

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

United States of America,)	
)	
Plaintiff,)	CIVIL NO. _____
v.)	
)	
George Toone and)	
In Toone Services, LLC d/b/a)	
Texan RV Park,)	
)	
Defendants.)	
_____)	

COMPLAINT

The United States of America alleges:

NATURE OF ACTION

1. This action is brought by the United States of America on behalf of Roxanne Joganik and Darlina Anthony to enforce the provisions of Title VIII of the Civil Rights Act of 1968 (the Fair Housing Act), as amended by the Fair Housing Amendments Act of 1988, 42 U.S.C. §§ 3601 to 3619.

JURISDICTION AND VENUE

2. This Court has jurisdiction over this action under 28 U.S.C. § 1331, 28 U.S.C. § 1345, and 42 U.S.C. § 3612(o).

3. Venue is proper under 28 U.S.C. § 1391(b) and 42 U.S.C. § 3612(o) because the actions giving rise to the United States’ allegations occurred in the Eastern District of Texas, the subject

property is located in the Eastern District of Texas, and all of the defendants reside and/or do business in the Eastern District of Texas.

PARTIES AND PROPERTY

4. Defendant George Toone (“Mr. Toone”) is a resident of Texas.
5. During all relevant times, Defendant Toone was the owner or co-owner of Defendant In Toone Services, LLC, doing business as Texan RV Park (“In Toone Services”).
6. In Toone Services’ principal place of business is 4757 Pamela Drive, Abilene, Texas, 79606.
7. During all relevant times, Defendants In Toone Services and/or Mr. Toone owned or co-owned the Texan RV Park (the “Park”), a 43-site recreational vehicle (“RV”) park located at 9024 Highway 175 West, Athens, TX 75751 (the “subject property”).
8. During all relevant times, Defendant Toone and his wife, Amy Toone, resided at the Park and were responsible for its management.
9. During all relevant times, the Defendants utilized the services of Marvin Corsbie and Suzanne Corsbie, employees who assisted the Defendants in overseeing the day-to-day operations of the Park.
10. The Park offers daily, weekly, and monthly rentals and it is available for long-term residents. The Park offers utilities and services, including: electricity, water hookup, sewer hookup, and Internet access. It also offers a pool, fishing ponds, and a club house.
11. The subject property is a dwelling within the meaning of the Fair Housing Act, 42 U.S.C. § 3602(b).
12. Roxanne Joganik (“Ms. Joganik”), formerly known as Scott Pepos and Roxann Fanteal, is and at all times relevant to the allegations was, a transgender individual who identifies as female.

On June 5, 2013, the District Court of Henderson County, Texas (173rd Judicial District) issued an Order granting Scott Pepos' Petition to change her name to Roxanne Joganik. Ms. Joganik is an aggrieved person, as defined by the Fair Housing Act, 42 U.S.C. § 3602(i).

13. Darlina Anthony ("Ms. Anthony") is Ms. Joganik's roommate. Ms. Anthony is an aggrieved person, as defined by the Fair Housing Act, 42 U.S.C. § 3602(i).

FACTUAL ALLEGATIONS

14. In April 2011, Ms. Joganik and Ms. Anthony moved into the Park. They resided in an RV owned by a trust established for the benefit of Ms. Anthony on lot 36 of the Park on a month-to-month basis. At the time they moved into the Park, the Park was owned by B.G. Williams and Delia Williams ("Williamses").

15. In or about May of 2012, shortly before Defendant In Toone Services took ownership of the Park, Ms. Joganik approached Defendant Toone, informed him that she is transgender, and asked him if she could wear female clothing in the common areas of the Park. During the same conversation, Defendant Toone denied Ms. Joganik's request and stated that he did not want Ms. Joganik to wear female clothing in the Park because "there are children around the pool" and it is "not the type of atmosphere we want to promote on private property," or words to that effect. Defendant Toone stated that Ms. Joganik would have to keep wearing her female clothing only inside of her RV.

16. Thereafter, pursuant to Defendant Toone's instruction, Ms. Joganik did not wear female clothing in the common areas of the Park.

