

CITY OF PHILADELPHIA,
Plaintiff,

v.

BRITH SHOLOM WINIT, L.P.,
Defendant.

: PHILADELPHIA COUNTY
: COURT OF COMMON PLEAS
: CIVIL TRIAL DIVISION
:
: JUNE TERM, 2019
: NO. 07525
:
:
:

[PROPOSED] ORDER

AND NOW, on this _____ day of February 2020, upon consideration of Tenants’ Petition to Intervene, any responses thereto, and a hearing held on _____, this Court **ORDERS** and **DECREES** that Petitioners Diana Dukes and Samuel Wolfolk are granted leave to intervene as Plaintiffs in this action. The Clerk of Court shall **DOCKET** Exhibit 3 to Tenants’ Petition to Intervene as Intervenors’ Response in Opposition to Defendant’s Motion.

BY THE COURT:

, J.

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TENANTS’ PETITION TO INTERVENE

1. Pursuant to Pennsylvania Rules of Civil Procedure 2327 and 2328, Diana Dukes and Samuel Wolfolk (“Petitioners”), respectfully request this Court grant them leave to intervene in this action following arguments put forth in Defendant’s Emergency Motion to Allow the Department of Licenses and Inspections to Issue a Rental License or Alternatively to Enforce the Escrow of Tenant Rents (“Motion”).¹

¹ Intervenors understand that the Court denied the Emergency Motion, but stated that there will be a full hearing on the matter on March 10, 2020. Intervenors are therefore referring to the merits of the arguments made by Defendant when referring to the “Motion.”

I. Factual Background

2. Brith Sholom Winit LP (“Defendant”) is the owner of Brith Sholom House (the “Property”) which is the home to nearly 300 low-income senior citizens.

3. Petitioners are current tenants at the Property.

4. Since 2009, the Property has been noncompliant with one of the most basic safety requirements under the Philadelphia Code—a proper fire suppression system.

5. On April 11, 2019, after a *decade* of neglecting the deficiency, Defendant lost its rental license.

6. Since April 2019, some tenants at the Property have been legally withholding rent, including Petitioners. Others tenants have continued to pay and Defendant has accepted their money, despite this Court’s multiple admonishments that it could *not* legally collect rent from any tenants.

7. Defendant now seeks to compel all tenants, including Petitioners, to pay rent—money which Defendant is not legally entitled to collect.

II. Legal Standard

8. A person may seek to intervene in any civil action or proceeding by filing a petition that states “the ground[s] on which intervention is sought and a statement of the relief or the defense which the petitioner desires to demand or assert.” Pa. R. Civ. P. 2328(a).

9. A person not a party to the action may intervene “[a]t any time during the pendency of an action.” Pa. R. Civ. P. 2327. The pendency of the action is any time “from its inception until the rendition of final judgment.” *U.S. Bank Nat’l Assoc. for Pa. Housing Fin. Agency v. Watters*, 163 A. 3d 1019, 1027 (Pa. 2017) (citing *Fin. Freedom, SFC v. Cooper*, 21 A.3d 1229, 1231 (Pa. Super. 2011)).

10. A person is entitled to intervene if “the determination of such action may affect any legally enforceable interest of such person whether or not such person may be bound by a judgment in the action.” Pa. R. Civ. P. 2327(4).

III. Petitioners have a Legally Enforceable Interest at Stake

11. A “legally enforceable interest” is one that “will be affected by the proceedings.” *See Keener v. Zoning Hearing Bd. of Millcreek Tp.*, 714 A.2d 1120, 1122 (Pa. Commw. Ct., 1998).

12. Intervention should be granted to “anyone having an interest of his own which no other party on the record is interested in protecting.” *Id.* (citing *Billy v. Board of Property Assessment, Appeals and Review of Allegheny County*, 44 A.2d 250 (Pa. 1949)).

13. Pennsylvania courts recognize that “legally enforceable interest” may be available to petitioners “without regard to whether [they] would be technically bound by the judgment entered in the action.” *See Tremont Tp. School Dist. V. Western Anthracite Coal Co.*, 113 A.2d 234, 236 (Pa. 1955).

14. Pennsylvania courts have permitted intervention where petitioners have property rights which are put at risk by the litigation. *See e.g., SBA Towers IX, LLC v. Unity Twp. Zoning Hearing Bd.*, 179 A.3d 652 (Pa. Commw. Ct.), *appeal denied*, 193 A.3d 346 (Pa. 2018), *Atticks v. Lancaster Twp. Zoning Hearing Bd.*, 915 A.2d 713 (Pa. 2007).

