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2005

Amended Complaint, Gassman v. Frischholtz et al, Docket No. 1:05-cv-05377 (Northern District of Illinois 2005)

F. Willis Caruso

John Marshall Law School, 6caruso@jmls.edu

John Marshall Law School Fair Housing Legal Clinic

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**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

Debra Gassman,)	
Plaintiff,)	
v.)	No.: 05 C 5377
)	
Edward Frischholz, and)	Judge: Judge George W. Lindberg
Shoreline Towers Condominium)	
Association, an Illinois not-for-profit)	Magistrate: Judge Arlander Keys
corporation,)	
Defendants.)	Plaintiff Demands Trial by Jury

AMENDED COMPLAINT

The Plaintiff Debra Gassman, by her attorneys F. Willis Caruso, Lewis W. Powell, III and the Senior Law Students of The John Marshall Law School Fair Housing Legal Clinic, complain of Defendants Edward Frischholz, and Shoreline Towers Condominium Association an Illinois not-for-profit corporation; as follows:

JURISDICTION

1. This action arises under 42 U.S.C. §1982, 42 U.S.C. §3601 et seq.; and The Illinois Condominium Act 765 ILCS 605/1 §§18.4B.
2. Jurisdiction is conferred on this Court by 28 U.S.C. §1331, §1343(a) and §2201, and 42 U.S.C. §3613(a).
3. Venue is proper in the Northern District of Illinois, Eastern Division since Plaintiff and Defendants reside within the boundaries thereof.

PARTIES

4. Plaintiff, Debra Gassman, is a Jewish American, female citizen of the United States who is the owner of and resides at 6301 North Sheridan Road unit 12P, Chicago, Illinois 60660 (“Subject Property”).

5. Defendant, Edward Frischholz, on information and belief, is a Caucasian/White male citizen of the United States, and at all times relevant hereto resided at 6301 North Sheridan Road and is made a party to this action for his individual acts. He continues to be the President of the Shoreline Towers' Board of Directors and sometimes acts for and on behalf of the Association.

6. Defendant Shoreline Towers Association is a not-for-profit corporation of Illinois and a condominium association located at 6301 North Sheridan Road Chicago, IL 60660.

FACTS RELEVANT TO ALL COUNTS

7. Commencing during or about May 2004 and continuing to the date hereof Defendants, Edward Frischholz, and Shoreline Towers Condominium Association intimidated, threatened, and interfered with Ms. Gassman by consistently removing and prohibiting Ms. Gassman from placing a Mezuzah (a religious parchment encased in a small tube essential to observing Jewish Religion) on the exterior of the Subject Property doorway.

8. Commencing during or about June 2004 and continuing to the date hereof, Defendants continued and continue to prevent the Ms. Gassman from placing a Mezuzah on the exterior of the Subject Property doorway, despite Jewish law requiring that Mezuzah be placed on the outside of the door of Jewish residences.

9. Commencing during or about May 2004, Defendants ordered the Mezuzah on the Subject Property to be removed to facilitate the repainting of the condominium hallway. The hallway painting was completed by approximately June 2004, after which Plaintiff placed the Mezuzah back on her door.

10. Contemporaneously, Defendants claimed that they were enforcing a condominium association by-law which purportedly prohibited anything from being placed on a doorpost in the

hallway of the Condominium. The claimed provision of by-law and the purported interpretation given by Defendants had not previously been so interpreted or enforced in the manner employed by Defendants, despite having been added in the year 2001.

11. Such actions deprived Ms. Gassman of the use and enjoyment of her home by infringing on her right to freely practice her religious faith. These actions were based on Ms. Gassman's status as members of the Jewish religion and because of race.

13. As a direct consequence of Defendants' discriminatory, retaliatory, interfering and harassing actions, Plaintiff continues to suffer emotional distress and mental anguish.

13. All of the actions of Defendants complained of herein were done willfully, maliciously with careless disregard for the rights of the Plaintiff.

CLAIMS

As Against Defendant Edward Frischholz

Count 1: Religious and Race Discrimination Under 42 U.S.C. §3604

14. Ms. Gassman restates and re-alleges paragraphs 1 through 13 of this Complaint as though the same were fully set forth and pleaded herein.

15. The actions by Defendant are in violation of the Ms. Gassman's housing rights by discriminating in the provision of services or facilities and to make the housing otherwise unavailable in connection with the ownership and rental of a dwelling based upon Ms. Gassman's Jewish religion and race constitutes discrimination on the basis of race and religion in violation of the Fair Housing Act 42 U.S.C. §3604 (a) and (b).

