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and all others similarly situated,
246 W. Upsal St., #B302,
Philadelphia, PA 19119,

CARL WILLIAMS,
and all others similarly situated,
246 W. Upsal St., # E401,
Philadelphia, PA 19119,

and

WILLIAM DENNIS SCOTT,
and all others similarly situated,
246 W. Upsal St., # G204,
Philadelphia, PA 19119,

Plaintiffs,

This is not an arbitration case

Class action complaint

Jury Trial Demanded

COURT OF COMMON PLEAS

PHILADELPHIA COUNTY

CIVIL DIVISION

NOVEMBER TERM, 2025

NO. 203

CLASS ACTION

v.

246 ASSOCIATES LLC,
246 W. Upsal St.,
Philadelphia, PA 19119,

ALAN LIEBERMAN,
246 W. Upsal St.,
Philadelphia, PA 19119,

and

REAL PROPERTIES
MANAGEMENT,
246 W. Upsal St.,
Philadelphia, PA 19119,

Defendants.

**BRIEF IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION
REQUIRING DEFENDANTS TO REPAIR UNSAFE AND IMMEDIATELY
DANGEROUS PROPERTY CONDITIONS**

I. MATTER BEFORE THE COURT

This case involves an unsafe building complex with 144 residential rental units located at 246 W. Upsal Street, Philadelphia, PA 19119 (hereinafter “Upsal Garden” or the “Property”). On August 20, 2025, the City of Philadelphia issued a Philadelphia Property Maintenance Code Violation finding that the Property was an “unsafe structure” due to dangerous conditions, including a deteriorated stone foundation, fractured exterior masonry walls, and deteriorated interior floor joists. *See* Ex. A, Violation CF-2025-089276 at 0002 [hereinafter the “Unsafe Violation”]. The City further certified that the conditions noted in the Unsafe Violation presented an “immediate danger or hazard to the health safety and welfare which requires immediate compliance and/or are intentional.” *Id.* The City ordered the Defendants to obtain a make-safe permit, hire an engineer to make the structure safe, and to correct the Unsafe Violation by September 26, 2025. *See id.* at 0002, 0005.

More than two months have passed since the City found that the Property was unsafe and immediately dangerous, and more than one month has passed since Defendants’ deadline to remedy those dangerous conditions. Defendants, who own and manage Upsal Garden, never appealed the City’s Unsafe Violation. More urgently, however, Defendants have not corrected the dangerous conditions or even obtained a permit to begin doing so. Just as the courts did in *The Woods at Wayne Homeowners Assoc. v. Gambone Bros. Construction Co.*, 893 A.2d 196 (Pa. Commw. Ct. 2006), a similar case involving dangerous real property conditions and related code violations, this Court should issue a mandatory preliminary injunction requiring Defendants to fix the dangerous conditions identified in the Unsafe Violation, render the Property safe, and thus to

restore the status quo that existed before Defendants permitted those dangerous conditions to arise.

Plaintiffs filed their Complaint on November 3, 2025, seeking injunctive relief such as this, and now respectfully request that the Court grant their Verified Motion for Preliminary Injunction.

II. QUESTION PRESENTED

Should the Court issue a mandatory preliminary injunction pursuant to Pa. R.C.P. 1531 requiring Defendants, without further delay, to fix conditions that the City has determined are unsafe and immediately dangerous, where more than two months have passed without Defendants having repaired those conditions or even obtained the permits to begin doing so, and where Plaintiffs have satisfied all of the elements necessary to obtain a Preliminary Injunction?

Suggested Answer: Yes.

III. STATEMENT OF FACTS

Plaintiffs incorporate by reference the facts set forth in their Verified Motion for Preliminary Injunction.

IV. ARGUMENT

A. Application to This Court For A Mandatory Preliminary Injunction Is Authorized By Pa. R.C.P. No. 1531 Because Plaintiffs Will Suffer Immediate and Irreparable Injury If An Injunction Is Not Issued.

Pa. R.C.P. 1531 governs issuance of preliminary and special injunctions. Under Rule 1531, a court may issue an injunction without a hearing or notice if “immediate and irreparable injury will be sustained before notice can be given or a hearing held.” Pa. R.C.P. No. 1531(a). In determining whether a preliminary or special injunction should be granted, “the court may act on

the basis of the averments of the pleadings or petition and may consider affidavits of parties or third persons or any other proof which the court may require.” *Id.* Here, the Court should issue a Preliminary Injunction on the basis of the averments in these pleadings.

