

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Norfolk Division

UNITED STATES OF AMERICA	)	
	)	
Plaintiff,	)	
	)	CASE NO.: 2:24-cv-16
v.	)	
	)	
MCGOWAN REALTY, LLC, D/B/A	)	
REDSAIL PROPERTY MANAGEMENT;	)	
	)	
and	)	
	)	
ROBERT GORMAN;	)	
	)	
Defendants.	)	
_____	)	

**COMPLAINT**

Plaintiff, the United States of America (“United States”), by and through its undersigned attorneys, alleges as follows:

**INTRODUCTION**

1. The United States brings this action under the Servicemembers Civil Relief Act (“SCRA”), 50 U.S.C. §§ 3901-4043, against McGowan Realty, LLC, d/b/a RedSail Property Management (“RedSail”) and Robert Gorman (collectively “Defendants”).

2. The SCRA serves “to provide for, strengthen, and expedite the national defense” through a broad array of legal protections that enable servicemembers “to devote their entire energy to the defense needs of the Nation.” 50 U.S.C. § 3902.

3. Section 3955 of the SCRA allows servicemembers who receive permanent change of station (“PCS”) orders to terminate their residential leases without penalty, thereby providing

some relief to servicemembers who would otherwise be forced to pay rent for housing they cannot occupy because they have been ordered to move to another location. The SCRA applies to PCS orders, irrespective of the number of miles a servicemember's PCS orders require the servicemember to move. 50 U.S.C. § 3955.

4. The Virginia Residential Landlord Tenant Act ("VRLTA"), VA. CODE ANN. § 55.1-1235(A), provides, in pertinent part, that, "[a]ny member of the Armed Forces of the United States or a member of the National Guard serving on full-time duty or as a civil service technician with the National Guard may . . . terminate his rental agreement if the member (i) has received permanent change of station orders to depart 35 miles or more (radius) from the location of the dwelling unit . . . ." Thus, the VRLTA allows only those servicemembers who receive PCS orders to depart 35 miles or more (radius) from their residence to terminate their residential leases without penalty.

5. Since at least August 2018, Defendant RedSail has imposed or attempted to impose the VRLTA's 35-mile limitation on servicemembers in the Hampton Roads area who were terminating their leases after receiving PCS orders, thereby depriving them of the full scope of their rights under federal law, 50 U.S.C. § 3955.

6. From about April 18, 2022, through mid-July 2022, Defendant Gorman, through his agent, Defendant RedSail, imposed the VRLTA's 35-mile limitation on a servicemember, thereby depriving him of the full scope of his rights under federal law, 50 U.S.C. § 3955.

**JURISDICTION AND VENUE**

7. This Court has jurisdiction over this action under 28 U.S.C. §§ 1331 and 1345 and 50 U.S.C. § 4041.

8. Venue is proper in this judicial district under 28 U.S.C. § 1391(b) because the events giving rise to the United States' claims occurred in the Eastern District of Virginia.

**PARTIES**

9. Plaintiff is the United States of America, which has authority to enforce the SCRA pursuant to 50 U.S.C. § 4041(a).

10. Defendant McGowan Realty, LLC, d/b/a RedSail Property Management is a corporation organized and existing under the laws of the Commonwealth of Virginia with its principal place of business in Newport News, Virginia. RedSail owns and manages residential homes in the Hampton Roads, Virginia, area, including Newport News, Hampton, Yorktown, Williamsburg, Virginia Beach, Norfolk, Chesapeake, Portsmouth, Suffolk, Poquoson, Carrolton, Smithfield, and Gloucester, Virginia.

11. At all times relevant to the complaint, Defendant Robert Gorman ("Gorman") has owned a residence with an address of 7125 Arrington Street, Suffolk, Virginia 23435 ("Arrington Street Home") since on or about January 31, 2018. At all times relevant to the complaint, Defendant RedSail managed the rental of Defendant Gorman's Arrington Street residence.

**FACTUAL ALLEGATIONS**

12. Since at least August 2018, Defendant RedSail has maintained a policy of imposing the state law's 35-mile limitation on servicemembers in the Hampton Roads area who sought to terminate their leases after receiving PCS orders. RedSail has asserted to at least two servicemembers that the VRLTA, VA. CODE ANN. § 55.1-1235(A), limited their SCRA right to terminate their residential leases because their military orders required them to report to a location less than 35 miles (radius) from their homes.

13. The Hampton Roads area, where Defendant RedSail does business and Defendant Gorman owns a home that Defendant RedSail manages, is home to several military installations, has a large military population, and has significant traffic issues, particularly near the bridges and tunnels that span the many Hampton Roads waterways.

