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2004

Amended 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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John Marshall Law School Fair Housing Legal Clinic

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**DOCKETED**

MAR 1 - 2004

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

**FILED**

FEB 27 2004

SUSAN GILBERT, and  
IOLA GILBERT,  
Plaintiffs,

**MICHAEL W. DOBBINS**  
**CLERK, U.S. DISTRICT COURT** No. 03 C 7844

v.

THORNDALE BEACH NORTH  
CONDOMINIUM ASSOCIATION  
An Illinois Not-For-Profit Corporation,  
And SIGRID INGOLD,  
Defendants.

The Honorable Judge Wayne R. Andersen

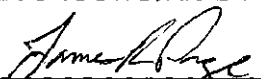
**NOTICE OF FILING**

TO: John J. Walsh III  
Pretzel & Stouffer, Chartered,  
Suite 2500  
One South Wacker Drive  
Chicago, Illinois 60606-4673

You are hereby notified that on February 27, 2004, at 1:30 p.m., we shall file in the United States District Court, Eastern Division, located at 219 S. Dearborn St., Chicago, IL, Amended Complaint, a copy which is served upon you.

**CERTIFICATE OF SERVICE**

I, James R. Page, Senior Law Student, on behalf of the plaintiffs, hereby certify that I caused a copy of this Amended Complaint to the above-listed attorney at the address indicated by depositing a copy of the same in the U.S. Mail depository located at 28 E. Jackson, Chicago, Illinois 60604, with the proper postage pre-paid before 5:00 p.m. on February 27, 2004, this statement as set forth is true and correct.

  
\_\_\_\_\_  
J. Damian Ortiz  
F. Willis Caruso  
James R. Page (711 Law Student)  
THE JOHN MARSHALL LAW SCHOOL  
FAIR HOUSING LEGAL CLINIC  
28 East Jackson, Suite 500  
Chicago, Illinois 60604  
312-786-2267

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IN UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
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SUSAN GILBERT, and  
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FILED

Plaintiffs,

FEB 27 2004

No. 03 C 7844

v.

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

The Honorable Wayne R. Andersen

THORNDALE BEACH NORTH  
CONDOMINIUM ASSOCIATION  
An Illinois Not-For-Profit  
Corporation, and SIGRID INGOLD,

JURY TRIAL REQUESTED

Defendants.

AMENDED COMPLAINT

The Plaintiffs, SUSAN GILBERT and IOLA GILBERT, (sometimes the "Gilberts") by their attorneys, F. Willis Caruso, J. Damian Ortiz and Senior Law Students of THE JOHN MARSHALL LAW SCHOOL FAIR HOUSING LEGAL CLINIC, complain of Defendants, Thorndale Beach North Condominium Association, an Illinois not-for-profit Corporation ("Condominium Association"), and Sigrid Ingold ("Ingold") as follows:

I. JURISDICTION

1. 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.

2. Jurisdiction is conferred on this court by 28 U.S.C. §1331, §1343(a)(4), 28 U.S.C. §2201, and 42 U.S.C. §3613.

3. Venue is proper in the Northern District of Illinois, Eastern Division since

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Plaintiffs, Iola and Susan Gilbert, and Defendants reside within the boundaries thereof.

## **II. PARTIES**

4. Plaintiff, Iola Gilbert, is a female person with a disability as defined by 42 U.S.C. 3602(h).

5. Specifically, Plaintiff, Iola Gilbert, suffers from multiple sclerosis and incontinence.

6. Plaintiff, Iola Gilbert, is an owner of, and has resided at 5901 N. Sheridan Road, Unit # 5K Chicago, Cook County, Illinois 60660 ("Unit") for approximately thirty-seven (37) years.

7. Plaintiff, Susan Gilbert, is a female person, and is the stepdaughter of Plaintiff, Iola Gilbert.

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

9. Defendant, 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.

10. Defendant is the Condominium Association for 5901 N. Sheridan Road, Chicago, Illinois, 60660.

11. Defendant, Ingold, is or was the President of said Condominium Association located at 5901 N. Sheridan Road, Chicago, Illinois, 60660.

## **III. FACTS**

12. Beginning on or about January of 2001 and continuing to the date hereof,

Ingold, members of the Condominium Association, and Board of Directors (“Directors”), acting on their own behalf and on the behalf of the Condominium Association, threatened, intimidated, and interfered with the Gilberts’ housing rights through persistent efforts to take the Gilberts’ Unit by soliciting, encouraging, facilitating, and publishing false discriminatory statements, and by filing baseless complaints.