B. Plaintiff Meets The Requirements For A Preliminary Injunction

Plaintiffs here seek a mandatory injunction, which “commands performance of some positive act to preserve the status quo.” *Gambone Bros.*, 893 A.2d at 204. Such injunctions receive “closer scrutiny” than injunctions that are “merely prohibitory.” *Id.* (cit. omitted). To obtain a preliminary injunction, a plaintiff must demonstrate: (1) the injunction is necessary to prevent immediate and irreparable harm not compensable in money damages; (2) greater injury will result from refusal of the injunction than from granting it; (3) the injunction will restore the status quo between the parties; and (4) the party seeking the injunction has a clear right to relief—in other words, that party is likely to prevail on the merits. *Gambone Bros.*, 893 A.2d at 204 (citing, *inter alia*, *Mazze v. Commonwealth*, 495 Pa. 128, 134, 432 A.2d 985 (1981)). Because of the danger to the health and safety of the residents of Upsal Garden, this case satisfies these elements, and the Court should order Defendants immediately to remedy the hazardous conditions giving rise to the Unsafe Violation.

i. Plaintiffs Will Suffer Immediate And Irreparable Harm If Their Request For An Injunction Is Denied.

Where conditions existing on real property create a “real and present danger,” neither monetary damages nor penalties for ongoing code violations constitute an adequate remedy for the risk presented by such danger. *Gambone Bros.*, 893 A.2d at 206. Rather, “[w]here irreparable harm might result before the legal remedy can be obtained, equity will provide the remedy.” *Id.* (cit.

omitted). In this case, it has been more than two months since the City issued the Unsafe Violation, finding that the structural deficiencies at the Property have created a “condition of immediate danger or hazard” to the “health safety and welfare” of the Property residents, and threatening that “[i]f these violations are not corrected before 09/26/25, the Department will act as soon as reasonable possible to vacate and/or demolish the unsafe structure.” *See* Ex. A, Violation No. CF-2025- 089276 at 0002. That danger arises directly from the deteriorated foundation, fractured exterior walls, and deteriorated floor joists, which affect “all buildings.” *Id.* at 0003. In declaring the Property unsafe, the City recognized the real and present danger and cited section 108.1 of the Philadelphia Property Maintenance Code, which provides in relevant part that:

An unsafe structure is a structure...that is found to be ***dangerous to the life, health, property or safety of the public or the occupants of the structure***because such structure contains unsafe equipment or is so damaged, decayed, dilapidated, structurally unsafe or of such faulty construction or unstable foundation, that partial or complete collapse is possible.

PM Code §108.1.1 (emphasis added).

Plaintiffs need not wait for a catastrophe to cause them harm, and then to seek some legal remedy after the fact. Because such injury would be immediate, irreparable and cannot be compensated for in damages, this Court should issue the Preliminary Injunction compelling Defendants immediately to make the Property safe. *See Gambone Bros.*, 893 A.2d at 206-208. *See also Cosner v. United Bank*, 358 Pa. Super. 484, 492 (Pa. Super. 1986) (holding that irreparable harm would result if the appellant did not maintain a water and septic system because the appellees’ homes would become uninhabitable without the use of the system).

ii. Any Potential Harm To Defendants Does Not Outweigh The Harm To Plaintiffs If The Injunction Is Denied.

Denying the injunction would cause greater injury to Plaintiffs than any potential harm to Defendants if the Court grants the injunction. In fact, Defendants will suffer no harm at all if the Court grants the Preliminary Injunction. Under Philadelphia black-letter law, Defendants are already required to remedy the unappealed Unsafe Violation that has caused the Property to become unsafe and immediately dangerous. All that Plaintiffs seek with this injunction request is for Defendants to repair the dangerous conditions and to make the Property safe without further delay – and thus to eliminate the risk of those unremedied conditions causing irreparable harm.

Even if this Court were to find that granting an injunction presents some theoretical risk to Defendants, it is indisputable that Defendants' interest in the Property is only pecuniary. By contrast, Plaintiffs' interest relates directly to their health and well-being. Absent preliminary injunctive relief requiring Defendants immediately to fix the dangerous conditions, that safety and well-being of Plaintiffs will remain at risk.

iii. Here, An Injunction Will Maintain The Status Quo By Placing The Parties In The Position They Would Be In Prior To The Defendants' Wrongful Conduct.

