

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA

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|----------------------------|---|------------------------------|
| UNITED STATES OF AMERICA, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | CIVIL ACTION NO. CA-432-69-R |
| |) | |
| |) | |
| LAKE CAROLINE, INC.; LAKE |) | <u>ORDER</u> |
| CAROLINE PROPERTY OWNERS |) | |
| ASSOCIATION, INC., an |) | |
| AMERICAN REALTY SERVICE |) | |
| CORPORATION, and GEORGE S. |) | |
| CARROLL, |) | |
| |) | |
| Defendants. |) | |

The United States instituted this action on October 13, 1969, against Lake Caroline, Inc., Lake Caroline Property Owners Association, Inc., American Realty Service Corporation, and George S. Carroll. The suit is based on alleged violations of the Fair Housing Act of 1968, 42 U.S.C. 3601 et seq., and Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e et seq. It is alleged that each of the defendants is engaged in a pattern and practice of resistance to the enjoyment by Negroes of the rights secured by these Acts. The essential thrust of the Complaint is that the defendants have discriminated against Negroes in their program of recruiting purchasers of lots at a recreational community in Ladysmith, Virginia, which is presently under construction,

by the use of the symbol Double-X as a code for possible Negro contacts and by directions to their employees to avoid contacting or soliciting Negroes. The Complaint alleges that Lake Caroline employees were given bonuses for making contacts with prospective white purchasers but not with similarly situated Negroes. Plaintiff alleges that, as a result of these practices, fewer than 1% of the lots at Ladysmith have been sold to Negroes. Plaintiff further alleges that the defendants have discriminated against Negroes in their employment practices, and, specifically, that they had a policy at their former Wheaton, Maryland solicitation office of refusing to hire any Negroes at all.

With the Complaint, the United States filed a motion for a preliminary injunction, which was accompanied by affidavits of several former Lake Caroline employees, by a white prospective purchaser of a lot at Lake Caroline, and by an attorney for plaintiff, setting out in detail the defendants' alleged discriminatory practices. The attorney's affidavit alleged that approximately 1100 of 1800 lots at Lake Caroline had already been sold, and that preliminary relief was needed so that no part of the case would become moot.

On or about November 4, 1969, the several defendants responded to the Complaint. The defendant American Realty Service Corporation, which is the parent company of Lake

Caroline, Inc., and which has organized about fifty recreational communities in various parts of the country through local subsidiaries, moved to dismiss the Complaint on the grounds that the parent company, which is a Delaware corporation, is not subject to service of process in Virginia because it alleges that it is not doing business in that State. In support of its motion, this defendant filed an affidavit of one of its Vice-Presidents listing its contacts with the Commonwealth of Virginia. The defendant Lake Caroline Property Owners Association, Inc., which is a Virginia corporation whose members are the owners of lots at the recreational community, and which will manage the project when it is completed, moved to dismiss the Complaint for lack of jurisdiction and for failure to state a claim against this defendant upon which relief may be granted. The defendant Lake Caroline, Inc. moved to dismiss the Second Claim in the Complaint, which alleges employment discrimination, on the grounds, not elaborated in its motion, that its activities "do not come within the provisions of Title VII of the Civil Rights Act of 1964." In addition, this defendant filed an Answer generally denying the allegations of discrimination in the Complaint. Finally, the defendant George S. Carroll, formerly president of Lake Caroline, Inc. and formerly an officer of American Realty Service Corporation, moved on unspecified grounds to dismiss the

allegations of employment discrimination, denied in his Answer all allegations of racial discrimination, and further alleged that he is now retired and has no further connection with the subject matter.