15. Moreover, Pennsylvania courts have held that a party not only has a “legally enforceable interest” but a “substantial interest” in litigation when it can show financial injury due to the actions of another party’s challenged behavior. *Allegheny County v. Monzo*, 500 A.2d 1096, 1100-01 (Pa. 1985).

16. Here, Defendant has no rental license and therefore is not entitled to collect rent under the Philadelphia Code. Phila. Code § 9-3091(4)(e); *see also* § 9-3092(1)(a).

17. This Court had admonished Defendant, *twice*, that it should not collect rent from any tenants at the Property. Oct. 10, 2019 Hearing, Tr. at 30:1-5; Dec. 5, 2019 Hearing, Tr. at 111:14-112:7.

18. Petitioners are tenants at the Property and are properly withholding rent.

19. Defendant filed its Motion seeking a conditional rental license to collect rent from Petitioners and all tenants at the Property—rent they are not entitled to by law.

20. Thus, Petitioners have an unambiguous and enforceable legal interest at stake in light of Defendant’s Motion. The challenged rent money is both a financial and property interest that is legally enforceable. *Keener*, 714 A.2d at 1122.

IV. No Grounds Exist For Denying Intervention

21. If grounds for intervention are established under any subsection of Pennsylvania Rule of Civil Procedure 2327, and no basis for refusal can be found in Pennsylvania Rule of Civil Procedure 2329, “the allowance of intervention is not discretionary, but is mandatory.” *In re Pa. Crime Comm’n*, 309 A.2d 401, 408 n.11 (Pa. 1973) (citing 2 Standard Pennsylvania Practice 460) (footnotes omitted)).

22. The only theoretical basis for denying Petitioners’ intervention is if “the interest of the petitioner is already adequately represented.” Pa.R.C.P. 2329(2).

23. The City’s principal interest in this matter is to ensure the Property complies with Philadelphia’s Fire Code. While Petitioners share this concern, their interests are broader than those of the City. *See, e.g., Pines v. Farrell*, 848 A.2d 94, 97–98 (Pa. 2004) (allowing intervention where proposed intervenor’s arguments were “not merely repetitive of the limited argument forwarded by respondent, but instead, promoted a proper resolution of the dispute”).

24. According to the Motion, the City has not determined whether it will oppose it. *See* Mtn. ¶23. This alone suggests Petitioners' rights are clearly unrepresented.

25. Unlike the City, Petitioners have a legally enforceable interest in ensuring their right to withhold rent is not abrogated.

26. Petitioners' right to withhold rent when Defendant does not have a valid rental license is a statutory right. Phila. Code § 9-3091(4)(e); *see also* § 9-3092(1)(a). Any decision to strip Petitioners of that right without their participation in the outcome would be an abuse of discretion.

27. Thus, there is no basis to deny Petitioners' request to intervene.

[remainder of page intentionally left blank]

V. Conclusion

WHEREFORE, for all the foregoing reasons and those included in Petitioners' Memorandum of Law, attached hereto as Exhibit 2, Petitioners respectfully request that this Court (i) GRANT its Petition to Intervene and allow it to become a party to this case, consistent with the Proposed Order, and (ii) docket Petitioners' Response in Opposition to Defendant's Motion, attached hereto as Exhibit 3.

Dated: February 18, 2020

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*Attorneys for Petitioners
Diana Dukes and Samuel Wolfolk*

EXHIBIT 1

VERIFICATION

I, Samuel Wolfolk, depose and state subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities that I am the Petitioner in this matter and the allegations set forth herein are true and correct to the best of my knowledge, information, and belief.


Samuel Wolfolk

Date: 2-14-2020

VERIFICATION

I, Diana Duker, depose and state subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities that I am the Petitioner in this matter and the allegations set forth herein are true and correct to the best of my knowledge, information, and belief.

Diana R. Duker
Diana Duker

Date: 2/14/2020

EXHIBIT 2

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**MEMORANDUM OF LAW IN SUPPORT OF
TENANTS’ PETITION TO INTERVENE**

Pursuant to Pennsylvania Rules of Civil Procedure 2327 and 2328, Diana Dukes and Samuel Wolfolk (“Petitioners”), respectfully request this Court grant them leave to intervene as plaintiffs in this action.