The status quo to be preserved by an injunction is the last actual, peaceable and lawful non-contested status which preceded the pending controversy. *Commonwealth v. Cohen*, 150 Pa. Super. 487, 489, 28 A.2d 723, 724 (1942). In our case, that is the status of the parties prior to the building foundation, exterior masonry walls, and floor joists becoming unsafe and immediately dangerous. The requested injunction will require Defendants to restore that status quo by promptly repairing those dangerous conditions identified in the Unsafe Notice – an obligation Defendants already have but have flouted. Such repairs will put the parties back in the same position that existed prior

to Defendants allowing these dangerous conditions to arise. *See Gambone Bros.*, 893 A.2d at 207 (affirming that a mandatory special injunction requiring developer to fix unsafe retaining walls would return the parties to the “status quo ante, which is that state existing when the retaining walls were secure.”).

iv. Plaintiff Has A Clear Right To The Relief Requested.

Plaintiffs have a clear right to relief for numerous independent reasons. **First**, the Unsafe Violation alone demonstrates that Plaintiffs have a clear right to relief. The Philadelphia Property Maintenance Code expressly sets forth the “responsibility of owners, operators and occupants,” including the “minimum requirements and standards...for...life safety, safety from fire and other hazards, and for safe and sanitary maintenance.” PM Code § 101.2. The purpose of the Philadelphia Property Maintenance Code (“PM Code”) is “to ensure public health, safety and welfare insofar as they are affected by the continued occupancy and maintenance of structures and premises. Existing structures and premises that do not comply with these provisions shall be altered or repaired to provide a minimum level of health and safety as required herein.” PM Code § 101.3.

In declaring Upsal Garden unsafe and immediately dangerous, the City has relied on PM Code §108.1. That section defines an “unsafe structure” as (among other things) a structure that is “found to be *dangerous to the life, health, property or safety of the public or the occupants of the structure*” because it is “*so damaged, decayed, dilapidated, structurally unsafe, or of such faulty construction or unstable foundation, that partial or complete collapse is possible.*” PM Code §108.1.1. The City also relied on PM Code §304.1 (regarding structural elements of a property not being properly anchored, free of cracks, or not being capable of supporting proper loads), in

determining that the stone foundations are deteriorated, the masonry walls are fractured, and the floor joists are also deteriorated.

The Unsafe Violation at issue here mandated that the Defendants “MAKE THE NECESSARY REPAIRS AND/OR TAKE THE NECESSARY ACTION(S) TO CORRECT THE CITED CONDITIONS PRIOR TO 09/26/2025.” *See* Ex. A, Violation No. CF-2025- 089276 at 0002 (original emphasis). Again, citing the PM Code, the City expressly identified the specific corrective actions that Defendants were required to take by September 26, 2025, including retaining a licensed engineer to identify the structural defects, submit a make safe plan, and to oversee the repairs.

Defendants had the right to appeal the Unsafe Violation within thirty (30) days. Defendants did not do so. Nor did Defendants take the required corrective actions by the September 26 deadline. To date, Defendants still have not undertaken those corrective actions—or even taken out the necessary permits so that they can begin doing so. Thus, Defendants not only have violated the PM Code by enabling these dangerous conditions to exist, but also have compounded their wrongdoing by simply ignoring the Unsafe Violation and their own legal duty to correct them. The Defendants’ refusal to fix these hazards has, in the language of the Code itself, created a risk of “partial or complete collapse” and put the life, health, and safety of the Plaintiffs at risk.¹ This abdication of Defendants’ responsibility as residential rental landlords cries out for preliminary injunctive relief.

Second, as noted in Plaintiffs’ Complaint, the Certificate of Rental Suitability that a landlord must provide to a tenant imposes on landlords a “continu[ing]” obligation to (among other things) “maintain the property in a fit and habitable condition.” Phila. Code §9-3903, *et*

¹ Given that Defendants have had 79 PM Code Violations in the last 5 years, this refusal to act is not surprising.

seq. A property owner who fails to correct a code violation related to the fitness and habitability of the property within 30 days of the notice of the violation (absent appealing the violation) is in non-compliance with the law. Phila. Code §9-3903(d). That is precisely what has occurred here: not only are Defendants in violation of the Philadelphia Property Maintenance Code, as noted above, but also Defendants are in violation of sections 9-3901 *et seq.*, which govern Defendants' ongoing maintenance responsibilities as residential rental landlords. Philadelphia law provides a private right of action to tenants to enforce the Certificate of Rental Suitability provisions of the Philadelphia Code. Phila. Code § 9-3901(4)(f).

