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OCT 15 2009

**JOSEPH HAAS
Clerk**

**UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

v.

TK Properties, L.L.C., Scott Terveen, Ann
Wagner, and Corey Anderson

Defendants.

Case No.: 09-4153

COMPLAINT

The United States of America ("United States") alleges as follows:

NATURE OF THE ACTION

1. This action is brought by the United States to enforce Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988 ("Fair Housing Act"), 42 U.S.C. §§ 3601-3631. It is brought on behalf of: Michelle Chevalier and her three minor children, B.W., D.W., and R.H.; Charlotte and Untoma Gadsden and their three minor children, I.W., J.G., and D.G.; and Jenny Johnson, and her two minor children, T.J. and C.H., pursuant to 42 U.S.C. §§ 3612(o) and 3614(a).

JURISDICTION AND VENUE

2. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1345, 42 U.S.C. § 3612(o) and 42 U.S.C. § 3614(a).

3. Venue is proper in this District under 28 U.S.C. § 1391(b) because Defendants reside there and because a substantial part of the events or omissions giving rise to the United States' claims occurred there.

PARTIES

4. TK Properties, L.L.C. ("TK Properties") is a limited liability corporation organized under the laws of South Dakota. From November 2003 until July 2009, TK Properties owned Lakeport Village Apartments ("Lakeport Village") in Sioux Falls, South Dakota. Scott Terveen, Michael Terveen, James Terveen and Ken Kraft are member-managers of TK Properties and share equally in the profits and losses of the corporation.

5. Scott Terveen oversaw the day-to-day operation of Lakeport Village and supervised the on-site managers.

6. At all times relevant to this case, Defendants Corey Anderson and Ann Wagner were the on-site property managers of Lakeport Village.

FACTUAL ALLEGATIONS

7. Lakeport Village is a 48-unit apartment complex that is comprised of three buildings, each with 16 units. Those units are "dwellings" within the meaning of the Fair Housing Act, 42 U.S.C. § 3602(b).

8. Michelle Chevalier lived at Lakeport Village with her three minor children, R.W., D.W., and R.H., from approximately June 2008 until May 2009.

9. Charlotte and Untoma Gadsden lived at Lakeport Village with their three minor children, I.W., J.G., D.G., and their adult son Brandon Williams, from approximately September 2006 until June 2009.

10. Jenny Johnson lived at Lakeport Village with her two minor children, T.J. and C.H., from 2001 until July 2009.

11. On or around December 1, 2008, TK Properties hired Ann Wagner and Corey

Anderson as on-site property managers.

12. On numerous occasions and in the presence of TK Properties' principals, Anderson and Wagner used the word "nigger" to refer to black tenants at Lakeport Village, including, *inter alia*, Untoma and Charlotte Gadsden and their children.

13. On or around January 5, 2009, Michelle Chevalier, a white tenant at Lakeport Village, complained to Wagner about noise coming from the Gadsdens' apartment. Chevalier and Wagner went upstairs to speak to the Gadsdens. Charlotte Gadsden explained to Wagner that her husband Untoma had just returned from the hospital and that the noise had been the result of his dialysis machine falling to the floor. Wagner nevertheless yelled, "that's it, you're done, you're out of here, I've had enough," or words to that effect.

14. Following this confrontation, Wagner urged Chevalier to file a false police report stating that Charlotte and Untoma Gadsden's 17-year old son, I.G., had attacked Chevalier. Chevalier refused to do so. Wagner nevertheless stated she would file such a report, and told Chevalier that she needed her help in evicting the Gadsdens, whom she referred to as "nigger" tenants. When the police arrived, Chevalier denied that she had been threatened by I.G. and therefore no charges were filed.

15. Anderson told Chevalier that, with regard to the maintenance requests of African Americans, "them fucking niggers can wait, I'll get to them when I get to them," or words to that effect. Anderson made the comment in the presence of Chevalier's children.

16. On or about February 11, 2009, Anderson called the Sioux Falls Police Department and falsely reported that J.G., the Gadsdens' 15-year old son, was attempting to steal change from the apartment complex's laundry machine. Scott Terveen insisted that charges be

filed. The charges were later dismissed.

