

**IN THE CIRCUIT COURT
FOR THE TWELFTH JUDICIAL CIRCUIT
WILL COUNTY, ILLINOIS
CHANCERY DIVISION**

JL Properties Group B LLC *et al.*,

Plaintiffs,

v.

Governor JB Pritzker,

Defendant.

No. 20 CH 601

GOVERNOR’S MOTION TO DISMISS COMPLAINT PURSUANT TO 735 ILCS 5/2-615

Defendant JB Pritzker, the Governor of Illinois, in his official capacity, and through his attorney, Illinois Attorney General Kwame Raoul, respectfully moves the Court pursuant to 735 ILCS 5/2-615 to dismiss Plaintiffs’ complaint with prejudice. A motion to dismiss pursuant to Section 2-615 “attacks the legal sufficiency of a complaint,” *Torres v. Peoria Park Dist.*, 2020 IL App (3d) 190248 ¶ 16, and “is proper where it is apparent the plaintiff cannot prove any set of facts entitling him to relief,” *Dixon, Laukitis, & Downing, P.C. v. Busey Bank*, 2013 IL App (3d) 120832 ¶ 9. Plaintiffs fail to state a cause of action for the following reasons, more fully explained in the *Governor’s Memorandum in Opposition to Plaintiffs’ Motion for Temporary Restraining Order and Preliminary Injunction* (“Memorandum”), filed on July 5, 2020, and incorporated herein.

1. Suspending residential evictions has played a crucial role in the Governor’s successful strategy to combat and contain the COVID-19 pandemic. Because the disease is highly contagious and can be spread by asymptomatic people who do not know they are infected, the key preventive measure is to minimize physical interactions between people who do not

reside in the same household.* The Governor’s COVID-19 measures have implemented this public health guidance—for example, by requiring residents to remain in their homes except to engage in essential activities and limiting nonessential business operations. In recent months, the Governor has relaxed some of his prior orders as the State’s cases declined from their peak in mid-May. The current restrictions reflect the Governor’s determination—based on science and public health guidance—that residents and businesses must resume activities safely and cautiously to ensure there is no backslide on the progress the State has made. Other states that have resisted taking public health precautions or that lifted those precautions earlier are now experiencing exponential growth and record high numbers of cases.

2. The Governor’s continued suspension of residential evictions furthers the public health goal of limiting unnecessary physical interactions, which continues to animate the State’s response to the COVID-19 pandemic. In addition, the suspension furthers the public health goal of reducing the particular risks associated with homelessness. And finally, it furthers the public health goal of ensuring a smooth transition to “normalcy” for vulnerable tenants whose health or finances have been particularly affected by the pandemic. Starting in August, approximately 30,000 Illinois renters “who are disproportionately impacted by the pandemic” will be able to access a State program offering “\$5,000 grants to provide emergency rental assistance.”

Complaint Exhibit H. To ensure these tenants—and their landlords—have an opportunity to

* The Memorandum contains information of which the Court can take judicial notice because it “can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.” Ill. R. Evid. 201(b)(2). The Court may consider “matters of which [it] can take judicial notice” in ruling on the Governor’s Section 2-615 motion. *K. Miller Constr. Co. v. McGinnis*, 238 Ill. 2d 284, 291 (2010). The Memorandum also references facts and other information contained in the Governor’s proclamations and executive orders that are exhibits to Plaintiffs’ complaint. “Any exhibits attached to the complaint are to be considered as part of the pleadings for purposes of considering a section 2–615 motion to dismiss.” *Falls v. Silver Cross Hosp. & Med. Ctrs.*, 2016 IL App (3d) 150319 ¶ 26.

benefit from the program, the Governor has announced residential evictions will remain suspended through July 31. *Id.*

3. Plaintiffs are landlords who raise a number of different claims challenging the Governor's legal authority to issue his executive orders affecting renters. Each count of the complaint should be dismissed for failure to state a viable cause of action.