*Sailor Number One*

14. On or about August 21, 2018, an active duty United States Navy Seaman and his spouse notified Defendant RedSail that they were terminating their lease on a home in Portsmouth, Virginia, pursuant to PCS orders.

15. Defendant RedSail initially declined to honor the Navy Seaman's lease termination because the PCS orders were within 35 miles (radius) of the Navy Seaman's leased residence.

16. Only after United States Navy Legal Assistance Attorneys interceded and informed Defendant RedSail that the Navy Seaman's PCS orders required him to report to a location more than 35 miles (radius) from his leased residence, Defendant RedSail allowed the Navy Seaman and his spouse to terminate their residential lease without penalty.

Sailor Number Two

17. On or about July 27, 2021, a United States Navy Fire Controlman Petty Officer First Class (“Petty Officer”) and his then-fiancée signed a lease for the Arrington Street Home with the property owner, Defendant Gorman. At that time, the Petty Officer was assigned to the USS Stout, with a homeport of Norfolk, Virginia.

18. The Arrington Street Home lease indicated that the “Owner [Robert Gorman] has appointed and granted RedSail Property Management (‘Agent’ or ‘Landlord’) exclusive actual agency authority to act as agent on behalf of and in the name of Owner in managing, leasing, operating and/or arranging for the lease or lease of the Property and to do any and all lawful things necessary for the fulfillment of this Agreement.”

19. The lease term was from July 30, 2021, to July 29, 2023, with a monthly rent of \$1,895 plus \$30 a month in pet rent, due on the first day of each month.

20. On or about July 27, 2021, the Petty Officer and his then-fiancée gave Defendant RedSail a \$1,895 security deposit.

21. On or about July 30, 2021, the Petty Officer and his then-fiancée moved into the Arrington Street Home. They made all rent payments in a timely manner from July 27, 2021, through July 15, 2022.

22. On or about November 21, 2021, the Petty Officer and his fiancée married.

23. In late December 2021, the Petty Officer received PCS orders dated December 22, 2021, directing him to report by June 18, 2022, to the Surface Combat Systems Training Command at Naval Air Station Oceana, Dam Neck Annex, in Virginia Beach, Virginia. The most direct route from the Arrington Street Home to the Petty Officer’s new duty station was

approximately 33.3 miles. Given the traffic, it would take him a minimum of 50 minutes to drive each way, which would more than double his prior commute time.

24. On April 18, 2022, the Petty Officer verbally notified Defendant RedSail that he was terminating his lease pursuant to his receipt of PCS orders and that he and his wife intended to vacate the home by May 18, 2022.

25. On April 18, 2022, the Petty Officer provided a copy of his PCS orders to Defendant RedSail via electronic mail.

26. In an April 18, 2022, electronic mail message, Defendant RedSail refused to honor the Petty Officer's lease termination because his PCS orders were for a location less than 35 miles (radius) from the Arrington Street Home.

27. On April 22, 2022, a United States Navy Legal Assistance Officer representing the Petty Officer notified Defendant RedSail via electronic mail that the Petty Officer's lease should terminate on May 30, 2022, thirty days after the due date for his next rent payment. The Legal Assistance Attorney also informed Defendant RedSail that the SCRA trumps the 35-mile (radius) limitation the VRLTA places upon a servicemember's right to terminate a residential lease.

28. By May 30, 2022, the Petty Officer and his wife vacated the Arrington Street Home and moved to a new home in Virginia Beach, Virginia, that was within three miles driving distance of the Petty Officer's new duty station.

29. On May 31, 2022, the Department of the Navy notified the Department of Justice that Defendant RedSail had refused to honor the Petty Officer and his wife's lease termination pursuant to PCS orders, in violation of 50 U.S.C. § 3955.

30. At Defendant RedSail's insistence, the Petty Officer and his wife continued to pay rent on the Arrington Street Home until new tenants could be found.

31. In June 2022, the Petty Officer and his wife paid \$1,895 in rent, \$30 in pet rent, and a \$750 lease termination fee. Defendant RedSail withheld from the Petty Officer's security deposit \$733.55 for rent owed through July 12, 2022, and \$100 for "Repairs: mismatched paint[.]" In total, the Petty Officer paid \$3,408.55 in additional rent and a termination fee.

32. Upon information and belief, by mid-July 2022, Defendant RedSail had found new tenants for the Arrington Street Home.

33. Since at least 2017, Defendant RedSail has used leases with military personnel clauses that omit several categories of servicemembers who may terminate their leases under the SCRA by stating, "You may terminate the Lease Contract if you enlist or are drafted or commissioned and on active duty in the Armed Forces of the United States. You must give us written notice of termination, 30 (thirty) days prior to the termination date."

