***Lapatin on the Law***

A TALE OF TWO CITIES

This month’s legal highlights consist of court cases originating 459 miles apart, one in Fairfax, Virginia and the other in nearby South Boston. Unfortunately, what they have in common is a landlord taking it on the chin for alleged mistreatment of one or more tenants.

The Fairfax complaint was brought by four families who had been living in a mobile home park. In each instance, there was a father with legal status in the United States, a mother who was undocumented and illegally residing in the country and children who were United States citizens. The fathers had signed the leases, providing valid Social Security numbers. The landlord suddenly began enforcing a policy requiring all adults living in the park to submit proof of legal status, failing which the household would be required to vacate the park or pay increased rent up to an additional $300 per month. Unable to comply, each of the families chose to vacate their homes at the park.

One year later, they banded together to sue the landlord for violating the federal fair housing law. In *Reyes v. Waples Mobile Home Park*, a federal Court of Appeals explained that the law can be violated not only by deliberate discrimination but also by enforcing requirements which disproportionately and adversely affect members of a protected class, in this case Latino families who were being denied one of the only affordable housing options in the county. The landlord would need to demonstrate that its policy was necessary in order to achieve a legitimate business interest. Avoiding criminal liability is undoubtedly such an interest and the landlord contended that its policy was justified by the risk of prosecution under the federal anti-harboring statute, which provides criminal penalties for any person who knowingly shields any illegal alien from detection.

The court retorted that a “legitimate interest cannot be phony. Otherwise defendants could manufacture business necessity based on speculative, or even imagined, liability. It seems then that the risk of prosecution or liability under a statute must at least be plausible.” In this connection, the court refused to accept the proposition that the anti-harboring statute applies to landlords merely because they lease housing accommodations to undocumented immigrants. The law requires some showing that an alien has been hidden from view in a place where authorities are unlikely to be looking. As one judge noted in another case, applying the statute too broadly could lead to making criminals of a hospital employee who lets an illegal alien stay in an emergency room overnight or a Good Samaritan who drives an illegal alien with a flat tire to a gas station.

While the government requires employers to verify the legal status of the persons they hire, no similar regulation exists in the context of housing. Indeed, the U.S. Department of Justice submitted a brief confirming that it does not prosecute residential landlords “merely because they do not, in the normal course of business, check the immigration status of every person living in their rentals.” The landlord’s position in this case was further undermined by the fact that he gave households with illegal aliens the option of remaining in their mobile homes at an increased rent. If the landlord were “truly concerned about being prosecuted for housing undocumented immigrants, its expected course would be to remove such tenants from the park as quickly as possible. The landlord would have a difficult time explaining to a prosecutor why, instead of evicting known undocumented immigrants, it opted to implement a surcharge instead.”

Nobody bothered telling the court about a 2003 advisory in which the U.S. Department of Housing and Urban Development upheld the legality of screening housing applicants on the basis of their immigration status. In particular, “asking housing applicants to provide documentation of their citizenship or immigration status during the screening process would not violate the Fair Housing Act. In fact, such measures have been in place for a number of years in screening applicants for federally-assisted housing.”

The South Boston case, *Dorrance v. AKG Realty, LLC*, involved an unmarried couple who had rented an apartment together. In May, 2020, the woman was subjected to serious domestic violence, at which point her boyfriend was arrested and made subject to the strict terms of a restraining order compelling him to stay away from both the apartment building and his girlfriend’s workplace.

Two months later, after having unsuccessfully attempted to renegotiate the rent, the girlfriend consulted an attorney and notified the landlord of her intention to vacate the apartment and terminate the lease. In this regard, she was availing herself of a 2012 statute allowing a domestic violence victim to leave an apartment and be relieved from future financial obligations. A landlord can request verification that someone wishing to depart is entitled to the protection of the statute but this particular landlord chose instead to send a series of messages reciting the girlfriend’s ongoing financial responsibilities. When a replacement tenant was found at a lower rent, the girlfriend was told that she would have to pay nearly $5,000 as a lease termination penalty and to cover the landlord’s losses. The landlord then presumably contacted an attorney who set him straight. He acknowledged the girlfriend’s right to end the tenancy and never pursued any claim for monetary relief. Nonetheless, the girlfriend maintained that she experienced severe emotional distress and anxiety during the month-long period during which the landlord threatened to hold her accountable for the prematurely-terminated lease.

A Suffolk Superior Court judge parsed through the domestic violence statute but could find no provision entitling a tenant to claim damages in a situation such as this. Likewise, although Massachusetts has a separate law prohibiting unfair debt collection practices, victims have no right to seek compensation. Nor had the landlord interfered with the tenant’s right of quiet enjoyment given the absence of any eviction or other interference with the use of the apartment.

In a similar vein, the judge refused to “dwell over-long” on the tenant’s claim that the landlord was liable for the intentional infliction of emotional distress. Damages can be awarded on this basis only where conduct can be considered extreme, outrageous, and beyond all possible bounds of decency in a civilized society. The landlord’s ill-informed attempt to seek economic redress hardly qualified. The one claim which the judge refused to dismiss was an allegation that the landlord’s conduct violated Chapter 93A of the Massachusetts General Laws, which generally outlaws unfair or deceptive trade practices. In the words of the judge, “the fact remains that the landlord persistently pursued the tenant for payments the he knew or reasonably should have known would not be due and owing. That he did so by continuing to assert a demand foreclosed by a law of which any competently advised landlord would have been aware, falls within the established concept of unfairness and is at least arguably unethical and unscrupulous.” The case will now proceed to trial.

At the risk of sound like a huckster, it should be noted that both the domestic violence statute and the screening of undocumented immigrants are analyzed in the Massachusetts Apartment Association’s *Landlord Survival Guide*, the updated 11th edition of which will soon be available. Plowing through its pages to learn what’s allowable and what isn’t is certainly preferable to the perils of being dragged into court.

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