4. Count I (which challenges the Governor's authority to issue the relevant executive orders) should be dismissed because the Governor was authorized to exercise powers pursuant to the Illinois Emergency Management Agency Act, 20 ILCS 3305 *et seq.* ("Emergency Management Act") when he issued Executive Order 2020-44 ("EO44") on June 26. The Emergency Management Act authorizes the Governor to exercise such powers for a period of 30 days after declaring that a disaster exists by proclamation, which the Governor also issued on June 26. Plaintiffs do not dispute that the COVID-19 pandemic constitutes an "epidemic" or "public health emergency" within the meaning of the Emergency Management Act. *See* Memorandum § I.A.1, at 11–14.

5. Count II (which claims EO44 exceeds the Governor's authority) should be dismissed because the emergency powers defined in Section 7 of the Emergency Management Act authorize the Governor to suspend residential evictions. *See* 20 ILCS 3305/7(1)–(14). The General Assembly used broad language that specifically authorizes the Governor to control "the occupancy of premises" within a disaster area, *id.* § 7(8), and "make provision for the availability and use of temporary emergency housing," *id.* § 7(10). In addition, the General Assembly generally authorized the Governor during disasters to employ "all available resources of the State government," *id.* § 7(2), and take all steps "necessary to promote and secure the safety and protection of the civilian population," *id.* § 7(12). These powers are sufficiently broad to allow

the Governor to suspend residential evictions while a disaster exists in the State. *See* Memorandum § I.A.2, at 14–15.

6. Count III (which alleges constructive possession of property without just compensation) should be dismissed because the Governor has not possessed or occupied Plaintiffs’ properties within the meaning of Section 7(4) of the Emergency Management Act. Possession and occupation of land require physical control of, and acts of dominion to be performed on, the subject property, which Plaintiffs do not allege the Governor or anyone acting on behalf of the State has done. Further, the Governor was not acting pursuant to Section 7(4) when he suspended residential evictions. *See* Memorandum § I.A.2, at 15–17.

7. Count IV (separation of powers) should be dismissed because the Governor was acting pursuant to the authority the General Assembly granted him in the Emergency Management Act when he suspended residential evictions and therefore did not violate the “separation of powers” doctrine. *See* Memorandum § I.A.3, at 18–19.

8. Counts V through X (alleging violations of various rights under the Illinois Constitution) should be dismissed because the Governor was acting to promote the public health and halt the spread of a deadly disease during a global pandemic of unprecedented magnitude when he temporarily suspended residential evictions. Any infringement of Plaintiffs’ rights protected under the Illinois Constitution was reasonable and therefore is not actionable. *See* Memorandum § I.B.1, at 19–21.

9. In the alternative, Counts V through X should be dismissed because they do not state claims for violations of Plaintiffs’ constitutional rights.

10. Count V (Jury Trial Clause) should be dismissed because Plaintiffs' rights to a civil jury trial were not diminished or abolished but rather merely temporarily suspended. *See* Memorandum § I.B.2, at 22–23.

11. Count VI (Certain Remedy Clause) should be dismissed because Plaintiffs have a statutory remedy against their tenants. In addition, the Certain Remedy Clause of the Illinois Constitution is merely an expression of a philosophy that is not intended to have any substantive effect on Illinois law. *See* Memorandum § I.B.2, at 21–22.

