

CAUSE NO. 2017-63022

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CONNIE CASTILLO, ET AL.,

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IN THE CIVIL DISTRICT COURT

Plaintiffs,

v.

OF HARRIS COUNTY, TEXAS

MEMORIAL DRIVE ELDERLY L.P.,  
HOUSTON HOUSING AUTHORITY,  
and TORY GUNSOLLEY,

Defendants.

FINJX  
STBMY  
TRILX  
CPLHX

333rd JUDICIAL DISTRICT

TEMPORARY INJUNCTION

On October 23, 2017, the Court conducted a hearing on Plaintiffs' request for injunctive relief. The Court first heard then denied Defendants' plea to the jurisdiction. The Court, having read the parties' briefing in support of and in opposition to the request for injunctive relief, then heard the parties' opening arguments, live testimony, considered documentary evidence, and arguments of counsel. At the conclusion of the hearing, the Court orally granted Plaintiffs' request for injunctive relief, but solicited proposed orders from both parties, which the parties' lawyers provided. The Court now issues this temporary injunction.

**A. Findings of Fact/Conclusions of Law**

1. The Court has jurisdiction over the parties and the subject matter.
2. Plaintiffs are tenants and residents of 2100 Memorial Drive, Houston, Texas (2100 Senior Living), a multi-unit, high-rise residential facility that serves low-income senior citizens.

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**FILED**

Chris Daniel  
District Clerk

OCT 27 2017

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Time: \_\_\_\_\_  
Harris County, Texas  
By: \_\_\_\_\_  
Deputy

RECORDER'S MEMORANDUM  
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3. On August 25, 2017, 2100 Memorial suffered flood damage from Hurricane Harvey, including flooding of the basement and first floor.

4. Some of the common areas suffered water damage. The fire-protection-and-sprinkler system also suffered damaged. But, the residents of 2100 Senior Living never lost power and only lost water service temporarily.

5. On September 8, 2017, Jessie Wilhite authored an inspection report for the City of Houston Fire Department, a "Fire Marshal, Life Safety Bureau Inspection Report" ("the Report," which is attached and incorporated by reference into this Temporary Injunction). The Report concluded – among other things -- that the "fire pump, sprinkler system and alarm system is out of service and need[s] restored ASAP," and that the "fire command room" needs to be "clean[ed] and restor[ed]." The Report also stated that, "where required by the fire code official, the building shall either be evacuated or an approved fire watch or standby inspector . . . shall be provided for all occupants left unprotected by the shut down until the life safety or fire protection system has been returned to service."

6. Since the Report, an approved fire watch or standby inspector has been provided around the clock for all occupants who remained at 2100 Senior Living.

7. The Report set a compliance date of October 13, 2017, for 2100 Senior Living to cure the deficiencies noted in the Report.

8. After receiving the Report, Defendants made no attempts to cure the deficiencies in the Report even though – according the credible testimony of Inspector

Wilhite – the deficiencies could have been cured on or before the October 13, 2017, deadline.

9. Instead, on September 18, 2017, Tory Gunsolley, the President/CEO of Houston Housing Authority (HHA), which owns and effectively controls the land and the buildings that constitute 2100 Senior Living, sent a letter attempting to terminate Plaintiffs' lease agreements and directing them to evacuate the building within 5 days and to remove all of their personal possessions (or be charged for the storage of their possessions).

10. In his letter, Mr. Gunsolley stated that, "as a practical matter," 2100 Senior Living "has become . . . totally unusable for residential purposes due to health and safety reasons."

11. At the hearing, Mr. Gunsolley testified he believed two transformers at 2100 Senior Living are unsafe, could fail, explode, and cause fire and therefore need replacing. The Court finds this testimony incredible as Mr. Gunsolley lacks the qualifications or experience to make that determination. The Court further finds that the controverting testimony offered by Plaintiffs' witness, Mr. Vossler, a journeyman electrician, is credible. And, Mr. Vossler testified that, by observing and listening to the transformers, he could determine they are "dry transformers" and that, if they fail, that would not result in an explosion. Mr. Vossler also testified that he is not convinced the transformers need replacing. Thus, the Court finds that whether the transformers need replacing is unknown and that an inspection is necessary to make that determination.