In its prayer for relief, the United States asks that the defendants be enjoined from further racial discrimination in housing and employment and required to take affirmative steps to correct the effects of their past discriminatory practices. The defendants, without admitting any violation of the law on their part, and without admitting that the defendant American Realty Service Corporation is doing business in Virginia, are prepared to undertake a program of recruiting Negroes as purchasers of lots and as employees. American Realty Service Corporation is likewise prepared to undertake an affirmative program of nondiscrimination with respect to all of its subsidiaries throughout the United States. In view of the willingness of the defendants to take the foregoing steps, the United States has agreed not to prosecute the litigation to secure a determination as to whether or not the defendants have discriminated against Negroes in the past. The United States also agrees to a voluntary dismissal as against the defendant Carroll, inasmuch as he is retired. Accordingly, without adjudication of this cause upon the merits, and without any determination as to whether or not American Realty

Service Corporation is doing business in Virginia for the purpose of service of process, and by consent of the parties, it is hereby ORDERED that the defendants Lake Caroline, Inc., Lake Caroline Property Owners Association, Inc., and American Realty Service Corporation, their officers, employees, agents and successors, and all those in active concert or participation with any of them, be and they are hereby permanently enjoined from discriminating against any person or group of persons on account of race, color, religion, or national origin with respect to employment or housing, and from failing to take the following affirmative steps to correct the effects of the past:

I

PROVISIONS AFFECTING THE OPERATION OF LAKE CAROLINE

1. The defendant, ^{1/} Lake Caroline, Inc., shall forthwith adopt and implement a program of solicitation of purchasers of lots at Ladysmith, Virginia, in geographic areas and communities inhabited predominantly by Negroes, provided, however, that the defendant need not solicit in areas in which the income of the majority of the population is too low to be reasonably considered as a source of prospective purchasers. No predominantly

^{1/} For purposes of convenience, the terms "defendant" or "defendants," as used in the remainder of this Order, shall include persons in privity with the named defendant or defendants, including officers, employees, agents, successors, and all persons acting in concert with any of them.

Negro area shall be excluded from solicitation on account of insufficiency of income of its residents if the income of a majority of persons residing in that area is no less than the income of a majority of the inhabitants of predominantly white areas in which the defendant has solicited in the past. It shall be the goal of this program that, until the remainder of the lots at the Ladysmith property have been sold, solicitation efforts shall be so directed that at least 30% of those solicited shall be Negro. As more fully set forth in the following paragraphs of this Order, the defendant shall report to the Court, with copies to plaintiff, the areas selected and the basis upon which the selection was made.

2. The bonus system of compensating solicitors and sales personnel shall be uniformly and equitably applied without regard to race of the employees or the prospective purchasers.

3. The defendant Lake Caroline, Inc. shall recruit Negro employees at all levels of employment so as to achieve an integrated work force at the earliest practicable date. Pursuant to this program, the defendant shall forthwith contact logical sources of Negro employees (e.g. predominantly Negro educational institutions, Urban League, N.A.A.C.P., prominent ministers or professional persons in the black community, federal, state

or private employment services serving the black community, etc.) and inform them of the defendant's affirmative program to recruit Negro employees and purchasers. The communications to these sources shall include a brief description of the jobs performed by employees of Lake Caroline, Inc., and the qualifications required for each job. In recruiting and hiring Negro employees, the defendant shall not require that they possess qualifications for any job or position more exacting than those which were in effect with respect to white employees prior to the institution of this action, as set forth in a Stipulation attached to this Order.

The defendant shall file with the Court, with copies to the plaintiff, notice of any proposed substantial modification of any qualification for any job, together with a brief statement as to the purpose of such change. If the plaintiff does not object to the proposed modification within thirty (30) days of service, the defendant may institute the change. If the plaintiff objects to the modification, it shall come before the Court for a hearing as soon as possible.

The defendant shall assign, promote and transfer employees without regard to race, and shall endeavor to place Negroes in supervisory and professional positions as vacancies for which they are qualified arise.

4. During the year following the entry of this Order, the defendant shall place a total of at least twelve (12) full-page advertisements for Lake Caroline in newspapers in the Washington, D. C. and Richmond, Virginia areas which have predominantly Negro readers.^{2/} Defendant's advertising in all media shall include a reasonably prominent statement to the effect that the defendant operates Lake Caroline on a racially nondiscriminatory basis and that persons of all races are welcome as purchasers. At least fifty (50) per cent of all newspaper advertising shall depict two or more persons using the facilities at Lake Caroline. At least four-fifths (4/5) of this fifty (50) per cent shall depict persons of both the Negro and white races.

