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Francis V. Kenneally, Clerk
Supreme Judicial Court for the Commonwealth
John Adams Courthouse, Suite 1400
Boston, MA 02108

Re: *Jason Dacey v. Sandy Burgess*; No. SJC-13286

Dear Mr. Kenneally,

MLPB submits this letter in support of reversal of the Northeast Housing Court's decision in the *Dacey* matter. The Northeast Housing Court in *Dacey* held that a Judgment ordering a tenant's eviction absent summary process was enforceable, given the existence of an agreement between the *pro se* tenant and the represented landlord generated through the Housing Court Mediation process in the context of a Civil Relief Injunction action filed by the tenant. MLPB is deeply concerned about the repercussions of this decision, which offers a landlord a new pathway to evict a tenant-plaintiff in an action where the tenant-plaintiff is affirmatively seeking relief from unhealthy housing conditions. This decision will harm the health of residents of the Commonwealth who rent their homes, and lead to disproportionate health-harming impacts on lower income renters and renters of color. Relatedly, the decision undermines the consumer protection power of the State Sanitary Code, a regulatory framework established to protect renters' health and public health. We write this letter to answer the Supreme Judicial Court's specific questions clearly: For the reasons described above and below, in this case, a judgment for possession and for issuance of execution should not issue absent commencement of summary process proceedings. Summary process should remain the exclusive means to recover possession of property when a tenant does not vacate the premises.

About MLPB

MLPB is a non-profit program whose mission is to equip communities of care with legal education and problem-solving insight that fosters prevention, health equity and human-centered system change. Through training, consultation and technical assistance — our *team-facing legal partnering* framework — we help teams and organizations better connect people and populations to the resources and legal protections they seek.

After two decades of thoughtful nurturing at Boston Medical Center, in July 2012 MLPB began to operate under the auspices of TSNE MissionWorks, a 501(c)(3) incorporated in the Commonwealth of Massachusetts that seeks to create a just and democratic society. Over the last decade, MLPB has expanded its work both within the Commonwealth and outside of Massachusetts, partnering extensively in Rhode Island and in national learning network contexts.



A majority of MLPB's partners in Massachusetts are healthcare and public health organizations who together bear responsibility for delivery of quality care to hundreds of thousands of Massachusetts residents. While MLPB is not an agent of these organizations and therefore does not speak on their behalf, our partnership network represents a community of stakeholders that understands the complex relationships between clinical, behavioral, social, and public health. Our consultative work with care teams frequently centers around common barriers to health that tenants in particular experience, such as eviction, homelessness, and poor housing quality.

Through our work, MLPB is reminded daily of how poor housing conditions and lack of affordable housing stock exacerbate health inequities, which in turn contribute to harmful health disparities impacting residents of the Commonwealth. Against this backdrop, the Northeast Housing Court's ruling in *Dacey* is extremely troubling. Absent a reversal, *Dacey* functionally strips tenants in the Commonwealth of a longstanding affirmative pathway to assert their rights to healthy housing: injunctive relief in connection with enforcement of the State Sanitary Code. Linking a tenant's assertion of their fair housing and code enforcement rights to a potential eviction outcome is especially likely to spur increased housing instability and homelessness among renters with lower incomes and renters of color.

Corporate Disclosure Statement

Pursuant to Mass. R.A.P. 17(c)(1), MLPB, a fiscally sponsored organization of Third Sector New England, Inc., represents that they are a 501(c)(3) organization incorporated under the laws of the Commonwealth of Massachusetts ("collectively MLPB"). MLPB does not issue stock and does not have a parent corporation, and no publicly held corporation holds stock in MLPB.

Mass. R.A.P. 17(c)(5) Declaration

MLPB declares that no party to the action or party's counsel authored this letter in whole or in part; that no party to the action or party's counsel, or any other person or entity, other than MLPB contributed money intended to fund preparation or submission of this letter; and MLPB does not and has not represented any of the parties to the present appeal in any proceedings or any capacity.

