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2005

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

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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

SECOND 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 (“Plaintiff”), is a Jewish American, female citizen of the United

States who is the owner of, and resides at, 6301 North Sheridan Road, Unit 6P, Chicago, Illinois 60660 (“Subject Property”).

5. Defendant, Edward Frischholz (“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, as well as in his capacity as an agent of Shoreline Towers Condominium Association. At all times relevant to this complaint, Edward Frischholz was and 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 Condominium Association (“Shoreline Towers”), 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 on or about the date of September 21, 2005, Defendants, Edward Frischholz and Shoreline Towers Condominium Association (collectively referred to herein as “Defendants”), intimidated, threatened, and interfered with Plaintiff’s exercise and enjoyment of her residence by consistently removing, preventing and prohibiting her, by threat or interference, from placing a Mezuzah (a religious parchment encased in a small tube which is essential to observing Jewish law) on the exterior of the doorpost of Subject Property.

8. Jewish law requires that a Mezuzah be placed on the outside of the doorpost of Plaintiff’s residence.

9. From on or about June 9, 2004, the Defendants were aware that Jewish law requires Plaintiff to display a Mezuzah on the exterior of her residence, on the doorpost.

10. 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.

11. Plaintiff removed the Mezuzah from the exterior doorpost of Subject Property in compliance with Defendants' order.

12. The hallway painting was completed by approximately June 2004, after which Plaintiff replaced the Mezuzah on the exterior doorpost of Subject Property.

13. Contemporaneously, Defendants claimed that they were enforcing a condominium association by-law which purportedly prohibited anything from being placed on the exterior doorpost of Plaintiff's residence.

14. The claimed provision of the 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.

15. Defendants' actions, described in paragraphs 7 through 14 deprived Ms. Gassman of the use and enjoyment of her residence by infringing on her right to freely practice her religious faith and her free speech rights.

16. Defendants' actions, described in paragraphs 7 through 14, were based on Plaintiff's status as a member of the Jewish religion.

17. Defendants' actions, described in paragraphs 7 through 14, were based on Plaintiff's race.

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

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

20. On September 21, 2005, in a companion case, Magistrate Judge Morton Denlow heard a Motion for a Temporary Restraining Order to prevent the removal of a Mezuzah from another unit in the same building and to temporarily restrain enforcement of the same purported prohibition of the placing of a Mezuzah on the exterior of doorposts in the building. (*See* Lynne Bloch, Helen Bloch and Nathan Bloch v. Edward Frischholz and Shoreline Towers Condominium Association, No 05 C 5379).

At the time of the hearing and at the request of the Magistrate Judge, the parties met in the attorney's room of the Magistrate Judge and drafted an "Agreed Rule" to allow the Mezuzah to be placed on the door. The Agreed Rule was to be presented to the Association's Board of Directors on September 22, 2005, and adopted by Shoreline Towers Condominium Association on October 27, 2005.

During the interim, it was agreed before the Magistrate Judge by Defendants' attorneys that Defendants would not interfere with the placing of Mezuzahs on the doorposts of residences in the building and there would be no disruption until the agreed upon rule was presented for vote.

21. The parties to the proceeding described in paragraph 20 reached an agreement whereby Shoreline Towers would present an agreed upon proposed amendment to be presented to the Board of Directors on September 22, 2005.

22. The "Agreed Rule" that Defendants would present to the Board of Directors and encourage the Board of Directors to enact, as worked out at Court on September 21, 2005 would not provide the whole and/or permanent relief sought by the Plaintiff in this action.

23. From the time of the filing of the Complaint, Defendants were aware that Plaintiff was seeking a permanent injunction that would forever protect her rights to display the Mezuzah on

the exterior doorpost of her residence and that Plaintiff was also seeking damages for the alleged violations of the Fair Housing Act, 42 U.S.C. § 3601, et seq. .

24. On or about October 20, 2005, Frischholz retaliated against Plaintiff and threatened her.

25. Plaintiff moved the court on October 27, 2005 to grant an order allowing them to file an Amended Complaint, to which a copy of the Amended Complaint was attached. Plaintiff's motion was granted on November 1, 2005 and the Amended Complaint was filed on November 16, 2005.

26. Plaintiff's Motion for Leave to File her Amended Complaint was filed before a meeting of the Shoreline Towers Board of Directors on the evening of October 27, 2005.

27. At the time Plaintiff filed their Motion for Leave to File Their Amended Complaint, there was no guarantee that the interim "Agreed Rule" would be adopted by Shoreline Towers Board of Directors at the evening meeting.

28. On or about November 1, 2005, Shoreline Towers retaliated against Plaintiff by charging her with a violation of the Declaration and a violation of the Rules and Regulations of the Association.

29. Shoreline Towers retaliated, discriminated, and interfered with the rights of Plaintiff by setting a hearing that the Association would not continue or delay, by disregarding procedure and testimony and by charging her \$1,400.00.

CLAIMS

As Against Defendant Edward Frischholz

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

30. Ms. Gassman restates and re-alleges paragraphs 1 through 29 of this Complaint as though the same were fully set forth and pleaded herein.

31. 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).

32. Ms. Gassman has sustained direct injuries including, but not limited to, being threatened by Defendant Edward Frischholz, and being barred from the full use and enjoyment of 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 threatening her and 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

34. Ms. Gassman restates and re-alleges paragraphs 1 through 29 of this Complaint as though

the same were fully set forth and pleaded herein.

35. The actions by Defendant Edward Frischholz, in threatening Ms. Gassman and of intimidating, interfering with the housing rights of, and harassing her 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.

36. 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.

37. 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 threatening her and 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

38. Ms. Gassman restates and re-alleges paragraphs 1 through 29 of this Complaint as though the same were fully set forth and pleaded herein.

39. The actions by the Defendant Edward Frischholz in threatening her and 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.

40. The actions by the Defendant of removing or causing the removal of a Mezuzah on the exterior doorway of the Subject Property, 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.

41. 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 threatening Plaintiff Debra Gassman, and 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

42. Ms. Gassman restates and re-alleges paragraphs 1 through 29 of this Complaint as though the same were fully set forth and pleaded herein.

43. 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 and retaliating against her by charging her and fining her, 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).

44. 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.

45. Ms. Gassman has suffered emotional distress and mental anguish, embarrassment, humiliation, and intimidation sustained as a result of Defendant's discriminatory actions including the retaliation and 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 retaliating against her and 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

46. Ms. Gassman restates and re-alleges paragraphs 1 through 29 of this Complaint as though the same were fully set forth and pleaded herein.

47. 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.

48. 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.

49. 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 6: Violation of 42 U.S.C. §1982

50. Ms. Gassman restates and re-alleges paragraphs 1 through 29 of this Complaint as though the same were fully set forth and pleaded herein.

51. The actions by the Defendant in retaliating and 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.

52. 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.

53. 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 7: Violation of Illinois Condominium Act §18.4: Powers and Duties of Managers

54. Ms. Gassman restates and re-alleges paragraphs 1 through 29 of this Complaint as though the same were fully set forth and pleaded herein.

55. 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.

56. 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, 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 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

57. Ms. Gassman restates and re-alleges paragraphs 1 through 29 of this Complaint as though the same were fully set forth and pleaded herein.

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

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

60. 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.

61. 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.

62. 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.

63. 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, 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.

Respectfully submitted,


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