

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

MARION DU BOSE and ROSETTA DU BOSE,
on behalf of themselves and all
others similarly situated,

plaintiffs,

-vs-

No. 69 C 422

WM. E. GOREY REALTY, WILLIAM E. GOREY
and unknown owners of WM. E. GOREY
REALTY,

defendants.

M

O R D E R

This cause came on to be held before this Court on the complaint of plaintiffs and on the answers of defendants. After a trial held on April 21, 1969, in which the testimony of witnesses, other evidence, and argument of counsel was presented, the Court sitting without a jury found for the plaintiffs against the defendants and on June 17, 1969, issued a Memorandum Opinion in support of its judgment.

It appearing to the Court that the defendants committed the acts as set forth in the complaint, specifically the defendants refused to show to the plaintiffs homes they had available for sale solely because of the plaintiffs' race, it is therefore

ORDERED, that WILLIAM E. GOREY REALTY, and WILLIAM E. GOREY, and their agents, servants, employees ~~and attorneys~~, and all other persons in active concert and participation with them

be and they are hereby permanently enjoined from refusing to show or sell to the plaintiffs, Marion and Rosetta Da Bose, homes that are available for sale; and it is further

ORDERED, that the defendants, WILLIAM E. GOREY REALTY, and WILLIAM E. GOREY, be and hereby are permanently enjoined from refusing to show or sell homes that are available for sale to any other prospective purchasers because of such prospective purchasers' race or color, and it is further

ORDERED, that the costs of this proceeding shall be taxed against defendants.

United States District Judge

DATED: June 20, 1969.

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A TRUE COPY ATTEST
ELBERT A. WAGNER, JR., CLERK
BY:

DEPUTY CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
DATE: SEP 9 1969

~~DOCKETED~~

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

FILED
JUN 17 1963

MARION DU BOSE, et al.,

Plaintiffs,

-vs-

WM. E. GOREY REALTY, et al.,

Defendants.

AT _____ O'CLOCK
ELBERT A. WAGNER, JR.
CLERK
NO. 69 C 422

MEMORANDUM OPINION

M

Marion and Rosetta DuBose are Negroes who reside in suburban Maywood, Illinois. As a part of a general program to evaluate brokers' compliance with the civil rights statutes, the DuBoses visited the William E. Gorey Realty which refused to show them its listings. Since racial discrimination is readily apparent, an injunction will be issued to prohibit future violations by the defendant, William E. Gorey, who has been doing business as William E. Gorey Realty.

In their civil rights complaint, plaintiffs also seek punitive damages. After describing the factual background more fully, the opinion will discuss (1) the need for injunctive relief, and (2) the desirability of an exemplary damage award.

d. H.

I. Background

On February 9, 1969, the plaintiffs and several other Negro and white citizens were asked by an organizer named Claude Howard to "test" numerous real estate brokers. After specifying that the DuBoses were to visit Gorey Realty, Mr. Howard informed them that prospective white home buyers would also call on the defendants. The individuals hoped to determine whether racial discrimination existed.

At Gorey Realty, the plaintiffs were required to complete a financial statement. Mr. Gorey then explained that his realty company had no homes for sale that met plaintiffs' needs, but that the DuBoses would be called if homes became available. Gorey Realty did not thereafter contact the plaintiffs. Another Negro, Mrs. Cecile Woodward, also visited defendant's office on February 9, 1969. She received a similar negative response.

In contrast, when the white citizens asked the defendant about homes, they were promptly given a listing of several homes within the same general price range specified by plaintiffs. The prospective white purchas-

ers were not required to complete a financial data sheet. Follow-up calls were made to the white citizens by defendant's sales personnel subsequent to the February 9, 1969 visit.

After the visits to several real estate brokers had been finished, the plaintiffs and the other testers reassembled and completed reports describing their findings. About two weeks later, a complaint, prepared in advance without the plaintiffs' knowledge or consent, was produced and exhibited to them. The DuBoses then elected to institute this lawsuit. It is clear from the foregoing that the February 9 visits to Gorey Realty made by plaintiffs and others were thus only one aspect of a larger, pre-arranged plan to test and enforce brokers' compliance with the civil rights statutes.¹

II. Discrimination

The evidence clearly shows that defendant's refusal to show the plaintiffs its residential listings

¹ This court has jurisdiction to determine the controversy since the DuBoses were financially able and generally interested in purchasing a home. Having considered a new residence since 1966, the plaintiffs had previously consulted other real estate agencies, although not in the Westchester area.

was motivated solely by the DuBose's race. This discrimination directly contravened both the 1968 civil rights statute and the related 1866 legislation. The former act declares explicitly that "it shall be unlawful --

"
 (d) To represent to any person because of race, color, religion, or national origin that any dwelling is not available for inspection, sale, or rental when such dwelling is in fact so available."

42 U.S.C. § 3604(d).² Similarly, the 1866 statute guarantees equal treatment for all citizens as follows:

"All citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by white citizens

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2. Defendant contends that section 3604 requires all prospective purchasers to be bona fide buyers before discrimination can be established. Subsection (a) contains such a limitation:

"[It shall be unlawful --] (a) to refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, color, religion, or national origin."