17. On or about May 3, 2012, Ms. Joganik and Ms. Anthony paid rent through June 11, 2012 to the Williamses.

18. On or about May 8, 2012, Defendant In Toone Services took ownership and control of the Park from the Williamses.

19. Defendants do not maintain a dress code at the Park.

20. On or about May 19, 2012, after the conversation discussed in paragraph 17, above, Defendant Toone visited Ms. Joganik and Ms. Anthony at their RV and asked them to sign a new set of Park rules and a site service agreement. The new Park rules provided that “[m]anagement reserves the right to refuse entrance to the R.V. Park to any person for any reason other than for reasons based on race, religion, handicapped, color or national origin.” This new Park rules did not include “sex” or “familial status” as among the protected classes even though they are protected classes under the Fair Housing Act.

21. During this conversation, Ms. Joganik requested that the Park rules be amended to include protections against sex discrimination. Defendant stated he would not amend the rules to include “sex” as among the protected classes. Ms. Joganik stated to Defendant Toone that she would not sign the Park rules because the rules did not include “sex” among the protected classes.

22. On or about June 6, 2012, Defendant Toone placed or caused a notice to be placed on Ms. Joganik’s and Ms. Anthony’s door stating that “Texan RV Park will not be renewing your Site Service Agreement as per Texas Penal Code #30.05(a)[sic]” and demanding that she “vacate the park immediately.” The notice stated that Ms. Joganik and Ms. Anthony had five remaining days of paid stay, which would be refunded provided the women immediately vacated the Park.

23. On or about June 7, 2012, Ms. Joganik wrote to Defendant Toone and informed him that he could not require Ms. Joganik and Ms. Anthony to leave the Park without following proper eviction procedures and without complying with other applicable state and federal laws.

24. On June 7, 2012, Defendants' counsel responded that Ms. Joganik had to vacate the Park immediately. The letter stated in part, "I have been informed that Mr. Pepos is a transgender who goes by the name Roxann Fanteal. Mr. Pepos refused to leave the Park despite being asked to do so." The letter further stated, ". . . Ms. Fanteal has never paid rent and has never paid for her use of the Park facilities or utilities. The Texan RV Park is well within its rights to demand that Ms. Fanteal leave the Park immediately."

25. On June 8, 2012, Ms. Joganik's attorney sent a letter to Defendants' counsel stating that Defendants could not force Ms. Joganik and Ms. Anthony to vacate the property immediately because they had a month-to-month lease under Texas state law and that prohibiting Ms. Joganik from dressing as a female in the Park violated federal fair housing laws.

26. On or about June 11, 2012, Ms. Joganik and her attorney went to the Park office and attempted to provide the managers of the Park, Marvin and Suzanne Corsbie, a signed copy of the Park rules and pay the rent. Ms. Joganik wrote on the offered copy of the rules that she was not waiving any rights guaranteed by state and federal law.

27. Mr. and Mrs. Corsbie refused to accept both the signed rules and the rent payment and stated that Defendant Toone had directed the Corsbies not to accept them.

28. In early June 2012, Defendant Toone asked the local Sheriff to remove Ms. Joganik and Ms. Anthony from the Park for trespassing. The Sheriff refused to do so and informed Defendant Toone that removal of a resident was a civil matter.

29. On June 11, 2012, Defendants initiated an eviction proceeding a *Texan RV Park, Plaintiff v. Scott Pepos*, Defendant, Cause No. E-120013, in the Justice of the Peace Court of Henderson County.

30. On July 5, 2012, an eviction hearing was held at the Precinct 1 Justice of the Peace Court of Henderson County in Defendants' eviction case against Ms. Joganik. During the eviction hearing, Ms. Joganik argued that Defendant Toone was seeking to evict her because of her transgender status and because she asked to dress as a woman in the Park's common areas.

31. The judge presiding over the eviction action told Ms. Joganik not to talk about her fair housing case and to refrain from using the word "transgender" in the court.

32. On or about July 5, 2013, the judge presiding over the eviction action ruled in favor of Defendants, awarding possession of lot 36 of the Park, and attorneys fees and court costs.

33. On August 18, 2012, Ms. Joganik and Ms. Anthony were evicted from the subject property. They moved their RV out of the Park the same day.

34. During their tenancy, at various times between May 2012 and August 2012, Defendant Toone made statements to Ms. Joganik and Ms. Anthony expressing discriminatory animus toward Ms. Joganik through his remarks to the effect that he did not want to have transgender individuals in the common areas of the park and that she did not conform to gender stereotypes of how men and women should behave and dress.