I. FACTUAL BACKGROUND

Brith Sholom Winit LP (“Defendant”) owns the Brith Sholom House (the “Property”) which is home to nearly 300 low-income senior citizens. Since 2009, the Property has been in violation of the Philadelphia Code’s requirement that it have a wet standpipe fire suppression system. On April 11, 2019, after a decade of neglecting the deficiency, Defendant was unable to renew its rental license due to its continuing failure to remedy the outstanding violations on the

property related to the fire suppression system. Mtn. ¶6; Phila. Code § 9-3901(2)(b)(iii).
Petitioners are tenants at the Property.

Since April 2019, some tenants at the Property, including Petitioners, have been legally withholding rent pursuant to Phila. Code § 9-3091(4)(e) and § 9-3092(1)(a). Other tenants have continued to pay and Defendant has accepted their money, despite this Court's multiple admonishments that it could not legally collect rent from any tenants. *See e.g. City of Philadelphia v. Brith Sholom Tr.* at 30:1-5; Dec. 5, 2019 *City of Philadelphia v. Brith Sholom Tr.* at 111:14-112:7. Defendant's attempt to compel rent from tenants, including Petitioners, by Emergency Motion, was a remedy to which Defendant is neither legally nor equitably entitled.¹

II. LEGAL STANDARD

A person may seek to intervene in any civil action or proceeding by filing a petition that states "the ground[s] on which intervention is sought and a statement of the relief or the defense which the petitioner desires to demand or assert." Pa. R. Civ. P. 2328(a). A person not a party to the action may intervene "[a]t any time during the pendency of an action." Pa. R. Civ. P. 2327. The pendency of the action is any time "from its inception until the rendition of final judgment." *U.S. Bank Nat'l Assoc. for Pa. Housing Fin. Agency v. Watters*, 163 A. 3d 1019, 1027 (Pa. 2017) (citing *Fin. Freedom, SFC v. Cooper*, 21 A.3d 1229, 1231 (Pa. Super. 2011)). A person is entitled to intervene if "the determination of such action may affect any legally enforceable interest of such person whether or not such person may be bound by a judgment in the action." Pa. R. Civ. P. 2327(4).

¹ Intervenors understand that the Court denied the Emergency Motion, but stated that there will be a full hearing on the matter on March 10, 2020. Intervenors are therefore referring to the merits of the arguments made by Defendant when referring to the "Motion."

III. ARGUMENT

A. Petitioners have a Legally Enforceable Interest at Stake

A “legally enforceable interest” is one that “will be affected by the proceedings. *See Keener v. Zoning Hearing Bd. of Millcreek Tp.*, 714 A.2d 1120, 1122 (Pa. Commw. Ct., 1998). Intervention should be granted to “anyone having an interest of his own which no other party on the record is interested in protecting.” *Id.* (citing *Billy v. Board of Property Assessment, Appeals and Review of Allegheny County*, 44 A.2d 250 (Pa. 1949)).

Pennsylvania courts have permitted intervention where petitioners have property rights which are put at risk by the litigation. *See e.g., SBA Towers IX, LLC v. Unity Twp. Zoning Hearing Bd.*, 179 A.3d 652 (Pa. Commw. Ct.), *appeal denied*, 193 A.3d 346 (Pa. 2018), *Atticks v. Lancaster Twp. Zoning Hearing Bd.*, 915 A.2d 713 (Pa. 2007). Moreover, Pennsylvania courts have held that a party not only has a “legally enforceable interest” but a “substantial interest” in litigation when it can show financial injury due to the actions of another party’s challenged behavior. *Allegheny County v. Monzo*, 500 A.2d 1096, 1100-01 (Pa. 1985).

Here, Defendant has no rental license and therefore is not entitled to collect rent under the Philadelphia Code. Phila. Code § 9-3091(4)(e); *see also* § 9-3092(1)(a). Petitioners are tenants at the Property and are properly withholding rent. Defendant’s Motion seeks a conditional license to collect rent from Petitioners and all tenants at the Property—rent they are not entitled. Defendant has the audacity to make this request despite the fact that this Court has admonished Defendant, *twice*, that it should not collect rent from any tenants at the Property. Oct. 10, 2019 Hearing, Tr. at 30:1-5; Dec. 5, 2019 Hearing, Tr. at 111:14-112:7.

Thus, Petitioners have an unambiguous and enforceable legal interest at stake in light of Defendant's Motion. The challenged rent money is both a financial and property interest that is legally enforceable. *Keener*, 714 A.2d at 1122.

B. No Grounds Exist For Denying Intervention

If grounds for intervention are established under any subsection of Pennsylvania Rule of Civil Procedure 2327, and no basis for refusal can be found in Pennsylvania Rule of Civil Procedure 2329, "the allowance of intervention is not discretionary, but is mandatory." *In re Pa. Crime Comm'n*, 309 A.2d 401, 408 n.11 (Pa. 1973) (citing 2 Standard Pennsylvania Practice 460) (footnotes omitted)).

