

FILED
APR 26 2000
TOD J. KLISPEK, CLERK

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF NORTH DAKOTA
NORTHWESTERN DIVISION

NORTH DAKOTA FAIR HOUSING)
COUNCIL, INC., SHAUNA)
KOLOBAKKEN, AMANDA KOLOBAKKEN,)
minor, MICHAEL KINDRED- VENNES,)
minor, and TYLER KOLOBAKKEN,)
minor, represented herein by)
their guardian ad litem, SHAUNA)
KOLOBAKKEN,)

Plaintiffs,)

vs.)

SERA LINKE, individually and)
doing business as HOLIDAY VILLAGE)
TRAILER COURT,)

Defendant.)

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Case No. _____

Judge _____

COMPLAINT

Plaintiffs North Dakota Fair Housing Council and the Kolobakken family, by and through their attorneys, complain against Sera Linke, individually and doing business as Holiday Village Trailer Court, as follows:

I. NATURE OF THE ACTION

1. In this action, plaintiffs seek monetary, declaratory and injunctive relief against defendant Sera Linke arising out of Ms. Linke's on-going discrimination against families with children on the basis of familial status in the ownership and operation of the Holiday Village Trailer Court, a rental premises located in Minot, North Dakota.

2. This complaint alleges four claims for relief. First, plaintiffs allege that defendant has violated the federal Fair Housing Act, 42 U.S.C. section 3613. Second, plaintiffs allege that defendant has violated the North Dakota Century Code on Human

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Rights, N.D. Cent. Code former section 14-02.4-12 and new sections 14-02.5-02, 14-02.5-03, and 14-02.5-45. Third, plaintiffs allege that defendant operated the Holiday Village Trailer Court in a negligent manner and, as a result of that negligence, caused injury to plaintiffs. Fourth, the Kolobakken family alleges that defendant is liable for negligent infliction of emotional distress.

II. JURISDICTION AND VENUE

3. Jurisdiction is conferred on this Court by 42 U.S.C. section 3613 and by 28 U.S.C. section 1331 in that the first claim alleged arises under the laws of the United States. This Court has supplemental jurisdiction pursuant to 28 U.S.C. section 1367 to hear and determine plaintiffs' state law claims because those claims are related to plaintiffs' federal law claim and arise out of a common nucleus of related facts. Plaintiffs' federal law claim and state law claims form part of the same case or controversy under Article III of the United States Constitution.

4. Venue is proper under 28 U.S.C. section 1391 in that the claims alleged arose within the City of Minot, North Dakota.

III. PARTIES

5. Plaintiff North Dakota Fair Housing Council, Inc. (the "Fair Housing Council") is a nonprofit corporation organized under the laws of the State of North Dakota with its principal place of business located at 533 Airport Road in Bismarck, North Dakota. One of the Fair Housing Council's specific purposes and goals is the promotion of equal opportunity in the renting, purchasing, financing and advertising of housing and elimination of all forms of illegal housing discrimination. To this end, the activities in which the Fair Housing Council engages in include, but are not limited to: (1) investigating allegations of discrimination; (2) conducting tests of housing facilities to

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determine whether equal opportunity in housing is provided; (3) taking such steps as it deems necessary to assure such equal opportunity and to counteract and eliminate discriminatory housing practices; and, (4) providing outreach and education to the community and housing providers regarding fair housing.

6. Plaintiff Shauna Kolobakken has resided since April 1998 with her minor children, plaintiffs Amanda Kolobakken, Michael Kindred-Vennes, and Tyler Kolobakken (hereinafter collectively referred to as "the Kolobakken family"), in a mobilehome, located at space 818 in the Holiday Village Trailer Court in Minot, North Dakota. The minor children plaintiffs are represented herein by their natural mother Shauna Kolobakken.

7. At all times relevant herein, defendant Sera Linke has owned and operated the Holiday Village Trailer Court, comprised of 266 dwelling lots, located at 1325 27th Street Southeast, in Minot, North Dakota.

IV. ALLEGATIONS OF FACT

A. INTRODUCTION

8. Ms. Linke has engaged in a pattern or practice of unlawful discrimination against families with children on the basis of familial status in the operation of the Holiday Village Trailer Court. Ms. Linke has pursued this pattern or practice of discrimination for the purpose or with the effect of excluding, harassing and retaliating against families with children at the Holiday Village Trailer Court. Ms. Linke continues to engage in such a pattern or practice of discrimination so as to constitute a continuing violation.

