

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

SECOND JUDICIAL DISTRICT

<p>State of Minnesota, by its Attorney General, Keith Ellison,</p> <p style="text-align: center;">Plaintiff,</p> <p>vs.</p> <p>HavenBrook Homes, LLC, HavenBrook Partners, LLC, Pretium Partners, LLC, FYR SFR Borrower, LLC, Home SFR Borrower, LLC, and Progress Residential Management Services, LLC,</p> <p style="text-align: center;">Defendants.</p>	<p style="text-align: right;">Court File No.: 62-CV-22-780 Case Type: Civil-Consumer Protection Hon. Mark Ireland</p>
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ORDER RELATED TO MOTION FOR A TEMPORARY INJUNCTION

This matter came before the undersigned Judge of District Court related on October 25, 2023 related to a motion to compel filed by Minnesota Officer of the Attorney General. Appearances of counsel were noted on the record.

Based on the files, records and proceedings herein:

IT IS ORDERED that:

1. The Office of the Minnesota Attorney General’s Motion for a Temporary Injunction is **GRANTED, in part/DENIED, in part**. The terms of the Temporary Injunction are set forth in a separate order.
2. The attached memorandum is incorporated herein by reference.

Dated:

BY THE COURT:

Mark Ireland
Judge of District Court

MEMORANDUM

Procedural History

In its original Complaint and its Amended Complaint, the Minnesota Office of the Attorney General (“AGO”) asserted claims against various corporate defendants related to the management of rental property. The AGO alleges that Defendants are responsible for a large rental portfolio of single-family homes in Minnesota of approximately 600 properties, and allegedly failed to make appropriate repairs to these properties, continued to make repairs without lead-safe protocols in place, misrepresented emergency repair response times, and continued to issue non-renewals or eviction notices in violation of the Minnesota Governor’s Executive Order 20-79. The AGO further alleges that this conduct violated Minn. Stat. § 325F.69, Prevention of Consumer Fraud Act (“CFA”); Minn. Stat. § 325D.44, Uniform Deceptive Trade Practices Act (“DTPA”); Minn. Stat. § 504B.161, Covenants of Landlord (“Covenant”); and Emergency Executive Order 20-79, Modifying the Suspension of Evictions and Writs of Recovery During the COVID-19 Peacetime Emergency (“Executive Order”).

On October 4, 2023, the AGO filed a motion to enjoin Defendants Progress Residential Management Services, LLC (“Progress”), HavenBrook Homes, LLC (“HavenBrook Homes”), HavenBrook Partners, LLC (“HavenBrook Partners”), FYR SFR Borrower, LLC (“FYR SFR Borrower”), and Home SFR Borrower, LLC (“Home SFE Borrower”) from violating the Lead-Based Paint Renovation, Repair, and Painting (“RRP”), 40 CFR §§ 745.80—745.92.

Specifically, the AGO seeks to require Defendants to conduct renovations in Minnesota rental housing built prior to 1978 only after applying for and receiving firm certification in accordance with the EPA’s Lead Renovation, Repair, and Painting Rule (40 CFR § 745, Subpart E); using only employees who are certified renovators or have been trained by a certified

renovator in accordance with the EPA's Lead Renovation, Repair, and Painting Rule (40 CFR § 745, Subpart E); and abiding by the safe-work practice standards set forth in 40 CFR § 745.85.

The requested injunction also requires Defendants to ensure that vendors, if hired, are certified renovators as required by 40 CFR § 745.85 and 40 CFR § 745.89 and maintain records that a certified renovator completed the project in accordance with 40 CFR § 745.86. Finally, the proposed injunction requires that the Defendants provide the Attorney General's Office of copies of documentation of its compliance every three months, if the motion is granted.

I. THE STANDARD APPLICABLE TO CLAIMS FOR A TEMPORARY INJUNCTION

The purpose of an injunction is to maintain the status quo and preserve the rights of the parties while pending determination of the litigation. *Metropolitan Sports Facilities Commission v. Minnesota Twins Partnership*, 638 N.W.2d 214, 220 (Minn. Ct. App.), *rev. denied* (Minn. 2002). Because an injunction is an equitable remedy, the party seeking an injunction must demonstrate that there is no adequate legal remedy and that the injunction is necessary to prevent irreparable harm. *Cherne Industrial, Inc., v. Grounds & Associates, Inc.*, 278 N.W.2d 81, 92 (Minn. 1979). Once there is a finding of irreparable harm, the court must weigh five factors to determine the propriety of granting a motion for injunctive relief. *E.g., Dahlberg Brothers, Inc. v. Ford Motor Co.*, 272 Minn. 264, 274-75, 137 N.W.2d 314, 321-22 (1965).

These factors are known as the "Dahlberg Factors." *State by Ulland v. International Ass'n. of Entrepreneurs*, 527 N.W.2d 133, 136 (Minn. Ct. App.), *rev. denied* (Minn. 1995). The applicant for injunctive relief has the burden of proving all five *Dahlberg* factors. *North Central Public Service Co. v. Village of Circle Pines*, 302 Minn. 53, 60, 224 N.W.2d 741, 746 (1974).