12. Mr. Gunsolley further testified that his "state of mind" at the time he decided to issue the September 18<sup>th</sup> notice to vacate was that there "could be a fire at any point in

time.” At the time he made this decision, Mr. Gunsolley had not received any reports or objective information to support his subjective determination or his assertion that, as a practical matter, 2100 Senior Living had become totally unusable for residential purposes due to health and safety reasons.

13. Mr. Gunsolley also testified that his concern about imminent safety issues was a reason for his decision to terminate the lease and to evacuate 2100 Senior Living. But, the Court finds that testimony incredible in light of Mr. Gunsolley’s testimony that, rather than attempt to repair the damage to the fire-protection and-sprinkler systems, HHA instead made a \$250,000 interest-free loan to cover any expenses that would result from moving the residents out of their leased premises.

14. Neither at the time of his eviction letter, nor since, has 2100 Senior Living, as a practical matter, become totally unusable for residential purposes due to health-and-safety reasons. Thus, Defendants failed to establish the grounds for terminating the Plaintiffs’ leases under section 92.054(b) of the Texas Property Code.

15. Plaintiffs adduced credible evidence – which Defendants did not controvert – that the deficiencies in the Report could be cured for an amount as low as \$30,000. Plaintiffs also adduced credible evidence – which Defendants did not controvert – that the electrical transformers, if damaged and needed replacing, could be removed and replaced (and elevated if necessary) in a matter of days, without interrupting the electrical service to the tenants of 2100 Senior Living, for approximately \$30,000 to \$40,000.

16. Defendants, by refusing even to attempt to cure the deficiencies in the Report, have not made their “best efforts” to maintain 2100 Senior Living.

17. Plaintiffs adduced credible evidence that, if forced to evacuate, they would not be able to move into comparable properties for the same or even similar rental rates. Rather, Plaintiffs would be forced to spend substantially more for comparable properties, which Plaintiff cannot afford, or, be forced to move to substantially less desirable properties than their current residences.

18. The Plaintiffs who testified, one of whom is undergoing treatment for large B-cell lymphoma, offered uncontroverted testimony about the unnecessary “hardship trauma” or “transfer trauma” they would endure if forced to relocate. Mr. Gunsolley acknowledged the existence such “transfer trauma” in his testimony, and also testified that he considered it. The Court finds Mr. Gunsolley’s testimony the he considered such “transfer trauma” in his decision to terminate incredible.

### **B. Injunctive Relief**

It is therefore ORDERED that Defendants, Memorial Drive Elderly, L.P., Houston Housing Authority, and their successors, assigns, officers, agents, servants, employees, attorneys, and any other person in active concert or participation with them who receive actual notice of this order by personal service or otherwise, shall be restrained from:

1. Terminating Plaintiffs’ leases or treating their leases as terminated under section 92.054(b) of the Texas Property Code unless and until Defendants can demonstrate to the Court that 2100 Senior Living has “as a practical matter become totally unusable for residential purposes.”

2. Terminating Plaintiffs' leases or treating their leases as terminated unless and until Defendants can demonstrate to the Court that "good cause" exists to terminate the leases.

It is further ORDERED that Defendants, within 45 days of this Temporary Injunction:

1. Cure the deficiencies in the Report.
2. Secure the removal of the Red Tag currently affixed to the building at 2100 Senior Living.
3. Request a re-inspection and pay any re-inspection fee necessary for that re-inspection to the Houston Fire Department, per HFC 105.8.2.
4. Test the transformers at 2100 Senior Living within 10 days of this Temporary Injunction to determine whether they pose an actual or potential safety threat to warrant repair or replacement and, if so, to repair or replace the transformers within 45 days of this Temporary Injunction to remove any actual or potential safety threat that the transformers pose.

This Temporary Injunction shall not be effective unless and until Plaintiffs execute and file with the clerk a bond, in conformity with the law, in the amount of \$1,000.00

The clerk, on the filing by Plaintiffs of the bond, shall issue a temporary injunction in conformity with the law and the terms of this order. This temporary injunction will remain in full force pending a final trial or until further order of the Court.

This case is set for a trial on the merits on March 26, 2018, at 9:00 a.m.

SIGNED this 27<sup>th</sup> day of October, 2017.

  
HON. DARYL L. MOORE

Unofficial Copy Office of Chris Daniel District Clerk