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Second Amended Complaint, Bloch vs. Frischholz, Docket No. 1:05-cv-05379 (Northern District of Illinois Sept 16, 2005)

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

Lynne Bloch, Helen Bloch, and)	
Nathan Bloch,)	
Plaintiffs,)	
)	
v.)	No. 05 C 5379
)	
Edward Frischholz, and)	Judge: David H. Coar
Shoreline Towers Condominium)	
Association, an Illinois not-for-profit)	Magistrate: Judge Morton Denlow
corporation,)	
Defendants.)	Plaintiffs Demand Trial by Jury

SECOND AMENDED COMPLAINT

The Plaintiffs Lynne Bloch, Helen Bloch, and Nathan Bloch, by their 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 the 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, Lynne Bloch, is a Jewish American, female citizen of the United States who is the owner of, and resides at, 6301 North Sheridan Road, Units 12R, 12K, and 12L, Chicago, Illinois 60660 (“Subject Property”). Lynne Bloch is mother of Plaintiffs Helen Bloch and Nathan Bloch.

5. Plaintiff, Helen Bloch, is a Jewish American, female citizen of the United States who formerly resided at 6301 North Sheridan Road, Units 12R, 12K, and 12L, Chicago Illinois 60660. Plaintiff Helen Bloch is the daughter of Plaintiff Lynne Bloch, and sister of Plaintiff Nathan Bloch.

6. Plaintiff, Nathan Bloch, is a Jewish American, male citizen of the United States who resides at 6301 North Sheridan Road, Units 12R, 12K, and 12L, Chicago, Illinois 60660. Plaintiff Nathan Bloch is the son of Plaintiff Lynne Bloch, and brother of Plaintiff Helen Bloch.

7. 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.

8. 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

9. Commencing during or about May 2004, and continuing to on or about the date of

September 21, 2005, Defendants, Frischholz and Shoreline Towers (collectively referred to herein as “Defendants”), intimidated, threatened, and interfered with Plaintiffs, Lynne Bloch, Helen Bloch, and Nathan Bloch’s (collectively referred to herein as “Plaintiffs”) exercise and enjoyment of their residence by consistently removing, preventing and prohibiting Plaintiffs, 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.

10. Jewish law requires that a Mezuzah be placed on the outside of the doorpost of Plaintiffs’ residence.

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

12. 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.

13. Plaintiffs removed the Mezuzah from the exterior doorpost of Subject Property in compliance with Defendants’ order.

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

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

16. 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.

17. Commencing during or about June 2004 and continuing to on or about the date of

September 21, 2005, Defendants continued to prevent Plaintiffs from placing a Mezuzah on the exterior doorpost of the Subject Property.

18. On information and belief, Defendants ordered or directed the building maintenance staff or others to remove the Mezuzah from the exterior doorpost of the Subject Property.

19. The Mezuzah on the Subject Property was removed by or on behalf of or at the direction and order of the Defendants three times before the death of Plaintiff, Lynne Bloch's husband, Dr. Bloch.

20. Plaintiffs were informed by or for and on behalf of Defendants that if the Mezuzah was put up, Plaintiffs would be fined by the Condominium Association.

21. Defendants removed the Mezuzah on the exterior doorpost of the Subject Property during Plaintiffs' Shiva (a seven day period of formal mourning under Jewish law, observed after the funeral of a close relative) for Dr. Bloch, the husband of Plaintiff, Lynne Bloch, and the father of Plaintiffs, Helen Bloch and Nathan Bloch.

22. On June 7, 2005, the Defendants removed or caused to be removed, the Mezuzah on the exterior doorpost of Subject Property while Plaintiffs were at the funeral of Dr. Bloch.

23. The removal of the Mezuzah on June 7, 2005 caused Plaintiffs great anguish and embarrassment when a Jewish Rabbi, who was making a Shiva call (the term used when someone attends at a Shiva), placed his hand toward the exterior doorpost of Subject Property and noticed the absence of a Mezuzah. Plaintiffs were made to explain why they were in violation of Jewish law by not having a Mezuzah on the exterior doorpost of their residence.

