

LEXSEE 18 FLA. L. WEEKLY FED. D 287

**TERRI MILSAP, DONNA WEISSINGER, and HOUSING OPPORTUNITIES
PROJECT FOR EXCELLENCE, INC., Plaintiffs, vs. CORNERSTONE RESIDEN-
TIAL MANAGEMENT, INC., and SANCTUARY COVE ASSOCIATES, LTD.
d/b/a SANCTUARY COVE APARTMENTS, Defendants.**

CASE NO. 05-60033-Civ-MARRA/SELTZER

**UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF
FLORIDA**

2005 U.S. Dist. LEXIS 1147; 18 Fla. L. Weekly Fed. D 287

**January 28, 2005, Decided
January 28, 2005, Filed**

SUBSEQUENT HISTORY: Motion to strike granted by *Milsap v. Cornerstone Residential Mgmt.*, 2007 U.S. Dist. LEXIS 22252 (S.D. Fla., Mar. 27, 2007)

DISPOSITION: Plaintiff's Motion For Temporary Injunction granted.

LexisNexis(R) Headnotes

Civil Procedure > Remedies > Injunctions > Elements > General Overview

Civil Procedure > Remedies > Injunctions > Preliminary & Temporary Injunctions

[HN1] A party requesting preliminary injunctive relief must show (1) a substantial likelihood of success on the merits; (2) a substantial threat of irreparable injury; (3) its own injury outweighs the injury to the nonmovant; and (4) the injunction would not disserve the public interest. Plaintiffs must clearly carry the burden of persuasion on all four elements to prevail on the Motion for Preliminary Injunction.

Civil Rights Law > Contractual Relations & Housing > Fair Housing Rights > General Overview

Public Health & Welfare Law > Housing & Public Buildings > Fair Housing

[HN2] See 42 U.S.C.S. § 3604.

Evidence > Procedural Considerations > Burdens of Proof > General Overview

Labor & Employment Law > Discrimination > Disparate Treatment > Proof > Circumstantial & Direct Evidence

[HN3] In disparate-treatment cases, one way a plaintiff may prove discrimination is through presentation of direct evidence of discrimination. Direct evidence is evidence that, if believed by the trier of fact, would prove a fact in question without reliance on inference or presumption.

Civil Rights Law > Contractual Relations & Housing > Fair Housing Rights > Fair Housing Amendments Act & Housing for Retirees

Family Law > Parental Duties & Rights > Consent > General Overview

Public Health & Welfare Law > Housing & Public Buildings > Fair Housing

[HN4] 42 U.S.C.S. § 3602(k) defines familial status as one or more individuals (who have not attained the age of 18 years) being domiciled with -- (1) a parent or another person having legal custody of such individual or individuals; or (2) the designee of such parent or other person having such custody, with the written permission of such parent or other person.

Civil Rights Law > Contractual Relations & Housing > Fair Housing Rights > General Overview

Public Health & Welfare Law > Housing & Public Buildings > Fair Housing

[HN5] The practice of refusing to rent an apartment to a tenant on the basis of the number of children in the household when the same unit would be rented to the

same sized household of adults constitutes discrimination on the basis of familial status.

Civil Rights Law > Contractual Relations & Housing > Fair Housing Rights > Remedies
Public Health & Welfare Law > Housing & Public Buildings > Fair Housing
Real Property Law > Zoning & Land Use > Building & Housing Codes

[HN6] In the United States Court of Appeals for the Eleventh Circuit, when there is a likelihood of success on a Fair Housing claim, irreparable injury, damage and vindication of the public interest must be presumed. Irreparable injury may be presumed from the fact of discrimination and violations of fair housing statutes. When a plaintiff who has standing to bring suit shows a substantial likelihood that a defendant has violated specific fair housing statutes and regulations, that alone, if un rebutted, is sufficient to support an injunction remedying those violations. There are several reasons why housing discrimination results in irreparable injury. First, a person who is discriminated against in the search for housing cannot remain in limbo while a court resolves the matter. He or she must find housing elsewhere, and once that housing is found, it becomes difficult to disrupt new friendships and other community ties by uprooting oneself again. Second, available housing where the discrimination is occurring could become filled during the pendency of a lawsuit, making corrective relief nearly impossible to enter. Third, monetary relief cannot correct the injury completely. Finally, harm from housing discrimination includes the loss of safe, sanitary, decent housing.

