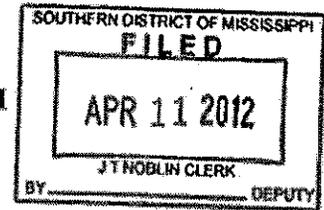


IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION



UNITED STATES OF AMERICA

PLAINTIFF

v.

CIVIL ACTION NO: 1:12-cv-112-LG-Jmr

THERESA O. MERCKER

DEFENDANT

COMPLAINT

The United States of America ("United States") alleges as follows:

NATURE OF ACTION

1. This action is brought by the United States to enforce Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988, 42 U.S.C. § 3601, *et seq.* (the "Fair Housing Act"). This action is brought on behalf of Devron and Shikina Jones and their five minor children, pursuant to 42 U.S.C. § 3612(o).

JURISDICTION AND VENUE

2. This Court has jurisdiction over this action under 28 U.S.C. §§ 1331 and 1345, and 42 U.S.C. § 3612(o).
3. Venue is proper under 28 U.S.C. § 1391(b) because the events or omissions giving rise to the United States' claims occurred in this judicial district.

PARTIES

4. Defendant Theresa O. Mercker, at all times relevant to this action, resided in Owensboro, Kentucky and was the owner of the property located at 2710 Angela Circle, Gulfport, Mississippi 39503 ("the subject property."). The subject property is a single-family, one-story house with

three bedrooms, a living room, a dining room, a den/family room, a kitchen, one full bath, one half bath, and a laundry room, containing 1,400 square feet (1,231 square feet of habitable floor space). The bedrooms measure approximately 100 square feet, 130 square feet and 154 square feet. The den/family room measures approximately 204 square feet; the living room measures approximately 208 square feet; and the dining room measures approximately 255 square feet.

5. In addition to the subject property, Mercker owned and managed nine properties in Owensboro, Kentucky.

6. At all times relevant to this action, Don Pizzetta, Owner of D&D Enterprises, was the property manager for the subject property pursuant to a management agreement with Mercker executed on July 15, 2005. The agreement provided that Pizzetta would assume responsibility for renting the subject property, including executing all lease agreements.

7. The subject property is a "dwelling" within the meaning of 42 U.S.C. § 3602(b).

8. Devron Jones and Shikina Jones ("Joneses") are a married couple and the parents of five minor children who, at all time relevant to this action, lived with them. The dates of birth of the five minor children are July 15, 1997, January 31, 1999, June 20, 2000, December 27, 2001 and May 16, 2002.

FACTUAL ALLEGATIONS

9. In or about May 2006, the Joneses were renting and occupying a two-bedroom apartment under Pizzetta's management and inquired about the availability of a larger home to better accommodate their family. In or about May 2006, Pizzetta showed them the subject property.

10. After viewing the subject property, the Joneses advised Pizzetta that they would like to rent it and, on or about May 25, 2006, they executed a one-year lease for the property and paid a

\$250 deposit and the first month's rent of \$900.

11. On or about May 29, 2006, the Joneses began moving into the subject property. Later that same day, Mercker and a friend arrived unannounced to inspect repairs previously made to the property. Mercker toured the property and observed the Joneses unpacking their belongings.

12. On or about May 29, 2006, after leaving the property, Mercker telephoned Pizzetta and told him to "get those people out because they [are] gonna tear up my house."

13. On or about May 30, 2006, Pizzetta informed the Joneses that Mercker wanted them out because she claimed they "were gonna tear up her house."

14. On or about June 1, 2006, the Joneses and their minor children moved back into the two-bedroom apartment they had formerly occupied.

15. The Joneses and their minor children had previously been living in a two-bedroom apartment, and experienced no plumbing problems there as a result of the number of people in their family.

16. Subsequent tenants of the subject property hung a curtain at the opening to the den/family room, and appeared to be using that room as a bedroom.

17. During the investigation by the United States Department of Housing and Urban Development ("HUD") (described below), Mercker stated that the subject property was too small for seven people. This stated occupancy standard, which Mercker had not reduced to writing and had not imposed on any other tenants of the subject property in the past, was significantly more restrictive than the local occupancy code applicable to homes in Gulfport, Mississippi (the 1994 Standard Housing Code). The local code required only 150 square feet of habitable floor space for the first occupant and an additional 100 square feet for each additional occupant,

totaling 750 square feet for seven occupants. The local code also required that every room occupied for sleeping purposes by one occupant contain at least 70 square feet of floor space, and that every room occupied for sleeping purposes by more than one person contain at least 50 square feet of floor space for each occupant. These standards would have been satisfied in this case by the Joneses' plan to have their five children sleep in two of the bedrooms and the den/family room.