Housing and the Health of People and Populations in the Commonwealth

The quality and accessibility of housing is a fundamental social determinant of health (SDOH); social determinants of health are defined as "**conditions in the places where people live, learn, work, and play that affect a wide range of health risks and outcomes**" (*emphasis added*).¹ There is overwhelming evidence that unsafe housing conditions are directly related to a wide range of health problems, including but not limited to, chronic respiratory illnesses like

¹ Centers for Disease Control and Prevention. (March 10, 2021). *About Social Determinants of Health (SDOH)*. U.S. Department of Health & Human Services. <https://www.cdc.gov/socialdeterminants/about.html>

asthma, poor mental health, and infectious diseases.^{2,3} In fact, “[h]ousing quality is a primary determinant of asthma disparities by race and social class in the US.”⁴

The scale of housing-related health risks is staggering. One recent study conducted in Boston noted that “[b]etween July 1, 2011, and April 24, 2021, there were 25,964 reports to the Inspectional Services Department of potential asthma triggers associated with housing conditions...”^{4,5} One asthmagen⁶ source is pests, like rodents and cockroaches, and these infestations are common in aged/aging, unmaintained housing stock. Meanwhile, the presence of pests often co-occurs with another code violation: structural defects that permit pests to enter the building/unit.³

When landlords alerted to these code violations fail to make the necessary repairs – and where the systems in place to inspect rental units and enforce sanitary codes/regulations are delayed or fail – renters are left with lose-lose choices. They can stay in the unit and remain ill, or attempt to leave the unit that is harming their health – but in the latter circumstance, the tenants often land in similarly infeasible circumstances. This turns into a vicious cycle, since it is rare that landlords remediate the conditions before the next renters move in, which exposes more people to the same harmful conditions previously experienced by the prior tenants. The judicial system should not erect additional barriers to safe and habitable housing, but rather should reaffirm the intent and power of sanitary codes, which are in place to protect not just an individual renter’s health but also to advance public health.

Crucially, the phenomenon of unhealthy housing conditions is not equally distributed across residents of the Commonwealth. Sanitary code violations and related negative health impacts are more prevalent in communities of color and lower income households. In the same recent Boston study noted above, researchers determined that “[r]ace is the most important factor predicting the incidence of asthma triggers and municipal responses.”⁴ The vast majority of Black and Latino families in the Commonwealth are renters, not homeowners. (In 2020, the White homeownership rate in Massachusetts was at 69.9% while the Black homeownership rate was at

² Ahmad K, Erqou S, Shah N, Nazir U, Morrison AR, Choudhary G, et al. (2020). *Association of poor housing conditions with COVID-19 incidence and mortality across US counties*. PLoS ONE 15(11): e0241327. <https://doi.org/10.1371/journal.pone.0241327>

³Krieger, J., & Higgins, D. L. (2002). *Housing and health: time again for public health action*. American Journal of Public Health, 92(5), 758–768. <https://doi.org/10.2105/ajph.92.5.758>

⁴ Lemire, Evan, Samuels, Elizabeth A., Wang, Wenyi, Haber, Adam. (2022). *Unequal Housing Conditions And Code Enforcement Contribute To Asthma Disparities In Boston, Massachusetts*. Health Affairs. 41:4, 563-572. <https://doi.org/10.1377/hlthaff.2021.01403>

⁵ Against this backdrop of pervasive concerns, the Boston Public Housing Commission convened the [Breathe Easy at Home](#) program to specifically address the need for timely inspection and enforcement where poor housing conditions are triggering asthma.

⁶ Asthmagen is defined as “any substance that through inhalation exposure contributes to the development of asthma in a human.” Law Insider. “Asthmagen.” Law Insider, Inc. <https://www.lawinsider.com/dictionary/asthmagen>

38.3% and Hispanic homeownership rate was at 27.3%.⁷⁾ Additionally, exposure to poor housing conditions is not the only housing-related disparity in play for communities of color. Evictions are disproportionately higher in neighborhoods in the Commonwealth with larger percentages of Black and Latino renters. In fact, after October 2020 when the state eviction moratorium expired:

“55 percent of eviction filings in the state’s six housing courts occurred in areas where the majority of residents identified as Black, Latino, Asian American/Pacific Islander, or Indigenous, even though only 42 percent of the state’s renters live in those neighborhoods.”⁸

This means that the stakes are disproportionately high for communities of color when a court decision, like the Housing Court’s decision in *Dacey*, makes it harder and riskier for renters to affirmatively pursue relief for poor housing conditions. This disparate impact on Black and Latino renters will only deepen health disparities in Massachusetts, which “have been well documented by the Massachusetts Department of Public Health (DPH), the Center for Health Information and Analysis (CHIA), the Office of the Attorney General, the [Massachusetts Health Policy Commission], and others” and directly linked to “social determinants of health, such as housing.”⁹

Limiting Tenants’ Access to Injunctive Relief Tools undermines the State Sanitary Code and thereby worsens health inequity

A ruling like the Housing Court’s in *Dacey* removes a critical problem-solving tool from a tenant’s toolbox: affirmative pursuit of injunctive relief when the rental unit where they live, sleep and raise families is injuring their health. The *Dacey* decision re-calibrates – in landlords’ favor – an already substantial power imbalance between landlords and tenants by linking a tenant’s pursuit of injunctive relief to a potential eviction outcome. For particularly egregious conditions of disrepair that require urgent attention, such as pest infestations like in *Dacey*, injunctions issued by housing courts offer the optimal avenue for tenants to seek immediate relief – especially since tenants cannot rely on municipalities to enforce their rights and therefore provide timely relief.

This is not a theoretical concern. A study conducted in Boston revealed that no significant change occurred as a result of a Proactive Rental Inspection Ordinance implemented for the

⁷ Source: Decennial censuses, the American Community Survey, and Urban Institute projections. *Forecasting State and National Trends in Household Formation and Homeownership*. Urban Institute. <https://www.urban.org/policy-centers/housing-finance-policy-center/projects/forecasting-state-and-national-trends-household-formation-and-homeownership/massachusetts>

⁸ Johnston, Katie. (March 22, 2022). *Eviction rates in communities of color higher during pandemic, report finds*. Boston Globe Media Partners, LLC. The Boston Globe. <https://www.bostonglobe.com/2022/03/22/business/pandemic-eviction-rates-nearly-twice-high-communities-color-report-finds/>

⁹ Massachusetts Health Policy Commission. (2020). *Health Equity Framework*. Commonwealth of Massachusetts. <https://www.mass.gov/doc/health-equity-framework-compendium/download>

purpose of improving housing conditions.⁴ Moreover, an analysis of tenant reports to the City of Boston’s Inspectional Services Department from 2011–2021 reveals that the lower the percentage of white residents, the lower the percentage of cases resolved with a repair.⁴ Meanwhile, data gathered over the course of five years indicated that 17.4 percent of “occupied housing units” had “at least one of the following problems: lack of complete kitchen facilities, lack of plumbing facilities, overcrowding or severely cost-burdened occupants.”¹⁰ The judiciary should refrain from taking any action that would limit tenant’s access to injunctive relief tools, which help to facilitate enforcement of sanitary codes and ensure safe and habitable housing for households and communities.

A related consideration is how the access to justice gap – really gulf – in the Commonwealth will amplify the health-harming impacts of letting the *Dacey* ruling stand. Just as income drives one’s ability to rent versus purchase a home, income also constrains one’s ability to engage counsel in an eviction matter. Notably,

“...the median income for all renter households was just \$42,000 in 2019—little more than half the \$81,000 median for homeowners. This disparity reflects the fact that fully 61 percent of all renter households meet HUD’s definition of low income (earning no more than 80 percent of the adjusted area median).”¹¹

Most tenants in the Commonwealth are unrepresented in eviction proceedings. According to the Trial Court’s Department of Research and Planning, 91.8% of defendant-tenants were *pro se* in summary process cases filed in 2019.¹² Renter households with lower income frequently lack the financial resources to hire legal representation to pursue legal options to enforce housing right repairs for poor housing conditions. This leads to a quandary where renters must consider whether to stay in an apartment with deplorable conditions or to seek alternate housing, which is in scarce supply – so scarce that Massachusetts faces a “severe” housing shortage with low vacancy and high demand on the rise.¹³ The *Dacey* decision comes at a time when families living in unsafe apartments cannot easily relocate to a new apartment. Current vacancy rates for rental units in

