

STATE OF VERMONT
WASHINGTON COUNTY, SS.

STATE OF VERMONT,)
Plaintiff,)
)
v.) Washington Superior Court
) Docket No. Wncv
ROBERT GRAY and KIM GRAY,)
Defendants.)

COMPLAINT

NOW COMES the State of Vermont, by and through Vermont Attorney General William H. Sorrell, pursuant to the Vermont Lead Law, 18 V.S.A., Chapter 38; the Vermont Consumer Fraud Act, 9 V.S.A., Chapter 63; and 18 V.S.A. § 130; and hereby makes the following Complaint against Robert Gray and Kim Gray who own a rental property located at 55 Doe Lane in Newbury, Vermont and have (1) failed to file affidavits of essential maintenance practices as required by 18 V.S.A. § 1759(b)¹; (2) failed to take reasonable care to reduce lead hazards at the property; and (3) engaged in deceptive acts and practices in commerce in violation of 9 V.S.A. § 2453(a).

ALLEGATIONS

The Parties

1. Robert Gray and Kim Gray (“Defendants”) are the owners of record of a rental property located at 55 Doe Lane in Newbury, Vermont (hereinafter, “the property”). Defendants reside in the town of Newbury.

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¹ The Vermont Lead Law was amended during the 2008 legislative session in Act 176, Sections 25-37. Unless otherwise noted, the statutory cites in the Allegations and Causes of Action are to the Lead Law that was in effect at the time the Defendant failed to act in accordance with the law. Requests for Relief, and the cites therein, reflect amendments that went into effect on July 1, 2008.

2. The property is pre-1978 “rental target housing” within the meaning of Vermont’s Lead Law, 18 V.S.A. § 1751(19), and is subject to the requirements of 18 V.S.A., Chapter 38. Upon information and belief, the tenants residing at the property do not pay cash rent and instead provide services in exchange for housing; such arrangements are “rental agreements” for purposes of the statutory definition of “rental target housing.” 18 V.S.A. § 1751(19); *see also* 9 V.S.A. § 4451(7) and (8).

3. The Attorney General has the right to appear in any civil action in which the State is interested when, in his judgment, the interests of the State so require. 3 V.S.A. § 157.

4. The Attorney General has an interest in ensuring that landlords comply with Vermont laws regarding the habitability of housing. 9 V.S.A. § 2453(a).

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 rental target housing. 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).

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

8. The Vermont Lead Law also requires that rental target housing owners file affidavits or compliance statements attesting to EMP performance with the Vermont Department of Health and the owners' insurance carrier. 18 V.S.A. § 1759(b).

9. Owners of rental target housing are required by the Vermont Lead Law to "take reasonable care to prevent exposure to, and the creation of, lead hazards." 18 V.S.A. § 1761(a).

10. The Vermont Consumer Fraud Act, 9 V.S.A., Chapter 63, prohibits unfair and deceptive acts and practices, including renting of housing that is noncompliant with the Lead Law.

11. Violations of the Vermont Lead Law are subject to a civil penalty up to \$10,000 per violation, 18 V.S.A. § 130, and in the case of a continuing violation, each day's continuance may be deemed a separate violation. 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).

Facts Relating to Defendants

12. Defendants are the owners of the property located at 55 Doe Lane in Newbury, Vermont which they have in the past and continue presently to rent and offer for rent. Upon information and belief, Defendants presently offer the property for use by workers as a part of pay for services.

13. The Vermont Department of Health has been in contact with Defendants since the fall of 2006 concerning their failure to perform EMPs at the property and other lead risks at the property.

14. The Vermont Department of Health drafted an Assurance of Discontinuance that it proposed to Defendants in November 2006 (the "2006 Assurance of Discontinuance").

15. The 2006 Assurance of Discontinuance addressed bringing the property into compliance with the Vermont Lead Law and further inspection by the Department of Health.

16. Along with the 2006 Assurance of Discontinuance, the Vermont Department of Health created a Work Plan, which specified the work required to bring the property into compliance with the Vermont Lead Law. The Work Plan required Defendants to ensure the stabilization of deteriorated paint on the interior and exterior the property, cleaning of the property, and coverage of soil around the property's exterior pathway, three drip lines, and near the outside herb patch. *See* Work Plan (Attachment A).

17. The Work Plan was provided to Defendants along with the 2006 Assurance of Discontinuance in November 2006.

18. Defendants did not sign the 2006 Assurance of Discontinuance and did not perform the tasks required by the Vermont Department of Health as specified in the Work Plan.

19. Due to the property remaining in violation of the Lead Law, in September 2007 the Vermont Department of Health instructed Defendants to not re-rent the property to new tenants.

20. Since November 2006, Defendants have rented the property or offered the property for rent for cash or in exchange for services. In late March 2008, a second Assurance of Discontinuance requiring EMP performance and compliance with the Work Plan was proposed to Defendants by the Vermont Department of Health, but Defendants again refused to accept its terms.

21. Since at least November 2006, Defendants have failed to submit EMP affidavits and have failed to comply with the Work Plan and meet the deadlines established by the Vermont Department of Health.

22. The Vermont Department of Health has no evidence to demonstrate that Defendants maintained the property in accordance with Vermont's Lead Law during the past three years.