16. Ms. Gassman has sustained direct injuries including, but not limited to, being barred from the full use and enjoyment of Subject Property, as guaranteed by the Fair Housing Act.

17. Ms. Gassman has suffered emotional distress and mental anguish, embarrassment,

humiliation and intimidation sustained as a result of Defendant's discriminatory actions including prohibiting the Mezuzah from placement on the exterior doorpost of the Subject Property.

WHEREFORE, Plaintiff prays the court to enter a Temporary Restraining Order, a Preliminary Injunction and a Permanent Injunction enjoining the Defendant, Edward Frischholz from prohibiting or preventing the Mezuzah from being placed on the doorpost of the Subject Property and/or from removing or defiling the Mezuzah, and/or from causing the Mezuzah to be removed or defiled. Plaintiff also prays that the court award actual damages for Plaintiff and against Edward Frischholz for the injury to the Plaintiff, including damages for emotional distress, mental anguish, humiliation and embarrassment, punitive damages for actions done with malice or willful disregard for the rights of the Plaintiff, attorney's fees and costs and such other relief as the court may deem just and proper.

Count 2: Violation of 42 U.S.C. §3617

18. Ms. Gassman restates and re-alleges paragraphs 1 through 13 of this Complaint as though the same were fully set forth and pleaded herein.

19. The actions by Defendant of intimidating, interfering with the housing rights of, and harassing Ms. Gassman by prohibiting the Mezuzah from being placed on the exterior doorpost, removing or causing to be removed the Mezuzah and defiling the Mezuzah is interference and intimidation discrimination on the basis of race and religion in violation of the Fair Housing Act, 42 U.S.C. §3617.

20. Ms. Gassman has sustained and continues to sustain direct injuries including, but not limited to, being barred from the full use and enjoyment of the Subject Property, as guaranteed by the Fair Housing Act.

21. Ms. Gassman has suffered emotional distress and mental anguish, embarrassment, humiliation and intimidation sustained as a result of Defendant's discriminatory actions including the prohibiting the Mezuzah from placement on the exterior doorpost of the Subject Property.

WHEREFORE, Plaintiff prays the court to enter a Temporary Restraining Order, a Preliminary Injunction and a Permanent Injunction enjoining the Defendant, Edward Frischholz from prohibiting or preventing the Mezuzah from being placed on the doorpost of the Subject Property and/or from removing or defiling the Mezuzah, and/or from causing the Mezuzah to be removed or defiled. Plaintiff also prays that the court award actual damages for Plaintiff and against Edward Frischholz for the injury to the Plaintiff, including damages for emotional distress, mental anguish, humiliation and embarrassment, punitive damages for actions done with malice or willful disregard for the rights of the Plaintiff, attorney's fees and costs and such other relief as the court may deem just and proper.

Count 3: Violation of 42 U.S.C. §1982

22. Ms. Gassman restates and re-alleges paragraphs 1 through 13 of this Complaint as though the same were fully set forth and pleaded herein.

23. The actions by the Defendant Edward Frischholz of prohibiting Ms. Gassman from placing a Mezuzah on the exterior doorway of the Subject Property, being because of race, is a violation of Ms. Gassman's right of to be free from discrimination based on race in violation of 42 U.S.C. §1982.

24. The actions by the Defendant of removing or causing the removal of a Mezuzah on the exterior doorway of the Subject Property, being because of race, are violations of Ms. Gassman's right to have the same rights as enjoyed by other citizens to hold and convey real and

personal property in violation of 42 U.S.C §1982.

25. Ms. Gassman has suffered emotional distress and mental anguish, embarrassment, humiliation and intimidation sustained as a result of Defendant's discriminatory actions including prohibiting the Mezuzah from placement on the exterior doorpost of the Subject Property.

WHEREFORE, Plaintiff prays the court to enter a Temporary Restraining Order, a Preliminary Injunction and a Permanent Injunction enjoining the Defendant, Edward Frischholz from prohibiting or preventing the Mezuzah from being placed on the doorpost of the Subject Property and/or from removing or defiling the Mezuzah, and/or from causing the Mezuzah to be removed or defiled. Plaintiff also prays that the court award actual damages for Plaintiff and against Edward Frischholz for the injury to the Plaintiff, including damages for emotional distress, mental anguish, humiliation and embarrassment, punitive damages for actions done with malice or willful disregard for the rights of the Plaintiff, attorney's fees and costs and such other relief as the court may deem just and proper.

As Against Defendant, Shoreline Towers Condominium Association

Count 4: Religious Discrimination Under 42 U.S.C. §3604

26. Ms. Gassman restates and re-alleges paragraphs 1 through 13 of this Complaint as though the same were fully set forth and pleaded herein.

