

STATE OF VERMONT
WASHINGTON COUNTY, SS.

STATE OF VERMONT,)
Plaintiff,)
)
v.) Washington Superior Court
) Docket No. 150-3-09 Wncv
PETER CROSS,)
Defendant.)

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 Peter Cross, (“Defendant”) who owns numerous residential rental properties in Bennington, North Bennington, and Shaftsbury, Vermont, and has failed to perform essential maintenance practices as required by 18 V.S.A. § 1759(b) and has made at least 28 false filings with the State of Vermont representing that the properties are in compliance with the lead law.

ALLEGATIONS

The Parties

1. Defendant Peter Cross (“Defendant”) owns 37 rental properties in Bennington, North Bennington, and Shaftsbury, Vermont (“the properties”) listed in Attachment A.

Attachment A. There are 149 rental units in the properties.

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.

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05609

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.

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

5. The Attorney General has an interest in ensuring that documents and representations made to the State of Vermont and its agencies are accurate and truthful.

Statutory scheme

6. 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.

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

8. 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).

9. 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).

10. 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).

11. 18 V.S.A. § 1759(a)(3) requires 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.”

12. 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).

13. The lead law defines “deteriorated paint” as “any interior or exterior lead-based paint or other coating that is peeling, chipping, chalking, or cracking or any paint or other coating located on an interior or exterior surface or fixture that is otherwise damaged or separated from the substrate.” 18 V.S.A. § 1751(b)(4).

14. Owners of rental target housing must “[i]nstall 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).

15. 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).

16. 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.

17. 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

18. 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.

19. In 2006, the Vermont Department of Health was in contact with Defendant concerning his failing to file Affidavits of Performance of Essential Maintenance Practices¹ (hereinafter "Affidavits of Performance") for the properties.

20. Defendant filed Affidavits of Performance for the properties in the fall of 2006.

21. The Department of Health did not have a record of Defendant's EMP compliance for the properties in the year 2007 until it received copies of the 2007 Affidavits of Performance on October 2, 2008.

22. The Department of Health received copies of Compliance Statements for the year 2008 for the properties on November 10, 2008, certifying that each of the properties was compliant with the lead law.

23. The Department of Health, through the Vermont Attorney General's Office, requested that Defendant permit it to access and inspect the properties in December 2008. Defendant, through counsel, declined to permit the inspection.

24. Defendant filed new EMP compliance statements for the properties on February 2, 2009. The February 2009 filings again represented that the properties were in compliance with the lead law.

¹ Prior to July 1, 2008, owners of rental target housing were required to file an Affidavit of Performance of Essential Maintenance Practices demonstrating EMP compliance annually with the Department of Health and the owner's insurance carrier. Since July 1, 2008, owners of rental target housing are required to file an EMP Compliance Statement (which need not be notarized) annually with the Department of Health, the owner's insurance carrier, and tenants at each unit in the property. 18 V.S.A. § 1759(b)(1)-(3).

25. On January 27, 2009, and February 3, 2009, Department of Health Program Technician Edmond Daudelin visited 14 of the properties and conducted an inspection of the exterior and visible areas of the properties.

26. Daudelin found that all 14 of the visited properties showed deteriorating paint on the exterior surfaces and were not in compliance with the lead law. The 14 properties visited by Daudelin are the properties listed in bold italics on Attachment A.

27. Photographs of the 14 properties are represented in Attachment B.²

28. The photographs of the 14 properties show deteriorated paint on the exterior surfaces of the properties and one property, 450 Main Street in Bennington, where window well inserts were lacking. Attachment B.

29. The 2008 Compliance Statements received by the Department of Health on November 10, 2008, represent that EMPs, including the removal or stabilization of deteriorated paint on exterior surfaces had occurred at the properties.

30. The 2009 Compliance Statements received by the Department of Health on February 2, 2009,³ represent that EMPs, including the removal or stabilization of deteriorated paint on exterior surfaces has occurred at the properties.

FIRST CAUSE OF ACTION – Failure to perform essential maintenance practices

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 Department of Health and the property owner's insurance carrier on an annual

² The photographs of the properties are labeled in Attachment B using the following method: each property is identified at the top of a page by its street address; the side of the building shown in each photo is labeled with a letter with the "A" side being the side facing the street, the other three sides of each property are labeled moving clockwise around the building as "B", "C", and "D" respectively.

³ The 2009 Compliance Statements, though received by the Department of Health on February 2, 2009, show that the EMP work done at the 14 identified non-compliant properties was performed by Defendant between January 2, 2009, and January 22, 2009, prior to the external inspections by Edmond Daudelin.

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 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).

34. The photographs taken by Department of Health Program Technician Edmund Daudelin show that 14 of the properties were not in compliance with the lead law.

Attachment B.

35. The photographs of 14 properties show deteriorated paint visible on the exterior surfaces of the properties in violation of 18 V.S.A. § 1759(a)(3).

36. One of the photographed properties, 450 Main Street in Bennington, shows it to be missing window well inserts in violation of 18 V.S.A. § 1759(a)(1).

37. Defendant violated Vermont’s lead law, 18 V.S.A., Chapter 38, by failing to perform the required EMPs at the 14 properties visited by Daudelin.

38. Each of the noncompliant properties represents a separate violation of the lead law and each day is a separate violation.

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GENERAL
State Street
Montpelier, VT
05609

SECOND CAUSE OF ACTION – Consumer Fraud: noncompliant rental housing

39. 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.

40. 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).

41. Each of the 14 noncompliant properties represents a separate violation of the Consumer Fraud Act and each day is a separate violation.

