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2003

Complaint, Gilbert v. Thorndale Beach North
Condominium Assoc., Docket No. 1:03-cv-07844
(Northern District of Illinois Nov 04, 2003)

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3. Venue is proper in the Northern District of Illinois, Eastern Division since plaintiffs Iola Gilbert and Susan Gilbert and all of the defendants reside within the boundaries thereof.

II. PARTIES

4. Plaintiff, Iola Gilbert, is a female person with a disability, with multiple sclerosis and incontinence.

5. Plaintiff, Iola Gilbert, is an owner of and has resided at 5901 N. Sheridan Road, Unit# 5K Chicago, Cook County, Illinois ("Unit") for approximately thirty-seven (37) years.

6. Plaintiff, Susan Gilbert is a female person and is Iola Gilbert's stepdaughter.

7. Plaintiff, Susan Gilbert, is an owner of and resides in the Unit, and is the primary caregiver for Iola Gilbert.

8. The Condominium Association is a condominium association registered as an Illinois not-for-profit corporation and is located at 5901 North Sheridan Road, Chicago, Cook County, Illinois, 60660.

9. The defendant Condominium Association is the Condominium Association for 5901 N. Sheridan Road, Chicago, Illinois, 60660.

III. FACTS

10. Beginning on or about January of 2001 and continuing to the date hereof, the Condominium Association, members of the Board of Directors ("Directors") and members of the Condominium Association on their own behalf and from time to time for and on behalf of the Condominium Association threatened, intimidated, and interfered

with the Gilberts' housing rights by persistent efforts to take the Gilberts' Unit, soliciting, encouraging, facilitating, and publishing false discriminatory statements and complaints because of the disability of Iola Gilbert.

11. These acts included without limitation purported formal action by the Condominium Association and a large number of false statements that there were urine odors coming from the Unit because Iola Gilbert is a person with a disability, multiple sclerosis and incontinence.

12. The acts were done because Iola Gilbert is a person with a disability and was attempting to exercise rights protected by the Fair Housing Act and Susan Gilbert her caregiver was assisting her in exercising rights protected by the Fair Housing Act.

13. Beginning in or about January of 2001 and on a continuing basis, the Condominium Association, members of the Board of Directors on their own behalf and for and on behalf of the Condominium Association encouraged, reported and supported false claims against the Gilberts to intimidate, threaten and interfere with the housing rights of the Gilberts.

14. On or about July 20, 2001, the Condominium Association sent to the Gilberts a threatening "Notice of Violation of Condominium Rules" ("Notice") which threatened to assess a two hundred dollar (\$200.00) fine for an alleged odor. The Notice specifically stated that the smell was "... caused by...the incontinent condition..." [the disability] of Iola Gilbert which Notice is still in existence on the date hereof.

15. The threatening Notice was accompanied by an additional notice labeled "Thirty Day Notice to Correct Violation Prior to Sale of Unit." This 30-day notice stated

that the Gilberts needed to “permanent[ly]” correct the alleged odor or be forced to lose the right to live in their Unit in the future.

16. On Monday, August 20, 2001 the Condominium Association held a meeting in which they intimidated, threatened, harassed, and insulted the Gilberts.

17. On Monday, August 20, 2001 the Directors threatened the Gilberts that in order to stay in their home they would have to get rid of their rugs, curtains, furniture and mattresses.

18. In an effort to stop the continuing threats, harassment and false allegations the Gilberts made a request for a reasonable accommodation under the Fair Housing Act 42 U.S.C. §3604 (f)(3)(B) on or about August 29, 2001.

19. To date hereof the Gilberts did not receive any response to that reasonable accommodation request.

20. Although repeatedly requested to do so in oral requests, and in writing the Condominium Association has not engaged in any dialogue, discussion or negotiation of a reasonable accommodation related to the Iola Gilbert’s disability.

21. On or about September 4, 2001, Plaintiffs, through the senior law students and the supervising attorney of The John Marshall Law School Fair Housing Legal Clinic made another request for a reasonable accommodation for the Gilberts.

22. The Condominium Association has not responded, negotiated, provided a reasonable accommodation, suggested any alternative, or any response to why the request for a reasonable accommodation cannot be agreed to and has not engaged in discussion or negotiation of a reasonable accommodation related to Iola Gilbert’s disability.

23. On or about the 17th day of September 2001, the Gilberts filed a timely complaint with the Department of Housing and Urban Development (“HUD”) case No. 05-01-1246-8. The filing of the HUD complaint stays the time for the filing of a federal complaint under 42 U.S.C. §3613.

24. On or about September 28, 2001, Plaintiffs, through the senior law students and supervising attorney made a third request for a reasonable accommodation.

25. Till this day the Condominium Association has not provided a reasonable accommodation, or any alternative, or response to the request for a reasonable accommodation related to the Iola Gilbert’s disability.