27. The actions by Defendant in violation of Ms. Gassman's housing rights in the provision of services or facilities in connection with the sale or rental of a dwelling based upon Ms. Gassman's Jewish religion and race constitutes discrimination on the basis of race and religion in violation of the Fair Housing Act 42 U.S.C. §3604 (a) and (b).

28. Ms. Gassman has sustained direct injuries including, but not limited to, being barred from

the full use and enjoyment of the Subject Property, as guaranteed by the Fair Housing Act.

29. Ms. Gassman has suffered emotional distress and mental anguish, embarrassment, humiliation and intimidation sustained as a result of Defendant's discriminatory actions including prohibiting the Mezuzah from placement on the exterior doorpost of the Subject Property.

WHEREFORE, Plaintiff prays the court to enter a Temporary Restraining Order, a Preliminary Injunction and a Permanent Injunction enjoining the Defendant, Shoreline Towers Condominium Association from prohibiting or preventing the Mezuzah from being placed on the doorpost of the Subject Property and/or from removing or defiling the Mezuzah, and/or from causing the Mezuzah to be removed or defiled. Plaintiff also prays that the court award actual damages for Plaintiff and against Shoreline Towers Condominium Association for the injury to the Plaintiff, including damages for emotional distress, mental anguish, humiliation and embarrassment, punitive damages for actions done with malice or willful disregard for the rights of the Plaintiff, attorney's fees and costs and such other relief as the court may deem just and proper.

Count 5: Violation of 42 U.S.C. §3617

30. Ms. Gassman restates and re-alleges paragraphs 1 through 13 of this Complaint as though the same were fully set forth and pleaded herein.

31. The actions by Defendant of intimidating, interfering with the housing rights of, and harassing Ms. Gassman by prohibiting the Mezuzah from being placed on the exterior doorpost, is discrimination on the basis of race and religion in violation of the Fair Housing Act, 42 U.S.C. §3617.

32. Ms. Gassman has sustained and continues to sustain direct injuries including, but not

limited to, being barred from the full use and enjoyment of the Subject Property as guaranteed by the Fair Housing Act.

33. Ms. Gassman has suffered emotional distress and mental anguish, embarrassment, humiliation and intimidation sustained as a result of Defendant's discriminatory actions including prohibiting the Mezuzah from placement on the exterior doorpost of the Subject Property.

WHEREFORE, Plaintiff prays the court to enter a Temporary Restraining Order, a Preliminary Injunction and a Permanent Injunction enjoining the Defendant, Edward Frischholz from prohibiting or preventing the Mezuzah from being placed on the doorpost of the Subject Property and/or from removing or defiling the Mezuzah, and/or from causing the Mezuzah to be removed or defiled. Plaintiff also prays that the court award actual damages for Plaintiff and against Edward Frischholz for the injury to the Plaintiff, including damages for emotional distress, mental anguish, humiliation and embarrassment, punitive damages for actions done with malice or willful disregard for the rights of the Plaintiff, attorney's fees and costs and such other relief as the court may deem just and proper.

Count 6: Violation of 42 U.S.C. §1982

34. Ms. Gassman restates and re-alleges paragraphs 1 through 13 of this Complaint as though the same were fully set forth and pleaded herein.

35. The actions by the Defendant of prohibiting Ms. Gassman from placing a Mezuzah on the exterior doorway of the Subject Property, being because of race, are a violation of Ms. Gassman's right to be protected against impairment of her rights as enjoyed by others in violation of 42 U.S.C. §1982.

36. The actions by the Defendant of removing or causing the removal of a Mezuzah from the

exterior doorway of the Subject Property, being because of race, are a violation of Ms. Gassman's right to have the same rights as enjoyed by white citizens to hold and convey real and personal property in violation of 42 U.S.C §1982.

37. Ms. Gassman has suffered emotional distress and mental anguish, embarrassment, humiliation and intimidation sustained as a result of Defendant's discriminatory actions including prohibiting the Mezuzah from placement on the exterior doorpost of the Subject Property.

WHEREFORE, Plaintiff prays the court to enter a Temporary Restraining Order, a Preliminary Injunction and a Permanent Injunction enjoining the Defendant, Edward Frischholz from prohibiting or preventing the Mezuzah from being placed on the doorpost of the Subject Property and/or from removing or defiling the Mezuzah, and/or from causing the Mezuzah to be removed or defiled. Plaintiff also prays that the court award actual damages for Plaintiff and against Edward Frischholz for the injury to the Plaintiff, including damages for emotional distress, mental anguish, humiliation and embarrassment, punitive damages for actions done with malice or willful disregard for the rights of the Plaintiff, attorney's fees and costs and such other relief as the court may deem just and proper.