Specifically, the relationship between the parties, public interest and consideration of public policy, administrative burden of enforcing the injunction, likelihood of success on the merits, and the comparative harm to the parties are the factors to be considered. *Id.*

II. THE ATTORNEY GENERAL’S MOTION FOR A TEMPORARY INJUNCTION.

Irreparable harm is a threshold matter, and, prior to weighing any *Dahlberg* factors, this Court must determine whether the AGO met its initial burden of demonstrating irreparable harm. Here, Defendants do not dispute the danger of lead paint and the adverse impact lead paint has on the health of people, especially children. As stated in the AGO’s memorandum, “[t]here is no level of lead exposure that is necessary or beneficial to the body, and no ‘safe’ level of exposure.”¹ Lead is a toxic metal with well-studied and well-known deleterious health consequences.² Although lead in paint was banned in 1978, there are approximately one million homes in Minnesota that have lead paint.³ The AGO asserts that,

Single-family homes in the Twin Cities, like the ones Defendants own and rent out, are particularly likely to be coated in lead-based paint as the average home was built *long* before 1978: 43 percent of the homes in Minneapolis were built before 1939 (with the median home being built in 1949) and 41 percent of the homes in Saint Paul were built before 1939 (with the median home being built in 1952).⁴

Defendants have owned or managed a large portfolio of single-family homes, either currently or in the past. Currently, Defendant Progress is the entity responsible for the day-to-day management of approximately 600 rental properties in the State of Minnesota. In its pleadings, the AGO

¹ Memorandum of Law in Support of State’s Motion For A Temporary Injunction at p. 2 (filed October 4, 2023).

² *Id.* (citing the Declaration of Dr. Abby Montague at ¶ 12).

³ *Id.* at p. 3-4.

⁴ *Id.* at p. 4.

describes past failures by Defendants to abate lead paint issues or ensure that the lead paint was properly removed by certified vendors.

Specifically, the AGO alleges that neither Defendant HavenBrook Homes nor Defendant Progress have a written lead-based paint disturbance policy of any kind.⁵ Its only written policy was to distribute an EPA pamphlet called “Protect Your Family From Lead in Your Home” to its tenants when they signed their lease. Defendant Progress’s renovation standards do not include guidelines for working with lead paint, and Defendant Progress has only one certified vendor as of January 2023.

The AGO alleges Defendant Progress’s has “sloppy practices” with regard to lead-based paint removal and mitigation, and continues to contract with outside vendors who are not EPA lead certified renovation firms. Defendant Progress was cited for lead-property violations, and the AGO describes several examples of Defendant Progress’s current practices and/or statements that are a basis for believing that tenants will be exposed to lead paint chips or dust in the future. These are described in pages 18-23 in the AGO’s memorandum, which are incorporated herein by reference.

Defendants vehemently deny these allegations, but this Court finds that the State met its threshold burden of establishing irreparable harm to the individuals, especially children, who reside in Defendants’ rental properties. This is based on evidence provided by the AGO that there are not proper safety protocols currently in place to prevent or mitigate exposure to lead paint as well as HavenBrook’s and Defendant Progress’s past actions. Defendants argue that they are not required to have written policies and that they are aware of their legal obligations as a landlord in the State of Minnesota, but these statements are not enough to overcome the evidence offered by

⁵ *Id.* at p. 12.

the AGO in light of the significant impact on renters who are unnecessarily exposed to lead paint and dust. For these reasons, the AGO established irreparable harm.

Even with proof of irreparable harm, however, this Court finds that Plaintiffs must still demonstrate entitlement to injunctive relief after consideration of the five *Dahlberg* factors.

A. The Relationship Between the Parties.

The first factor for consideration is the relationship between the two parties that have come before the court. A court must evaluate “the nature and background of the relationship between the parties preexisting the dispute giving rise to the request for relief.” *Metropolitan Sports Facilities Com’n v. Minnesota Twins Partnership*, 638 N.W.2d 214, 220 (Minn. Ct. App. 2002). A temporary injunction is issued to maintain the status quo pending a decision on the merits. *Pickerign v. Pasco Mktg., Inc.*, 228 N.W.2d 562, 564 (1975). Here, the relationship between the parties is that of landlord and tenant.

The AGO is acting pursuant to its statutory authority under Minn. Stat. § 8.31 to enforce the state’s covenants of inhabitability as well as its inherent *parens patriae* authority to bring a claim to protect its quasi-sovereign interests in the health and general well-being of its residents. *See Alfred L. Snapp & Son v. P.R.*, 458 U.S. 592, 102 S.Ct. 3260, 3269 (1982) (describing the long history and nature of state Attorneys General asserting its *parens patriae* authority to protect its residents). In this matter, the AGO seeks a temporary injunction on behalf of the hundreds if not thousands of tenants who reside in rental houses that contain lead paint and are at-risk of exposure to lead paint if this lead paint is disturbed by repairs or directly mitigated by persons not qualified to do so in the future. Defendants are the landlord and any party acting on the landlord’s behalf that will conduct repairs on its rental properties or abate lead paint in the future.

