

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

HEPBURN TOWNSHIP,	:	DOCKET NO. 13-01,864
Plaintiff,	:	
vs.	:	CIVIL ACTION
	:	
LOIS J. BAUSINGER REVOCABLE TRUST and	:	
ALVIN BAUSINGER,	:	OPINION IN SUPPORT OF
Defendants.	:	PRELIMINARY INJUNCTION

**OPINION**

This opinion supports the Court’s July 31, 2013 Order, granting Plaintiff Hepburn Township’s preliminary injunction.

I. Factual and Procedural Background

This matter pertains to a dwelling located at 67 Academy Road, Cogan Station, Hepburn Township (Lycoming County Tax Parcel No. 15-289-113) (the “property”). On July 16, 2013, Plaintiff Hepburn Township (the “Township”) declared the property to be unfit for human habitation and dangerous. Petition, ¶ 3-4. On July 16, 2013, the Township notified the owner of the property, Defendant Lois J. Bausinger Revocable Trust, and its occupier, Alvin Bausinger, that the property had to be vacated within forty-eight (48) hours. Defendant Alvin Bausinger refused to vacate. Petition, ¶ 5-6. On July 26, 2013, the Township filed an Emergency Petition to Enjoin Illegal Occupancy Pursuant to Pa. R.C.P. 1531 and Action for Permanent Injunction. On that date, the Court issued a rule returnable upon Defendants to show cause as to why the Township’s petition should not be granted and scheduled a hearing for July 31, 2013.

At the time of the hearing, Lois J. Bausinger and Defendant Alvin Bausinger appeared with their attorney, John Person, III, Esq., and Denise Dieter, Esq., appeared on behalf of the Township. Upon agreement of the parties, the Court admitted into evidence the structural and civil engineering report of Jeffrey E. Brooks, P.E., and accepted his findings as facts. *See* Pet.

Ex. 1. The Court also took judicial notice of the reports of Romuald K. Andraka, the Township's Building Code Official, and Arthur T. Thomas, P.E.; these reports were attached to the Township's petition as Exhibit B. *See* Petition, Ex. B.

After counsel's remarks, the Court granted the Township's petition for a preliminary injunction and ordered Defendants to vacate the property. Specifically, the Court declared the property to be uninhabitable, unfit for human occupancy, and a danger. The Court also ordered that the electricity to the property be terminated. The Court stated that no person shall reside in the property. The Court provided that Defendant Alvin Bausinger could retrieve his personal belongings from the property during four (4) hour time slots for the week ending August 7, 2013.

## II. Discussion

In *Warehime v. Warehime*, 860 A.2d 41 (Pa. 2004), our Supreme Court established six (6) prerequisites that must be established before a Court may grant preliminary injunctive relief.

In particular, the petitioning party must show:

- 1) the injunction is necessary to prevent immediate and irreparable harm that cannot be adequately compensated by damages;
- 2) greater injury would result from refusing an injunction than from granting it, and, concomitantly, that issuance of an injunction will not substantially harm other interested parties in the proceedings;
- 3) a preliminary injunction will properly restore the parties to their status as it existed immediately prior to the alleged wrongful conduct;
- 4) the activity it seeks to restrain is actionable, that its right to relief is clear, and that the wrong is manifest, or, in other words, must show that it is likely to prevail on the merits;
- 5) the injunction it seeks is reasonably suited to abate the offending activity; and,
- 6) a preliminary injunction will not adversely affect the public interest.

*Id.* at 47-48; *Summit Towne Centre, Inc. v. Shoe Show of Rocky Mount Inc.*, 828 A.2d 995, 1000 (Pa. 2003); *Iron Age Corp. v. Dvorak*, 880 A.2d 657, 662 (Pa. Super. Ct. 2005).

In this matter, the Court found that the Township established the requisite elements for a preliminary injunction through the reports both attached to the Township's petition and admitted

into evidence at the time of the hearing. The Brooks report addressed the deficiencies in the property's foundation, first floor system, electric system, exposed attic insulation, kitchen water system, and its single smoke detector. In his report, Mr. Brooks provided that, in his opinion, "the entire floor system is in jeopardy of at least partial (if not total) collapse, [creating] an imminent danger to anyone occupying the home above." Pet. Ex. 1. Additionally, Mr. Brooks provided that the deficiencies in the property's electric system and exposed attic insulation created a hazard not only to those occupants of the property, but their neighbors as well. Mr. Brooks concluded:

**Based on all of the above observations, it is my professional opinion that the home be vacated immediately, and remain unoccupied until such time as the home is properly repaired, as will be discussed later within this report. Clearly in my professional opinion, the poor structural condition of the home makes it not only 'unsafe', but also 'unfit for human occupancy', and very 'dangerous'. I cannot overstate the real possibility of a first floor structural collapse at any time, given its extremely deteriorated floor joists. The excessive deflection (far beyond what is reasonable and to be expected) is an outward indicator that a failure of the first floor structure is imminent. The home as it currently exists would be covered within the 2012 International Property Maintenance Code (IPMC), specifically Section 108; Unsafe Structure and Equipment, parts 108.1.1, 108.1.3, and 108.1.5(5).**

*Id.*, 3-4 (emphasis in original). Mr. Brooks' report was further supported by the reports of Mr. Andraka and Mr. Thomas. *See* Petition, Ex. B.

After considering the numerous reports provided by the Township, the Court granted the Township's request for a preliminary injunction. The Brooks report establishes that the injunction is necessary to prevent immediate and irreparable harm that could not be adequately compensated by money damages because it provides that the property is inches away from either

collapsing to the ground or combusting into flames. The Brooks report also supports the notion that greater injury would result from refusing the injunction than granting it and that the issuance of the injunction would not substantially harm the other parties interested in the proceedings; in fact, the Courts' injunction protects *all* of the individuals interested in the above-captioned proceeding. The preliminary injunction maintains the status quo as nobody has yet to be injured from the dilapidated property. The Brooks report also provides that the action that the Township is seeking to restrain is actionable and that the Township is likely to prevail on the merits as the property is currently in violation of the 2012 International Property Maintenance Code, Section 108 Unsafe Structure and Equipment. Additionally, the Court's injunction is reasonably suited to abate the offending activity as it was drafted to protect the lives of the individuals residing in and living around the property; also, the Court provided time frames for Defendant Alvin Bausinger to enter the property and retrieve his personal belongings. Lastly, the preliminary injunction does not adversely affect the public interest. The Court cannot stress enough the danger that the occupancy of this property presents to both its residents and neighbors. Therefore, after considering the *Warehime* factors and the facts of the instant matter, the Court was compelled to grant the Township's injunction petition.

BY THE COURT,

\_\_\_\_\_  
Date

\_\_\_\_\_  
Richard A. Gray, J.

cc: Denise Dieter, Esq. – Counsel for Plaintiff  
John Person, III, Esq. – Counsel for Defendants  
Gary L. Weber, Esq. – Lycoming County Reporter