23. The Vermont Department of Health has no evidence to demonstrate that Defendants performed EMPs on the property during the past three years.

24. The Vermont Department of Health has no evidence to demonstrate that Defendants filed any affidavits or a compliance statement attesting to EMP performance with their insurance carrier during the past three years.

FIRST CAUSE OF ACTION – Failure to perform essential maintenance practices

25. The Lead Law requires that EMPs specified in 18 V.S.A. § 1759 be performed at all rental target housing and that affidavits or compliance statements attesting to EMP performance be filed with the Vermont Department of Health and the property owner's liability insurance carrier. 18 V.S.A. § 1759.

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

- a. Failing to perform EMPs at the property for the last three years;
- b. Failing to file with the Department of Health affidavits or a compliance statement attesting to EMP performance for the property during any of the last three years; and
- c. Failing to file with their liability insurance carrier affidavits attesting to EMP performance for the property for the last three years.

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

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

SECOND CAUSE OF ACTION – Duty of Reasonable Care

29. The Lead Law requires owners of rental target housing to “take reasonable care to prevent exposure to, and the creation of, lead hazards.” 18 V.S.A. § 1761.

30. Defendants violated Vermont's Lead Law, 18 V.S.A. Chapter 38, by failing to take reasonable care to prevent exposure to lead hazards through performance of the tasks identified in the Work Plan (Attachment A) created by the Vermont Department of Health.

31. 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).

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

THIRD CAUSE OF ACTION – Consumer Fraud Act

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

34. By renting to tenants, and by offering for rent, the property that was not in compliance with the Lead Law, Defendants engaged in deceptive acts and practices in commerce in violation of the Consumer Fraud Act, 9 V.S.A. § 2453(a), in that they misrepresented a material condition of the rentals.

35. By renting to tenants, and by offering for rent, the property that was not in compliance with the Lead Law, Defendants engaged in unfair acts and practices in commerce in violation of the Consumer Fraud Act, 9 V.S.A. § 2453(a), in that their actions amounted to *per se* non-compliance with existing law, was oppressive and unscrupulous, and caused substantial and unavoidable injury that was not outweighed by benefits to competition.

36. 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).

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

RELIEF SOUGHT

WHEREFORE, based on the allegations set forth above, the State respectfully asks the Court to award the following relief:

1. An Order finding that Defendants violated 18 V.S.A. § 1759 and 9 V.S.A. § 2453(a) and that the violations are continuing.

2. An Order requiring Defendants: (1) to identify all rental units built prior to 1978 in Vermont in which they have an ownership interest or responsibility for maintenance; (2) to immediately comply with § 1759 as to all units in which they have an ownership interest or responsibility for maintenance unless EMP obligations are specifically excepted in the maintenance contract; (3) to immediately comply with, and complete the tasks set out in, the Work Plan (Attachment A) created by the Vermont Department of Health; and (4) to hire an independent contractor to inspect the property to confirm compliance following the submission of the EMP compliance statement and completion of the Work Plan.

3. Civil penalties of not more than \$10,000.00 for each violation of the Lead Law.

4. Civil penalties of not more than \$10,000.00 for each violation of the Consumer Fraud Act. An Order requiring reimbursement to the State for the reasonable value of its services and its expenses in investigating and prosecuting the action.

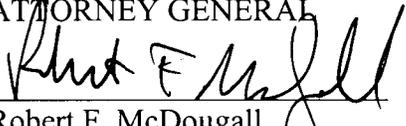
5. Such other relief as the Court may deem just and appropriate.

DATED at Montpelier, Vermont this 13th day of February, 2009.

Respectfully submitted,

WILLIAM H. SORRELL
ATTORNEY GENERAL

By:


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Work Plan

55 Doe Lane, Newbury

55 Doe Lane, Newbury						
INTERIOR	Room	Component	Paint Stabilization Performed by or supervised by an EMP certified individual	Name of worker	Date Completed by	
	Downstairs Entry	stabilize deteriorated stair components stabilize deteriorated entry door components			12/20/2006	
		stabilize deteriorated paint on door and doorway components between the kitchen and the hall			12/20/2006	
	Hallway	install window well inserts			12/20/2006	
	Master bedroom	stabilized all deteriorated paint on window and door components			12/20/2006	
		install window well inserts			12/20/2006	
	Bathroom	stabilized all deteriorated paint on window and door components			12/20/2006	
		install window well inserts			12/20/2006	

Work Plan

Cleaning	Room	Component	Cleaning - Performed by or supervised by an EMP certified individual	Name of Worker	Date Completed by
	Office	stabilize door components and either rehang door or plane the edges offsite so the door opens and closes easily			12/20/2006
		install window well inserts			12/20/2006
	Child Bedroom	stabilize door components and either rehang door or plane the edges offsite so the door opens and closes easily			12/20/2006
		install window well inserts			12/20/2006
	All	All horizontal surfaces			12/20/2006

Work Plan

Exterior	Building	Component	Paint Stabilization Performed by or supervised by an EMP certified individual	Name of Worker	Date Completed by
	Main House with attached garage	All deteriorated components, including the walls, window areas and shutters			5/31/2007
Soil		Pathway "A" "B" and "D" driplines Herb Patch	Coverage Type	Name of Worker	Date Completed by 5/31/2007 5/31/2007 5/31/2007