COUNSEL: [*1] For TERRI MILSAP, DONNA WEISSINGER, HOUSING OPPORTUNITIES PROJECT FOR EXCELLENCE, INC., Plaintiffs: Matthew Wilson Dietz, Matthew W. Dietz, Coral Gables, FL.

For CORNERSTONE RESIDENTIAL MANAGEMENT, INC., SANCTUARY COVE ASSOCIATES, LTD. DBA SANCTUARY COVE APARTMENTS, Defendants: Leslie W. Langbein, Langbein & Langbein, Miami Lakes, FL.

JUDGES: KENNETH A. MARRA, United States District Judge.

OPINION BY: KENNETH A. MARRA

OPINION

ORDER GRANTING PRELIMINARY INJUNCTION

THIS CAUSE is before the Court upon Plaintiff's Motion For Temporary Injunction [DE 2]. Also pending is Defendants' Motion to Accept Response to Motion For Temporary Injunctive Relief Out of Time [DE 13]. An evidentiary hearing was held on January 20, 2005, with closing arguments presented on January 25, 2005. The Court has carefully considered the evidence presented at the hearing, all the materials submitted by the parties, and is otherwise fully advised in the premises.

Plaintiff Terri Milsap ("Milsap") is a single mother of two young boys, and because of her income, she has a *Section 8* federal rental assistance voucher for a two-bedroom apartment. Plaintiff Donna Weissinger ("Weissinger") is a single mother [*2] of four children, three of whom currently reside with her. Both sought housing at Sanctuary Cove Apartments, a new multi-family residential property in Fort Lauderdale. Both were advised that they do not meet the residency standards of the residential development. Milsap currently lives in substandard housing that is in a constant state of disrepair. Weissinger will have to leave her current residence by February 1, 2005 and does not presently have a permanent alternative place to reside.

Defendant Cornerstone Residential Management, LLC ("CRM") is the management and leasing agent for Sanctuary Cove Apartments ("Sanctuary Cove"), which is owned by Sanctuary Cove Associates, Ltd. ("Associates") (collectively the "Defendants"). CRM is a part of Cornerstone Group ("Cornerstone"), a developer of multi-family residential properties in south Florida. Cornerstone receives financing from the U.S. Florida Housing Finance Corporation, various housing finance authorities, various local governments, and in some instances, from the Housing and Urban Development Department ("HUD").

The property at issue, Sanctuary Cove Apartments, was developed and is operated with federal, state and local sources, [*3] including the Housing Finance Authority of Broward County, Florida ("the Authority"). As a condition to receipt of Authority financing, Associates was required to enter into a Land Use Restriction Agreement ("the Agreement" or "LURA"). The Agreement stipulates that the project will be open to "members of the general public" who qualify as "Lower-Income Tenants" or "Eligible Persons" as defined in *Florida Statutes § 159.601*. Furthermore, Section 2(d) of the Agreement states:

. . . The Owner will not discriminate against children of any age when renting the units in the Project; however, the Owner may, but shall have no obligation to, impose reasonable limits on the number of children occupying an individual

unit as follows: the Owner may require that (1) no more than one child per bedroom will be allowed in any unit with two or more bedrooms, and (2) in one-bedroom or smaller apartments no children will be allowed except that all tenants must be allowed at least twenty-four (24) months after children become a part of the tenant's household to relocate to new housing. . .

The owner chose to impose the occupancy limits as set forth in the LURA. This policy is published [*4] and implemented by the Defendants as follows:

Our management company has established the following limits on occupancy at Sanctuary Cove apartments:

One Bedroom: Maximum of Two (2) people (2 adults)

Two Bedroom: Maximum of Three (3) people (couple & 1 heart beat per room)

Three Bedroom: Maximum of Four (4) people (couple & 1 heart beat per room)¹

Sanctuary Cove also utilizes HUD Tenant Selection Guidelines to determine whether applicants are eligible for occupancy. Among other things, applicants must (1) meet income restrictions; (2) be a U.S. citizen or eligible non-citizen; (3) disclose the social security numbers of all family members; and (4) sign certain consent forms that permit verification of all information given on the application.

¹ HUD Policy 74.65.1 Chapter 5, Section (b) establishes minimum and maximum occupancy guides. The minimum number of people permitted in a two-bedroom apartment is two (2) and the maximum is four (4). The minimum number of occupants in a three-bedroom apartment is three (3) and the maximum is six (6) [DE 14 at 5].