26. In spite of these repeated requests, as of the date hereof, the Condominium Association has not provided a reasonable accommodation, or any alternative, or any response to the repeated requests for a reasonable accommodation.

27. Prior to October 1, 2001 and continuing to the date hereof, the Condominium Association has continued its proceedings based on false claims and complaints about the disability of Iola Gilbert.

28. Prior to October 1, 2001 and continuing to the date hereof, the Condominium Association has refused to apprise the Gilberts of purported complaints though often requested to do so.

29. On or about October 1, 2001, the Condominium Association sent the Gilberts a letter assessing the Gilberts: (a.) A \$200.00 fine relating to Iola Gilbert’s disability; (b.) A \$25.00 late fee related to Iola Gilbert’s disability, and; (c.) \$1,605.00 in attorney’s fees.

30. The October 1, 2001, notice to the Gilberts above referred to was labeled, "REMINDER," and charged a late fee even though the Gilberts never received any prior demand notice for any of these amounts.

31. On October 1, 2001, at a Condominium Association meeting, the Directors on behalf of the Condominium Association singled out Susan Gilbert, who was present at the meeting, to embarrass, intimidate, and insult the Gilberts in order to retaliate against the Gilberts for exercising, and attempting to exercise their rights under the Fair Housing Act.

32. On or about October 8, 2001 the Gilberts received a Notice and Demand for Possession on the letterhead of the Condominium Association's attorney, Ellis B. Levin, Attorney at Law claiming a default and seeking possession Pursuant to the Forcible Entry and Detainer Act 735 ILCS 5/9-101 *et. seq.* The threat that the Gilberts would be evicted is because of Iola Gilbert's disability is in bold letters on page two (2) "YOUR RIGHT TO POSSESSION OF THE PREMISES WILL BE TERMINATED."

33. Such action would deprive the Gilberts of their home where Iola Gilbert has lived for thirty-seven (37) years. The eviction threat caused the Gilberts emotional distress, and Iola Gilbert's medical condition to further deteriorate.

34. As a direct consequence of Defendants discriminatory, retaliatory, harassing actions Plaintiffs have suffered and continue to suffer emotional and financial hardship. Their ownership of the Unit is under constant threat and the Gilbert's have been put in great jeopardy of losing their home.

35. All of the actions of defendants complained of herein, were done willfully, maliciously and/or with reckless disregard for the rights of the plaintiffs.

COUNT I

HANDICAPPED DISCRIMINATION UNDER 42 U.S.C. §3604(f)(1)

36. The Gilberts restate and reallege paragraphs 1 thru 35 of this Complaint as paragraphs 1 thru 35 of this Count I as though the same were fully set forth and pleaded herein.

37. The actions of defendants in threatening, intimidating and interfering with the Gilbert's housing rights based on the disability of Iola Gilbert constitutes discrimination on the basis of handicap in violation of Section 804 of the Fair Housing Act, 42 U.S.C. § 3604 (f)(1) as amended.

COUNT II

HANDICAPPED DISCRIMINATION UNDER 42 U.S.C §3604(f)(2)

38. The Gilberts restate and reallege paragraphs 1 thru 35 of this Complaint as paragraphs 1 thru 35 of this Count II as though the same were fully set forth and pleaded herein.

39. The actions of defendants in threatening, intimidating and interfering with the Gilbert's housing rights based on the disability of Iola Gilbert constitutes discrimination on the basis of handicap in violation of Section 804 of the Fair Housing Act, 42 U.S.C. § 3604 (f)(2) as amended.

COUNT III

HANDICAPPED DISCRIMINATION UNDER 42 U.S.C. §3604(f)(3)(B)

40. The Gilberts restate and reallege paragraphs 1 thru 35 of this Complaint as paragraphs 1 thru 35 of this Count III as though the same were fully set forth and pleaded herein.

41. The actions of defendants in discriminating against the Gilberts in refusing to make reasonable accommodations in rules, policies, practices, or services to afford the Gilberts equal opportunity to use and enjoy their dwelling based on the disability of Iola Gilbert constitutes discrimination on the basis of handicap in violation of Section 804 of the Fair Housing Act, 42 U.S.C. § 3604 (f)(3)(B) as amended.

COUNT IV

DISCRIMINATION UNDER 42 U.S.C. §3617

42. The Gilberts restate and reallege paragraphs 1 thru 35 of this Complaint as paragraphs 1 thru 35 of this Count IV as though the same were fully set forth and pleaded herein.

43. The actions of defendants in threatening, intimidating, and interfering with the Gilberts' housing rights based on the disability of Iola Gilbert constitutes discrimination on the basis of handicap in violation of Section 818 of the Fair Housing Act, 42 U.S.C. §3617 as amended.