17. On numerous occasions, white tenant Johnson heard Anderson and Wagner use the word “nigger” to describe black tenants, including the Gadsdens. On or about February 19, 2009, white tenant Jenny Johnson told another white tenant that she believed Anderson and Wagner were racist. Anderson, who learned of Johnson’s allegations, responded by sending Johnson a text message that said, “Who in the hell do u think u r if u want 2 bitch about me and b nosy u know where I live.” Anderson also told another tenant that he would “punch [Johnson] in the mouth to shut her up,” or words to that effect. The tenant told Johnson about Anderson’s threat.

18. Following Anderson’s text message and threat of assault, Wagner and Johnson saw each other on the balconies of their respective units. Wagner yelled, “Do you know the difference between a black person and a nigger?...They’re niggers. They’re niggers upstairs in 306,” or words to that effect, referring to the Gadsden’s unit.

19. On February 20, 2009, Chevalier, Charlotte Gadsden, Untoma Gadsden and Johnson went to the Sioux Falls Housing and Redevelopment Commission (“Housing Authority”) to complain about the discriminatory conduct of Anderson and Wagner. Anderson and Wagner saw them leave the property.

20. Later that day, the Gadsdens and Johnson returned to their apartments to find that they and other tenants on their floor did not have heat.

21. The following day, on February 21, 2009, Wagner sent Chevalier a text message asking, “is it true you were with Jen [Tenant Johnson] yesterday at housing [Sioux Falls Housing and Redevelopment Commission]. we have never done anything 2 u or your family-y r u against

us?”

22. On February 22, 2009, Johnson received a voice mail message from Wagner in which she yelled vulgarities and stated that she would use “every ounce in my body” to “take you out of here.” Johnson felt threatened by the message and called the police the following day.

23. Defendants TK Properties and Scott Terveen knew about Defendant Anderson and Wagner’s discriminatory conduct, but failed to take corrective action. In February 2009, Johnson met with Michael Terveen to complain about Anderson and Wagner’s discriminatory conduct. Michael Terveen relayed Johnson’s complaints to Scott Terveen.

24. Despite these complaints, Defendants TK Properties and Scott Terveen failed to curtail Wagner and Anderson’s authority over the management of the complex and allowed them to continue on as managers. Corey Anderson and Ann Wagner continued to live at the property rent-free and continued to serve as managers of the property until at least May 2009.

25. Defendants created a racially hostile housing environment for the Gadsdens, the Chevaliers, and the Johnsons, and materially altered the terms and conditions of their housing on the basis of race. As a result of the defendant’s racially discriminatory and retaliatory conduct, the Chevalier family, the Gadsden family and the Johnson family moved out of Lakeport Village Apartments.

26. Defendants Scott Terveen and TK Properties, L.L.C. are liable for the above-described discriminatory conduct of their agents, Defendants Ann Wagner and Corey Anderson.

27. On February 26, 2009, Charlotte Gadsden, Untoma Gadsden, Chevalier, and Johnson, on behalf of themselves and their minor children, filed three discrimination complaints with the U.S. Department of Housing and Urban Development (“HUD”), pursuant to 42 U.S.C. §

3610(a).

28. Pursuant to 42 U.S.C. § 3610(a) and (b), the Secretary of HUD investigated these complaints, attempted conciliation without success, and prepared final investigative reports. Based on the information gathered in the course of this investigation, the Secretary, pursuant to 42 U.S.C. § 3610(g), determined that reasonable cause exists to believe that Defendants had engaged in illegal discriminatory housing practices in violation of the Fair Housing Act. Accordingly, on August 31, 2009, pursuant to 42 U.S.C. § 3610(g)(2)(A), the Secretary issued a Determination of Reasonable Cause and Charge of Discrimination against Defendants.

29. On September 15, 2009, Charlotte Gadsden, Untoma Gadsden, Chevalier, and Johnson timely elected to have these charges resolved in a federal civil action, pursuant to 42 U.S.C. § 3612(a).

30. The Secretary of HUD subsequently authorized the Attorney General to file this action on behalf of the HUD complainants, pursuant to 42 U.S.C. § 3612(o).