B. THE COMPLAINT OF THE KOLOBAKKEN FAMILY

9. Since April 1998, Ms. Linke has discriminated against the Kolobakken family by committing each of the following discriminatory housing practices:

a. By telling Ms. Kolobakken that she could not live at Holiday Village because she had too many children, Ms. Linke discriminated against the Kolobakken family on the basis of familial status.

b. By giving Ms. Kolobakken the green Holiday Village rules pamphlet, which contained rules that indicated limitations and discrimination based on familial status, Ms. Linke discriminated against the Kolobakken family on the basis of familial status.

c. By making unwarranted complaints to Ms. Kolobakken about her children's behavior and her trash, grass, and vehicles, making disparaging remarks about Ms. Kolobakken's parenting style, restricting Ms. Kolobakken's children's play activities outside their home, prohibiting children from having guests, monitoring Ms. Kolobakken and her children's activities, more strictly enforcing Holiday Village rules against Ms. Kolobakken and her children, threatening to terminate Ms. Kolobakken's tenancy, issuing Ms. Kolobakken a lease termination notice in August 1998 and otherwise, Ms. Linke provided the Kolobakken family with different terms, conditions and privileges of rental housing, and different services and facilities in connection that housing.

d. By issuing an April 1999 letter terminating the Kolobakken family's tenancy because Ms. Kolobakken had filed a complaint with HUD, Ms. Linke coerced, intimidated, threatened and interfered with Ms. Kolobakken in the exercise and enjoyment of, and on account of Ms. Kolobakken having exercised or enjoyed, her rights under the Fair Housing Act.

C. THE INVESTIGATION CONDUCTED BY THE FAIR HOUSING COUNCIL.

10. On April 21, 1998, Ms. Kolobakken contacted the Fair Housing Council, complaining that Ms. Linke discriminated against her family on the basis of their familial status.

11. In response to that complaint, the Fair Housing Council contacted and interviewed other residents of the Holiday Village Trailer Court. That investigation confirmed that Ms. Linke engages in discriminatory housing practices against families with children because of familial status.

D. HUD INVESTIGATION AND CHARGE OF DISCRIMINATION

12. On April 6, 1999, Ms. the Kolobakken family filed a complaint with the Department of Housing and Urban Development (HUD) pursuant to 42 U.S.C. section 3610, alleging that Ms. Linke discriminated against them in violation of the federal Fair Housing Act.

13. Pursuant to 42 U.S.C. section 3610, HUD conducted an investigation of the complaint, attempted conciliation unsuccessfully, and issued a final investigative report. Based upon that investigation, HUD determined that there was reasonable cause to believe that Ms. Linke committed discriminatory housing practices and, pursuant to 42 U.S.C. section 3610, issued a charge of discrimination on January 2, 2000.

14. On January 27, 2000, Ms. Linke filed a notice of election, demanding that this matter be adjudicated in the district court. Pursuant to that notice, the Attorney General filed an action in case A4-00-017 in U.S. District Court of the District of North Dakota pursuant to 42 U.S.C. 3612.

E. INJURIES

15. Since April 21, 1998, the Fair Housing Council has diverted resources as

a result of defendant's discriminatory conduct: (1) to assist the Kolcbakken family in their efforts to become informed about and exercise their fair housing rights; (2) to investigate, evaluate and determine the extent to which the property management practices of the defendant deny equal housing opportunities to families with children; (3) to educate and perform outreach to the residents of Holiday Village Trailer Court to inform them of their fair housing rights; and (4) to protect the fair housing rights of the Council's members, associates, and constituents from the continued discrimination of the defendant based on familial status. As a result of defendants' unlawful acts and practices, the Fair Housing Council has suffered injury to its ability to carry out its purpose and to serve the public in its effort to eliminate housing discrimination, to resolve fair housing disputes, to find and to make available decent rental housing for persons regardless of familial status, and to assure rights to the important social, professional, business, economic, and political benefits of associations that arise from living in a community in which persons with and without children reside. Defendants' unlawful acts and practices also have caused the Fair Housing Council to suffer economic losses and out-of-pocket expenditures, incurring costs in efforts to counteract and eliminate discriminatory housing practices in the operation of housing and to provide outreach and education to persons involved in the operation of housing in the City of Minot regarding the requirements of the fair housing laws. As a result of defendant's unlawful acts and practices, the Fair Housing Council's ability to perform its customary counselling, referral, outreach and education activities has been impaired, and it has suffered a decrease in its ability to undertake other efforts to end unlawful housing practices. Accordingly, the Fair Housing Council is entitled to compensatory damages.

16. As a result of defendant's unlawful acts and practices, the Kolobakken

family has suffered loss of housing, including the invasion of the private right of occupancy, use and enjoyment of their premises, constructive eviction, violation of their civil rights, and severe emotional distress, including anger, discouragement, despair, humiliation, and frustration, with accompanying bodily injury, including headaches and stomachaches of a continuing nature. Accordingly, the members of the Kolobakken family, and each of them, is entitled to compensatory damages against defendant.

17. In doing the acts of which plaintiffs complain, defendant acted with oppression, fraud and malice, and with wanton and conscious or reckless disregard of the rights of plaintiffs. Accordingly, plaintiffs are entitled to punitive damages against defendant under the Fair Housing Act.

18. There now exists an actual controversy between the parties regarding defendant's duties under the federal and state fair housing laws. Accordingly, plaintiffs are entitled to declaratory relief against defendant.