34. Since at least August 2018 and despite information to the contrary from Navy Legal Assistance and Department of Justice Attorneys, Defendant RedSail has asserted that the following provision in RedSail's lease operated as an effective SCRA waiver and allowed RedSail to impose the VRLTA's 35-mile provision: "THIS LEASE SHALL BE GOVERNED BY THE VIRGINIA RESIDENTIAL LANDLORD TENANT ACT." A valid SCRA waiver, however, must be in writing and must be "executed as an instrument *separate* from the obligation or liability to which it appears." 50 U.S.C. §3918(a) (emphasis added).

35. Since at least August 2018, Defendant RedSail has also insisted that the VRLTA's 35-mile provision operates to limit servicemembers' residential lease termination rights under Section 3955 of the SCRA.

**SERVICEMEMBER CIVIL RELIEF ACT VIOLATIONS**

36. The United States realleges and incorporates by reference each allegation in the preceding paragraphs as if fully set forth herein.

37. The SCRA allows a servicemember to terminate a residential lease "at any time after . . . the lessee's entry into military service; or . . . the date of the lessee's military orders" if "the lease is executed by or on behalf of a person who thereafter and during the term of the lease enters military service; or . . . [if] the servicemember, while in military service, executes the lease and thereafter receives military orders for a permanent change of station or to deploy with a military unit, or as an individual in support of a military operation, for a period of not less than 90 days." 50 U.S.C. § 3955(a), (b).

38. "A lessee's termination of a lease pursuant to this section shall terminate any obligation a dependent of the lessee may have under the lease." 50 U.S.C. § 3955(a)(2).

39. When a lease provides for monthly payment of rent, the lease termination "is effective 30 days after the first date on which the next rental payment is due . . ." 50 U.S.C. § 3955(d)(1)(A).

40. When a servicemember terminates a lease under the SCRA, "[t]he lessor may not impose an early termination charge[.]" 50 U.S.C. § 3955(e)(1).

41. Further, it is unlawful to knowingly seize, hold, or detain the security deposit of a servicemember or a servicemember's dependent in order to cover rent accruing after the termination of the lease. 50 U.S.C. § 3955(h).

42. Defendant RedSail engaged in a pattern or practice of violating Section 3955 of the SCRA by: (1) including provisions in its leases that deprive servicemembers of the full protection of the SCRA, (2) maintaining and enforcing a policy of applying the VRLTA's 35-mile (radius) limitation, which conflicts and is incompatible with servicemembers' unqualified rights under Section 3955 of the SCRA; and (3) assessing early termination and additional rent charges and withholding a security deposit from a Petty Officer who properly terminated his lease under Section 3955 of the SCRA.

43. Defendant RedSail and Defendant Gorman's violations of Section 3955 of the SCRA raise issues of significant public importance. The SCRA prohibits landlords from forcing servicemembers and their dependents to pay for housing they cannot inhabit because they have received permanent change of station orders. Early termination fees impose financial burdens on servicemembers and their families and negatively impact military readiness.

44. The SCRA-protected servicemember and his dependent-spouse whose rights under Section 3955 of the SCRA were violated are "aggrieved persons" under 50 U.S.C. § 4041(b)(2), and they have suffered damages as a result of Defendants' conduct.

45. Defendants' conduct was intentional, willful, and taken in disregard for the rights of servicemembers.

### PRAYER FOR RELIEF

WHEREFORE, the United States respectfully requests that the Court enter an ORDER that:

1. Declares that Defendants' conduct violated the SCRA;
2. Declares that residential housing owners and property managers cannot impose the VRLTA's 35-mile (radius) limitation on servicemembers who qualify for lease termination under the SCRA;
3. Enjoins Defendants, their subsidiaries, agents, employees, and successors, and all other entities in active concert or participation with Defendants, from:
  - a. including or enforcing provisions in any residential lease that violate or purport to narrow the scope of rights guaranteed by the SCRA, 50 U.S.C. § 3955;
  - b. failing or refusing to take such affirmative steps as may be necessary to restore, as nearly as practicable, each person aggrieved by Defendants' illegal conduct to the position he or she would have been in, but for Defendants' illegal conduct;
  - c. failing or refusing to take actions as may be necessary to prevent the recurrence of any unlawful conduct in the future and to eliminate, to the extent practicable, the effects of their unlawful conduct, including implementing policies and procedures to ensure that Defendants afford SCRA-protected servicemembers all protections contained in the SCRA;
4. Award appropriate monetary damages to the Petty Officer aggrieved by Defendants' violations of the SCRA, pursuant to 50 U.S.C. § 4041(b)(2);

