

STATE OF VERMONT
WASHINGTON COUNTY, SS.

FILED

2009 OCT 15 P 12: 22

STATE OF VERMONT,)
Plaintiff,)
v.)
STEVEN DAVIS,)
Defendant.)

WASHINGTON COUNTY
SUPERIOR COURT
Washington Superior Court
Docket No. 791-10-09 Wncv

COMPLAINT

NOW COMES the State of Vermont, by and through Vermont Attorney General William H. Sorrell, and pursuant to the Vermont lead law, 18 V.S.A., Chapter 38; and the Vermont Consumer Fraud Act, 9 V.S.A., Chapter 63; hereby makes the following complaint against Steven Davis (“Defendant”) who owns numerous residential rental properties in the Town of Hartford, Vermont, and has failed to perform essential maintenance practices as required by 18 V.S.A. § 1759(b).

ALLEGATIONS

The Parties

1. Defendant Steven Davis (“Defendant”) owns a number of rental properties in the Town of Hartford, Vermont. Five of the rental properties (“the properties”) owned by Defendant are listed in Attachment A. *See* Attachment A.
2. The properties were constructed prior to 1978, are “rental target housing” within the meaning of the Vermont lead law, 18 V.S.A. § 1751(23), and are subject to the requirements of 18 V.S.A. Chapter 38.
3. The Attorney General has the right to appear in any civil action in which the State, in his judgment, has an interest. 3 V.S.A. § 157.

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4. The Attorney General has an interest in ensuring that landlords comply with Vermont laws regarding habitability of housing.

Statutory scheme

5. Lead-based paint in housing, the focus of the Vermont lead law, is a leading cause of childhood lead poisoning, which can result in adverse health effects, including decreases in IQ.

6. The lead law requires that essential maintenance practices (“EMPs”) specified in 18 V.S.A. § 1759 be performed at all pre-1978 rental housing.

7. All paint in pre-1978 housing is presumed to be lead-based unless a certified inspector has determined that it is not lead-based. 18 V.S.A. § 1759(a).

8. EMPs include, but are not limited to, installing window well inserts, visually inspecting properties at least annually for deteriorated paint, restoring surfaces to be free of deteriorated paint within 30 days after such paint has been visually identified or reported to the owner, and posting lead-based paint hazard information in a prominent place. 18 V.S.A. § 1759(a) (2), (4) and (7).

9. The EMP requirements also mandate that an owner of rental target housing file affidavits or compliance statements attesting to EMP performance with the Vermont Department of Health and with the owner's insurance carrier. 18 V.S.A. § 1759(b).

10. Under the lead law, all paint in rental target housing is “presumed to be lead-based unless a lead inspector or lead risk assessor has determined that it is not lead-based.” 18 V.S.A. § 1760(a).

11. A violation of the lead law requirements may result in a maximum civil penalty of \$10,000.00. 18 V.S.A. § 130(b)(6). Each day that a violation continues is a separate violation. 18 V.S.A. § 130(b)(6).

12. The Vermont Consumer Fraud Act, 9 V.S.A Chapter 63, prohibits unfair and deceptive acts and practices, which includes the offering for rent, or the renting of, target housing that is noncompliant with the lead law.

13. Violations of the Consumer Fraud Act are subject to a civil penalty of up to \$10,000.00 per violation. 9 V.S.A. § 2458(b)(1). Each day that a violation continues is a separate violation.

Facts relating to Defendant

14. Defendant is the owner of the properties listed in Attachment A which he has in the past and continues presently to rent and offer for rent. Attachment A.

15. The Vermont Department of Health has no evidence to demonstrate that Defendant maintained the properties in accordance with Vermont's lead law in 2008 or 2009.

16. The Vermont Department of Health has no evidence to demonstrate that Defendant performed EMPs on the properties in 2008 or 2009.

17. The Vermont Department of Health has no evidence to demonstrate that Defendant filed any EMP compliance statements attesting to EMP performance with his insurance carrier or tenants in 2008 or 2009.

18. The Office of the Attorney General sent Defendant a letter dated February 18, 2009 which advised him of the lead law and requested proof of lead law compliance at the properties within 90 days.

19. Defendant did not respond to the February 18, 2009 letter.

20. The Office of the Attorney General sent Defendant a Civil Investigative Demand by certified mail on May 22, 2009 requesting proof of lead law compliance at the properties and other information.

