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2005

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

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**MICHAEL W. DOBBINS
CLERK, U.S. DISTRICT COURT**

United States District Court
For The Northern District of Illinois,
Eastern Division

Debra Gassman,)
)
Plaintiff,)
)
vs.)
)
Edward Frischholtz, Shoreline Towers)
Condominium Association, an Illinois)
not-for-profit corporation,)
)
Defendants,)

05C 5377

No. _____
Judge JUDGE LINDBERG
Magistrate _____

MAGISTRATE JUDGE KEYS

Complaints

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, and complains of Defendants Edward Frischholz, and the Shoreline Towers Condominium Association an Illinois not-for-profit corporation; as follows:

I. Jurisdiction

1. This action arises under 42 U.S.C. §1982, 42 U.S.C. §3601 et seq.; the Illinois Constitution Article 1, §3 and §4; 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.

II. Parties

A. Plaintiffs:

4. Plaintiff Debra Gassman is a Jewish American citizen who is the owner of and resides at 6301 North Sheridan Road Unit 6B, Chicago, Illinois 60660. (Sometimes referred to herein as the "Subject Property")

B. Defendants:

5. Defendant Edward Frischholz 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 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.

III. Statement of Facts

7. Commencing during or about May 2004 and continuing to the date hereof Defendants Edward Frischholz, and the Shoreline Towers Condominium Association; intimidated, threatened, and interfered with Debra Gassman's by consistently removing and prohibiting Debra 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 Debra Gassman from placing a Mezuzah on the exterior of the Subject Property doorway, despite Jewish law requiring that a

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 July 2004, after which Plaintiff placed the Mezuzah back on their door.

10. On information and belief Defendants ordered or directed the building staff or others to remove the Mezuzah from the door of the Subject Property. The Mezuzah on the subject property was removed by or on behalf or at the direction and order of the Defendants several times.

11. Defendants claimed that they were enforcing a 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 which had not previously been so interpreted or enforced in the manner employed by Defendants, despite having been added in the year 2001.

12. Commencing during or about May 2004, and continuing to the date hereof, Defendants began to remove and prohibit Debra Gassman from replacing the Mezuzah on the exterior doorway of the Subject Property.

13. Commencing during or about June 2004, and continuing to the date hereof, Defendants continued to remove the Mezuzah and to prohibit Debra Gassman from placing the Mezuzah back on the doorway.

14. Such actions deprived and deprive Debra Gassman of the use and enjoyment of their home by infringing on their right to freely practice their religious faith. These actions discriminate against Debra Gassman because of her status as a member of the

Jewish religion and race.

15. In the past two years, Defendant Edward Frischholz's actions have insulted and harassed Debra Gassman.

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

17. All of the actions of Defendants complained of herein were done willfully, maliciously with disregard for the rights of the Plaintiffs.

IV. Claims for Relief

Claims Against Defendant Edward Frischholz

Count 1

Religious Discrimination Under 42 U.S.C. §3604

18. Debra Gassman restate and re-allege paragraphs 1 through 17 of this Complaint as though the same were fully set forth and pleaded herein.

19. The actions by Defendant are in violation of Debra Gassman's housing rights by discriminating in the provision of services or facilities and to make the housing otherwise unavailable in connection with the sale or rental of a dwelling and interferes with the housing rights of Debra Gassman on the basis of race and religion in violation of the Fair Housing Act 42 U.S.C. §3604 (a) and (b).

20. Debra 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, and the emotional and mental anguish sustained as a result of Defendant's discriminatory actions of prohibiting and removing the Mezuzah from placement on the

exterior doorpost of the Subject Property.