[*5] On or about October 19, 2004, Milsap went to Sanctuary Cove and inquired about renting a two-bedroom apartment. She was told that because she had two children, she could not rent a two-bedroom apartment, but that if she wished, she could apply to rent a three-bedroom apartment. Milsap later met with the property manager who explained to her that Sanctuary Cove is governed by a LURA which does not allow one

child to share a room with another child. Hearing Transcript, Vol 5 at 131-132. The property manager then recommended that Milsap try St. Croix, a new comparable Cornerstone complex nearby that did not have the same occupancy limits relative to children.

On or about December 13, 2004, Weissinger went to Sanctuary Cove with her three children. When she inquired about the availability of a three-bedroom apartment, she was told that she could not live at Sanctuary Cove because their occupancy standards require that each child have their own bedroom (and they do not have any four-bedroom units). Weissinger asked why her boys could not continue sharing a room as they always have, and Sanctuary Cove responded that it was just the rules. They suggested she try another apartment complex [*6] opening nearby but when she called the other property, she was told it would not open until March 2005.

It is alleged that the Defendants' implementation of their published residency standards discriminates against the Plaintiffs and others similarly situated, in the terms, conditions, and privileges of renting at Sanctuary Cove because of their familial status in violation of the Fair Housing Act of 1968, as amended, *42 U.S.C. § 3601, et seq.*² Defendants assert that their policy does not violate the law because the occupancy limits they have implemented fall within minimum/maximum HUD occupancy guidelines. Defendants also contend that their residency standards do not discriminate based upon familial status, or against children in particular, because their policy applies neutrally to limit "one heart beat" per bedroom.

² At the hearing Plaintiffs asserted the additional claim that by limiting a one-bedroom apartment to two occupants, a two-bedroom apartment to three occupants and a three-bedroom apartment to four occupants, Defendants violated HUD's presumptive standards that two persons per room is a reasonable restriction. Relief for this claim was not sought in the Motion For Temporary Injunction. Moreover, in view of the minimum and maximum occupancy guides set forth in HUD Policy 74.65.1 Chapter 5, Section (b), there is insufficient evidence in the current record to support a finding that Plaintiffs would likely succeed on this claim.

[*7] Plaintiffs seek a preliminary injunction because Weissinger needs a home for herself and her three children³ and because other units are continuing to be denied to families with children. Plaintiffs request this Court to order Sanctuary Cove to (a) immediately permit Weissinger to enter into a lease for a three-bedroom apartment for herself and her three children; (b) to enjoin the Defendants from discriminating on the basis of familial status and remove the discriminatory practice of limit-

ing apartments to families with two children; and (3) to order Defendants to publish a notice in a newspaper of general circulation each week for eight consecutive weeks regarding the availability of apartments to families with children on a non-discriminatory basis.

3 Weissinger testified at the hearing that she has a 19 year old daughter who is a freshman at the University of Central Florida. Weissinger further testified that this daughter resides in Orlando, Florida and will only visit for a weekend once in a while. Hearing Transcript, Vol. 5 at 44. Defendants assert that for purposes of their residency requirements, Weissinger has four children. The Court finds that Weissinger has three (3) children who would be domiciled with her, and that her 19 year old daughter does not reside with her. If Weissinger does ultimately lease a unit at Sanctuary Cove, and if Weissinger's 19 year old daughter does actually reside with her, Weissinger will be subject to any legally permissible action Sanctuary Cove may take due to the change in circumstances. The Court expresses no opinion at this time as to whether an attempt by Sanctuary Cove to evict Weissinger due to her 19 year old daughter residing with her and the other three (3) children would constitute a violation of the FHA.

[*8] [HN1] A party requesting preliminary injunctive relief must show (1) a substantial likelihood of success on the merits; (2) a substantial threat of irreparable injury; (3) its own injury outweighs the injury to the nonmovant; and (4) the injunction would not disserve the public interest. *Haitian Refugee Ctr., Inc. v. Baker*, 949 F.2d 1109, 1110 (11th Cir. 1991); *Four Seasons Hotels And Resorts, B.V. v. Consorcio Barr, S.A.*, 320 F.3d 1205 (11th Cir. 2003), *Siegel v. LePore*, 234 F.3d 1163, 1176 (11th Cir. 2000). Plaintiffs must clearly carry the burden of persuasion on all four elements to prevail on the Motion for Preliminary Injunction. *Sofarelli v. Pinellas County*, 931 F.2d 718, 724 (11th Cir. 1991).