12. Count VII (Equal Protection Clause) should be dismissed because:

a. Plaintiffs' claims under the Equal Protection Clause merely repackage their arguments the Governor violated the more specific provisions of the Jury Trial and Certain Remedy clauses. *See* Memorandum § I.B.3, at 23–24.

b. Plaintiffs as landlords are not similarly situated in all relevant respects to mortgagors in foreclosure actions and plaintiffs in ejectment actions, each of which the General Assembly already determined should be treated differently in the procedures available to regain possession of land, a preexisting classification to which Plaintiffs do not object. *See* Memorandum § I.B.3, at 24–26.

c. The Governor's decision to temporarily suspend the ability to commence residential eviction proceedings is necessary to advance a compelling State interest and narrowly tailored to its attainment. Plaintiffs acknowledge the State has a compelling interest in stopping the spread of COVID-19 and addressing the economic harm it has caused. The precarious position of evicted residential tenants makes them uniquely vulnerable to the disease, and subjecting those tenants to the eviction process exposes numerous others. The Governor's actions are merely temporary, designed to smooth the

transition to an emergency assistance program that will benefit tenants and landlords alike. *See* Memorandum § I.B.3, at 26–29.

d. The Governor’s decision to temporarily suspend the ability to enforce residential eviction orders does not violate the Equal Protection Clause because it has not created any classifications. *See* Memorandum § I.B.3, at 29.

13. Count VIII (Due Process Clause) should be dismissed because the standard for reviewing a substantive due process claim is the same as the standard for reviewing an equal protection claim. *See* Memorandum § I.B.3, at 29–30.

14. Count IX (Takings Clause) should be dismissed because Plaintiffs cannot establish they have been completely deprived of all economically beneficial use of their properties. In addition, the Governor’s actions are not subject to the Takings Clause because any interference with Plaintiffs’ property rights arises from a public program adjusting the benefits and burdens of economic life to promote the common good. Suspending residential evictions protects vulnerable individuals whose access to housing and other critical resources have been threatened by the widespread economic losses resulting from the pandemic. *See* Memorandum § I.B.4, at 30–34.

15. Count X (Contracts Clause) should be dismissed because Plaintiffs fail to allege the suspension of residential evictions constitutes a substantial impairment of their contractual rights. The harm they allege relates to a contractual remedy rather than an essential term. In addition, the suspension of residential evictions was both reasonable and necessary to serve an important public purpose. There is abundant precedent on the importance of protecting renters and mortgagees from forced evictions during times of economic, social, and public health crises. *See* Memorandum § I.B.5, at 34–37.

For these reasons, and as more fully explained in the Memorandum incorporated into this motion, the Governor respectfully moves the Court pursuant to 735 ILCS 5/2-615 to dismiss Plaintiffs' complaint with prejudice.

Dated: July 7, 2020

Respectfully submitted,

KWAME RAOUL
Attorney General of Illinois

/s/ Darren Kinkad
R. Douglas Rees #6201825
Thomas J. Verticchio #6190501
Tanya Bouley #6307049
Samantha Grund-Wickramasekera
#6326985
Darren Kinkad #6304847
Office of the Illinois Attorney General
100 West Randolph Street
Chicago, Illinois 60601

Counsel for the Governor

CERTIFICATE OF SERVICE

Under penalties as provided by law pursuant to 735 ILCS 5/1-109, the undersigned hereby certifies the statements set forth in this certificate of service are true and correct and that he has caused an electronic copy of the foregoing to be served upon the following:

James V. Noonan #6200366
Solomon Maman #6299407
Noonan & Lieberman, Ltd.
105 W. Adams, Suite 1800
Chicago, IL 60603
(312) 431-1455
intake@noonanandlieberman.com
jnoonan@noonanandlieberman.com
smaman@noonanandlieberman.com

Jeffrey Grant Brown #6194262
Jeffrey Grant Brown, P.C.
65 W. Jackson Blvd., Suite 107
Chicago, IL 60604
(312) 789-9700
jeff@jgbrownlaw.com

Sarah Megan
Prairie State Legal Services, Inc.
31W001 E. North Ave., Suite 200
West Chicago, IL 60185
(630) 797-3517
smegan@pslegal.org

Matthew Hulstein
Chicago Volunteer Legal Services
33 N Dearborn St., Suite 400
Chicago, IL 60602
(312) 332-8217
mhulstein@cvls.org

via email at the addresses noted above on July 7, 2020.

By: s/ Darren Kinhead