizing as long as Defendants are not constrained from threatening and carrying out retaliatory actions.

The R.I. Supreme Court affirmed the trial judge's finding that the United Way's unauthorized use of the Fund for Community Progress logo and identity intentionally created confusion and disrupted the ability of the Fund to conduct its own effective outreach – and that this constituted irreparable harm justifying the issuance of a preliminary injunction. In the same way Defendants' anti-tenant union communication and termination of tenancy letters to the Plaintiffs and other tenants has had the desired effect of chilling participation in the tenant union and preventing Reclaim RI and tenant leaders from doing outreach for organizing. Defendants' actions will continue to have that effect in the absence of a preliminary injunction preventing such conduct.

C. THE BALANCE OF THE EQUITIES AND THE PUBLIC INTEREST STRONGLY FAVOR PLAINTIFFS

The Defendants have no legitimate interest in engaging in intimidation tactics prohibited by R.I.G.L. §34-18-46(a)(3) and (4) and thus have no legitimate interest to balance against the

of nearly \$80,000 to affordably rent; this exceeds the state's median household income by more than \$5,000 and the median renter income by nearly \$40,000.).
<https://d337wih8hx5yft.cloudfront.net/documents/Housing-Fact-Books/2023HFB.pdf>

Plaintiffs' need for the injunction. The Plaintiffs have an acute interest in both preserving their ability to reside in their homes and retaining their right to organize and work with Reclaim RI effectively. The Plaintiffs' interest aligns with the public interest in protecting tenants from their landlords retaliating against them for participating in the organization of a tenants' union.

D. A PRELIMINARY INJUNCTION IS REQUIRED TO PROTECT THE STATUS QUO

The Plaintiffs seek a return to the status quo that prevailed before the Defendants' unlawful retaliatory conduct targeting tenants who organize with Reclaim RI. During September and early October, tenant organizers employed by and volunteering with Reclaim RI went door to door meeting with tenants, learning about their challenges, and encouraging them to come together with other tenants facing similar issues and challenges. Tenants were encouraged and hopeful that they would be able to better protect their rights under Rhode Island law by learning more about their rights and taking collective action, supported by the tenant organizers from Reclaim RI. A preliminary injunction is needed to restore an environment, free from retaliation, in which tenants know they can come together with Reclaim RI organizers and their fellow tenants without risking their homes.

CONCLUSION

For all of the foregoing reasons, the Plaintiffs hereby respectfully request that this Court issue a temporary restraining order and, after hearing thereon, that a preliminary injunction be granted, enjoining the Defendants, their officers, agents, servants, employees, and attorneys, and other persons who are in active concert or participation with them from (a) commencing or pursuing eviction proceedings based upon the notices of termination of tenancy issued to any Plaintiff as of the date of the injunction; (b) issuing any notice of termination of tenancy to any Plaintiff for reasons other than non-payment of rent until this matter can be heard on the merits;

and (c) from interfering with Plaintiffs' access to Reclaim RI representatives who are social guests of the Plaintiffs.

Respectfully submitted,

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