The only theoretical basis for denying Petitioners' intervention is if "the interest of the petitioner is already adequately represented." Pa.R.C.P. 2329(2). According to Defendant's Motion, the City has not determined whether it will oppose the request to collect rent. See Mtn. ¶23. This statement alone suggests Petitioners' rights are not adequately represented.

The City's principal interest in this matter is to ensure the Property complies with Philadelphia's Fire Code. Obviously, Petitioners share this concern, but their interests are both broader than and distinct from the City's interests in this litigation. *See, e.g., Pines v. Farrell*, 848 A.2d 94, 97-98 (Pa. 2004) (allowing intervention where proposed intervenor's arguments were "not merely repetitive of the limited argument forwarded by respondent, but instead, promoted a proper resolution of the dispute"). Petitioners have a legally enforceable interest in their right to withhold rent where, as here, the Property does not have a rental license. The City does not pay rent at the Property and thus cannot adequately represent this interest.

Petitioners' right to withhold rent when Defendant does not have a valid rental license is a statutory right. Phila. Code § 9-3091(4)(e); *see also* § 9-3092(1)(a). Any decision to strip

Petitioners of that right without their participation in the outcome would be an abuse of discretion. Thus, Petitioners have a right to intervene in this action in light of the arguments laid out in Defendant's Motion and in anticipation of the March 10, 2020 hearing. There is no basis to deny Petitioners' request to intervene.

IV. CONCLUSION

WHEREFORE, Petitioners respectfully request that this Court grant their Petition to Intervene and allow them to become parties to this case.

Dated: February 18, 2020

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EXHIBIT 3

CITY OF PHILADELPHIA,	:	PHILADELPHIA COUNTY
	:	COURT OF COMMON PLEAS
Plaintiff,	:	CIVIL TRIAL DIVISION
	:	
v.	:	JUNE TERM, 2019
	:	NO. 07525
BRITH SHOLOM WINIT, L.P.,	:	
	:	
Defendant.	:	

[PROPOSED] ORDER

AND NOW, this ____ day of March, 2020, upon consideration of Defendant's Motion to Allow the Department of Licenses and Inspections to Issue a Rental License or Alternatively to Enforce the Escrow of Tenant Rents Escrow and the responses thereto, it is hereby **ORDERED** that Defendant's Motion is **DENIED**. This Court hereby **ORDERS** that Defendant shall:

- a. Immediately cease collecting any and all rent, in any form provided;
- b. Immediately reimburse any rental or other payment received from any tenant from this date forward;
- c. Immediately notify all tenants that they are no longer required to pay rent or charges of any kind until further notice by
 - i. hand delivering a note, signed by the Property management, to each tenant; and
 - ii. posting a note and/or flyer, signed by the Property management, on every bulletin board on the Property.
- d. Notify this Court and all other parties to the action once hand delivery has been completed.

DONE AND ORDERED this ____ day of _____, 2020.

Judge Lyris F. Younge

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	:	
Defendant.	:	

**INTERVENORS’ RESPONSE IN OPPOSITION TO
DEFENDANT’S MOTION**

Intervenors, Diana Dukes and Samuel Wolfolk, respectfully submit their Response in Opposition to Defendant’s Motion to Allow the Department of Licenses and Inspections to Issue a Rental License or Alternatively to Enforce Escrow of Tenant Rent¹:

1. Admitted, upon information and belief.
2. Denied. Brith Sholom Winit L.P. acquired the Property in 2012 according to

Philadelphia’s public property records.

¹ Intervenors understand that the Court denied the Emergency Motion, but stated that there will be a full hearing on the matter on March 10, 2020. Intervenors are providing their direct response to Defendant’s arguments in connection with the requirements of Pa.R.C.P. 2328 regarding Petitions to Intervene and responses to pleadings. Intervenors also set forth their responses to the factual and legal averments of Defendant in advance of the March 10, 2020 hearing.

3. Admitted, upon information and belief.

4. Denied. Brith Sholom Winit L.P. acquired the Property in 2012 according to Philadelphia's public property records.

5. Admitted, upon information and belief.

6. Admitted.

7. Denied as stated. Tenants, including Intervenors, have no legal obligation to pay rent given Defendant's noncompliance with Philadelphia law.