Third, the leases between Defendants and Plaintiffs require Defendants to “[k]eep up the property in good repair and working order,” which “includes the roof, windows, doors, locks, floors, steps, porches, exterior and interior walls, ceilings, *foundations, and all other structural parts of the property.*” *See, e.g.,* Ex. C, Brown 2023 Lease at 0014 (emphasis added). As the Unsafe Violation demonstrates, Defendants have breached this express provision in their contracts with the Plaintiffs.

Fourth, there is an implied warranty of habitability that runs with every residential rental lease. *Pugh v. Holmes*, 486 Pa. 272, 289-291, 405 A.2d 897 (1979). “At a minimum, this means the premises must be safe and sanitary.” *Id.* The Unsafe Violation proves that Defendants have failed to keep the Property safe.

In short: Plaintiffs have established a clear right to relief resulting from Defendants' violations of multiple provisions of the Philadelphia Code, as well as on Plaintiffs' claims for breach of lease. Here, the injunction only asks that Defendants do what the Philadelphia Code, their Certificates of Rental Suitability, and their leases already require: to remedy the Unsafe Violation without delay and thus to make the Property safe.

C. The Injunction Bond Should Be Nominal.

Pa. R. C. P. 1531(b), requires a bond when an injunction is issued. This Court has discretion to determine the amount of the bond. *See Broad and Locust Assocs. v. Locust-Broad Realty Co.*, 464 A.2d 506, 509 (Pa. Super. 1983). The purpose of the bond is to provide a source of funds if a party is wrongly enjoined; however, the bond amount “is not set to cover all damages, but only those [damages] that are reasonably foreseeable.” *Christo v. Tuscany, Inc.*, 533 A.2d 461, 467 (Pa. Super. 1987). In deciding the bond amount, the Court is to engage in a balancing of equities on a case by case basis:

“[P]laintiffs may be unable to provide sufficient security where damages could be great, or where plaintiff is impecunious, yet the court may determine, based upon the balance of the equities, that the injunction should nevertheless issue. Consequently, a relatively low bond in light of possible damages may be set.”

Christo, 533 A.2d at 467 (emphasis added); *see also Safeguard Mutual Ins. Co. v. Williams*, 345 A.2d 664, 463 Pa. 567, 580 (1975) (affirming minimal bond amount after balancing limited financial resources of plaintiffs, their needs, and potential harm to defendant). The mere fact that the subject of the injunction is real estate worth millions of dollars does not justify a significant bond where the actual damage that the property owner would suffer if wrongly enjoined was limited and “amorphous.” *See Broad and Locust Assocs.*, 464 A.2d at 509.

That is precisely the case here. Defendants have a legal obligation to make the very repairs at issue, independent of Plaintiffs’ requested injunction. Therefore, Defendants will not suffer any damage if it turns out they were wrongfully enjoined. Defendants have not appealed the Unsafe Violation. The Philadelphia Property Maintenance Code requires the Defendants to make the necessary repairs to render the Property safe. So do the Defendants’ Certificates of Rental Suitability, and their leases. All that the Preliminary Injunction seeks is to order the Defendants to

make such repairs promptly and without any further delay, because of the risk of irreparable harm caused by the ongoing unsafe and immediately dangerous conditions. Moreover, Plaintiffs are low-income individuals who are proceeding *in forma pauperis* cannot afford a significant bond. Thus, the balancing of the equities as to these issues suggests the Court should set a nominal bond only.

V. RELIEF REQUESTED

Plaintiffs respectfully request that this Court grant their Verified Motion for a Preliminary Injunction and enter an order immediately requiring Defendants to remedy the Unsafe Violation and make the Property safe.

Dated: November 6, 2025

Respectfully submitted,

By: /s Mary M. McKenzie

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on 11-6-25, he served a true and correct copy of the foregoing document by hand delivery on Defendants at 246 W. Upsal Street, Philadelphia, PA 19119.

/s Michael LiPuma