13. More specifically, these acts included, without limitation, purported formal action by the Condominium Association, and a large number of false statements alleging that there were urine odors coming from the Gilberts’ Unit because Iola Gilbert is a person suffering from multiple sclerosis and incontinence, when in fact no such odors existed.

14. The above acts were done based on the fact that Iola Gilbert is a person suffering from a disability and attempting to exercise rights protected by the Fair Housing Act, and Susan Gilbert, Iola’s caregiver and stepdaughter, was and is assisting Iola in exercising said Fair Housing rights.

15. Beginning in or about January of 2001 and on a continuing basis, Ingold, the Condominium Association, and members of the Board of Directors acting on the behalf of the Condominium Association, encouraged, reported, and supported false claims against the Gilberts in an effort to intimidate, threaten, and interfere with the housing rights of the Gilberts.

16. On or about July 20, 2001, the Condominium Association sent the Gilberts a “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; said Notice is still pending on the date hereof.

17. The above mentioned Notice was accompanied by an additional threatening

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 they would lose the right to live in their Unit.

18. On August 20, 2001, Ingold and the Condominium Association held a meeting at which they intimidated, threatened, and harassed, the Gilberts.

19. Further, at said August 20, 2001, meeting, Ingold specifically asked the Condominium Association Members to ask the Gilberts to get rid of their rugs, curtains, furniture, and mattresses to remedy the allegations.

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

21. When no response was made by the Condominium Association to their request for a reasonable accommodation, on or about September 4, 2001, Plaintiffs, through senior law students and the supervising attorney F. Willis Caruso of The John Marshall Law School Fair Housing Legal Clinic, made an additional request for a reasonable accommodation on behalf of the Gilberts.

22. The Condominium Association has not provided a reasonable accommodation or given any response as to why the request for a reasonable accommodation, based on Iola’s disability, cannot be fulfilled.

23. On or about September 17, 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 pursuant to 42 U.S.C. §3613.

24. On or about September 28, 2001, and although clearly not required under the law, Plaintiffs, through senior law students and their supervising attorney, made a third request for a reasonable accommodation as an attempt to provide some means to settle this matter.

25. In spite of the above stated requests, as of the date hereof, the Condominium Association has failed to provide any kind of reasonable accommodation, or any reason for it's failing to do so.

26. Prior to October 1, 2001, and continuing to the date hereof, Ingold and the Condominium Association have engaged in instituting and entertaining the following actions based on false claims and complaints about the disability of Iola Gilbert:

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

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

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

D. 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, claiming a default and seeking possession pursuant to the Forcible Entry and Detainer Act 735

ILCS 5/9-101 et. seq.

E. Such actions threaten to deprived the Gilberts of their right to full enjoyment of their home in which Iola Gilbert has lived for thirty-seven (37) years. The eviction threat caused both Plaintiffs' emotional distress, and caused Iola Gilbert's medical condition to further deteriorate.

27. As a direct consequence of Defendants' discriminatory, retaliatory, and harassing actions, Plaintiffs have suffered and continue to suffer emotional and financial hardship. Their ownership of the Unit is under constant threat, which places the Gilberts in constant jeopardy of losing their home.

28. All of the actions of Defendants and condominium association members complained of herein were done willfully, maliciously, and/or with negligent disregard for the rights of the Plaintiffs.

**CLAIM I**  
**HANDICAPPED DISCRIMINATION UNDER 42 U.S.C. §3604**

29. The Gilberts restate and re-allege paragraphs 1 through 28 of this Complaint as though the same were fully set forth and pleaded herein.

30. The actions of Defendants in threatening, intimidating and interfering with the Gilberts' housing rights because of Iola Gilbert's disability, and their actions in failing to provide her with a reasonable accommodation constitute discrimination on the basis of handicap in violation of the Fair Housing Act, 42 U.S.C. § 3604 (f)(1), (f)(2) and (f)(3)(B), as amended and the Federal Regulations under 24 CFR 14 *et al.*, promulgated thereunder.

31. The Gilberts have sustained direct injuries including, but not limited to, being barred from the full enjoyment of the premises, as guaranteed by the Fair Housing Act, and



threatened removal from their home of thirty-seven (37) years, and will continue to sustain said injuries 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 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 attorney's 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; and
- f. Any such additional relief that the court deems just and proper.

**CLAIM II**  
**VIOLATION OF 42 U.S.C. §3617**

32. The Gilberts restate and re-allege paragraphs 1 through 31 of this Complaint as though the same were fully set forth and pleaded herein.

