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RAYMOND T. BALVAGE and DEBORAH A. BALVAGE, husband and wife;
CHARLES E. WEAVER and SUSAN M. WEAVER, husband and wife; JOYCE MARIE
ADAMS; LUVERN HARLAND ALLEN; EDGAR AMES; JAMES ALVIN BAKER
and DARLA JEAN BAKER, husband and wife; RALPH ALVIN BARFELL, JR.;
SHARON MARIE BANTA; RAY BODINE and JANIE KAY BODINE, husband and
wife; RICHARD ANTHONY BRAGA, JR. and MARGARET LOUISE BRAGA,
husband and wife; CHARLES THOMAS CALDWELL and SANDI KAY CALDWELL,
husband and wife; LAREN WILLBUR COLEMAN and PAMELA DENISE COLEMAN,
husband and wife; ALVIN DEE COLPITTS and CORABELLE COLPITTS, husband and
wife; BETTY GENE DONOGHUE; ELIZABETH ELAINE DUPREE; JOYCE ELAIN
FISCHER; JEANNETTE H. HEADEN; GLENN RICHARD HUESTIS and CAROL
NADINE HUESTIS, husband and wife; BARBARA JEAN JOY; MIRIAM MARGARET
KENNEDY-ALLEN; GERALD BLAIR KOLB and ETHEL MAY KOLB, husband and
wife; ALFRED WESLEY LEACH and GLORIA EILEEN LEACH, husband and wife;
RAYMOND ERNEST MORRIS and CAROLYN L. MORRIS, husband and wife;
ARNOLD NADEAU; KAREN CAMPBELL; BOB PISTONE and DORIS PISTONE,
husband and wife; VERN POWELL and SHARON POWELL, husband and wife;
EARLEEN M. RUTHERFORD; CHARLES JOHN SANTINEAU; BARBARA LOUISE
PEPPER; LUCAS JOHN SHIMMIN; DON SMITH and DIANE SMITH, husband and
wife; DONALD NEIL STROUD and SHARON LEE STROUD, husband and wife;
WALTER GORDON WEST and JANET MARIE WEST, husband and wife; BEVERLY
WHITE; BOB WHITE and DIANE WHITE, husband and wife; Plaintiffs, v.
RYDERWOOD IMPROVEMENT AND SERVICE ASSOCIATION, INC., a
Washington non-profit corporation, Defendant.

CASE NO. C09-5409BHS

UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF
WASHINGTON, TACOMA DIVISION

2009 U.S. Dist. Ct. Motions 607230; 2010 U.S. Dist. Ct. Motions LEXIS 29391

June 17, 2010

Motion for Injunction

VIEW OTHER AVAILABLE CONTENT RELATED TO THIS DOCUMENT: U.S. District Court: Motion(s); Pleading(s)

COUNSEL: [*1] Joseph E. Lynam, WSBA No. 12728, Abraham K. Lorber, WSBA No. 40668, Attorneys for Plaintiffs, Lane Powell PC, Seattle, WA.

JUDGES: Honorable Benjamin H. Settle

TITLE: Plaintiffs' Motion For Preliminary Injunction

TEXT: I. INTRODUCTION AND RELIEF REQUESTED

Plaintiffs hereby move the Court for an Order granting a preliminary injunction containing the injunctive relief stated in the proposed Order filed herewith. This injunction, which will remain in effect until otherwise ordered by the Court, is necessary to cease and correct defendant Ryderwood Improvement and Service Association, Inc.'s ("RISA") discriminatory housing practices.

On June 4, 2010, in its Order Denying Defendant's Motion for Partial Summary Judgment and Granting In Part and Denying in Part Plaintiffs' Motion for Partial Summary Judgment, the Court found RISA had violated *42 U.S.C. § 3601*, et seq., the Fair Housing Act ("FHA"), by discriminating on the basis of familial status in such a manner that prevented Plaintiffs from selling their homes. n1 The Court ruled RISA may not discriminate on the basis of familial status because it "is not entitled to the HOPA exception [to the FHA]." n2 [*2] Plaintiffs now seek the following injunctive relief that will implement this ruling until otherwise ordered by the Court:

1. RISA shall immediately cease any and all enforcement of age-restrictions on the sale or rental of, or residency in, homes in Ryderwood, Washington;
2. Within three (3) days of entry of the preliminary injunction, RISA shall mail letters (in the form attached to Plaintiffs' proposed Order as Exhibit A) to each and every homeowner in Ryderwood, Washington stating that RISA is not a "55 and older" community and stating that the Court has ordered RISA to immediately cease enforcement of its age-restrictions;
3. Within three (3) days of entry of the preliminary injunction, RISA shall mail letters (in the form attached to Plaintiffs' proposed Order as Exhibit A) to real estate agencies, title companies, and escrow companies who service Ryderwood, Washington (who are listed in Exhibit B to Plaintiffs' proposed Order) explaining RISA is not a "55 and older" community and stating the Court has ordered RISA to immediately cease enforcement of its age-restrictions;
4. Within five (5) days of entry of the preliminary injunction, RISA shall remove any [*3] all signs in the town of Ryderwood, Washington that designate Ryderwood as a "55 and older community," "fifty-five plus community," "55+ community," or in any way refer to or suggest that a "55 and older" or other age-restriction exists in Ryderwood, Washington concerning ownership, rental, or residency of homes; and
5. Within fourteen (14) days of entry of the preliminary injunction, RISA shall amend its bylaws to remove any and all provisions which purport to limit ownership, rental, or residency of homes in Ryderwood, Washington to persons who are ages 55 or older. n3 n4

n1 Dkt. 42, at 14.

n2 *Id.*, at 15.

n3 The injunctive relief requested by Plaintiff is modeled on the injunctive relief imposed by the court in

Simovitz v. Chanticleer Condominium Assoc., 933 F. Supp. 1394, 1408 (N.D. Ill. 1996).

n4 RCW 64.38.028 allows discriminatory provisions to be removed from bylaws upon the vote of a simple majority of a homeowner's association's board of directors. Accordingly, there is no real obstacle to RISA complying with this aspect of Plaintiffs' requested injunction.

[*4]

This injunctive relief is necessary to enforce the Court's June 4, 2010 Order and to prevent ongoing otherwise irreparable harm to Plaintiffs and their property interests.

II. FACTS

A. The Court's June 4, 2010 Order

On June 4, 2010, this Court entered its Order Denying Defendants' Motion for Partial Summary Judgment and Granting in Part and Denying in Part Plaintiffs' Motion for Partial Summary Judgment ("Order on PMSJs"). n5 In its Order on PMSJs, the Court granted Plaintiffs partial summary judgment on certain of their claims against defendant Ryderwood Improvement and Service Association, Inc. ("RISA"). n6 The Court ruled that RISA has violated 42 U.S.C. § 3601 et seq., the Fair Housing Act ("FHA"), specifically 42 U.S.C. § 3604(a)-(e). n7 The Court ruled that RISA's admitted familial status discrimination is not excused by the exception to the FHA's prohibition on such discrimination contained at 42 U.S.C. § 3607(b), the Housing for Older Persons Act ("HOPA"), because RISA "has not shown compliance with the regulations governing [HOPA]." n8 The Court noted that that it is undisputed [*5] that RISA's familial status discrimination which gives rise to Plaintiffs' claims is ongoing. n9

n5 Dkt. 42.

n6 *Id.*, at p. 14.

n7 *Id.*, at 13-14.

n8 *Id.*, at 15.

n9 *Id.*, at 15.

B. Plaintiffs' Otherwise Irreparable Injuries

In support of their Motion for Partial Summary Judgment, Plaintiffs filed declarations of 35 homeowners in Ryderwood which stated the following:

I live in Ryderwood

I would like to sell my home and list it on the market as available for sale to anyone, including families with children, because I believe that no enforceable age-restrictions govern the sale of my home or who can live in my home. It is my understanding that local real estate agents will not list my home for sale to families with children but will only list it for sale to persons 55 years of age or older ("Older Persons"). I am concerned about listing my home for sale to Older Persons only because I worry that doing so will expose [*6] me to liability for wrongful discrimination or liability for misrepresentation being made in the sale of my home. I have been unable to sell my home because of this conundrum. n10

n10 See Exhs. A-II to Dkt. 32 (Declaration of Abraham. K. Lorber in Opposition to Defendant's Motion for Partial Summary Judgment).

Plaintiffs still want to sell their homes and move away from Ryderwood. n11 However, because RISA has not been ordered to cease its discriminatory policies, the conundrum faced by Plaintiffs still exists. n12 Indeed, local real estate agents, title officers, and escrow officers are not aware of the Court's Order on PMSJs and many residents believe that the age-restrictions are still in force. n13 Additionally, signs remain posted in Ryderwood which proclaim its status as a "55 and older" community and which advise potential buyers not to purchase unless they "qualify." n14

n11 Declaration of Charles E. Weaver in Support of Plaintiffs' Motion for Preliminary Injunction ("Weaver Decl."), P 4.