21. The Civil Investigative Demand was signed for and received by Defendant on May 27, 2009.

22. Defendant did not respond to the Civil Investigative Demand.

FIRST CAUSE OF ACTION – Failure to perform essential maintenance practices

23. The State of Vermont incorporates and realleges paragraphs 1 through 22 above.

24. The lead law requires that EMPs specified in 18 V.S.A. § 1759 be performed at all rental target housing and that compliance statements attesting to EMP performance be filed with the Department of Health and the property owner's insurance carrier on an annual basis. 18 V.S.A. § 1759. Copies of the compliance statements must also be given to all tenants at the property and to new tenants prior to entering a lease agreement. 18 V.S.A. § 1759(b)(3)-(4).

25. EMPs require that a property owner “[p]romptly and safely remove or stabilize lead-based paint if more than one square foot of deteriorated lead-based paint is found on any interior or exterior surface located within any area of the dwelling to which access by tenants is not restricted.” 18 V.S.A. § 1759(a)(3).

26. Owners must also install “window well inserts in all windows or protect window wells by another method approved by [the Department of Health].” 18 V.S.A. § 1759(a)(1).

27. Defendant violated Vermont's Lead Law, 18 V.S.A. Chapter 38, by:
- a. Failing to file with the Department of Health an EMP compliance statement attesting to EMP performance for any of the properties during 2008 or 2009; and
 - b. Failing to file with his liability insurance carrier or tenants EMP compliance statements attesting to EMP performance for any of the properties in 2008 or 2009.

28. A violation of the EMP requirements may result in a maximum civil penalty of \$10,000.00. 18 V.S.A. § 130(b)(6).

29. Each day that a violation continues is a separate violation. 18 V.S.A. § 130(b)(6).

SECOND CAUSE OF ACTION – Consumer Fraud: noncompliant rental housing

30. The State of Vermont incorporates and realleges paragraphs 1 through 29 above.

31. The Vermont Consumer Fraud Act, 9 V.S.A., Chapter 63, prohibits unfair and deceptive acts and practices in commerce, which include the rental of, or offering for rent, housing that is noncompliant with the lead law.

32. By renting to tenants, and by offering for rent, property that was not in compliance with the lead law, Defendant engaged in unfair acts and practices in commerce in violation of the Consumer Fraud Act, 9 V.S.A. § 2453(a).

33. Each of the five noncompliant properties represents a separate violation of the Consumer Fraud Act and each day is a separate violation.

34. Violations of the Consumer Fraud Act are subject to a civil penalty of up to \$10,000.00 per violation. 9 V.S.A. § 2458(b)(1).

35. Each day that a violation continues is a separate violation.

RELIEF SOUGHT

WHEREFORE, based on the allegations set forth above, the State of Vermont respectfully requests that the Court award the following relief:

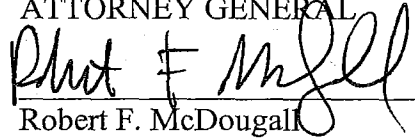
1. An Order finding that Defendant violated 18 V.S.A. § 1759 for each of the five non-compliant properties and that the violations are continuing.
2. An Order finding that Defendant violated 9 V.S.A. § 2453(a) for renting or offering for rent each of the five non-compliant properties and that the violations are continuing.
3. Civil Penalties of not more than \$10,000 for each violation of the lead law.
4. Civil Penalties of not more than \$10,000 for each violation of the Consumer Fraud Act.
5. An Order requiring that Defendant hire, at his expense and with the approval of the Attorney General's Office, an independent contractor who is certified by the Department of Health to perform EMP work to conduct compliance inspections of the interior and exterior of the five identified non-compliant properties and all other rental target housing properties owned by Defendant.
6. An Order requiring that Defendant bring the identified five non-compliant properties and any other non-compliant properties identified by the independent inspection into compliance with the requirements of the lead law
7. An Order requiring reimbursement to the State for the reasonable value of its services and its expenses in investigating and prosecuting this action.
8. Such other relief as the Court may deem just and appropriate.

DATED at Montpelier, Vermont this 15th day of October, 2009.

Respectfully submitted,

WILLIAM H. SORRELL
ATTORNEY GENERAL

By:



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ATTACHMENT A

1. 1743 Maple Street, Hartford, Vermont
2. 77 Christian Street, Hartford, Vermont
3. 63 Christian Street, Hartford, Vermont
4. 152 Lantern Lane, Hartford, Vermont
5. 1217 Maple Street, Hartford, Vermont

Five properties