

06-61575

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
Ft. Lauderdale Division

CIV - COOKE

MAGISTRATE JUDGE
BROWN

HERNANDO GONZALEZ, BERTHA GONZALEZ,)
LUZ ELENA BETANCUR, and FERNAND)
BERNARD,)

Plaintiffs,)

v.)

Case No.)

SUNRISE LAKES CONDOMINIUM APARTMENTS,)
PHASE 3, INC. 4, a Florida corporation,)

Defendant.)

2006 OCT 19 AM 9:30
SUNRISE LAKES CONDOMINIUM APARTMENTS, INC.
S.D. OF FLA - HIA

**COMPLAINT FOR HOUSING DISCRIMINATION
ON THE BASIS OF NATIONAL ORIGIN**

and

JURY DEMAND

1. This action arises under the Fair Housing Act of 1968, as amended, 42. U.S.C. § 3601, *et seq*, and seeks a declaratory judgment, preliminary and permanent injunctive relief, monetary damages, and attorneys' fees for discrimination in the sale of housing on the basis of national origin. Defendant has engaged and is continuing to engage in a pattern and practice of conduct with the intent, purpose, and effect of discriminating against prospective condominium purchasers of Hispanic descent.

SCANNED

Jurisdiction and Venue

2. Jurisdiction is invoked pursuant to 42 U.S.C. § 3613(a) in that plaintiffs elect to assert their claims of housing discrimination in a civil action and also pursuant to 28 U.S.C. §§ 1331, 2201 and 1343(a)(4) in that this is a civil action seeking to redress the deprivation of the right to fair housing secured to the plaintiffs by the Fair Housing Act.

3. Plaintiffs seek declaratory relief pursuant to 28 U.S.C. §§ 2201 and 2202.

4. Plaintiffs seek preliminary and permanent injunctive relief pursuant to Rule 65, Federal Rules of Civil Procedure.

5. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391(b) and 1391(c) in that the claims arose in this district and the defendant conducts business in this district.

Parties

6. Plaintiff, Hernando Gonzalez, was born in Colombia, and is now a U.S. Resident. He, along with his wife, the plaintiff Bertha Gonzalez, is a resident of Coral Springs, Broward County, Florida.

7. Plaintiff, Bertha Gonzalez, was born in Colombia, and is now a U.S. Citizen. She, along with her husband, the plaintiff Hernando Gonzalez, is a resident of Coral Springs, Broward County, Florida.

8. Plaintiff, Luz Elena Betancur, is a U.S. Citizen. She, along with her partner, the plaintiff Fernand Bernard, is a resident of Sunrise, Broward County, Florida. Plaintiff Betancur is a registered real estate agent with Century 21, Tenace Realty, Inc., located in Coral Springs, Broward County, Florida.

9. Plaintiff, Fernand Bernard, a resident alien of Canadian citizenship, is the owner of Condominium Unit 108 at 9400 Sunrise Lakes Boulevard, Sunrise, Florida 33322, where he lives with his partner, plaintiff Luz Elena Betancur.

10. Defendant Sunrise Lakes Condominium Apartments, Phase 3, Inc. 4 (hereinafter "defendant Association") is a Florida corporation which serves as the condominium association for the 36 unit condominium complex which includes plaintiff Bernard's unit. All unit owners at Sunrise Lakes Condominium Apartments, Phase 3, Inc. 4 are members of the defendant Association.

Factual Allegations

11. In 2004 plaintiff Bernard purchased his current residence, Condominium Unit 108, in Sunrise Lakes Condominium Apartments, Phase 3, Inc. 4.

12. On or about February 27, 2006, plaintiff Bernard placed his Condominium Unit 108 for sale and listed it with plaintiff Betancur, a registered real estate agent.

13. On April 14, 2006, plaintiff Bernard entered into a contract for the sale of his unit for \$68,000 with Hector and Benigna Ochoa, who are of Hispanic origin. Hector and Benigna Ochoa qualified for financing to purchase plaintiff Bernard's Condominium Unit and were ready, able and willing to close.

14. In accordance with the Declaration of Condominium, the Ochoas' purchase of plaintiff Bernard's unit required approval by the defendant Association.

15. On April 21, 2006, the Ochoas were notified by letter that defendant Association disapproved the purchase because the Ochoas did not meet "our association criteria."

16. After the Ochoas' purchase was disapproved by the defendant Association and the sale lost, plaintiff Bernard with the assistance of his realtor, plaintiff Betancur, listed his unit again for sale.

17. On April 16, 2006, plaintiffs Hernando and Bertha Gonzalez entered into a contract to purchase Unit 145 in Sunrise Lakes Condominium Apartments, Phase 3, Inc. 5 for \$ 76,500. Unit 145 in Sunrise Lakes Condominium Apartments, Phase 3, Inc. 5 is located in a nearby building, is the same size, and is otherwise nearly identical to Condominium Unit 108 owned by plaintiff Bernard. Plaintiffs Hernando and Bertha Gonzalez were to pay cash for the unit. They were also responsible for the monthly maintenance cost was \$262.90. Plaintiffs Hernando and Bertha Gonzalez received a Certificate of Approval to purchase Unit 145 from the Association in Sunrise Lakes Condominium Apartments, Phase 3, Inc. 5. However, since the inspection of Unit 145 produced evidence of mold and other structural problems resulting from a leak, the sale did not close.