COUNT V

NEGLIGENCE

44. The Gilberts restate and reallege paragraphs 1 thru 35 of this Complaint as paragraphs 1 thru 35 of this Count V as though the same were fully set forth and pleaded herein.

45. The Gilberts were injured, sustained damage, and the defendants were negligent by threatening, intimidating, making and proceeding based on false statements about the Gilberts and negligently interfering with the Gilberts' housing rights causing injury to the Gilberts.

COUNT VI

BREACH OF FIDUCIARY DUTY

46. The Gilberts restate and reallege paragraphs 1 thru 35 of this Complaint as paragraphs 1 thru 35 of this Count VI as though the same were fully set forth and pleaded herein.

47. That as all times relevant, the defendants were in a fiduciary relationship to the Condominium Association and its members including the Gilberts.

48. That the Condominium Association is responsible, as principal for the acts of its servants.

49. That the defendants have breached their fiduciary duty to the Gilberts by failing to discharge the duties owed the Gilberts and further by acting in a willful and wanton manner and engaging in bad faith and unfair dealing.

50. The defendants breached their fiduciary duty to the Gilberts when they threatened, intimidated, and interfered with the Gilberts' housing rights, as a superior in the relationship which had the ability to exert influence over the Gilberts because of that superior standing.

COUNT VII

DEFAMATION IN THE FORM OF SLANDER

51. The Gilberts restate and reallege paragraphs 1 thru 35 of this Complaint as paragraphs 1 thru 35 of this Count VII as though the same were fully set forth and pleaded herein.

52. The actions of defendants in orally making knowingly false statements about the Gilberts and Iola Gilbert's disability to third parties constitutes defamation in the form of slander.

COUNT VIII

DEFAMATION IN THE FORM OF LIBEL

53. The Gilberts restate and reallege paragraphs 1 thru 35 of this Complaint as paragraphs 1 thru 35 of this Count VIII as though the same were fully set forth and pleaded herein.

54. The actions of defendants in publishing knowingly false statements about the Gilberts and Iola Gilbert's disability to third parties constitutes defamation in the form of libel.

COUNT IX

TORTIOUS INTERFERENCE WITH A CONTRACTUAL RELATIONSHIP

55. The Gilberts restate and reallege paragraphs 1 thru 35 of this Complaint as paragraphs 1 thru 35 of this Count IX as though the same were fully set forth and pleaded herein.

56. The actions of defendants in threatening to revoke the Gilberts' right to live in their unit constitutes tortious interference with a contractual relationship.

COUNT X

FRAUDULENT MISREPRESENTATION

57. The Gilberts restate and reallege paragraphs 1 thru 35 of this Complaint as paragraphs 1 thru 35 of this Count X as though the same were fully set forth and pleaded herein.

58. The actions of defendants in encouraging, reporting, and supporting knowingly false claims against the Gilberts in order to induce them to leave their Unit constitutes fraudulent misrepresentation.

COUNT XI

INJUNCTIVE RELIEF

59. The Gilberts restate and reallege paragraphs 1 thru 35 of this Complaint as paragraphs 1 thru 35 of this Count XI as though the same were fully set forth and pleaded herein.

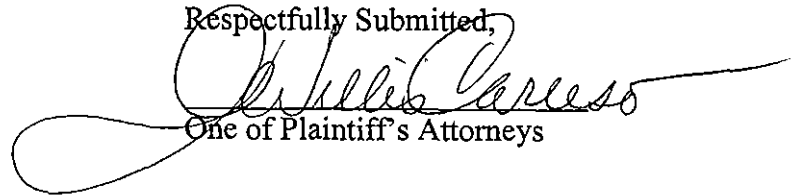
60. The actions of defendants in injuring the Gilberts including but not limited to being barred from the full enjoyment of the premises as guaranteed by the Fair Housing Act, and being removed from their home of thirty-seven (37) years, will continue until and unless the court enters an injunction on behalf of the Gilberts.

WHEREFORE, Plaintiffs request that this court enter judgment for Plaintiffs and against the defendants as follows;

- a. Temporary, Preliminary, and Permanent Injunctive relief prohibiting harassment, retaliation, and discrimination by defendants, and precluding any action to assess or collect any fines or attorneys fees during the pendency of this action;
- b. Temporary, Preliminary, and Permanent Injunction providing that Defendants cannot refuse to participate and negotiate in good faith to provide a reasonable accommodation for the handicap/disability of Iola Gilbert;
- c. Compensatory Damages;

- d. Punitive damages;
- e. Attorney's fees and costs;
- f. Any such additional relief that the court deems just and proper.

Respectfully Submitted,



One of Plaintiff's Attorneys

F. Willis Caruso
J. Damian Ortiz
Jamie Doolin, Senior Law Student
Michael Fleck, Senior Law Student
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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS

Civil Cover Sheet

This automated JS-44 conforms generally to the manual JS-44 approved by the Judicial Conference of the United States in September 1974. The data is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. The information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is authorized for use only in the Northern District of Illinois.