21. Wherefore, Plaintiff prays the court to enter a Temporary Restraining Order, a Preliminary Injunction and a Permanent Injunction enjoining the Defendants from prohibiting the placing of the Mezuzah on the exterior doorpost of the Plaintiff's residence and prohibiting the Defendant Edward Frichhoz from preventing the Mezuzah from being placed on the doorpost of the Subject Property and/or removing the Mezuzah placed on the exterior doorpost of the Subject Property. That the court award actual damages for the injury to the Plaintiff including damages for mental anguish, humiliation and embarrassment, punitive damages of actions done with malice or careless 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

22. Debra Gassman restates and re-allege paragraph 1 through 17 of this Complaint as though the same were fully set forth and pleaded herein.

23. The actions by Defendant of intimidating, interfering with the housing rights of, and harassing Debra Gassman is interference and intimidation discrimination on the basis of race and religion in violation of the Fair Housing Act, 42 U.S.C. §3617.

24. Debra 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, as well as emotional and mental anguish, embarrassment, and intimidation sustained as a result of Defendant's discriminatory actions of prohibiting the Mezuzah from placement on the exterior doorpost of the

Subject Property.

25. Wherefore, Plaintiff prays the court to enter a Temporary Restraining Order, a Preliminary Injunction and a Permanent Injunction enjoining the Defendant from prohibiting the placing of the Mezuzah on the exterior doorpost of the Subject Property and prohibiting the Defendant from removing the Mezuzah placed on the exterior doorpost of the Subject Property. That the court award actual damages for the injury to the Plaintiffs including damages for mental anguish, humiliation and embarrassment, punitive damages for actions done with malice or in careless disregard for the rights of 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

26. Debra Gassman restates and re-allege paragraph 1 through 17 of this Complaint as though the same were fully set forth and pleaded herein.

27. The actions by the Defendant of prohibiting Debra Gassman from placing a Mezuzah on the exterior doorway of the Subject Property, being based upon race, are a violation of Debra 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.

28. Wherefore, Plaintiff prays the court to enter a Temporary Restraining Order, a Preliminary Injunction and a Permanent Injunction enjoining the Defendants from prohibiting the placing of the Mezuzah on the exterior doorpost of the Subject Property and prohibiting the Defendants from removing the Mezuzah placed on the exterior doorpost of the Subject Property. That the court award actual damages for the injury to

the Plaintiff including damages for mental anguish, humiliation and embarrassment, punitive damages for actions done with malice or with careless disregard for the rights of the Plaintiff, attorney's fees and cost and such other relief as the court shall deem just and proper.

Count 4

Violation of the Illinois Constitution Article 1, §3 and §4

29. The Blochs restate and re-allege paragraph 1 through 17 of this Complaint as though the same were fully set forth and pleaded herein.

30. The actions by the Defendant of prohibiting the Plaintiff from placing the Mezuzah on the exterior doorpost of the Subject Property is a violation of Plaintiff's right to free exercise and enjoyment of religion and worship without discrimination, in violation of Article 1, §3 of the Illinois Constitution.

31. The actions by the Defendant of prohibiting the Debra Gassman freedom of speech by prohibiting Plaintiffs from placing a Mezuzah on the Plaintiff's doorways is a violation of Article 1, §4 of the Illinois Constitution.

32. Wherefore, Plaintiff prays the court to enter a Temporary Restraining Order, a Preliminary Injunction and a Permanent Injunction enjoining the Defendant from prohibiting the placing of the Mezuzah on the exterior doorpost of the Subject Property and prohibiting the Defendant from removing the Mezuzah placed on the exterior doorpost of the Subject Property. That the court award actual damages for the injury to the Plaintiff including damages for mental anguish, humiliation and embarrassment, punitive damages for actions done with malice or with careless 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

INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

33. Debra Gassman restates and re-allege paragraphs 1 through 17 of this Complaint as though the same were fully set forth and pleaded herein.

