

STATE OF VERMONT
SUPERIOR COURT
WASHINGTON UNIT

VT SUPERIOR COURT
WASHINGTON UNIT
CIVIL DIVISION

2015 MAY -6 P 1:16

STATE OF VERMONT,)
)
Plaintiff,)
)
v.)
)
SOON KWON,)
)
Defendant.)

CIVIL DIVISION
Docket No. 289-S-15Wncv

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 Protection Act, 9 V.S.A., Chapter 63; hereby makes the following complaint against Soon Kwon who owns residential rental properties in the City of Burlington, Vermont, for repeated violations of Vermont's lead law.

The Parties

1. Defendant Soon Kwon ("Defendant") is the owner of several rental properties located at: 66-68 South Union Street, 40-42 Colchester Avenue, 34 Colchester Avenue, and 41 South Willard Street, all located in Burlington, Vermont (collectively, "the Properties").
2. The Properties were all constructed prior to 1978, and therefore, are pre-1978 "rental target housing" within the meaning of the Vermont lead law, 18 V.S.A. § 1751(23), and are all 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.

Office of the
ATTORNEY
GENERAL
109 State Street
Montpelier, VT
05609

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

Statutory Framework

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 Protection 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 Protection 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.

Factual Allegations

14. Defendant is the owner of the Properties which he has in the past and continues presently to rent and offer for rent.

15. In April 2013, the Vermont Department of Health (“VDH”) issued Defendant five civil violations for failing to comply with Vermont’s EMP requirements for the Properties under 18 V.S.A. § 1759.

16. On March 31, 2014, Defendant and VDH entered into an Assurance of Discontinuance (“AOD”) to resolve the civil violations. In that AOD, Defendant agreed that all pre-1978 housing must comply with the EMP requirements, that Defendant will adhere to and comply with Title 18, Chapter 38, of the Vermont lead law, and that failing to comply with Title 18 could subject him to civil penalties of up to \$10,000 for each violation.

17. On June 1, 2014, Defendant submitted EMP compliance statements for each of the Properties to VDH. In those statements, Defendant stated that: he visually inspected all exterior and interior surfaces of the Properties to identify deteriorated paint, he stabilized all

deteriorated paint, he removed any paint chips from the ground at the Properties, he verified that window well inserts were in place or not required, and he provided to his tenants copies of the EPA's pamphlet "Protect Your Family from Lead in Your Home."

18. The June 2014 EMP compliance statements also contained a statement that "all information provided on this form is true and accurate" and that "providing false, incomplete or inaccurate information on this form is unlawful and is punishable by civil and criminal penalties pursuant to Vermont law." Defendant signed each of the EMP compliance statements for the Properties and filed them with VDH.

19. On August 19, 2014 the City of Burlington's Code Enforcement Office conducted an inspection of 40-42 Colchester Avenue. The Code Enforcement Office found deteriorated exterior paint and paint chips in the outdoor areas of the property. A re-inspection on September 18, 2014 found that Defendant still had not removed paint chips from the outdoor areas of 40-42 Colchester Avenue.

20. On August 26, 2014, VDH conducted an inspection of 41 South Willard Street. VDH found deteriorated paint, lack of window well inserts, and that the mandatory EPA pamphlet ("Protect Your Family From Lead in Your Home") was not provided to tenants. VDH also sampled paint chips from two exterior locations at 41 South Willard Street and confirmed that the paint contained lead concentrations of 13% and 16% respectively.

FIRST CAUSE OF ACTION
Consumer Protection Act: false affidavit

21. The State of Vermont incorporates and realleges paragraphs 1 through 20 above.

22. The Vermont Consumer Protection 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.

Office of the
ATTORNEY
GENERAL
109 State Street
Montpelier, VT
05609

23. By submitting at least two false EMP compliance statements to the State of Vermont in June 2014 and inaccurately representing that 40-42 Colchester Avenue and 41 South Willard Street were in compliance with the lead law, Defendant engaged in unfair and deceptive acts and practices in commerce in violation of the Consumer Protection Act. 9 V.S.A. § 2453(a).

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

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

**SECOND CAUSE OF ACTION
Consumer Protection Act: AOD violation**

26. The State of Vermont incorporates and realleges paragraphs 1 through 20 above.

27. The Vermont Consumer Protection 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.

28. Defendant violated the terms and conditions of the March 31, 2014 AOD by failing to comply with Vermont's lead law for at least two of the Properties, as described above.

29. Defendant's violation of his AOD also constitutes an unfair and deceptive act and practice in commerce under the Consumer Protection Act subject to a civil penalty of up to \$10,000.00 per violation. 9 V.S.A. § 2458(b)(1).

**THIRD CAUSE OF ACTION
Failure to perform essential maintenance practices**

30. The State of Vermont incorporates and realleges paragraphs 1 through 20 above.

31. 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 VDH 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).

32. 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).

33. Owners must "remove all visible paint chips from the ground on the property." 18 V.S.A. § 1759(a)(5).

34. Owners must also provide a copy of the EMP statement to all tenants along with written materials such as the EPA's pamphlet entitled "Protect Your Family From Lead in Your Home." 18 V.S.A. § 1759(b)(3) & (4).

35. Further, owners must 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).

36. Defendant violated Vermont's Lead Law, 18 V.S.A. Chapter 38, by:

- a. Failing to stabilize deteriorated paint at 40-42 Colchester Avenue and 41 South Willard Street during 2014;
- b. Failing to remove paint chips from the ground at 40-42 Colchester Avenue;
- c. Failing to install window well inserts or protect the window linings at 41 South Willard Street; and
- d. Failing to provide a copy of the EPA pamphlet to tenants at 41 South Willard Street.

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

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

FOURTH CAUSE OF ACTION
Consumer Protection Act: noncompliant rental housing

39. The State of Vermont incorporates and realleges paragraphs 1 through 20 above.

40. The Vermont Consumer Protection 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.

41. By renting to tenants, and by offering for rent, the Properties when they were not in compliance with the lead law, Defendant engaged in unfair acts and practices in commerce in violation of the Consumer Protection Act, 9 V.S.A. § 2453(a).

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

43. 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 and that the violations are continuing.
2. An Order finding that Defendant violated 9 V.S.A. § 2453(a) and that the violations are continuing.
3. Civil Penalties of not more than \$10,000 for each day the Defendant violated the lead law.

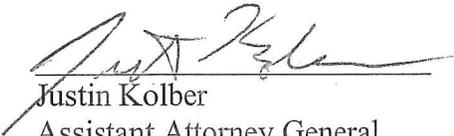
4. Civil Penalties of not more than \$10,000 for each day the Defendant violated the Consumer Protection Act.
5. An Order requiring that Defendant hire, at his expense and with the approval of the Attorney General's Office, an independent contractor who is certified by the Department of Health to perform EMP work to conduct compliance inspections of the interior and exterior of the Properties and all other rental target housing properties owned by Defendant.
6. An Order requiring that Defendant bring the 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 6th day of May, 2015.

Respectfully submitted,

WILLIAM H. SORRELL
ATTORNEY GENERAL

By:


Justin Kolber
Assistant Attorney General
Office of the Attorney General
109 State Street
Montpelier, Vermont 05609
802.828.3186

Office of the
ATTORNEY
GENERAL
109 State Street
Montpelier, VT
05609