5. In order to assure that all employees understand and adhere to the racially nondiscriminatory procedures and affirmative steps described in this Order, the defendant shall forthwith instruct their employees in detail as to the provisions of this Order. The defendant shall, within ten days of the entry of this Order, secure from each employee of Lake Caroline, Inc., a signed statement certifying that he understands that it is his

^{2/} Counsel for plaintiff and counsel for defendants shall confer before or during the twelfth month following the entry of this Order to determine if they consider it necessary or appropriate to continue with such advertisements.

obligation not to discriminate against any person on account of race, color, religion, or national origin, in relation to employment and housing, including the solicitation of prospective employees and purchasers, and that failure to comply with such obligation will result in dismissal.

6. All applicants for membership of the Lake Caroline Property Owners' Association shall be admitted to membership in that Association without regard to race, color, religion and national origin on the basis of objective nonracial criteria as set forth in the Order of Judge Hogan in Newbern v. Lake Lorelei, (S.D. Ohio, April 22, 1969).

II

PROVISIONS AFFECTING OTHER SUBSIDIARIES OF AMERICAN REALTY SERVICE CORPORATION

The defendant American Realty Service Corporation (hereinafter American Realty) shall forthwith contact the appropriate representative of all of its subsidiaries throughout the United States (and, when created, the appropriate representatives of any future subsidiaries) and instruct the management that it is the policy of American Realty and of all of its subsidiaries not to discriminate in its housing or employment practices, including solicitation of prospective purchasers and employees, on account of race, color, religion or national origin. Specifically, the management of each subsidiary shall be ordered

(a) To select areas in which solicitation of purchasers is to be conducted without regard to race, and on the basis of objective nonracial criteria;

(b) In areas which have been so selected, to make solicitations on a nonracial basis, and, to discontinue any practice of "Double-Xing" records of suspected Negroes or of failing or refusing to solicit them to purchase lots in the same manner as white purchasers are solicited;

(c) To indicate in all advertising for purchasers or employees that persons of all races are welcome as purchasers and employees, and to depict Negroes as well as white persons using such facilities in a substantial proportion of photographs or illustrations contained in such advertising;

(d) To advertise for purchasers and employees in newspapers having a predominantly black audience, where such newspapers have a circulation of at least 10,000;

(e) Where no Negroes^{3/} or few Negroes have purchased lots or have become employees

^{3/} Or other minorities, where applicable.

in relation to a particular subsidiary, to make appropriate contacts with Negro sources in an attempt to secure more Negro employees and purchasers;

(f) To secure and refer to American Realty, within twenty days of the entry of this Order, signed statements from each employee of each subsidiary of American Realty certifying that he understands that it is his obligation not to discriminate against any person on account of race, color, religion or national origin in relation to employment and housing, including the solicitation of prospective employees and purchasers, and that failure to comply with such obligation will result in dismissal.

III

REPORTING

In order to assure that the provisions of this Order are bringing about the effective desegregation of the recreational communities operated by the defendants with respect to housing and employment, the defendants shall make the following reports to the Court:

A

Reports Relating to Lake Caroline

On or before the fifteenth day of February, March, August, and November of 1970, 1971 and 1972, the defendants, Lake Caroline, Inc., and Lake Caroline Property Owners Association, Inc., shall file with the Court and serve upon counsel for plaintiff a Report reflecting:

(1) The number of purchasers of lots, by race, during the previous reporting period, each non-white purchaser to be identified by name and address;

(2) The number of applicants for employment accepted and rejected, by race, during the previous reporting period, the position for which each person was employed, and the name and address of each non-white person accepted or rejected, and the name, race, and address of each employee promoted, transferred or dismissed during the Reporting Period;

(3) The number of lots sold, by race of purchaser since the organization of Lake Caroline, and the number of persons employed at the time of the Report, by job and race;