8. Denied as stated. Defendant is not allowed to collect rent without a rental license and this Court has twice admonished the Defendant not to collect rent from any tenants at the Property. Defendant continues to flagrantly disregard this Court's orders and illegally collect rent from tenants.

9. Denied. Defendant has no legal right to collect rent. Defendant has provided no evidence to this Court about its alleged severe ongoing financial hardship.

10. Admitted.

11. Admitted.

12. Admitted.

13. Denied.

14. Denied. Intervenors lack sufficient information to confirm this statement and therefore it is denied. Strict proof is demanded at trial or an evidentiary hearing.

15. Denied. Intervenors lack sufficient information to confirm this statement and therefore it is denied. Strict proof is demanded at trial or an evidentiary hearing.

16. Denied. Intervenors lack sufficient information to confirm this statement and therefore it is denied. Strict proof is demanded at trial or an evidentiary hearing.

17. Denied. Intervenors have observed no personnel performing a fire watch over the past four months.

18. Denied.

19. Denied. Tenants have no legal obligation to pay Defendant. The Property has no rental license, has open code violations, and has been in violation of Philadelphia law for over a decade.

20. Denied.

21. Denied.

22. Denied.

23. Denied. Intervenors lack sufficient information to confirm this statement and therefore it is denied.

WHEREFORE, for the foregoing reasons, Intervenors request this Court to DENY Defendant's Motion.

[remainder of page intentionally left blank]

Dated: February 18, 2020

/s/ Michael L. Kichline

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**INTERVENORS’ MEMORANDUM OF LAW IN OPPOSITION
TO DEFENDANT’S MOTION**

Defendant has exposed its senior-citizen tenants to an illegal and potentially life-threatening fire trap for over a decade. Defendant has no rental license, cannot collect rent, and only has itself to blame. And yet, with hundreds of senior citizens still exposed and subject to this unsafe condition, Defendants filed an Emergency Motion to Allow the Department of Licenses and Inspections to Issue a Rental License or Alternatively to Enforce Escrow of Tenant Rents. This Motion¹ sought to allow Defendant to collect rent and protect its profit margins in

¹ Intervenors understand that the Court denied the Emergency Motion, but stated that there will be a full hearing on the matter on March 10, 2020. Intervenors are therefore referring to the merits of the arguments made by Defendant when referring to the “Motion.”

contravention of Philadelphia law—one month after an actual emergency in the form of a real fire broke out at the property. The Court rightfully rejected Defendant’s “emergency” claim, but made clear that the merits of Defendant’s Motion will be considered at the next hearing on March 10, 2020.

Since October 2019, this Court has expressly admonished Defendant that it must cease collecting rent from all tenants at the property. Yet, Defendant continues to collect rent and also filed the Motion because it is not collecting rent from *all* tenants. In other words, Defendant knows it is in direct and flagrant violation of this Court’s admonishments and still seeks relief this Court has twice denied. This Court should continue to deny Defendant the relief it requests in its Motion.

I. PROCEDURAL AND FACTUAL BACKGROUND

A. Procedural Background

The City of Philadelphia (the “City”) filed this action in June 2019. The City’s Department of Licenses and Inspections (“L&I”) had previously cited Brith Sholom House (the “Property”) for violations of the Philadelphia Fire Code in December 2018. This Court held two hearings in this action, one on October 11, 2019, and another on December 5, 2019. A third hearing is scheduled for March 10, 2020. Defendant filed its Emergency Motion on February 7, 2020. This Court rightfully denied the “emergency” nature of the filing on February 14, 2020, but noted that “[t]here will be a full hearing as to the matter.” Order dated Feb. 14, 2020.

B. Factual Background

The Property has been noncompliant with one of the most basic safety requirements under the Philadelphia Code since 2009. The legal requirement to install a wet fire suppression system that is able to quickly extinguish a fire is even more important here, where the Property is home to almost 300 senior citizens. In 2009, the Property was owned by the Brith Sholom Foundation and received notice that it was noncompliant with the Philadelphia Fire Code. The Property applied

for and was granted a variance on April 13, 2009, with a mandate to complete an upgrade of the system by October 1, 2009. *See* Letter to Jose Camacho, City 1 in Trial Exhibits, Dec. 6, 2019. But, the Brith Sholom Foundation failed to update the Property's fire suppression system. Over two years later, in 2012, the Property's owners finally obtained the necessary permit to complete the work.² Again, the fire suppression system was neglected and the work was never completed. That same year, Brith Sholom Foundation transferred ownership of the Property to Defendant.³

In December 2018, nearly *a decade* after the Property's owners first had notice that the Property was noncompliant, the City issued a series of violations against the Property for its failure to install a proper fire suppression system. Again, Defendant failed to remedy the code violations levied against the Property and continued to collect rent from its tenants. The City filed this enforcement action against Defendant. Tenants of the Property were concerned that the City could shut down the Property because of its lack of wet standpipe system, something that would cause hundreds of seniors to be displaced.