[*7]

n12 *Id.*

n13 *Id.*, at P 5.

n14 *Id.*, at P 6; Exh. A. to Weaver Decl.

The prime home buying season in Ryderwood is in the summer. n15 If they are forced to wait until after trial for injunctive relief, Plaintiffs will miss the opportunity to sell their homes during this year's home-buying season. n16 If preliminary relief is granted, Plaintiffs will be able to take advantage of the summer home buying season. n17 The injunctive relief requested by Plaintiffs' is essential to ensuring the marketability of their homes, preventing ongoing illegal discrimination against families with children, and implementing the Court's Order on PMSJs.

n15 *Id.*, at P 7.

n16 *Id.*

n17 *Id.*

C. Actions to be Required and Restrained

Plaintiffs ask the Court to order RISA to stop discriminating, to advise the community, local real estate agents, title officers, and escrow [*8] officers n18 that Ryderwood is not a "55 and older" community, and to take down signs that indicate Ryderwood is a "55 and older community," and excise discriminatory provisions from its bylaws.

n18 A list of local real estate agencies, title companies, and escrow companies operating in Ryderwood is contained at P8 of the Weaver Declaration.

As the Court noted in its Order on PMSJs, it is undisputed that:

RISA . . . [enforces its age-restrictions by] posting signs throughout the community stating that residency is restricted to those who are '55 and older,' disclosures to real estate agents that work in the area, disclosures to title companies that work in the area, and disclosures to prospective purchasers and visitors to Ryderwood. n19

RISA discriminatory signs are still up in various locations around the community. n20 RISA has not informed real estate agents or title companies that it is not entitled to the HOPA exception. n21 There is still uncertainty in the community as to the enforceability [*9] of RISA's age-restrictions. n22 Unless and until the Court orders these matters corrected, RISA's age-restrictions will remain the de facto law of the town.

n19 Dkt. 42, pp. 4-5 (quotation marks modified).

n20 Weaver Decl., P 6; Exh. A to Weaver Decl.

n21 Weaver Decl., P 5.

n22 *Id.*

III. EVIDENCE RELIED UPON

This Motion relies upon the Declaration of Charles E. Weaver in Support of Plaintiffs' Motion for Preliminary Injunction (and exhibit thereto); the Declaration of Abraham. K. Lorber in Opposition to Defendant's Motion for Partial Summary Judgment and the attached 35 Declarations of Plaintiff-homeowners; and the pleadings and papers on file with the Court in this matter.

IV. ISSUE

Whether the Court should enter a preliminary injunction consistent with its earlier Order on PMSJs in order to prevent Plaintiffs from suffering otherwise irreparable harm arising out of RISA's discriminatory housing practices and to prevent RISA from engaging in ongoing illegal [*10] familial status discrimination?

V. ARGUMENT

42 U.S.C. § 3613(c)(1) states:

In a civil action under [the private enforcement provision of the Fair Housing Act] . . . , if the court finds that a discriminatory housing practice has occurred or is about to occur, the court may . . . grant as relief, as the court deems appropriate, any permanent or temporary injunction, temporary restraining order, or other order (including an order enjoining the defendant from engaging in such practice or ordering such affirmative action as may be appropriate).

A plaintiff seeking a preliminary injunction "must establish [1] he is likely to succeed on the merits, [2] that he is likely to suffer irreparable harm in the absence of preliminary relief, [3] that the balance of equities tips in his favor, and [4] that an injunction is in the public interest." n23 A court granting a preliminary injunction may restrain *or require* acts by the non-moving party. n24

n23 *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. , 129 S.Ct. 365, 374 (2008) (internal citations omitted).

[*11]

n24 See Fed. R. Civ. P. 65(d)(1)(C) (emphasis added).

A. Plaintiffs Have Already Succeeded on the Merits Regarding the Subject Matter of the Preliminary Injunction.

In its Order on PMSJs, the Court ruled that RISA does not qualify for the HOPA exception to the FHA and that Plaintiffs have prevailed, as a matter of law, on their claims of FHA violations arising out of their inability to sell their homes. n25 Even if RISA ultimately prevails on Plaintiffs' remaining FHA claims (which Plaintiffs assert it will not), Plaintiffs have already succeeded in proving that RISA's familial status discrimination is illegal. Accordingly, Plaintiffs are likely to succeed on the merits and have met the first prong of the *Winter* test.

n25 Dkt. 42, p. 15, 14.

