

(For Publication)

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
SOUTHERN DIVISION

MATT SPENCER, et al.	)	Case No. SA CV 00-350-GLT[ej]
	)	
Plaintiffs,	)	ORDER GRANTING MOTION FOR
	)	JUDGMENT ON THE PLEADINGS
vs.	)	
	)	
DANIEL W. CONWAY, et al.	)	
	)	
Defendants.	)	
	)	

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On apparent first impression, the Court holds it is a violation of the federal Fair Housing Act, 42 § 3604(a), for an apartment owner to instruct residential managers not to rent to minority applicants, even if no further discriminatory action is taken as a result of the instruction.

I. BACKGROUND

Plaintiffs Matt and Michelle Spencer were resident managers at Defendants' apartment complex in Lake Forest, California.<sup>1/</sup> As part of their compensation, the Spencers were given free apartment rent in the complex. They allege Defendant Conway instructed them not to rent

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<sup>1/</sup> Defendants are the Conway Family Trust, which owns the complex, and Daniel Conway, who is the trustee.

1 to minority tenants, but Plaintiffs refused to follow this  
2 instruction. Plaintiffs allege they were harassed and ultimately  
3 terminated and evicted by Defendants in retaliation for renting  
4 apartments to minority tenants.

5 Plaintiffs' Complaint alleges they received a letter from  
6 Defendant Conway (attached as a complaint exhibit) in which Defendant  
7 instructed them not to rent to minorities. Defendant wrote, "No more  
8 blacks and no more Mexicans are my instructions to you." Defendants'  
9 Answer admits the letter.

10 Plaintiffs move for judgment on the pleadings as to liability  
11 only,<sup>2/</sup> arguing their Fair Housing claim pleadings and Defendants'  
12 admission entitle them to adjudication as a matter of law.<sup>3/</sup>

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14 <sup>2/</sup>After the pleadings are closed, a party may move for  
15 judgment on the pleadings. Rule 12(c), Federal Rules of Civil  
16 Procedure. Rule 12(c) does not specifically authorize or  
17 prohibit a motion for "partial" judgment on the pleadings. It is  
18 the practice of many courts to permit "partial" judgment on the  
19 pleadings, such as on a certain issue, claim, or defense.  
20 Schwarzer, California Practice Guide, Federal Civil Procedure  
21 Before Trial, 9:340.

19 <sup>3/</sup>The Court has already ruled in an earlier motion  
20 Plaintiffs have standing to bring a federal Fair Housing Act  
21 claim. Claims under the Fair Housing Act "are to be judged under  
22 a very liberal standing requirement" and plaintiffs need not  
23 allege they are direct victims of discrimination. Harris v.  
24 Itzhaki, 183 F.3d 1043, 1049 (9th Cir. 1999). A plaintiff must  
25 satisfy the Article III requirement of injury in fact, but "any  
26 person harmed by discrimination, whether or not the target of the  
27 discrimination, can sue to recover for his or her own injury,"  
28 and can do so "even where no housing has actually been denied to  
persons protected under the Act." Id. at 1050 (emphasis in  
original). Plaintiffs who have suffered some injury of their own  
may assert the rights of others who are the more direct victims  
of a violation. Gladstone, Realtors v. Village of Bellwood, 441  
U.S. 91, 103 n.9 (1979); Mackey v. Nationwide Ins. Cos., 724 F.2d  
419, 423 (4th Cir. 1984). Residents or former residents also  
have standing to assert their own right to live in an integrated

(continued...)

1 II. DISCUSSION

2 The novel question presented on this motion is whether it is a  
3 violation of the federal Fair Housing Act, 42 U.S.C. § 3604(a), for an  
4 apartment owner to instruct resident managers not to rent to minority  
5 applicants, even if no further discriminatory action is taken as a  
6 result of the instruction. The Court determines it is, and that  
7 § 3604(a) is broad enough to cover such conduct.

8 The federal Fair Housing Act provides:

9 it shall be unlawful-- (a) To refuse to sell or rent  
10 after the making of a bona fide offer, or to refuse to  
11 negotiate for the sale or rental of, or otherwise make  
12 unavailable or deny, a dwelling to any person because of  
13 race, color, religion, sex, familial status, or national  
14 origin.

15 42 U.S.C. § 3604(a).

16 Defendants contend that, even though the discriminatory  
17 instruction to their resident managers is admitted, the instruction is  
18 not a § 3604(a) violation because it resulted in no discriminatory  
19 action -- the managers refused to follow the instruction. To be  
20 actionable, Defendants argue, there must be some discriminatory action  
21 taken as a result of the discriminatory instruction.