At an October hearing for this case, Defendant's counsel pleaded poverty and requested a conditional rental license in order to collect rent and refinance the Property. *See* Oct. 10, 2019 *City of Philadelphia v. Brith Sholom Tr.* at 30: 15-25 ("Oct. 10, 2019 Hearing"). This Court, however, entered an Order requiring Defendant to, among other things, obtain a contractor, apply for permits for the work, "inform tenants of legal agencies available as needed," but refused to

² *See* Department of Licenses and Inspections Page, Permit Number 386925 <https://li.phila.gov/#details?entity=permits&eid=386925&key=96678&address=3939%20CONSHOHOCKEN%20AVE> (last accessed Feb. 12, 2020).

³ Despite assertions from Defendant that the current owners bought the Property in 2018, the entity Brith Sholom Winit L.P. has been the owner of record since 2012. Moreover, Defendant has represented to the Court that it was a nonprofit, despite the owner of the Property being a registered partnership and not having registered in Pennsylvania as a charity. *See* Dec. 5, 2019 *City of Philadelphia v. Brith Sholom Tr.* at 69: 5-21.

grant a conditional rental license. *See* Order dated Oct. 11, 2019. This Court also admonished Defendant that it was not permitted to collect rent from tenants as it did not have a valid rental license and the Property was noncompliant with the Philadelphia Code:

The Court . . . I'm just saying that if you have an outstanding L&I violation on your property, you are not to be able to collect rent. You probably have up until this point, but going forward, you can't until this is fully complied.

See Oct. 10, 2019 Hearing, Tr. at 30:1-5.

A second hearing was held in the case on December 5, 2019, where Defendant again acknowledged it had not started work on the fire suppression system.⁴ *See* Dec. 5, 2019 *City of Philadelphia v. Brith Sholom* Tr. at 97: 15-25, 98:1-4 (“Dec. 5, 2019 Hearing”). But now, Defendant somehow had available funds to put a deposit down with a contractor to begin work on the standpipe system—despite this Court’s refusal to grant Defendant a conditional license. *Id.* at 100: 2-25. At this point, Defendant merely asked for “time to comply with the violations.” *Id.* at 102:18-21. But when asked whether Defendant was collecting rent, the following exchange took place:

The Court: When was the last time you collected rent?

[Defendant’s Counsel]: The last time we collected rent from any person in this residence was last month.

The Court: How are you collecting any moneys if you have a notice of violation that’s outstanding . . . ? That’s a violation of the law. How can you do that? How are you collecting money? How are you doing anything? You can’t do that. That was clear at the last court listing . . . You know that . . . and the property manager knows that and the owner knows that.”

Id. at 111:14-112:7

⁴ Fearful again that they may be displaced, dozens of tenants living in the Property attended the hearing. See Jason Laughlin, “Philly’s real estate boom spurs fear of eviction among one building’s senior citizens.” PHILA. INQ. (Dec. 6, 2019) (<https://www.inquirer.com/real-estate/housing/seniors-housing-apartment-tenant-renters-eviction-20191206.html>).

As an excuse, Defendant's counsel claimed they needed the rent money to fund "this capital project that was *unexpected*" and admitted to explicitly defying this Court's orders from its last hearing. *Id.* at 117:11-15. This Court again entered an Order requiring Defendant to take steps to begin work on the suppression system, forbidding Defendant from displacing any tenants without leave of court, and refusing to grant a provisional rental license. *See* Order dated Dec. 5, 2019.

Early in the morning of January 4, 2020, the worst fears of many tenants became a reality when a fire broke out at the Property. According to officials, the fire started on the fourth floor. Hundreds of seniors, many of whom have mobility issues, were evacuated or were forced to shelter in their rooms as smoke filled the Property. One man, Shawn Smith, carried his mother down ten flights of stairs to get her to safety.⁵ Intervenor Samuel Wolfolk attempted to use one of the exit stairways, but it was filled with smoke. He covered his mouth to avoid breathing in the fumes and turned to find another way out. Mr. Wolfolk then witnessed fire crews run up the steps, connect hoses to the standpipe system, and fail to draw water. In the end, it was fortunate that no one was seriously injured.