19. Unless enjoined, defendant will continue to engage in the unlawful acts and the pattern or practice of discrimination described above. Plaintiffs have no adequate remedy at law. Plaintiffs are now suffering and will continue to suffer irreparable injury from Ms. Linke's acts and defendant's pattern or practice of discrimination unless relief is provided by this Court. Accordingly, plaintiffs are entitled to injunctive relief against defendant.

V. CLAIMS FOR RELIEF

A. FIRST CLAIM

[Fair Housing Act]

20. Plaintiffs reallege and incorporate by reference paragraphs 1 through 19 of the complaint herein.

21. Defendant has injured each plaintiff in violation of the federal Fair Housing Act by committing the following discriminatory housing practices:

- A. Refusing to rent or negotiate for the rental of a dwelling because of familial status in violation of 42 U.S.C. section 3604(a);
- B. Discriminating against any person in the terms, condition, or privileges of rental of a dwelling, or in the provision of services or facilities in connection therewith, because of familial status in violation of 42 U.S.C. section 3604(b);
- C. Making statements with respect to the rental of a dwelling which indicate a preference, limitation, or discrimination based on familial status in violation of 42 U.S.C. section 3604(c);
- D. Interfering with any person in the exercise or enjoyment of, or on account of his having exercised or enjoyed, or on account of his having aided or encouraged any other person in the exercise or enjoyment of rights guaranteed by the Fair Housing Act, in violation of 42 U.S.C. section 3617.

B. SECOND CLAIM

[North Dakota Century Code on Human Rights]

22. Plaintiffs reallege and incorporate by reference paragraphs 1 through 19 of the complaint herein.

23. Defendant has injured each plaintiff in violation of the North Dakota Century Code on Human Rights, Discriminatory Housing Practices by Owner or Agent, by committing the following discriminatory housing practices:

- A. Refusing to rent or negotiate for the rental of a dwelling because

of familial status in violation of N.D.C.C. former section 14-02.4-12(1) and new section 14-02.5-02(1);

B. Discriminating against any person in the terms, condition, or privileges of rental of a dwelling, or in the provision of services or facilities in connection therewith, because of familial status in violation of N.D.C.C. former section 14-02.4-12(2);

C. Making statements with respect to the rental of a dwelling which indicate a preference, limitation, or discrimination based on familial status in violation of N.D.C.C. section 14-02.4-12(3) and new section 12-02.5-03;

D. Interfering with any person in the exercise or enjoyment of, or on account of his having exercised or enjoyed, or on account of his having aided or encouraged any other person in the exercise or enjoyment of rights guaranteed by the North Dakota Century Code on Human Rights, in violation of N.D.C.C. former section 14-02.4-18 and new section 14-02.5-45.

C. THIRD CLAIM

[Negligence]

24. Plaintiffs reallege and incorporate by reference paragraphs 1 through 19 of the complaint herein.

25. Defendant owed each plaintiff a duty of care in the operation of her rental premises. Defendant failed to exercise the ordinary and reasonable care and diligence required of a housing provider in the operation and management of the Holiday Village Trailer Court. Defendant breached the duty of care by failing to follow

standard, recognized rental practices of the community, resulting in injury to each plaintiffs.

D. FOURTH CLAIM

[Negligent Infliction of Emotional Distress]

26. Plaintiffs reallege and incorporate by reference paragraphs 1 through 19 of the complaint herein.

27. Defendant owed the Kolobakken family a duty of care in dealing with tenants and prospective tenants in the operation of the Holiday Village Trailer Court. Defendant failed to exercise ordinary care and diligence required of a housing provider in dealing with tenants and prospective tenants in the operation and management of the Holiday Village Trailer Court. Defendant knew or should have known that her failure to exercise due care in the performance of her duties as the owner and operator of residential rental property would cause the Kolobakken family to suffer severe emotional distress.

VI. PRAYER FOR RELIEF

Wherefore, plaintiffs respectfully pray for entry of a judgment against the defendant that:

1. Awards compensatory and punitive damages according to proof;
2. Declares that defendant has violated the provisions of the applicable federal and state laws;
3. Enjoins all unlawful practices complained about herein and imposes affirmative injunctive relief requiring defendant, her partners, agents, employees, assignees, and all persons acting in concert or participating with her, to take affirmative action to provide equal housing opportunities to all tenants and

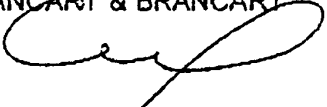
prospective tenants regardless of familial status;

4. Awards costs of this action, including reasonable attorneys' fees; and,
5. Awards all such other relief as the Court deems just.

Dated: April 16, 2000.

Respectfully Submitted,

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VII. JURY DEMAND

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, plaintiffs hereby request a trial by jury.

Dated: April 16, 2000.

Respectfully Submitted,

BRANCART & BRANCART



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