B. Plaintiffs Continue to Suffer Otherwise Irreparable Harm as a Result of RISA's Discrimination.

A preliminary injunction is necessary to [*12] prevent Plaintiffs' otherwise irreparable injuries. Every day that RISA's age-restrictions remain in place and every day that real estate agents refuse to list Plaintiffs' home for sale to the general public is another day that Plaintiffs' homes remain off the market and unavailable to potential buyers. The majority of homes sold in Ryderwood sell over the summer. n26 Thus, if Plaintiffs are forced to wait until after trial to obtain injunctive relief, their ability to list their homes during the prime selling season will be irreparably delayed another year.

n26 Weaver Decl, P 7.

If the Court grants the requested injunctive relief, harm to Plaintiffs will be averted. Plaintiffs will no longer be prevented from listing their homes for sale to the general public because the community and local real estate agents, title companies, and escrow companies will be presented with proof that the age-restrictions are unenforceable. Plaintiffs will then be able to participate in the market without fear of incurring liability [*13] for housing discrimination. Moreover, RISA unlawful discrimination will be stopped. Because the requested injunctive relief will prevent otherwise irreparable harm, Plaintiffs have met the second prong of the *Winter* test.

C. The Balance of Equities and Public Policy Strongly Support Granting the Injunction.

"It is the policy of the United States to provide, within constitutional limitations, for fair housing throughout the United States." n27 "Exemptions from the Fair Housing Act are to be construed narrowly, in recognition of the important goal of preventing housing discrimination." n28

n27 42 U.S.C. § 3601.

n28 *Massaro v. Mainlands Section 1 & 2 Civic Ass'n, Inc.*, 3 F.3d 1472, 1475 (11th Cir. 1993).

With this Motion, Plaintiffs seek the Court's help in exercising a fundamental property right: the right to sell their homes on the open market. Additionally, the requested injunctive relief will prevent RISA from engaging in ongoing illegal [*14] familial status discrimination. The Court has ruled that RISA does not qualify for exceptions to the FHA that would otherwise allow it to discriminate. Thus, equity and public policy support the enjoining RISA's ongoing discriminatory conduct. The only "burden" RISA might "suffer" if this injunction is granted is the money it will spend on postage and the nominal costs it might incur for removing and storing signs. These "burdens" cannot justify RISA's ongoing practice of unlawful familial discrimination. Accordingly, the third and fourth prongs of the *Winter* test are met and the preliminary injunction should issue.

D. No Security is Necessary for Entry of the Injunction.

Fed. R. Civ. P. 65(c) states:

The court may issue a preliminary injunction or a temporary restraining order only if the movant gives security in an amount that the court considers proper to pay the costs and damages sustained by any party found to have been wrongfully enjoined or restrained.

However, "[t]he district court may dispense with the filing of a bond when it concludes there is no realistic likelihood of harm to the defendant from enjoining his or her conduct." n29

n29 *Jorgensen v. Cassidy*, 320 F.3d 906, 920 (9th Cir. 2003) (citing *Barahona-Gomez v. Reno*, 167 F.3d 1228, 1237 (9th Cir.1999)).

[*15]

Here, RISA will not be harmed by the issuance of Plaintiffs' requested injunction. The injunction requested by Plaintiff does not affect property owned by RISA nor does it impede RISA's alleged ability to collect dues. Even if somehow RISA is later found to have been improperly enjoined (of which Plaintiffs contend there exists no realistic chance), then there is no economic damages which will have been incurred by RISA. Based on the Courts' Order on PMSJs, Plaintiffs' are almost certain to obtain the declaratory and injunctive relief in final judgment. Accordingly, Plaintiffs request that requested injunction issue without the posting of security.

VI. CONCLUSION

The Court has ruled, as a matter of law, that RISA's conduct violates the FHA and that RISA does not qualify for the HOPA exception. Plaintiffs respectfully submit that the Court should grant preliminary injunctive relief consistent with this ruling.

DATED: June 17, 2010

LANE POWELL PC

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CERTIFICATE OF SERVICE

The undersigned certifies under penalty of perjury under the laws of the State of Washington, that on June 17, 2010, the document attached hereto was presented to the Clerk of the Court for filing and uploading to the CM/ECF system. In accordance with their ECF registration agreement and the Court's rules, the Clerk of the Court will send e-mail notification of such filing to the following persons:

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DATED June 17, 2010 at Seattle, Washington.

/s/ Joseph E. Lynam
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[SEE [PROPOSED] ORDER IMPOSING PRELIMINARY INJUNCTION IN ORIGINAL]

[SEE DECLARATION OF CHARLES WEAVER IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION IN ORIGINAL]