18. On July 20, 2006, plaintiffs Hernando and Bertha Gonzalez entered into a contract to purchase Unit 108 for \$67,000 from plaintiff Bernard.

19. Both the defendant Association and the association for Sunrise Lakes Condominium Apartments, Phase 3, Inc. 5, utilize the same management company. Accordingly, the management company used the same information previously provided by plaintiffs Hernando and Bertha Gonzalez as part of their application to purchase Condominium Unit 108 owned by plaintiff Bernard.

20. Plaintiffs Hernando and Bertha Gonzalez were prepared to pay \$67,000 in cash to close on plaintiff Bernard's Unit 108. The monthly maintenance charge is \$229.00. Plaintiffs Hernando and Bertha Gonzalez provided defendant Association with a copy of their Bank of America statement showing a balance of \$65,922.03 on August 8, 2006. Furthermore, they provided the defendant

Association with written verification that plaintiff Bertha Gonzalez earned between \$300.00 and \$350.00 per week working as a beautician; a copy of a lease for an apartment they owned in Columbia which produced \$400.00 per month in rent; and verification of \$1,118.00 per month in Social Security benefits, for a total monthly income of at least \$2,718.00.

21. The verified monthly income of plaintiffs Hernando and Bertha Gonzales is more than sufficient to meet their monthly expenses, including the monthly maintenance fee of \$229.00.

22. Plaintiffs Hernando and Bertha Gonzalez engaged an attorney to assist in their closing on Unit 108, paid the inspection fees, and paid the defendant Association's application fee.

23. Plaintiff Bernard engaged an attorney who sent a letter to defendant Association referencing that the Hernando and Bertha Gonzalez had already submitted evidence of their financial ability to purchase Unit 108 to the Association's management company, and pointed out that the Hernando and Bertha Gonzalez had been previously approved to purchase another unit under the defendant Association's management company's oversight in Phase 3, Inc. 5, but did not close as the unit had damage which the seller was unwilling to repair. Plaintiff Bernard's attorney requested that approval of the Gonzalez's purchase be expedited.

24. On August 21, 2006, defendant Association notified plaintiffs Hernando and Bertha Gonzalez that they were not qualified based on their application (and without a personal interview) because they failed "to meet the financial responsibilities to the Association (Article 11 Section D)" despite the Gonzalez's willingness to pay cash for the unit, despite their verified monthly income being more than sufficient to afford the monthly maintenance fee, and despite the Gonzalez's earlier approval of the purchase of an identical unit in the same phase costing \$9,500 more and with a higher monthly maintenance fee.

25. Plaintiff, Luz Elana Betancur, having produced a ready, able and willing buyer, is entitled to her commission on the sale of the Unit 108, amounting to 3% of the sales price of \$67,000.00.

26. The defendant Association's letterhead listed twenty-three (23) board of directors, with four (4) board members also serving as Association officers. None of the twenty-three (23) board of directors possesses an Hispanic surname. On information and belief, none of the board members are of Hispanic national origin.

27. All plaintiffs have been, and continue to be, adversely affected by the acts, policies, and practices of the defendant and/or its agents.

Cause of Action
Violation of the Fair Housing Act of 1968

28. Plaintiffs repeat and reallege paragraphs 1 through 27 of this Complaint as if fully set forth herein.

29. Defendant, in violation of 42 U.S.C. § 3601, *et seq.*, has discriminated against plaintiffs Hernando and Bertha Gonzalez on the basis of national origin by refusing to approve their purchase of a home.

30. Defendant's discriminatory actions have also adversely affected plaintiffs Luz Elena Betancur and Fernand Bernard.

31. As a direct and proximate result of defendant's actions described above, plaintiffs Hernando and Bertha Gonzalez have suffered, and are continuing to suffer, and will in the future suffer irreparable loss and injury including, but not limited to humiliation, embarrassment, emotional distress, the possible loss of a more favorable mortgage rate, the loss of legal fees, the loss of the application and inspection fees, and a deprivation of their rights to equal housing opportunities

regardless of their national origin. In engaging in the unlawful conduct described above, defendant Association acted intentionally and maliciously to damage the rights and feelings of the plaintiffs Gonzalez in violation of the Fair Housing Act of 1968.

32. As a direct and proximate result of the defendant's actions set forth herein, plaintiff Bernard was denied the opportunity to sell his condominium unit to Hispanic persons on the basis of their national origin, and was, and continues to be, adversely affected by the acts policies, and practices of the defendant Association and the defendant's agents. In engaging in the unlawful conduct described above, defendant Association acted intentionally and maliciously to damage the rights and feelings of the plaintiff Bernard in violation of the Fair Housing Act of 1968.