In the wake of this fire and with the knowledge that it has failed to act for over a decade to prevent a potentially catastrophic event, Defendant moves for this Court to allow it to collect rent from tenants in contravention of Philadelphia and Pennsylvania law.

II. ARGUMENT

Defendant is not entitled to rent or a rental license under Philadelphia law. Defendant requests that this Court set aside the law and use its power in equity to grant it a provisional license.

⁵ *See* "Man carries mother down 10 flights to escape Philadelphia senior facility fire," WPVI 6 ABC (Jan. 4, 2020) (<https://6abc.com/5814126/>).

After failing to make the Property safe for a decade, along with numerous shortcomings in between, this Court should decline the invitation.

Defendant has disregarded this Court's orders to stop collecting rent. The Motion does not claim Defendant needs the money to complete the necessary work simply because it's not true. If Defendant attempts to plead poverty, this Court should demand it produce its ownership structure, all books and records, and all other relevant information before entertaining Defendant's charade any further. Put simply, Defendant wants credit for complying with some of the conditions in the Court's Order, but in reality is closer to contempt than the "clean hands" necessary to obtain the equitable relief it seeks.

A. Defendant is not entitled to Relief under Philadelphia Law

Defendant seeks a provisional rental license to collect money to which it is not entitled, or, in the alternative, for tenants to pay into an escrow account "with the balance [of funds] to be paid to [Defendant] when [Defendant] renews its rental license." Emerg. Mtn. ¶22. Defendant claims it is entitled to this relief because it has taken "reasonable steps to remove the violations from the Property. *Id.* at ¶18.

Under Philadelphia law, Defendant cannot collect rent without a valid rental license. Phila. Code § 9-3091(4)(e); *see also* § 9-3092(1)(a) ("No person shall collect rent with respect to any property . . . unless a valid rental license has been issued for the property."). Defendant's rental license expired on April 11, 2019, because of outstanding violations on the Property, including the lack of a proper fire suppression system. Mtn. ¶6; Phila. Code § 9-3901(2)(b)(iii). Since April 11, 2019, Defendant conceded that it has been illegally collecting rent. Dec. 5, 2019 Hearing, Tr. 111:14-112:7 (admitting Defendant has been collecting rent); *see also* Mtn. ¶7 ("Since Brith Sholom's rental license expired, *some* Tenants have refused to pay rent."). Defendant's contention

that Tenants were required to escrow their withheld rent has been specifically considered—and rejected—by the Pennsylvania Supreme Court over forty years ago.⁶

Nothing in Pennsylvania law or the Philadelphia Code suggests that a provisional rental license can be granted. Phila. Code § 9-3900, *et seq.* Defendant’s request has no basis in law and should be denied.⁷

B. Defendant is not entitled to Equitable Relief

Defendant cannot satisfy the stringent requirements for equitable relief. “A Pennsylvania court’s equity jurisdiction is limited and well defined.” *Armstrong Sch. Dist. v. Armstrong Ed. Ass’n*, 291 A.2d 125, 127 (Pa. Commw. Ct. 1972). “Equitable relief should only be granted where there is a constitutional or statutory basis for it.” *Id.* (citing *Golden v. Andrews*, 89 Daugh. 254, 256 (1968)). “The courts of equity of Pennsylvania do not possess the general powers of a court of equity, but only such as have been conferred upon them by statute.” *Id.* (quoting *Pitcairn v. Pitcairn*, 201 Pa. 368, 50 A. 963 (1902)).

Additionally, “a party seeking equitable relief . . . must come before the court with clean hands.” *Mudd v. Nosker Lumber, Inc.*, 662 A.2d 660, 663–64 (Pa. Super. Ct. 1995). “One guilty of wrongdoing should be denied access to the court. *Id.* In other words, “he who seeks equity must do equity.” *Sprague v. Casey*, 550 A.2d 184, 188 (Pa. 1988).

First, there is no statutory basis for the equitable relief that Defendant seeks. It cannot be found in the Philadelphia Code or Pennsylvania law. Phila. Code § 9-3900, *et seq.*

⁶ *Pugh v. Holmes*, 405 A.2d 897, 907 (Pa. 1979). (“Appellant urges that the failure of the Superior Court to require a method of escrowing unpaid rents is the most glaring defect in the Superior Court’s decision below. This Court is . . . not inclined to make such procedure mandatory.”). Similarly, Defendant’s argument regarding the Rent Withholding Act is inapposite, as the same *Pugh* court rejected the notion that the Rent Withholding Act was the exclusive remedy for tenants in Pennsylvania. *Id.* at 904.