24. The removal of the Mezuzah on June 7, 2005 was completed despite a verbal commitment by Shoreline Towers to allow, and not to remove, the Mezuzah during Plaintiffs' Shiva.

25. Defendants' actions, described in paragraphs 9 through 24 deprived Plaintiffs of the use and enjoyment of their residence by infringing on their right to freely practice their religious faith and their free speech rights.

26. Defendants' actions, described in paragraphs 9 through 24 were based on Plaintiffs' status as members of the Jewish religion

27. Defendants' actions, described in paragraphs 9 through 24 were based on Plaintiffs' race.

28. Over the past two years, Defendant, Frischholz has insulted and harassed Lynne Bloch.

29. Frischholz published a letter making various false statements, including that Lynne Bloch is a racist.

30. Frischholz published a letter encouraging other tenants to keep Lynne Bloch off of the Board of Directors in the future because she is Jewish.

31. On or about September 1, 2005, Defendants held a special meeting and would not allow Lynne Bloch to attend despite her position on the Board of Directors of Shoreline Towers.

32. Defendants have prevented Lynne Bloch from fully participating as a member of the Board of Directors of Shoreline Towers.

33. As a direct consequence of Defendants' discriminatory, retaliatory, interfering and harassing actions, Plaintiffs continue to suffer emotional distress and mental anguish.

34. All of the actions of Defendants complained of herein were done willfully, maliciously, and withy careless disregard for the rights of the Plaintiffs.

35. On September 21, 2005, Magistrate Judge Morton Denlow heard Plaintiffs' Motion for a Temporary Restraining Order to prevent the removal of Plaintiffs' Mezuzah from the exterior doorpost of Subject Property.

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 on October 27, 2005.

36. The parties 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.

37. The parties reached an agreement whereby Shoreline Towers would not interfere with the placing of a Mezuzahs on the exterior doorposts of residences in the building and there would be not disruption until the agreed upon rule was presented for vote.

38. 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 Plaintiffs in this action.

39. From the time of the filing of the Complaint, Defendants were aware that Plaintiffs were seeking a permanent injunction that would forever protect their rights to display the Mezuzah on the exterior doorpost of their residence and that Plaintiffs were also seeking damages for the alleged violations of the Fair Housing Act, 42 U.S.C. § 3601, et seq.

40. Plaintiffs 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.

41. Plaintiffs' Motion for Leave to File the Amended Complaint was filed before a meeting of the Shoreline Towers Condominium Association Board of Directors on the evening of October 27, 2005 and the "Civil Docket of the United States District Court shows November 16, 2005 , Entry 30 "Amended Complaint by Lynne Bloch, Helen Bloch, Nathan Bloch against all Defendants."

42. At the time Plaintiffs filed their Motion for Leave to file the Amended Complaint, prior

to the meeting, there was not guarantee that the interim “Agreed Rule” would be adopted by the Shoreline Towers Condominium Association Board of Directors at the evening meeting.

CLAIMS FOR RELIEF

As Against Defendant Edward Frischholz

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

43. The Blochs restate and re-allege paragraphs 1 through 42 of this Complaint as though the same were fully set forth and pleaded herein.

44. The actions by Defendant are in violation of the Blochs’ 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 the Blochs’ 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).

45. The Blochs have 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.

46. The Blochs have 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, Plaintiffs pray 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. Plaintiffs also pray that the court award actual damages for Plaintiffs and

against Edward Frischholz for the injury to the Plaintiffs, including damages for emotional distress, mental anguish, humiliation and embarrassment, punitive damages of 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 shall deem just and proper.

Count 2: Violation of 42 U.S.C. §3617

47. The Blochs restate and re-allege paragraph 1 through 42 of this Complaint as though the same were fully set forth and pleaded herein.

48. The actions by Defendant of intimidating, interfering with the housing rights of, and harassing the Blochs by prohibiting the Mezuzah from being placed on the exterior doorpost, removing or causing to be removed the Mezuzah and defiling the Mezuzah, spitting in the face of Ms. Lynne Bloch, publishing and circulating defamatory and scurrilous material about the Blochs is interference and intimidation discrimination on the basis of race and religion in violation of the Fair Housing Act, 42 U.S.C. §3617.