33. As a result of the defendant's actions set forth herein, plaintiff Betancur was denied the opportunity to make a commission on the sale of plaintiff Bernard's condominium unit to Hispanic persons on the basis of their national origin, and was, and continues to be, adversely affected by the acts policies, and practices of the defendant Association and the defendant's agents as she is of the opinion that she can not bring any other prospective Hispanic purchasers as they will similarly be disapproved by the defendant Association. In engaging in the unlawful conduct described above, defendant Association acted intentionally and maliciously to damage the rights and feelings of the plaintiff Betancur in violation of the Fair Housing Act of 1968.

Relief Sought

WHEREFORE plaintiffs requests:

(a) That the Court declare the actions of the defendant complained of herein to be in violation of the Fair Housing Act of 1968, as amended, 42 U.S.C. § 3601, *et seq.*;

(b) That defendant be ordered to take appropriate affirmative actions to ensure that the activities complained of above are not engaged in again by them or any of their agents;

(c) That defendant, its agents, employees, and successors be preliminarily and permanently enjoined from discriminating on the basis of national origin against any person in violation of the Fair Housing Act of 1968, and enter preliminary and permanent injunctive relief enjoining the defendant, its successors, and its servants, agents and employees, and all those acting in concert with them, from discriminating on the basis of national origin in the sale of condominium units, and specifically enjoin the defendant to adopt policies, procedures and practices which will insure that all individuals who apply to be approved with the financial ability to afford a unit, may do so without regard to their national origin;

(d) That appropriate compensatory and punitive damages be awarded to the plaintiffs against the defendant to compensate the plaintiffs for the loss of out-of-pocket expenses related to the sale of the condominium, the humiliation, embarrassment, emotional distress caused by the defendant's discriminatory actions, and loss of equal housing rights;

(e) That plaintiffs be awarded their costs and reasonable attorneys' fees in this action; and

(f) That plaintiffs be awarded such other and further relief as the court deems just and proper.

Demand For Jury Trial

Pursuant to Rule 38(b), Federal Rules of Civil Procedure, the plaintiff demands a trial by jury on all issues so triable in this matter.

Respectfully submitted,

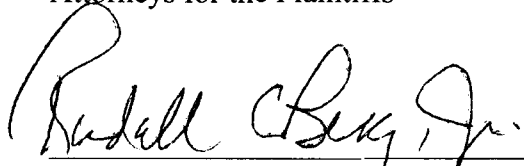
Randall C. Berg, Jr., Esq.
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305- 530-0055(FAX)
E-mail: APuentes@CarltonFields.com

Attorneys for the Plaintiffs

A handwritten signature in black ink, appearing to read "Randall C. Berg, Jr.", written over a horizontal line.

By: Randall C. Berg, Jr., Esq.
Fla. Bar No. 318371

06-61575

JS 44 (Rev. 11/05)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.) **NOTICE: Attorneys MUST Indicate All Re-filed Cases Below.**

I. (a) PLAINTIFFS
 Hernando Gonzalez, Bertha Gonzalez, Luz Elena Betancur, and Fernand Bernard

(b) County of Residence of First Listed Plaintiff Broward
 (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)
 Randall C. Berg, Jr. Esq., Peter M. Siegel, Esq., Florida Justice Institute
 4320 Bank of America Tower, 100 S.E. Second St., Miami, FL 33131
 305-358-2081
FTL/06061575 COOPER/STB

(d) Check County Where Action Arose: MIAMI-DADE MONROE BROWARD PALM BEACH MARTIN ST. LUCIE INDIAN RIVER OKEECHOBEE HIGHLANDS

DEFENDANTS
 Sunrise Lakes Condominium Apartments, Phase 3, Inc. 4

County of Residence of First Listed Defendant Broward
 (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT LAND INVOLVED.

Attorneys (If Known)

MAGISTRATE JUDGE
BROWN

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

1 U.S. Government Plaintiff
 2 U.S. Government Defendant

3 Federal Question (U.S. Government Not a Party)

4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF	PTF	DEF
Citizen of This State	<input checked="" type="checkbox"/> 1	<input type="checkbox"/> 1	<input type="checkbox"/> 4	<input checked="" type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Trust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input checked="" type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	

V. ORIGIN (Place an "X" in One Box Only)

1 Original Proceeding 2 Removed from State Court 3 Re-filed- (see VI below) 4 Reinstated or Reopened 5 Transferred from another district (specify) 6 Multidistrict Litigation 7 Appeal to District Judge from Magistrate Judgment

VI. RELATED/RE-FILED CASE(S).

a) Re-filed Case YES NO b) Related Cases YES NO

(See instructions second page): JUDGE _____ DOCKET NUMBER _____

VII. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing and Write a Brief Statement of Cause (Do not cite jurisdictional statutes unless diversity):
 42 U.S.C. 3601, et seq. Housing Discrimination on the Basis of National Origin

LENGTH OF TRIAL via _____ days estimated (for both sides to try entire case)

VIII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 **DEMAND \$** _____

CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

ABOVE INFORMATION IS TRUE & CORRECT TO THE BEST OF MY KNOWLEDGE

SIGNATURE OF ATTORNEY OF RECORD: *[Signature]* DATE: 10/18/06

FOR OFFICE USE ONLY: AMOUNT: 350.00 RECEIPT #: 948365 IFP