HUD ADMINISTRATIVE PROCESS

35. On June 21, 2012, Ms. Joganik filed a complaint with HUD alleging that Defendant Toone discriminated against her based on sex, in violation of the Fair Housing Act.

36. On August 30, 2012, Darlina Anthony ("Ms. Anthony") filed a complaint with HUD alleging that Defendants discriminated against her based on sex, in violation of the Fair Housing Act.

37. On February 1, 2013, Ms. Joganik amended her complaint to add, *inter alia*, Defendant In Toone Services as a respondent.

38. On September 11, 2012, and February 1, 2013, Ms. Anthony amended her HUD complaint to add, *inter alia*, Defendants In Toone Services as a respondent.

39. Pursuant to 42 U.S.C. §3610(a) and (b), the Secretary of HUD conducted and completed an investigation of the complaints, attempted conciliation without success, and prepared a final investigative report. Based on 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 occurred because of sex.

40. As a result of the administrative process described above, on August 15, 2013, the Regional Director of HUD's Forth Worth Regional Office of Fair Housing and Equal Opportunity issued a Charge of Discrimination ("Charge"), pursuant to 42 U.S.C. § 3610(g)(2)(A). The Charge determined that reasonable cause exists to believe that Defendants engaged in discriminatory housing practices, in violation of 42 U.S.C. §§ 3604(b) and 3617.

41. On September 3, 2013, Defendants elected to have the claims asserted in that Charge of Discrimination decided in a civil action pursuant to 42 U.S.C. § 3612(a).

42. On September 4, 2012, a HUD Administrative Law Judge issued a Notice of Election to Proceed in a United States federal district court and terminated the administrative proceedings on the complaints filed with HUD by Ms. Joganik and Ms. Anthony.

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

FAIR HOUSING ACT VIOLATIONS

44. Plaintiff re-alleges and incorporates by reference the allegations set forth above.
45. The conduct of Defendants described above constitutes:
- a. Discrimination in the terms, conditions, or privileges of the rental of dwellings, or in the provision of services or facilities in connection therewith, because of sex, in violation of Section 804(b) of the Fair Housing Act, 42 U.S.C. § 3604(b);
 - b. The making of statements with respect to the rental of dwellings that indicate a preference, limitation, or discrimination based on sex, in violation of Section 804(c) of the Fair Housing Act, 42 U.S.C. § 3604(c); and
 - c. Coercion, intimidation, threats, or interference with persons in the exercise or enjoyment of, or on account of their having exercised or enjoyed, their rights under Section 804 of the Fair Housing Act, in violation of Section 818 of the Fair Housing Act, 42 U.S.C. § 3617.
46. Defendants' conduct was intentional, willful, and taken in disregard of the federally-protected rights of others.

RELIEF REQUESTED

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

- 1. Declares that Defendants' discriminatory practices, as alleged herein, violate the Fair Housing Act, as amended, 42 U.S.C. §§ 3601 to 3619;
- 2. Enjoins Defendants, their agents, employees, successors, and all other persons in active concert or participation with them, from:

- a. Discriminating against any person in the terms, conditions, or privileges of the rental of a dwelling, or in the provision of services or facilities in connection with such dwelling, because of sex;
 - b. Coercing, intimidating, interfering with or threatening to take any action against any person in the exercise or enjoyment of rights granted or protected by the Fair Housing Act, as amended;
 - c. Failing or refusing to take such affirmative steps as may be necessary to prevent the recurrence of any discriminatory conduct in the future and to eliminate, to the extent practicable, the effects of the Defendants' discriminatory conduct; and
 - d. Failing or refusing to take such affirmative steps as may be necessary to restore, as nearly as practicable, the victims of Defendants' past unlawful practices to the position they would have been in but for the discriminatory conduct, including implementing policies and procedures to ensure that no applicant to or resident of the Park are discriminated against because of sex.
3. Awards monetary damages to Roxann Joganik and Darlina Anthony, pursuant to the Fair Housing Act at 42 U.S.C. §§ 3612(o)(3); 3613(c)(1);

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

Dated:

October 3, 2013

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