¹⁰ America's Health Rankings analysis of U.S. Department of Housing and Urban Development, Comprehensive Housing Affordability Strategy, United Health Foundation, AmericasHealthRankings.org, accessed 2022. https://www.americashealthrankings.org/explore/health-of-women-and-children/measure/severe_housing_problems/state/MA

¹¹ Joint Center for Housing Studies of Harvard University. (2022). *America’s Rental Housing 2022*. President and Fellows of Harvard College. www.jchs.harvard.edu/sites/default/files/reports/files/Harvard_JCHS_Americas_Rental_Housing_2022.pdf

¹² Department of Research and Planning. (May 2021). *Housing Court Summary Process: Fee-Shifting, Dispositions, and Other Practices*. Massachusetts Trial Court. <https://www.mass.gov/doc/summary-process-fee-shifting-dispositions-and-other-practices/download?ga=2.39171107.1094520945.1666281537-1038838920.1662127017>.

¹³ Valencia, Milton J. (July 20, 2022). ‘Things need to change.’ For the next Massachusetts governor, housing challenges await. Boston Globe Media Partners, LLC. The Boston Globe. <https://www.bostonglobe.com/2022/07/19/metro/things-need-change-next-massachusetts-governor-housing-challenges-await/?p1=Article Inline Text Link>

Boston is under 0.47%¹⁴ and statewide at 4.2%.¹⁵ Housing searches are challenging, and tenants often must settle for units that are not up to code. For some landlords there is even a business incentive to rent specifically to a low-income tenant because they “have less social power to demand repairs.”¹⁶

Given this imbalance in legal representation and the stakes for individual households and populations of renters in the Commonwealth, summary process must be kept separate and distinct from injunctive actions so that *pro se* tenants have legal mechanisms to bring plaintiff actions against landlords without fear of eviction.

Conclusion

Affirming this decision would discourage – actually chill – tenants from using Civil Repair Injunction actions to attempt to remedy health-harming housing conditions, which will generate negative health consequences for residents of the Commonwealth. Affirming this decision also would enhance landlords’ ability to circumvent their maintenance obligations under the State Sanitary Code. Failure to remediate poor housing conditions not only harms the health of tenant-households, but it also worsens health disparities among Black and Latino renter populations, who have few-to-zero housing alternatives in a tight housing market impacted by historic inflation. Furthermore, many renters impacted by the lower court ruling have marginal-to-no-disposable income with which to retain legal counsel in an eviction matter. If *Dacey* stands, many more families who lack economic and legal resources will be forced to make untenable choices between being housed and being healthy, which will intensify public health risks.

In conclusion, the Housing Court’s decision in the *Dacey* case should be reversed, and summary process should be confirmed as the exclusive pathway to a potential eviction of a tenant. A landlord should not be able to obtain a judgment for possession and for issuance of execution absent the commencement of summary process proceedings; and summary process should be the only means to recover possession of land or a tenement when a tenant does not vacate the premises. Any decision contrary to that is a step backward for health equity and access to justice in the Commonwealth.

¹⁴ Salpoglou, Demetrios. (2022). *2022 Boston Mid Year Apartment Rental Market Report*. Boston Pads, LLC.

<https://bostonpads.com/blog/boston-rental-market/2022-boston-mid-year-apartment-rental-market-report/>

¹⁵ U.S. Census Bureau, Rental Vacancy Rate for Massachusetts [MARVAC], retrieved from FRED, Federal Reserve Bank of St. Louis; <https://fred.stlouisfed.org/series/MARVAC>, October 18, 2022.

¹⁶ Desmond M, Wilmers N. Do the poor pay more for housing? Exploitation, profit, and risk in rental markets. *Am J Sociol*. 2019;124(4):1090–124



Respectfully submitted,

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