As stated above, the purpose of a temporary injunction is to maintain the status quo of individuals who rent single-family homes owned or serviced by Defendants and the Defendants acting in their capacity of a landlord. The underlying injunction sought by the AGO maintains the legal relationship between these two parties. Nothing in the injunction alters that contractual relationship between landlord and tenant. The injunction sought by the AGO is also consistent with and does not alter the existing relationship between a landlord and the entities that are responsible to regulate landlords, which includes the Minnesota Office of the Attorney General. Therefore, this factor favors the issuance of the temporary injunction.

B. The Public Interest and Consideration of Public Policy.

The second factor requires the consideration of any public interest or public policy when considering the issuance of a temporary injunction. *Dahlberg Bros.*, 137 N.W.2d at 321-22. In this matter, the AGO seeks an injunction to prevent or mitigate lead paint exposure for the tenants who reside in single-family homes owned or serviced by Defendants. As discussed above, the health consequences of being exposed to lead paint are life-altering. The State of Minnesota and the AGO, therefore, have a significant interest in ensuring that landlords abide by their obligations to conduct repairs as well as lead paint mitigation in accordance with best practices as well as state and federal law. Therefore, this factor weighs heavily in favor of granting the request for a temporary injunction.

C. Administrative Burden of Supervising and Enforcing the Injunction.

The administrative burden of supervising and enforcing the injunction largely depends on the terms of the injunction ultimately issued by the Court. Minnesota courts have shown significant hesitation to take over the management of a business under an injunction. *See Metropolitan Sports Facilities Com'n*, 638 N.W.2d at 229. Here, the injunctive relief can be tailored to ensure that it

does pose a significant burden on the Defendants or require this Court to “take over” management of the Defendants. The injunction simply requires compliance with legal obligations that already exist, and then establishes several mechanisms to ensure that those legal obligations are followed. Specifically, requiring written policies and protocols as well as sharing certain information when lead paint is abated or mitigated. Therefore, this factor weighs slightly in favor of the issuance of an injunction.

D. The Likelihood of Success on the Merits.

The AGO has met its burden of showing a reasonable likelihood of success on the merits. If a plaintiff can show no likelihood of prevailing on the merits, a District Court is in error as a matter of law if it were to grant a temporary injunction. *Sanborn Mfg. Co. v. Currie*, 500 N.W.2d 161, 165 (Minn. Ct. App. 1993). But if a plaintiff makes even a doubtful showing as to the likelihood of prevailing on the merits, a district court may consider issuing a temporary injunction to preserve the status quo until trial on the merits. *Dahlberg*, 272 Minn. at 275 n. 13, 137 N.W.2d at 321 n. 13 (upholding temporary injunction despite finding that plaintiff may have serious obstacles to overcome), *See also Queen City Const., Inc. v. City of Rochester*, 604 N.W.2d 368 (Minn. Ct. App. 1999).

Here, the Court finds that the AGO has met its burden of demonstrating a reasonable likelihood of success at trial on the merits even though the underlying litigation is complex and there are serious obstacles for the AGO to overcome. The AGO, however, presented specific examples of conduct that Defendants engaged in practices that either exposed or risked exposure of lead to its tenants in violation of Minnesota law. The AGO also sets forth a credible argument that Defendants have engaged in “willful blindness,” which is a deliberate avoidance of knowledge related to the conduct of servicers and third-parties maintaining and repairing its rental properties.

See e.g. Ariola v. City of Stillwater, 889 N.W.2d 340, 359 (Minn. Ct. App. 2017). Even after being notified of concerns related to its management of homes that contain lead paint and specific federal laws related to who and how to limit exposure to lead paint, Defendants do not appear to have changed their conduct, instituted new safeguards, issued written policies, or engaged in formal training of employees. Therefore, this factor weighs in favor of issuing an injunction as to Defendant Progress.

E. The Comparative Harm to the Parties.

The final step of the *Dahlberg* analysis is a weighing of the relative hardship to the parties if injunctive relief is or is not granted. *Cramond v. AFL-CIO*, 267 Minn. 229, 234, 126 N.W.2d 252, 256 (Minn. 1964). The court balances plaintiff's irreparable harm against any harm to defendant. Plaintiff must demonstrate irreparable harm to secure its requested relief and defendants need only show substantial harm to prevent an injunction. *See Yager v. Thompson*, 352 N.W.2d 71, 75 (Minn. Ct. App. 1984). As stated above, the Court finds that the AGO established irreparable harm to tenants if the requested injunctive relief is not granted. The risk to the health and safety of these tenants, particularly children, is significant and could impact their life.

The Court also finds that Defendants have failed to establish substantial harm that would be caused to them by the issuance of an injunction. Defendants are not a small rental company that own two or three apartment buildings. Defendants own approximately 600 single-family homes in Minnesota, where hundreds, if not, thousands of people reside. They are sophisticated company and have the means and resources to comply with the injunction.

CONCLUSION

For the reasons stated above, this Court issues a temporary injunction against Defendant Progress Residential Management Services, LLC and any successor entities that manage Defendants' single-family rental properties in Minnesota. The injunction shall remain in effect until further order or until completion of a trial on the merits.

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