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

34. The Gilberts have sustained direct injuries including, but not limited to, being barred from the full enjoyment of the premises, as guaranteed by the Fair Housing Act, and

threatened removal from their home of thirty-seven (37) years, and will continue to sustain said injuries 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 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 Iola Gilbert's disability;
- c. Compensatory Damages;
- d. Punitive damages;
- e. Attorney's fees and costs; and
- f. Any such additional relief that the court deems just and proper.

**CLAIM III**  
**NEGLIGENCE**

35. The Gilberts restate and re-allege paragraphs 1 through 34 of this Complaint as though the same were fully set forth and pleaded herein.

36. Defendants had a duty to:

- a. Make a reasonable investigation of any complaints against the Gilberts before instituting adverse actions;
- b. Exercise reasonable care with respect to investigating complaints against the Gilberts;

c. Refrain from misrepresenting the true condition of the Gilbert's unit and surrounding common areas;

d. Perform their duties as a board and board members in a reasonable manner, including but not limited to acting with due care so as to not harm the welfare of the Association members (including the Gilberts) and their property;

e. Perform their duties as a board and board members with due regard for the provisions and duties set forth in the Illinois Condominium and Property Act and the Declarations and Bylaws;

f. Refrain from performing their duties as a board and board members in direct contradiction to the provisions and duties set forth in the Illinois Condominium Property Act and the Declarations and Bylaws.

37. Defendants breached one or more of these duties by:

a. Failing to undertake reasonable investigations of any complaints against the Gilberts;

b. Failing to conduct any investigations of complaints against the Gilberts in a reasonable manner;

c. Misrepresenting the true condition of the Gilbert's unit and surrounding common areas;

d. Failing to investigate, and in some cases perpetuating false complaints against the Gilberts;

e. Performing their duties as a board and board members in an unreasonable manner, and without due care for the welfare of the Condominium Association's members (including the Gilberts) and their property;

f. Failing to perform their duties as a board and board members with due regard for the provisions and duties set forth in the Illinois Condominium and Property Act and the Declarations and Bylaws;

g. Repeatedly performing their duties as a board and board members in direct contradiction to the provisions and duties set forth in the Illinois Condominium and Property Act and the Declarations and Bylaws.

38. As a direct result and proximate cause of Defendants' breaches, the Gilberts were injured and sustained emotional, pecuniary, and physical damages.

**WHEREFORE**, Plaintiffs request that this court enter judgment for Plaintiffs and against Defendants as follows:

- a. Compensatory Damages;
- b. Punitive damages;
- c. Reasonable fees and costs; and
- d. Any such additional relief that the court deems just and proper.

**CLAIM IV**  
**BREACH OF FIDUCIARY DUTY UNDER 765 ILCS 605/18.4**

39. The Gilberts restate and re-allege paragraphs 1 through 38 of this Complaint as though the same were fully set forth and pleaded herein.

40. That at all times relevant, Defendants, Condominium Association, and its members were in a fiduciary relationship with the Gilberts based on the relationship between the parties and pursuant to condominium by laws and 765 ILCS 605/18.4.

41. The Defendants had a fiduciary duty to act in the Gilberts' best interests

in exercising the same level of care as they would with regard to their own property and affairs.

42. That Defendants, breached their fiduciary duty by:

a. Failing to undertake reasonable investigations of any complaints against the Gilberts;

b. Failing to conduct any investigations of complaints against the Gilberts' in a reasonable manner;

c. Misrepresenting the true condition of the Gilbert's unit and surrounding common areas;

d. Failing to investigate, and in some cases perpetuating false complaints against the Gilberts;

e. Performing their duties as a board and board members in an unreasonable manner, and without due care for the welfare of the Condominium Association's members (including the Gilberts) and their property;

f. Failing to perform their duties as a board and board members with due regard for the provisions and duties set forth in the Illinois Condominium and Property Act and the Declarations and Bylaws;

g. In addition, Defendant, Condominium Association, breached its fiduciary duty to the Gilberts when its members used their superior position to threaten, intimidate, and interfere with the Gilberts' housing rights.

43. As a direct result and proximate cause of Defendant's breach of fiduciary duties, the Gilberts sustained emotional, pecuniary, and physical damages.

**WHEREFORE**, Plaintiffs request that this court enter judgment for Plaintiffs and against Defendant, Condominium Association, as follows:

- a. Compensatory Damages;
- b. Punitive damages;
- c. Reasonable fees and costs; and
- d. Any such additional relief that the court deems just and proper.

Respectfully submitted,

By: 

\_\_\_\_\_  
One of Plaintiff's Attorneys

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