34. Defendant's repeated acts of removing the Mezuzah caused disruption of Debra Gassman's exercise of her religion.

35. The Defendant's conduct was intentional and outrageous.

36. The Defendant's intentional conduct caused Debra Gassman to suffer severe emotional distress, and mental anguish.

37. Wherefore, Plaintiff pray the court to enter a Temporary Restraining Order, a Preliminary Injunction and a Permanent Injunction enjoining the Defendant from prohibiting the placing of the Mezuzah on the exterior doorpost of the Subject Property and prohibiting the Defendant from removing the Mezuzah placed on the exterior doorpost of the Subject Property. That the court award damages for the injury to the Plaintiff including actual damages for mental anguish, humiliation and embarrassment, punitive damages and attorney's fees and costs and such other relief as the court shall deem just and proper.

Claims Against

Defendant Shoreline Towers Condominium Association

Count 6

Religious Discrimination Under 42 U.S.C. §3604

38. Debra Gassman restates and re-alleges paragraphs 1 through 17 of this Complaint

as though the same were fully set forth and pleaded herein.

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

40. Debra 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, and the emotional and mental anguish sustained as a result of Defendant's discriminatory actions of prohibiting and removing the Mezuzah from placement on the exterior doorpost of the Subject Property.

41. Wherefore, Plaintiff pray the court to enter a Temporary Restraining Order, a Preliminary Injunction and a Permanent Injunction enjoining the Defendant from prohibiting the placing of the Mezuzah on the exterior doorpost of the Subject Property and prohibiting the Defendant from removing the Mezuzah placed on the exterior doorpost of the Subject Property. That the court award actual damages for the injury to the Plaintiff including damages for mental anguish, humiliation and embarrassment, punitive damages for actions done with malice or careless disregard for the rights of the Plaintiffs, attorney's fees costs and such other relief as the court shall deem just and proper.

Count 7

Violation of 42 U.S.C. §3617

42. The Blochs restate and re-allege paragraph 1 through 17 of this Complaint as though the same were fully set forth and pleaded herein.

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

44. Debra Gassman has 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 as well as emotional and mental anguish sustained as a result of Defendant's discriminatory actions of prohibiting the Mezuzah from placement on the exterior doorpost of the Subject Property.

45. Wherefore, Plaintiff prays the court to enter a Temporary Restraining Order, a Preliminary Injunction and a Permanent Injunction enjoining the Defendants from prohibiting the placing of the Mezuzah on the exterior doorpost of the Subject Property and prohibiting the Defendants from removing the Mezuzah placed on the exterior doorpost of the Subject Property. That the court award actual damages for the injury to the Plaintiff including damages for mental anguish, humiliation and embarrassment, Punitive damages for actions done with malice or in careless disregard for the rights of Plaintiff, attorney's fees and costs and such other relief as the court shall deem just and proper.

Count 8

Violation of 42 U.S.C. §1982

46. Debra Gassman restates and re-alleges paragraph 1 through 17 of this Complaint as though the same were fully set forth and pleaded herein.

47. The actions by the Defendant of prohibiting Debra Gassman from placing a Mezuzah on the exterior doorway of the Subject Property, being based upon race, are a violation of Debra 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.

48. Wherefore, Plaintiff prays the court to enter a Temporary Restraining Order, a Preliminary Injunction and a Permanent Injunction enjoining the Defendants from prohibiting the placing of the Mezuzah on the exterior doorpost of the Subject Property and prohibiting the Defendants from removing the Mezuzah placed on the exterior doorpost of the Subject Property. That the court award actual damages for the injury to the Plaintiff including damages for mental anguish, humiliation and embarrassment, punitive damages for actions done with malice or with careless 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 9

Violation of the Illinois Constitution Article 1, §3 and §4

49. The Blochs restate and re-allege paragraph 1 through 17 of this Complaint as though the same were fully set forth and pleaded herein.

50. The actions by the Defendant of prohibiting the Plaintiff from placing the Mezuzah on their exterior doorpost is a violation of Plaintiff's right to free exercise and enjoyment of religion and worship without discrimination, in violation of Article 1, §3 of the Illinois Constitution.

51. The actions by the Defendant of prohibiting Debra Gassman freedom of speech by prohibiting Plaintiff from placing a Mezuzah on the Plaintiff's doorway is a violation

of Article 1, §4 of the Illinois Constitution.