(4) A detailed account of all affirmative steps taken by the defendants in compliance with each and every provision of Part I of this Order during the preceding Reporting Period. With respect to the selection of solicitation areas, the Report shall disclose in detail the areas selected, the information secured by defendant as to the racial composition of such areas and the sources of such information, as well as detailed statistics as to the portion of defendant's solicitation effort directed to those areas. With respect to the implementation of objective standards as required in Part I of this Order, the defendants shall report, by name, address and race, and date of application, each applicant for membership in the Lake Caroline Property Owners' Association who has been rejected for membership. The defendant, Lake Caroline Property Owners' Association shall maintain records which show the identity of the person or persons who rejected each such applicant, and the reason for rejection and shall make these records available to a representative of the plaintiff upon request. The defendant,

Lake Caroline, Inc. shall include with its Reports copies of all correspondence, advertisements and other documents or papers used during the reporting period to implement the provisions of this Order, or representative sample copies with names and addresses of persons contacted. Where oral contacts were made in relation to this Order, a brief description of such contacts shall be included. The defendant, Lake Caroline, Inc. shall further include with its Reports a copy of the nondiscrimination statement signed by their employees as required herein and a list of all employees signing such a statement. If any present employees of Lake Caroline, or newly hired employees, decline to sign such a statement, the defendant Lake Caroline, Inc. shall include in its Report a full statement of all of the pertinent circumstances and of the action taken by it in relation thereto.

B

Reports Relating to Other Subsidiaries

On or before the first day of April 1970, the defendant American Realty Service Corporation shall file with the Court and serve upon counsel for plaintiff

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a report which shall include a detailed account of all affirmative steps taken by each of its subsidiaries in compliance with each and every provision of Part II of this Order. This Report shall include copies of all pertinent correspondence, advertising and other documents.

IV

Defendants shall make available to representatives of the plaintiff, upon reasonable demand, all records pertinent to this action.

No later than twenty days after the filing of the Report of February 15, 1970, counsel for plaintiff and counsel for the defendants shall confer in order to attempt to agree, on the basis of that Report, as to what, if any, additional reporting is necessary to accomplish the purposes of this Order. If the parties are unable to agree, then the disagreement shall be submitted to the Court by appropriate motion for its determination.

IT IS FURTHER ORDERED that the action be and it is hereby dismissed against the defendant George S. Carroll.

IT IS FURTHER ORDERED that each party shall bear its own costs with respect to all matters predating the entry of the Order.

The Court retains jurisdiction of this action
for all purposes.

ORDERED this day of

1970.

United States District Judge

The undersigned consent to
the entry of this Order:

BRIAN P. GETTINGS
United States Attorney

Frank E. Schwelb
FRANK E. SCHWELB
Attorney
Department of Justice

Walter W. Barnett
WALTER W. BARNETT
Attorney
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HERNDON P. JEFFREYS, JR.
Attorney for Defendants

HENRY T. WICKHAM
Attorney for Defendants

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) STIPULATION
LAKE CAROLINE, INC.; LAKE)
CAROLINE PROPERTY OWNERS)
ASSOCIATION, INC.; an)
AMERICAN REALTY SERVICE)
CORPORATION, and GEORGE S.)
CARROLL,)
)
) Defendants.)
)

IT IS HEREBY STIPULATED by and between the parties
hereto that the following have been and are the informal,
nonracial job requirements for jobs at Lake Caroline:

1. Salesmen and Dinner Hosts

- (a) Ability to read, write, and reasonably
comprehend the English language, and
some ability or promise in salesmanship;
- (b) Reasonably good appearance and manner.

2. Telephone solicitors

- (a) Ability to read and write;
- (b) Reasonable ability to communicate over
the telephone.

3. Clerical staff

- (a) Reasonable capacity for office work;

(b) Reasonable proficiency in English
speaking and writing;

(c) Reasonably good appearance, especially
for those persons dealing with the
public;

(d) Typing for typists, and shorthand for
stenographers.

4. Construction and Maintenance Employees

Physical and elementary mental capacity to do the work.

It is further stipulated that there are no formal
educational requirements for any of these jobs, and that
applicants who meet the qualifications described herein
need not have completed any particular number of grades
in school.

Frank E. Schwelb

FRANK E. SCHWELB
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