Second, even if there was such a basis, Defendant is the last party deserving of equitable relief. Defendant asks this Court to overlook the *decade-long delay* in making the Property safe for its tenants. It asks this Court to overlook the blatant disregard of this Court’s orders, in both hearings, to *stop collecting rent*. Oct. 10, 2019 Hearing, Tr. at 30:1-5; Dec. 5, 2019 Hearing, Tr. at 111:14-112:7. Defendant’s actions are closer to contempt than they are deserving of equity. Defendant confuses its compliance with some of this Court’s order with the “clean hands” necessary to obtain equitable relief, and it is simply not entitled to the equitable relief it seeks under Pennsylvania law. *Sprague*, 550 A.2d at 188.

Third, the Motion itself does not claim that Defendant needs rent money to perform the necessary work. *See Mtn*. This becomes clear when Defendant requests an escrow account with funds to be released *after* it receives or renews its license for the Property. *Id.* at ¶22. In other words, the requested rent is not for completing the work, it is simply for protecting Defendant’s profit margins *after* the work has been completed. After Tenant’s counsel informed this Court of its intent to intervene, Defendant completely changed its position and now claims “Brith Sholom House may be forced to cease all operations” if Defendant cannot collect rent. *Livesey Ltr. to Ct.* (Feb. 13, 2020).

This, however, is not the first bait-and-switch tactic Defendant has used when representing its available funds. Defendant received an almost identical bid in January 2019 to complete the work by the same company that is now under contract, Precision Sprinklers.⁸ Defendant claimed at the December hearing it did not accept the January bid because it lacked funds—despite its full collection of rent at the time. Four months later in April its rental license expired, and tenants

⁸ It should also be noted that Precision Sprinklers (“Precision”), had been in contact with Defendant and the owner of the Property since 2013. When Precision was hired to inspect the Property in 2013, it fraudulently certified the Property had a wet standpipe when it did not. Dec. 5, 2019 Hearing, 84:4-8.

properly began withholding rent. In December, Defendant inexplicably came up with the money to put down a deposit and start work. This was surprising for two reasons. First, Defendant was now receiving substantially less in rent than it had eleven months ago. *See* Dec. 5, 2019 Hearing, Tr. at 100: 2-25. Second, this Court *denied* Defendant's request for a conditional license at the October hearing, yet, it was able to obtain financing without it. *Id.* Defendant dragged its feet because it didn't want to complete the project, and it wasn't until this Court threatened additional penalties that the money suddenly became available.

The money is somewhere in Defendant's chain of ownership. That much is clear from the record. If Defendant claims poverty again the Court should not entertain the charade before Defendant has (1) produced its entire chain of ownership—looking past shell companies to the real individuals running the show, (2) produced all the books and records of these companies, their partners, and the individuals who own them, and (3) any other records this Court deems necessary or proper in determining whether piercing the corporate veil, to the individuals in charge, is proper in this case. If Defendant is undercapitalized and cannot make the necessary repairs, this Court must hold the real owners of the company accountable for making it so.

C. This Court Should Order an Immediate Cessation of All Rent and Require Defendant to Notify its Tenants of the Same

For the *third* time, this Court should hold that Defendant must immediately cease collecting rent from *all* tenants at the Property. Clearly verbal admonishments are not enough. Accordingly, this Court should order (1) Defendant to immediately cease collecting rent, and all rent money sent to them must not be cashed and immediately reimbursed or otherwise returned to the tenant, and (2) Defendant to immediately notify all tenants that they are no longer required to pay rent or charges of any kind, until further notice. The Court should require this notice be hand delivered

to each tenant, posted on every bulletin board on the Property, and signed by the Property's management.

This Court has, within its disposal, the most powerful incentive for Defendant to complete this project as soon as possible—denying the collection of *all* rent. This Court should not hesitate to use this tool, and enforce it, in the most unambiguous way to prevent any further delays. The Court should also enforce a strict work schedule for the project, with monthly checkups to ensure it is done expeditiously.

[remainder of page intentionally left blank]

III. CONCLUSION

WHEREFORE, Intervenor request that this Court deny Defendant's Motion and draft an appropriate order consistent with the foregoing.

Dated: February 18, 2020

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CERTIFICATE OF SERVICE

I hereby certify that on February 18, 2020, I caused a true and correct copy of the foregoing Petition to Intervene and supporting exhibits and memoranda:

Via the Court's electronic filing system, email, and first class mail to Plaintiff's counsel Defendant's counsel at:

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