After carefully weighing the testimony and evidence presented at the hearing, reviewing the record, and considering the law as it applies to the specific facts of this case, the Court concludes that Plaintiffs have met the essential elements required for a preliminary injunction as follows:

LIKELIHOOD OF SUCCESS ON THE MERITS

On September 13, 1988, Congress amended the Fair Housing Act ("FHA") to prohibit, *inter* [*9] *alia*, housing practices that discriminate on the basis of familial status. 42 U.S.C. §§ 3601-19. Pursuant to 42 U.S.C. § 3604 it shall be [HN2] unlawful-

(a) To refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, color, religion, sex, familial status,⁴ or national origin.

(b) To discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race, color, religion, sex, familial status, or national origin.

(c) To make, print, or publish, or cause to be made, printed, or published any notice, statement, or advertisement, with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on race, color, religion, sex, handicap, familial status, or national origin, or an intention to make any such preference, limitation, or discrimination.

[HN3] In disparate-treatment cases, one way a plaintiff may prove discrimination [*10] is through presentation of "direct evidence" of discrimination. "Direct evidence" is evidence that, if believed by the trier of fact, would prove a fact in question without reliance on inference or presumption. We have that here. The printed occupancy policy published and promulgated by Sanctuary Cove discriminates against families on its face: it limits residents to two children and requires that each child occupy their own room, while the same limitations are not applied to adult residents. For instance, in a one-bedroom, two adults are permitted but no children are permitted. Thus, two unrelated adults are permitted to share a one-bedroom apartment, but a single parent and one child may not. In a two-bedroom, two adults and one child are permitted but one adult and two children are not permitted. Similarly, in a three-bedroom apartment, four adults, or two adults and two children are permitted, but one adult and three children are not permitted. The property manager of Sanctuary Cove, Ms. DeBoy, even testified that instead of limiting the second and third bedrooms to "one heartbeat per room," the policy should have said "one child per room." Hearing Transcript, Vol. 5 at 129; [*11] *see also* Vol. 5 at 147, 176. There is no rational basis for these distinctions and no competent evidence was submitted to justify these restrictions.

4 [HN4] Section 3602(k) defines "familial status" as one or more individuals (who have not attained the age of 18 years) being domiciled with--

(1) a parent or another person having legal custody of such individual or individuals; or

(2) the designee of such parent or other person having such custody, with the written permission of such parent or other person.

The Defendants [HN5] practice of refusing to rent an apartment to a tenant on the basis of the number of children in the household when the same unit would be rented to the same sized household of adults constitutes discrimination on the basis of familial status. See *Glover v. Crestwood Lake Section 1 Holding Corps.*, 746 F. Supp. 301, 310 (S.D.N.Y. 1990) (holding that policy of an apartment complex barring a single parent with one child from occupying a one-bedroom apartment while allowing two [*12] adults to share a one-bedroom apartment constituted discrimination on the basis of familial status under the FHA). Based on the direct evidence of discrimination, the Court concludes that Plaintiffs have a substantial likelihood of prevailing on the merits of their claim of discrimination in violation of the FHA.

IRREPARABLE INJURY

INJURY TO NONMOVANT PUBLIC INTEREST

[HN6] In the Eleventh Circuit Court of Appeals, when there is a likelihood of success on a Fair Housing claim, irreparable injury, damage and vindication of the public interest must be presumed. In *Rogers v. Windmill Pointe Village Club Ass'n, Inc.*, 967 F.2d 525 (11th Cir. 1992), the Eleventh Circuit held that, "irreparable injury may be presumed from the fact of discrimination and violations of fair housing statutes" (citing *Gresham v. Windrush Partners, Ltd.*, 730 F.2d 1417, 1423 (11th Cir. 1984)). "When a plaintiff who has standing⁵ to bring suit shows a substantial likelihood that a defendant has violated specific fair housing statutes and regulations, that alone, if unrebutted, is sufficient to support an injunction remedying those violations." *Gresham*, 730 F.2d at 1423-1424. [*13] The Court in *Gresham* listed several reasons why housing discrimination results in irreparable injury. First, a person who is discriminated against in the search for housing cannot remain in limbo while a court resolves the matter. He or she must find housing else-

where, and once that housing is found, it becomes difficult to disrupt new friendships and other community ties by uprooting oneself again. *Id.* at 1424. Second, available housing where the discrimination is occurring could become filled during the pendency of a lawsuit, making corrective relief nearly impossible to enter. *Id.* Third, monetary relief cannot correct the injury completely. *Id.* Finally, harm from housing discrimination includes the loss of safe, sanitary, decent housing. *Id.*