18. According to the United States Census Bureau's 2005-2009 American Community Survey (ACS) Public Use Microdata Sample (PUMS), 89% of households in Harrison County, Mississippi with seven members have at least one child under 18 years of age.

19. Given the overall size of the subject property, the size of the bedrooms, the ages of the children, the configuration of the subject property, the capacity of the building systems and the local governmental occupancy requirements, the occupancy limitation imposed by Mercker unreasonably limited the ability of families with children to rent the property.

HUD ADMINISTRATIVE PROCESS

20. On or about September 11, 2006, the Joneses filed a timely fair housing complaint with HUD, alleging, among other things, that Defendant Mercker had engaged in housing discrimination on the basis of race. On January 30, 2007, and October 27, 2007, their complaint was amended to include the Jones' five minor children; to add familial status as an additional basis for the alleged discrimination and to allege violations of subsection 804(a) and section 818 of the Act.

21. Pursuant to 42 U.S.C. § 3610(a) and (b), the Secretary of HUD conducted and completed an investigation of the complaint, attempted conciliation without success and prepared a final investigative report. Based upon the information gathered in the investigation, the Secretary,

pursuant to 42 U.S.C. § 3610(g)(1), determined that reasonable cause existed to believe that illegal discriminatory housing practices had occurred. Therefore, on June 24, 2011, the Secretary issued a Charge of Discrimination, pursuant to 42 U.S.C. § 3610(g)(2)(A), charging the above-named defendant with engaging in discriminatory practices based on familial status in violation of the Fair Housing Act.

22. On July 7, 2011, Defendant Mercker elected to have the claims asserted in the HUD Charge resolved in a civil action pursuant to 42 U.S.C. § 3610(a). On July 11, 2011, the Administrative Law Judge issued a Notice of Election to Proceed in United States District Court and terminated the administrative proceeding.

23. Following this Notice of Election, the Secretary of HUD authorized the Attorney General to commence civil action, pursuant to 42 U.S.C. § 3612(o).

FAIR HOUSING ACT VIOLATIONS

24. Plaintiff re-alleges and incorporates by reference the allegations set forth in paragraphs 1 through 23, above.

25. By the actions set forth above, Defendant Mercker has discriminated against the Joneses and their five minor children by:

a. Making housing unavailable to them because of familial status in violation of 42 U.S.C. § 3604(a); and

b. Discriminating against the Joneses in the terms and conditions of their tenancy because of familial status in violation of 42 U.S.C. § 3604(b).

26. As a result of Defendant Mercker's discriminatory conduct, the Joneses and their minor children suffered injuries, including a lost housing opportunity, economic loss, inconvenience, and emotional distress. The Joneses and their minor children meet the definition of "familial

status" and are "aggrieved persons" within the meaning of the Fair Housing Act, 42 U.S.C. § 3602(i), (k).

27. The actions of the Defendant were intentional, willful, and taken in disregard of the federally protected rights of the Joneses and their five minor children.

PRAYER FOR RELIEF

WHEREFORE, the United States of America prays for relief as follows:

1. A declaration that the discriminatory conduct of Defendant Theresa O. Mercker, as set forth above, violates the Fair Housing Act, 42 U.S.C. § 3601, *et seq.*;
2. An injunction against Defendant Theresa O. Mercker, her agents, employees, successors, and all other persons in active concert or participation with any of them from:
 - a. Refusing to rent after the making of a bona fide offer, or refusing to negotiate for the rental of, or otherwise making unavailable or denying a dwelling to any person because of familial status, in violation of 42 U.S.C. § 3604(a);
 - b. Discriminating against any person in the terms, conditions, or privileges of rental of a dwelling, or in the provision of services or facilities in connection therewith, because of familial status, in violation of 42 U.S.C. § 3604(b);
 - c. Failing or refusing to take such affirmative steps as may be necessary to restore, as nearly as practicable, the Joneses to the position they would have been in but for the discriminatory conduct; and
 - d. Failing or refusing to take such actions as may be necessary to prevent the recurrence of any such discriminatory conduct in the future and to eliminate, to the extent practicable, the effects of Defendant's unlawful conduct, and implementing policies and procedures to ensure that no rental applicants or tenants are discriminated against because

of their familial status.

3. An award of monetary damages to the Joneses and their minor children pursuant to 42 U.S.C. §§ 3612(o)(3) and 3613 (c)(1).

The United States further prays for such additional relief as the interests of justice may require.

Dated: April 11, 2012

Respectfully submitted,

GREGORY K. DAVIS
United States Attorney


MITZI DEASE PAIGE, MS Bar No. 6014
Assistant United States Attorney
501 East Court Street, Suite 4.430
Jackson, Mississippi 39201
Telephone No.: 601-973-2840
Fax No.: 601-965-4032
E-Mail: Mitzi.Paige@usdoj.gov