THIRD CAUSE OF ACTION – Consumer Fraud: false filings with the State

42. The Vermont Consumer Fraud Act, 9 V.S.A., Chapter 63, prohibits unfair and deceptive acts and practices in commerce.

43. On November 10, 2008, Defendant filed EMP compliance statements for the properties with the State of Vermont Department of Health.

44. On February 2, 2009, Defendant filed EMP compliance statements for the properties with the State of Vermont Department of Health.

45. Visual exterior inspections of the properties by the Department of Health in January and February 2009 determined that at least 14 of the properties were not in compliance with the lead law as represented by Defendant in his November 2008 and February 2009 filings.

46. By submitting at least 28 false EMP compliance statements (two per each property) to the State of Vermont Department of Health on November 10, 2008, and February 2, 2009, and by falsely representing that the properties were in compliance with the lead law,

Defendant engaged in unfair and deceptive acts and practices in commerce in violation of the Consumer Fraud Act, 9 V.S.A. § 2453(a).

47. The false EMP compliance statements filed with the State of Vermont Department of Health on November 10, 2008, and February 2, 2009, represent that Defendant would be giving copies of the compliance statement to tenants at each of the properties and to his insurance liability company.

48. By providing at least 28 false EMP compliance statements to his tenants and his insurance liability company which wrongfully represented the properties to be in compliance with the lead law, Defendant engaged in unfair and deceptive acts and practices in commerce in violation of the Consumer Fraud Act, 9 V.S.A. § 2453(a).

49. Each of the false EMP compliance statements which were filed with the State of Vermont Department of Health on November 10, 2008, and February 2, 2009, represents a separate violation of the Consumer Fraud Act and each day represents 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 14 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 14 non-compliant properties and that the violations are continuing.
3. An Order finding that Defendant violated 9 V.S.A. § 2453(a) by submitting at least 28 false EMP compliance statements for the properties to the State of Vermont Department of Health and that the violations are continuing.

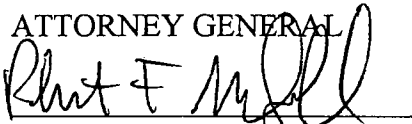
4. Civil Penalties of not more than \$10,000 for each violation of the lead law.
5. Civil Penalties of not more than \$10,000 for each violation of the Consumer Fraud Act.
6. An Order requiring that Defendant hire, at his expense and with the approval of the Attorney General's Office, an independent contractor who is certified by the Department of Health to perform EMP work to conduct compliance inspections of the interior and exterior of the 14 identified non-compliant properties and all other rental target housing properties owned by Defendant.
7. An Order requiring that Defendant bring the identified 14 non-compliant properties and any other non-compliant properties identified by the independent inspection into compliance with the requirements of the lead law
8. An Order requiring reimbursement to the State for the reasonable value of its services and its expenses in investigating and prosecuting this action.
9. Such other relief as the Court may deem just and appropriate.

DATED at Montpelier, Vermont this 27th day of February, 2009.

Respectfully submitted,

WILLIAM H. SORRELL
ATTORNEY GENERAL

By:


Robert F. McDougall
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

ATTACHMENT A

1) 123 Benmont Avenue Bennington, VT	-	5 units
2) 448 Coleville Road Bennington, VT	-	1 unit
3) 319 County Street Bennington, VT	-	1 unit
4) 104 Elm Street Bennington, VT	-	3 units
5) 303-305 Gage Street Bennington, VT	-	2 units
6) 318-320 Gage Street Bennington, VT	-	2 units
7) 137-139 Park Street Bennington, VT	-	3 units
8) 450 Main Street Bennington, VT	-	6 units
9) 629 Main Street Bennington, VT	-	8 units
10) 637 Main Street Bennington, VT	-	3 units
11) 638 Main Street Bennington, VT	-	3 units
12) 639 Main Street Bennington, VT	-	4 units
13) 652 Main Street Bennington, VT	-	5 units
14) 702 Main Street Bennington, VT	-	4 units
15) 704 Main Street Bennington, VT	-	4 units
16) 715-717 Main Street Bennington, VT	-	7 units
17) 801-803 Main Street Bennington, VT	-	2 units
18) 306-308 Silver Street Bennington, VT	-	3 units
19) 311-313 Silver Street Bennington, VT	-	3 units
20) 317 Pleasant Street Bennington, VT	-	2 units
21) 308 Pleasant Street Bennington, VT	-	8 units
22) 324 Pleasant Street Bennington, VT	-	10 units
23) 224 School Street Bennington, VT	-	4 units
24) 319-321 School Street Bennington, VT	-	15 units
25) 323 School Street Bennington, VT	-	6 units
26) 325-327-329 School Street Bennington, VT	-	11 units
27) 307 South Street Bennington, VT	-	2 units
28) 317-319 South Street Bennington, VT	-	2 units
29) 1204 Woodford Road Bennington, VT	-	2 units
30) 17-19 West Street North Bennington, VT	-	2 units
31) 9 Water Street North Bennington, VT	-	2 units
32) 16 Main Street North Bennington, VT	-	3 units
33) 29 Main Street North Bennington, VT	-	2 units
34) 63 Main Street North Bennington, VT	-	1 unit
35) 969 Main Street Shaftsbury, VT	-	3 units
36) 16 Colvin Avenue Shaftsbury, VT	-	2 units
37) 7A Route 67 Shaftsbury, VT	-	3 units

37 Properties – 149 units

Properties listed in bold italics represent the 14 properties visited by Department of Health Program Technician Edmund Daudelin on January 27, 2009 and February 3, 2009.