52. Wherefore, Plaintiff prays the court to enter a Temporary Restraining Order, a Preliminary Injunction and a Permanent Injunction enjoining the Defendants from prohibiting the placing of the Mezuzah on the exterior doorpost of the Plaintiff's residence and prohibiting the Defendants from removing the Mezuzah placed on the exterior doorpost of the residence. That the court award damages for the injury to the Plaintiff including damages for mental anguish, humiliation and embarrassment, punitive damages, attorney's fees and costs and such other relief as the court shall deem just and proper.

Count 10

Violation of Illinois Condominium Act §18.4:

Powers and Duties of Managers

53. Debra Gassman restates and re-alleges paragraph 1 through 17 of this Complaint as though the same were fully set forth and pleaded herein.

54. 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.

55. Wherefore, Plaintiffs pray the court to enter a Temporary Restraining Order, a Preliminary Injunction and a Permanent Injunction enjoining the Defendants from prohibiting the placing of the Mezuzah on the exterior doorpost of the Subject Property and prohibiting the Defendants from removing the Mezuzah placed on the exterior doorpost of the Subject Property. That the court award actual damages for the injury to the Plaintiff including damages for mental anguish, humiliation and embarrassment,

punitive damage for actions done with malice or with careless 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 11

INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

56. The Blochs restate and re-allege paragraphs 1 through 17 of this Complaint as though the same were fully set forth and pleaded herein.

57. Defendant's repeated acts of removing the Mezuzah and refusing to allow the Mezuzah to be placed on the exterior doorpost of the Subject Property, amount to extreme and outrageous conduct.

58. The Defendant's conduct was intentional and outrageous.

59. The Defendant's intentional conduct caused Debra Gassman to suffer severe emotional distress, and mental anguish.

60. Wherefore, Plaintiff prays the court to enter a Temporary Restraining Order, a Preliminary Injunction and a Permanent Injunction enjoining the Defendants from prohibiting the placing of the Mezuzah on the exterior doorpost of the Subject Property and prohibiting the Defendants from removing the Mezuzah placed on the exterior doorpost of the Subject Property. That the court award actual damages for the injury to the Plaintiff including damages for mental anguish, humiliation and embarrassment, punitive damages for actions done with malice or with careless disregard for the rights of Plaintiffs, attorney's fees and costs and such other relief as the court shall deem just and proper.

Count 12

BREACH OF FIDUCIARY DUTY UNDER 765 ILCS 605/18.4

61. Debra Gassman restates and re-alleges paragraphs 1 through 17 of this Complaint as though the same were fully set forth and pleaded herein.

62. At all times relevant, Defendant, was in a fiduciary relationship with the Debra Gassman.

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

64. 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 Debra Gassman) 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
- 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 Debra Gassman.

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

66. In addition, Defendant Shoreline Towers Condominium Association breached its

fiduciary duty to Debra Gassman when it used its particular and superior position to intimidate, and interfere with the Debra Gassman's housing rights.

67. As a direct and proximate cause of Defendant's breach of the fiduciary Debra Gassman was injured and sustained emotional distress, embarrassment and other injury and continue to suffer emotional distress, embarrassment and other injury.

68. Wherefore, Plaintiff prays the court to enter a Temporary Restraining Order, a Preliminary Injunction and a Permanent Injunction enjoining the Defendants from prohibiting the placing of the Mezuzah on the exterior doorpost of the Subject Property and prohibiting the Defendants from removing the Mezuzah placed on the exterior doorpost of the Subject Property. That the court award damages for the injury to the Plaintiff including damages for mental anguish, humiliation and embarrassment, punitive damages for actions done with malice or with careless disregard for the rights of the Plaintiff, attorney's fees and costs and such other relief as the court shall deem just and proper.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "F. Willis Caruso", with a long horizontal flourish extending to the right.

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