FIRST CLAIM FOR RELIEF

31. Plaintiff re-alleges and incorporates by reference the allegations set forth in paragraphs 1-30, supra.

32. By the actions and statements referred to in the foregoing paragraphs, Defendants have:

- (a) Discriminated in the terms, conditions or privileges of the sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, on the basis of race, in violation of 42 U.S.C. § 3604(b);

- (b) Made statements with respect to the rental of a dwelling that indicated a preference, limitation or discrimination based on race, in violation of 42 U.S.C. § 3604(c); and
- (c) Coerced, intimidated, threatened or interfered with persons in the exercise or enjoyment of, or on account of their having exercised or enjoyed, their rights under the Fair Housing Act, in violation of 42 U.S.C. § 3617.

33. Charlotte Gadsden, Untoma Gadsden, Chevalier, Johnson, and their children, have suffered damages as a result of Defendants' violations of 42 U.S.C. §§ 3604(b), (c) and 42 U.S.C. § 3617 and are "aggrieved persons" pursuant to 42 U.S.C. § 3602(i).

34. Defendants' actions, as set forth above, were intentional, willful and/or taken in reckless disregard for the rights of others.

SECOND CLAIM FOR RELIEF

35. Plaintiff re-alleges and incorporates by reference the allegations set forth in paragraphs 1-34, supra.

36. Defendants' conduct and statements, described above, constitute:

- (a) A pattern or practice of resistance to the full enjoyment of rights granted by the Fair Housing Act, 42 U.S.C. §§ 3604(b), 3604(c) and 3617, in violation of 42 U.S.C. § 3614(a); or
- (b) A denial to a group of persons of rights granted by the Fair Housing Act, 42 U.S.C. §§ 3604(b), 3604(c) and 3617, which raises an issue of general public importance, in violation of 42 U.S.C. § 3614(a).

33. In addition to Charlotte Gadsden, Untoma Gadsden, Chevalier, Johnson, and their minor children, there may be other victims of Defendants' discriminatory actions and practices who are "aggrieved persons" as defined in 42 U.S.C. § 3602(i).

WHEREFORE, the United States prays that this Court enter an order that:

1. Declares that Defendants' actions, policies and practices, as alleged herein, violate the Fair Housing Act;

2. Declares that Defendants have engaged in a pattern or practice of discrimination in violation of the Fair Housing Act, or have denied rights guaranteed under the Fair Housing Act to a group of persons, which denial raises an issue of general public importance;

3. Enjoins Defendants, their agents, employees and successors, and all other persons in active concert or participation with them, from:

- (a) discriminating in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, on the basis of race;
- (b) stating any preference, limitation or discrimination on the basis of race, ;
and
- (c) failing or refusing to take such steps as may be necessary to prevent the recurrence of any discriminatory conduct in the future and to eliminate, to the extent practicable, the effects of Defendants' unlawful housing practices;

4. Awards monetary damages, pursuant to 42 U.S.C. §§ 3612(o)(3), 3613(c)(1), and 3614(d)(1)(B) to all persons harmed by Defendants' discriminatory practices on the basis of race;

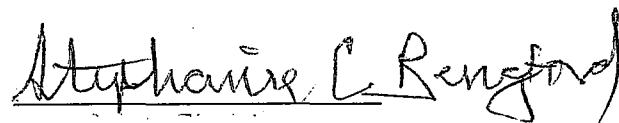
and

5. Assesses a civil penalty against Defendants, pursuant to 42 U.S.C. § 3614(d)(1)(C) and 28 C.F.R. § 85.3(b)(3) to vindicate the public interest.

The United States further prays for such additional relief as the interests of justice may require.

Dated: October 15, 2009.

DENNIS R. HOLMES
Acting United States Attorney

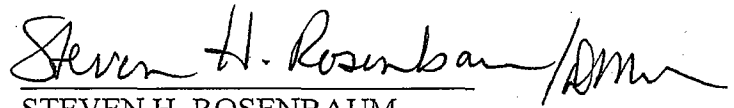


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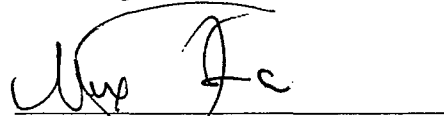
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