Plaintiff(s): IOLA GILBERT, AND SUSAN GILBERT
County of Residence: County of Residence: UNITED STATES
Plaintiff's Atty: THE JOHN MARSHALL LAW SCHOOL FAIR HOUSING LEGAL CLINIC
28 E. JACKSON CHICAGO, IL 60604 (312)786-2267
Defendant(s): THORNDALE BEACH NORTH CONDOMINIUM ASSOCIATION, AN ILLINOIS NOT-FOR-PROFIT CORPORATION
Defendant's Atty:

03C 7844
JUDGE ANDERSEN

II. Basis of Jurisdiction: 3. Federal Question (U.S. not a party)

III. Citizenship of Principal Parties (Diversity Cases Only)

Plaintiff:- N/A
Defendant:- N/A

MAGISTRATE JUDGE KEYS
DOCKETED
NOV - 5 2003

IV. Origin : 1. Original Proceeding

V. Nature of Suit: 443 Housing/Accommodations

VI. Cause of Action: This action is brought pursuant to the Fair Housing Act of 1968, as amended, 42 U.S.C. §3601 et. seq., §3604 (f)(1), (f)(2), (f)(3)(b), and §3617. Defendants have in the past and continue to interfere with Plaintiff's housing rights.

VII. Requested in Complaint

Class Action: No
Dollar Demand:
Jury Demand: Yes

VIII. This case **IS NOT** a refiling of a previously dismissed case.

Signature:

Date: 11-4-03

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U.S. DISTRICT COURT
NOV 4 2003

If any of this information is incorrect, please go back to the Civil Cover Sheet Input form using the Back button in your browser and change it. Once correct, print this form, sign and date it and submit it with your new civil action. Note: You may need to adjust the font size in your browser display to make the form print properly. Revised: 06/28/00

1-2

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS**

EASTERN DIVISION

In the Matter of

IOLA GILBERT, and, SUSAN GILBERT

v.

Thorndale Beach North Condominium Association

Case No. **03C 7844**
JUDGE ANDERSEN
MAGISTRATE JUDGE KEYS

APPEARANCES ARE HEREBY FILED BY THE UNDERSIGNED AS ATTORNEY(S) FOR:

A PLAINTIFF

(A)		(B)	
SIGNATURE <i>F. Willis Caruso</i>		SIGNATURE <i>J. Damian Ortiz</i>	
NAME F. Willis Caruso		NAME J. Damian Ortiz	
FIRM The John Marshall Law School Fair Housing Legal Clinic		FIRM The John Marshall Law School Fair Housing Legal Clinic	
STREET ADDRESS 28 E. Jackson Blvd #500		STREET ADDRESS 28 E. Jackson Blvd #500	
CITY/STATE/ZIP Chicago, IL 60604		CITY/STATE/ZIP Chicago, IL 60604	
TELEPHONE NUMBER (312) 786-2267	FAX NUMBER (312) 786-1047	TELEPHONE NUMBER (312) 786-2267	FAX NUMBER (312) 786-1047
E-MAIL ADDRESS 6caruso@jmls.edu		E-MAIL ADDRESS 6ortiz@jmls.edu	
IDENTIFICATION NUMBER (SEE ITEM 4 ON REVERSE) 00406252		IDENTIFICATION NUMBER (SEE ITEM 4 ON REVERSE) 6243609	
MEMBER OF TRIAL BAR? YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>		MEMBER OF TRIAL BAR? YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>	
TRIAL ATTORNEY? YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>		TRIAL ATTORNEY? YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>	
		DESIGNATED AS LOCAL COUNSEL? YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>	
(C)		(D)	
SIGNATURE		SIGNATURE	
NAME		NAME	
FIRM		FIRM	
STREET ADDRESS		STREET ADDRESS	
CITY/STATE/ZIP		CITY/STATE/ZIP	
TELEPHONE NUMBER	FAX NUMBER	TELEPHONE NUMBER	FAX NUMBER
E-MAIL ADDRESS		E-MAIL ADDRESS	
IDENTIFICATION NUMBER (SEE ITEM 4 ON REVERSE)		IDENTIFICATION NUMBER (SEE ITEM 4 ON REVERSE)	
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TRIAL ATTORNEY? YES <input type="checkbox"/> NO <input type="checkbox"/>		TRIAL ATTORNEY? YES <input type="checkbox"/> NO <input type="checkbox"/>	
DESIGNATED AS LOCAL COUNSEL? YES <input type="checkbox"/> NO <input type="checkbox"/>		DESIGNATED AS LOCAL COUNSEL? YES <input type="checkbox"/> NO <input type="checkbox"/>	

DOCKETED
NOV 5 2003

U.S. DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
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