

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division

| | | |
|---------------------------------|---|-----------------------|
| UNITED STATES OF AMERICA, |) | |
| |) | |
| Plaintiff, |) | |
| |) | CASE NO.: 2:22-cv-334 |
| v. |) | |
| |) | |
| CHESAPEAKE COVESIDE LANE |) | |
| APARTMENTS PROPERTY OWNER, LLC, |) | |
| D/B/A HIDEAWAY AT GREENBRIER, |) | |
| |) | |
| AND |) | |
| |) | |
| CHASE ARBOR APARTMENTS PROPERTY |) | |
| OWNER, LLC, T/A CHASE ARBOR |) | |
| APARTMENTS, |) | |
| |) | |
| Defendants. |) | |
| _____ |) | |

COMPLAINT

Plaintiff, the United States of America (“United States”), by and through its undersigned attorneys, alleges as follows:

INTRODUCTION

1. The United States brings this action under the Servicemembers Civil Relief Act (“SCRA”), 50 U.S.C. §§ 3901-4043, against Chesapeake Coveseide Lane Apartments Property Owner, LLC, D/B/A Hideaway at Greenbrier and Chase Arbor Apartments Property Owner, LLC, T/A Chase Arbor Apartments (collectively “Defendants”).

2. The purpose of the SCRA is to provide for the temporary suspension of judicial and administrative proceedings and transactions that may adversely affect the rights of

servicemembers during their military service, so that they can devote their entire energy to the defense of the Nation.

3. Section 3931 of the SCRA protects servicemembers from default judgments in circumstances in which, because of their military service, they may be unable to appear and defend themselves. The SCRA requires that when seeking a default judgment, a plaintiff must “file with the court an affidavit -- (A) stating whether or not the defendant is in military service and showing necessary facts to support the affidavit; or (B) if the plaintiff is unable to determine whether or not the defendant is in military service, stating that the plaintiff is unable to determine whether or not the defendant is in military service.” 50 U.S.C. § 3931(b)(1).

4. If the plaintiff informs the court that the defendant is in military service, the court may not issue a default judgment until it appoints an attorney to represent the defendant. *See* 50 U.S.C. § 3931(b)(2). The court must also postpone the proceedings for at least 90 days upon motion by the attorney, or on the court’s own motion, if the court determines that: (1) there may be a defense to the action that cannot be presented without the servicemember’s presence; or (2) after due diligence, the attorney has been unable to contact the servicemember or otherwise determine if a meritorious defense exists. *See* 50 U.S.C. § 3931(d).

5. An investigation by the United States revealed that Defendants obtained default judgments against numerous SCRA-protected servicemembers without filing accurate affidavits of military service, in violation of 50 U.S.C. § 3931. In doing so, Defendants deprived these servicemember-tenants of their statutory rights to have their cases postponed and their right to have attorneys appointed to represent them.

JURISDICTION AND VENUE

6. This Court has jurisdiction over this action under 28 U.S.C. §§ 1331 and 1345 and 50 U.S.C. § 4041.

7. Venue is proper in this judicial district under 28 U.S.C. § 1391(b) because the events giving rise to the United States' claims occurred in the Eastern District of Virginia.

PARTIES

8. Plaintiff is the United States of America, which has authority to enforce the SCRA pursuant to 50 U.S.C. § 4041(a).

9. Defendant Chesapeake Covese Lane Apartments Property Owner, LLC, D/B/A Hideaway at Greenbrier ("Covese") is a corporation organized and existing under the laws of Delaware. From April 4, 2012, to the present, Covese has owned Hideaway at Greenbrier Luxury Apartment Homes ("Hideaway"), a residential apartment complex located at 150 Covese Lane, Chesapeake, Virginia 23320.

10. Defendant Chase Arbor Apartments Property Owner, LLC, T/A Chase Arbor Apartments ("Chase Arbor") is a corporation organized and existing under the laws of Delaware. From June 6, 2013, to the present, Chase Arbor has owned the Chase Arbor Apartments, a residential apartment complex located at 1500 Chase Arbor Common, Virginia Beach, Virginia 23462.

FACTUAL ALLEGATIONS

11. In 2018, a military legal assistance attorney with the Department of the Navy notified the Department of Justice (“DoJ”) that Covese had obtained a default eviction judgment against an SCRA-protected servicemember by using an affidavit that falsely stated that the servicemember “was not in military service.”