Count 7: Violation of Illinois Condominium Act §18.4: Powers and Duties of Managers

38. Ms. Gassman restates and re-alleges paragraphs 1 through 13 of this Complaint as though the same were fully set forth and pleaded herein.

39. Defendant violated The Illinois Condominium Act §§18.4: Powers and Duties of Managers by enforcing rules and regulations that impair Plaintiff's rights by preventing Plaintiff from freely exercising her religion and free speech.

40. Ms. Gassman has suffered emotional distress and mental anguish, embarrassment,

humiliation and intimidation sustained as a result of Defendant's discriminatory actions including the prohibiting the Mezuzah from placement on the exterior doorpost of the Subject Property.

WHEREFORE, Plaintiff prays the court to enter a Temporary Restraining Order, a Preliminary Injunction and a Permanent Injunction enjoining the Defendant, Edward Frischholz from prohibiting or preventing the Mezuzah from being placed on the doorpost of the Subject Property and/or from removing or defiling the Mezuzah, and/or from causing the Mezuzah to be removed or defiled. Plaintiff also prays that the court award actual damages for Plaintiff and against Edward Frischholz for the injury to the Plaintiff, including damages for emotional distress, mental anguish, humiliation and embarrassment, punitive damages for actions done with malice or willful disregard for the rights of the Plaintiffs, attorney's fees and costs and such other relief as the court may deem just and proper.

Count 8: Breach of Fiduciary Duty Pursuant to 765 ILCS 605/18.4

41. Ms. Gassman restates and re-alleges paragraphs 1 through 13 of this Complaint as though the same were fully set forth and pleaded herein.

42. At all times relevant, Defendant, was in a fiduciary relationship with Ms. Gassman.

43. Defendant Shoreline Towers Condominium Association is responsible, as principal, for the acts of its agents, employees and servant members.

44. Under Condominium Property Act, Defendant had a duty to:

- a. Perform its duties as an association in a reasonable manner and with due care for the welfare of Shoreline Towers Condominium's members (including Ms. Gassman) and her property.
- b. Perform its duties as an association with due regard for the provisions and duties

set forth in the Condominium Property Act and the Declarations and Bylaws, conduct any investigations of complaints against Ms. Gassman in a reasonable manner;

c. Perform its duties as an Association with due regard for the provisions and duties set forth in the Fair Housing Act and its regulations.

d. Otherwise act in its fiduciary relationship with Ms. Gassman.

45. Defendant, Shoreline Towers Condominium Association breached its fiduciary duty to Ms. Gassman by failing in its duties owed to Ms. Gassman, by acting in a willful and wanton manner, and by engaging in bad faith and unfair dealing.

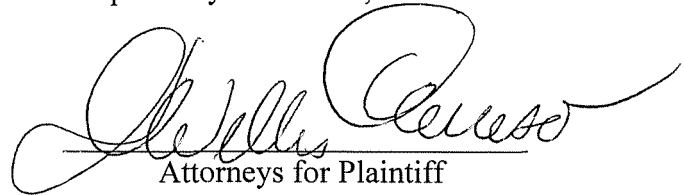
46. In addition, Defendant Shoreline Towers Condominium Association breached its fiduciary duty to Ms. Gassman when it used its particular and superior position to intimidate, and interfere with Ms. Gassman's housing rights.

47. As a direct and proximate cause of Defendant's breach of the fiduciary duty, Ms. Gassman was injured and sustained emotional distress, embarrassment and other injury and continues to suffer emotional distress, embarrassment and other injury.

WHEREFORE, Plaintiff prays the court to enter a Temporary Restraining Order, a Preliminary Injunction and a Permanent Injunction enjoining the Defendant, Edward Frischholz from prohibiting or preventing the Mezuzah from being placed on the doorpost of the Subject Property and/or from removing or defiling the Mezuzah, and/or from causing the Mezuzah to be removed or defiled. Plaintiff also prays that the court award actual damages for Plaintiff and against Edward Frischholz for the injury to the Plaintiff, including damages for emotional distress, mental anguish, humiliation and embarrassment, punitive damages for actions done with malice or willful disregard for the rights of the Plaintiff, attorney's fees and costs and

such other relief as the court may deem just and proper.

Respectfully Submitted,



Attorneys for Plaintiff

F. Willis Caruso
Lewis W. Powell III
Dustin DeGroot, Senior Law Student
The John Marshall Law School
Fair Housing Legal Clinic
28 East Jackson Boulevard
Suite 500
Chicago, Illinois 60604
(312) 786-2267 FAX (312) 786-1047