5 The Plaintiffs have suffered a distinct and palpable injury as a result of the Defendants' conduct and therefore having standing to sue. See *Gorski v. Troy*, 929 F.2d 1183, 1187-88 (7th Cir. 1991) (detailed discussion of Congress' intent to apply broad standing principles under the FHA). Plaintiffs have been advised they do not qualify for the size units they sought based upon the number of children in their family, while Defendants would rent those same units to other tenants with the same number of adult residents. The fact that Milsap and Weissinger did not actually complete applications is irrelevant. It is clear from the record that even if Plaintiffs had formally applied and met all of the other requirements for acceptance, they would not have been offered the units they sought. This is sufficient injury in fact directly resulting from Defendants' discriminatory policy.

[*14] Defendants have not presented evidence in the record to rebut this presumption of irreparable injury. Therefore, the Court finds that Plaintiffs have established the existence of irreparable injury. Additionally, the Court finds that the threatened injury of continued enforcement of the child restrictions outweighs whatever damage the proposed injunction may cause Defendants. Because of the strong national policy against housing discrimination, enjoining Defendants from enforcing their occupancy standards which result in discrimination based upon familial status during the pendency of this litigation would not be adverse to the public interest, but rather would promote it.⁶

6 On January 27, 2005, Defendants notified the Court that the "Residency Standards" for Sanctuary Cove have been amended and no longer take into consideration the relationship of the occupants. See Suggestion of Mootness [DE 19]. Plaintiffs' that same day filed a response. A case may be moot if "the defendant can demonstrate that there is no reasonable expectation that the wrong will be repeated. The burden is a heavy one." See *United States v. W.T. Grant Co.*, 345 U.S. 629, 632, 97 L. Ed. 1303, 73 S. Ct. 894 (1953). Here the defendants told the Court that

Sanctuary Cove will no longer take into consideration whether an occupant is an adult or a child. "Such a profession does not suffice to make a case moot although it is one of the factors to be considered in determining the appropriateness of granting an injunction against the non-discontinued acts." *Id.* Defendants' act has not met the burden of establishing mootness. Moreover, if the Court were to declare the case moot, that would mean that the Defendants would be entitled to a dismissal as a matter of right and the Defendants would be free to return to its former discriminatory occupancy policy. The public interest in having the legality of the occupancy policy at Sanctuary Cove settled militates against a mootness conclusion.

[*15] Accordingly, it is hereby ORDERED AND ADJUDGED that Plaintiff's Motion For Temporary Injunction [DE 2] is GRANTED and that Defendants, Cornerstone Residential Management, Inc. and Sanctuary Cove Associates, Ltd., doing business as Sanctuary Cove Apartments, and its officers, agents, employees, successors, attorneys, and all persons acting in concert or participation with any of them hereby are:

1. Restrained from discriminating against any person on the basis of familial status by enforcing the occupancy policy/residency standards printed, published and disseminated by Defendants which standards are derived from the Land Use Restriction Agreement. Specifically, as to any prospective tenant that is a parent ⁷ who otherwise qualifies for residency at the Sanctuary Cove Apartments, Defendants are enjoined from denying that parent residency if the number of occupants of the residential unit is within the maximum per unit standards in effect at Sanctuary Cove.

7 For the purposes of this Order, the term parent shall incorporate the definition of familial status in as used in 42 U.S.C. § 3602(k).

[*16] 2. Sanctuary Cove is immediately to permit Donna Weissinger to apply for a three-bedroom apartment. Defendants shall not deny Weissinger occupancy based upon familial status;

3. Plaintiff shall post security in the amount of \$ 1,000.00. The security shall be posted by close of business on Tuesday, February 1, 2005, although this preliminary injunction shall issue immediately.

4. The Plaintiffs request for a Court Order directing Defendants to publish a notice in a newspaper of general circulation is denied without prejudice. Defendants may seek this relief at the end of the case.

5. To the extent the Plaintiffs' seek preliminary injunctive relief as to the maximum occupancy standards being used by Defendants, that request is denied without prejudice. At this point, insufficient evidence has been presented on this issue. Plaintiffs may seek permanent injunctive relief regarding this issue after a trial on the merits.

6. The Motion to Accept Response to Motion For Temporary Injunctive Relief Out of Time [DE 13] is GRANTED.

DONE AND ORDERED in Chambers at Fort Lauderdale, Broward County, Florida, this 28th day of January, 2005.

KENNETH A. MARRA

United States [*17] District Judge