22 The few cases touching on discriminatory instructions also  
23 involve additional discriminatory action. But, these additional acts  
24 are treated as part of the evidentiary showing of discrimination,  
25 rather than a required element of the claim. For example, in United  
26 States v. Youritan Construction from a California district court, the  
27 resident manager of an apartment complex instructed her rental agents

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28 <sup>3/</sup>(...continued)  
community free of housing discrimination. Id. at 113-15.

1 to discriminate against blacks and other minorities in the rental of  
2 apartments at the complex, and stated it was "defendants' policy and  
3 disposition to avoid renting to black tenants." 370 F. Supp. 643, 646  
4 (N.D. Cal. 1973). Defendants engaged in acts of discrimination,  
5 including falsely telling black rental applicants that no apartments  
6 were available and using a "credit check" to dissuade blacks from  
7 renting. Id. at 648, 650-51.

8 Finding a violation of section 3604(a), the Youritan Court stated  
9 to "otherwise make unavailable" or to deny housing because of race  
10 "appears to be as broad as Congress could have made it, and all  
11 practices which have the effect of denying dwellings on prohibited  
12 grounds are therefore unlawful." Id. at 648 (relying on United States  
13 v. Real Estate Development Corp., 347 F. Supp. 776 (N.D. Miss. 1972)).

14 The court also said,

15 [r]acially derogatory remarks, by those in a position to  
16 influence the attitude of fellow and subordinate  
17 employees toward apartment applicants of a particular  
18 race, can reasonably be expected to adversely affect the  
19 rental opportunities of applicants. Thus, laws  
prohibiting discrimination in housing because of race  
prohibit not only, for example, overt racial rejection of  
applicants, but subtle behavior as well.

20 Id. (relying on United States v. Mitchell, 327 F. Supp. 476 (N.D. Ga.  
1971)).

21 In United States v. L & H Land Corporation from a Florida  
22 District Court, the manager of an apartment complex made statements to  
23 two residents of the complex that blacks were not allowed at the  
24 apartments, and residents could not have blacks as guests. 407  
25 F.Supp. 576, 578 (S.D. Fla. 1976). The apartment manager refused to  
26 permit one of the residents to entertain two black guests at a private  
27 party on the apartment complex grounds.  
28

1 The Court held the apartment manager's statements to the  
2 residents were an admission of a policy in violation of Section  
3 3604(a) and 3604(b). See id. at 579. The court ruled these  
4 statements, coupled with the manager refusing to permit one of the  
5 residents to entertain two black guests, and other acts, "all  
6 constitute persuasive evidence that [the manager] engaged in a course  
7 of conduct in violation of both 42 U.S.C. § 3604(a) and (b)." Id.

8 Finally, in the Ninth Circuit's Harris v. Itzhaki, 183 F.3d 1043  
9 (9<sup>th</sup> Cir. 1999), Plaintiff, a black tenant, overheard an assistant  
10 apartment manager say, "The owners don't want to rent to Blacks." Id.  
11 at 1048. There were also specific acts of claimed discrimination.  
12 The Court held the discriminatory statement was part of an evidentiary  
13 showing establishing a triable issue on the existence of a section  
14 3604(a) claim.

15 The Court holds a discriminatory instruction alone may be the  
16 basis of a section 3604(a) claim, without other accompanying  
17 discriminatory action. Giving an instruction to discriminate against  
18 prospective minority tenants is itself an act to "otherwise make  
19 unavailable" housing under section 3604(a).

20 Congress has made the scope of section 3604(a) very wide. As  
21 noted in Youritan, the phrase to "otherwise make unavailable" or to  
22 deny housing because of race "appears to be as broad as Congress could  
23 have made it, and all practices which have the effect of denying  
24 dwellings on prohibited grounds are therefore unlawful." Id. at 648.

25 Here, the apartment owner was in a position to influence the  
26 actions of the apartment managers toward minority apartment  
27 applicants. Agents can be expected to carry out the instructions of  
28 their employers. As Youritan noted, such a situation "can reasonably

1 be expected to adversely affect the rental opportunities of  
2 applicants." By instructing Plaintiffs not to rent to minorities,  
3 Defendant set in motion a process which, if carried through, would  
4 result in minorities being denied housing. The Spencers' refusal to  
5 comply with their employer's instruction does not mean the statute was  
6 not violated. This kind of subtle action is what Congress intended to  
7 prohibit as "otherwise mak[ing] unavailable" housing to people because  
8 of race. 42 U.S.C. § 3604(a).

9 III. DISPOSITION

10 Judgment on the pleadings, as to liability only, is GRANTED on  
11 the 42 U.S.C. § 3604(a) claim. Issues of causation and damages still  
12 remain.

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14 DATED: July \_\_\_\_, 2001

15 \_\_\_\_\_  
16 GARY L. TAYLOR  
17 UNITED STATES DISTRICT JUDGE  
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