None of the succeeding subsections, however, have the "bona fide" restriction, thus indicating that Congress only intended to require a bona fide offer in situations where the actual owner of the property refuses to sell or rent.

thereof to inherit, purchase, lease, sell, hold, and convey real and personal property."

3

42 U.S.C. § 1982.

To prevent future discrimination by the defendant, a permanent injunction is required. The 1968 legislation expressly provided that "[t]he court may grant as relief . . . any permanent or temporary injunction . . ."

42 U.S.C. § 3612(c). See Jones v. Mayer, 392 U.S. 409, 414 n. 13 (1968).

In addition, the injunction will forbid the defendant to discriminate against any and all prospective Negro home purchasers as a class. Since the defendant's conduct was motivated exclusively by the plaintiffs' race,

"the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief . . . with respect to the class as a whole."

3 The section prohibits "all racial discrimination, whether or not under color of law, with respect to the rights enumerated therein--including the right to purchase or lease property." Jones v. Mayer Co., 392 U.S. 409, 436 (1968).

F.R.C.P. 23(b)(2).⁴ See Advisory Committee's Note, 39

F.R.D. 98, 102 (1966).⁵ As explained in Potts v. Flax, 313 F.2d 284, 288-289 (5th Cir. 1963):

"It [the complaint] sought obliteration of that policy of . . . racial discrimination The case therefore had those elements which are sometimes suggested as a distinction between those which are, or are not, appropriate as a class suit

". . . [T]he relief to the class as it was sought and obtained was a good deal more than something merely appropriate By the very nature of the controversy, the attack is on the unconstitutional practice of racial discrimination. Once that is found to exist, the Court must order that it be discontinued."

See also Bailey v. Patterson, 323 F.2d 201 (5th Cir. 1963);

Brunson v. Board of Trustees, 311 F.2d 107 (4th Cir. 1962);

2 Barron & Holtzoff § 562.1 (Wright ed. 1961).

4 Furthermore, the members of the class are so numerous that joinder of all members is impracticable; there are questions of law or fact common to the class; the claims of the representative plaintiffs are typical of the claims of the class; and, the representative parties will fairly and adequately protect the interests of the class. The plaintiffs' requested class action is therefore appropriate.

5 "Illustrative [of subsection (b)(2)] are various actions in the civil-rights field where a party is charged with discriminating unlawfully against a class, usually one whose members are incapable of specific enumeration."

III. Punitive Damages

Relying upon the 1968 and the 1866 statutes, plaintiffs also request punitive damages. The latter legislation, however, does not permit a damage award. As explained in Jones v. Mayer, 392 U.S. 409, 414 & n.14 (1968):

"[A]lthough it [the statute] can be enforced by injunction, it contains no provision expressly authorizing a federal court to order the payment of damages.

"In no event, on the facts alleged in the present complaint, would the petitioners be entitled to punitive damages:"⁶

In the 1968 Act, Congress expressly declared that "[t]he court may grant as relief . . . not more than \$1,000 punitive damages . . .," 42 U.S.C. § 3612(c), thus authorizing an exemplary award even if there is no wilful or wanton conduct. In determining whether punitive damages are appropriate, two competing factors are relevant. First, real estate brokers may continue their discrimination against Negroes, despite its illegality, if

6 Although the Supreme Court did not exclude punitive damages for wilful and wanton conduct, the defendant's refusal on February 9 to assist Negroes did not demonstrate such oppressive or malicious indifference to the plaintiff's rights as to justify an exemplary award. Compare Philadelphia, Wilmington, and Baltimore R. Co. v. Quigley, 21 How. 202, 213-214 (1858); Barry v. Edmunds, 116 U.S. 550, 562-565 (1886).

the only sanction imposed is injunctive relief. On this basis, an additional damage penalty might be a useful deterrent. On the other hand, potential plaintiffs should not be able to visit five or six brokers in an afternoon and collect punitive damages from each of them. The basic objective of the 1968 legislation is to help destroy segregated housing, not to enrich persons who seek its enforcement by private actions.

In the instant controversy, the latter consideration outweighs the former factor. As a result of the defendant's February 9 discrimination, he will be very effectively prohibited from further violations of the civil rights statutes. Although the plaintiffs were generally in the market for a new home, they did not specifically want to purchase a residence from Gorey Realty. Rather, they were evaluating brokers' practices. Plaintiffs have thus not been inconvenienced or injured in the way that an actual potential home buyer could have been. Punitive damages are therefore inappropriate in this particular case.

Plaintiffs will prepare and submit a proper
order within five days.

ENTER:

Bernard M. Decker
United States District Judge.

DATED: June 17, 1969.

A TRUE COPY ATTEST
ELBERT A. WAGNER, JR., CLERK
BY:

Cornelia H. ...
DEPUTY CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
DATE: SEP 9 1969.