49. The Blochs have sustained and continue 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.

50. The Blochs have 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, Plaintiffs pray 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. Plaintiffs also pray that the court award actual damages for Plaintiffs and against Edward Frischholz for the injury to the Plaintiffs, including damages for emotional distress, mental anguish, humiliation and embarrassment, punitive damages of 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 shall deem just and proper.

Count 3: Violation of 42 U.S.C. §1982

51. The Blochs restate and re-allege paragraph 1 through 42 of this Complaint as though the same were fully set forth and pleaded herein.

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

53. 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 the Blochs' 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.

54. The Blochs have 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, Plaintiffs pray 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. Plaintiffs also pray that the court award actual damages for Plaintiffs and against Edward Frischholz for the injury to the Plaintiffs, including damages for emotional distress, mental anguish, humiliation and embarrassment, punitive damages of 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 shall deem just and proper.

As Against Defendant, Shoreline Towers Condominium Association

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

55. The Blochs restate and re-allege paragraphs 1 through 42 of this Complaint as though the same were fully set forth and pleaded herein.

56. The actions by Defendant in violation of the Blochs' housing rights in the provision of services or facilities in connection with the sale or rental of a dwelling based upon the Blochs' 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).

57. The Blochs have 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.

58. The Blochs have 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, Plaintiffs pray 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. Plaintiffs also pray that the court award actual damages for Plaintiffs and against Edward Frischholz for the injury to the Plaintiffs, including damages for emotional distress, mental anguish, humiliation and embarrassment, punitive damages of 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 shall deem just and proper.

Count 5: Violation of 42 U.S.C. §3617

59. The Blochs restate and re-allege paragraph 1 through 42 of this Complaint as though the same were fully set forth and pleaded herein.

60. The actions by Defendant of intimidating, interfering with the housing rights of, and harassing the Blochs 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.

61. The Blochs have sustained and continue 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.

62. The Blochs have 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, Plaintiffs pray 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. Plaintiffs also pray that the court award actual damages for Plaintiffs and against Edward Frischholz for the injury to the Plaintiffs, including damages for emotional distress, mental anguish, humiliation and embarrassment, punitive damages of 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 shall deem just and proper.

Count 6: Violation of 42 U.S.C. §1982

63. The Blochs restate and re-allege paragraph 1 through 42 of this Complaint as though the same were fully set forth and pleaded herein.

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

65. 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 the Blochs' 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.

66. The Blochs have 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, Plaintiffs pray 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. Plaintiffs also pray that the court award actual damages for Plaintiffs and against Edward Frischholz for the injury to the Plaintiffs, including damages for emotional distress, mental anguish, humiliation and embarrassment, punitive damages of 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 shall deem just and proper.

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

67. The Blochs restate and re-allege paragraph 1 through 42 of this Complaint as though the same were fully set forth and pleaded herein.

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

69. The Blochs have 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, Plaintiffs pray 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. Plaintiffs also pray that the court award actual damages for Plaintiffs and against Edward Frischholz for the injury to the Plaintiffs, including

damages for emotional distress, mental anguish, humiliation and embarrassment, punitive damages of 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 shall deem just and proper.

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

70. The Blochs restate and re-allege paragraphs 1 through 42 of this Complaint as though the same were fully set forth and pleaded herein.

71. At all times relevant, Defendant, was in a fiduciary relationship with the Blochs.

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

73. 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 the Blochs) and their 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 the Blochs 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 the Blochs.


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

75. In addition, Defendant Shoreline Towers Condominium Association breached its fiduciary duty to the Blochs when it used its particular and superior position to intimidate, and interfere with the Blochs' housing rights.

76. As a direct and proximate cause of Defendant's breach of the fiduciary duty, the Blochs were injured and sustained emotional distress, embarrassment and other injury and continue to suffer emotional distress, embarrassment and other injury.

WHEREFORE, Plaintiffs pray 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. Plaintiffs also pray that the court award actual damages for Plaintiffs and against Defendant, Shoreline Towers for the injury to the Plaintiffs, including damages for emotional distress, mental anguish, humiliation and embarrassment, punitive damages of 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 shall deem just and proper.

Respectfully submitted,



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