12. After receiving the complaint from the military legal assistance attorney, DoJ initiated an investigation into default judgments obtained by Covese and an affiliated property owner, Chase Arbor, which used the same law firm to file civil claims for eviction and money damages in Virginia state courts.

13. General District Courts in the Commonwealth of Virginia require that plaintiffs seeking entry of a default judgment complete and file Form DC-418 – Affidavit – Default Judgment Servicemembers Civil Relief Act (VA. CODE § 8.01-15.2) (“Form DC-418”).

14. Form DC-418 requires the affiant to check one of three boxes stating that the defendant/respondent:

- (a) is in military service;
- (b) is not in military service; or
- (c) that “[t]he affiant is unable to determine whether or not the defendant/respondent is in military service.”

15. Defendants had access to tenant files that contained information that would have permitted them to verify a tenant’s military status, including the name, Social Security number, date of birth, and employment information.

16. At all times relevant, the Defense Manpower Database Center (“DMDC”) has maintained a free public website that anyone seeking to comply with the SCRA can search to determine an individual’s military status using the individual’s last name and either Social Security number or date of birth. A DMDC certificate showing the individual’s military status can be printed after searching the DMDC database, thereby proving that the database was searched on a particular date.

17. From April 4, 2012, to the present, Defendants obtained numerous default judgments against SCRA-protected servicemembers by using affidavits of military service that falsely stated that the servicemembers were “not in military service,” by stating that the affiants were “unable to determine” if the servicemembers were in military service, or by failing to file affidavits of military service.

18. By failing to file true and accurate affidavits indicating the military status of their servicemember-tenants, Defendants deprived these servicemembers of their right to have the court postpone the case and appoint an attorney to represent them.

19. At the time that the affidavits were filed, Defendants knew or should have known that the affidavits failed to accurately disclose servicemember-tenants’ military service to the court.

SERVICEMEMBER CIVIL RELIEF ACT VIOLATIONS

Violations of 50 U.S.C. § 3931 (Default Judgments)

20. The United States realleges and incorporates by reference each allegation in the preceding paragraphs as if fully set forth herein.

21. The SCRA provides two alternative bases under which the Attorney General may sue to enforce the statute, either one of which is sufficient to support this lawsuit. *See* 50 U.S.C. § 4041(a)(1) and 4041(a)(2).

22. By failing to file true and accurate affidavits indicating the military status of servicemember-tenants, Defendants have:

- a. engaged in a pattern or practice of violating Section 3931 of the SCRA, 50 U.S.C. § 3931, thus triggering the Attorney General’s authority to sue under 50 U.S.C. § 4041(a)(1); and/or
- b. engaged in violations of Section 3931 of the SCRA that raise an issue of significant public importance, thus triggering the Attorney General’s authority to sue under 50 U.S.C. § 4041(a)(2).

23. The SCRA-protected servicemembers against whom Defendants obtained default judgments in violation of the SCRA are “person[s] aggrieved” under 50 U.S.C. § 4041(b)(2) and have suffered damages as a result of Defendants’ conduct.

24. Defendants’ conduct was intentional, willful, and taken in disregard for the rights of servicemembers.

PRAYER FOR RELIEF

WHEREFORE, the United States respectfully requests that the Court enter an ORDER that:

1. Declares that Defendants’ conduct violated the SCRA;
2. Enjoins Defendants, their subsidiaries, agents, employees, and successors, and all other entities in active concert or participation with Defendants, from:

- a. obtaining a default judgment in any action without first filing with the court an affidavit that is prepared after performing a check of the DMDC database and reviewing the tenant file for indicia of military service and that:
 - i. states whether the defendant is in military service and shows necessary facts to support the affidavit; or
 - ii. if the plaintiff is unable to determine whether or not the defendant is in military service, states that the plaintiff is unable to determine whether or not the defendant is in military service and sets forth specific facts establishing the plaintiff's efforts to determine whether the defendant is in military service;
 - b. failing or refusing to take such affirmative steps as may be necessary to restore, as nearly as practicable, each person aggrieved by Defendants' illegal conduct to the position he or she would have been in but for Defendants' illegal conduct;
 - c. failing or refusing to take actions as may be necessary to prevent the recurrence of any unlawful conduct in the future and to eliminate, to the extent practicable, the effects of their unlawful conduct, including implementing policies and procedures to ensure that Defendants afford SCRA-protected servicemembers all protections contained in the SCRA;
3. Award appropriate monetary damages to each person aggrieved by Defendants' violations of the SCRA, pursuant to 50 U.S.C. § 4041(b)(2);

