

4/2

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION
Civil No. 4-89-912**

Velma Lifgren, et al.,

Plaintiffs

v.

Clayton Yuetter, et al.

Defendants.

**PLAINTIFFS' PRETRIAL
STATEMENT**

1. Name, address and occupation of clients:

Velma Lifgren, Ruby Peterson, Florence Anderson, Dennis Erickson, Marie Erickson, Philip Schaffner, Clem Ostertag, Florence Peterson, Esther Helps, Clara Ecklund, Herma Blair, Grace Peterson, Lillian Magnuson, Jeanette Johnson, Esther Faust, Evelyn Pruszka, Ivy Vitous, Colette Ledin, Clinton Ledin, Lillian Bathhurst, and Paul Bathhurst.
The address of all Plaintiffs is:

29545 East Street
Chisago City, MN 55013

All Plaintiffs are retired except Dennis Erickson and Philip Schaffner, both of whom are employed as maintenance workers.

2. Name of Insurance carriers involved: None for Plaintiffs.

3. Names and addresses of all witnesses:

Plaintiffs have not designated their witnesses yet. The final list will include some, but probably not all of the following persons: ;

A. Some of the Plaintiffs (See #1 above).

B. Ted DeZurik
5470 Churchill Street
St. Paul, MN 55126

- C. Linda DeZurik
5470 Churchill Street
St. Paul, MN 55126
- D. Thomas Jones, address unknown
- E. M. Howard Boatman, Chief, Rural Housing
Farmers Homes Administration
410 Farm Credit Building
375 Jackson Street
St. Paul, MN 55101-1853
- F. Gordon C. Anderson
Multiple Family Housing Coordinator
Farmers Homes Administration
410 Farm Credit Building
375 Jackson Street
St. Paul, MN 55101-1853
- G. William M. Slininger
District Director
Farmers Home Administration
3700 West Division, Suite 112
St. Cloud, MN 56301
- H. Arlene Halfon
Senior Loan Specialist
Multi-Family Housing Servicing
and Property Management Division
Farmers Home Administration
United States Department of Agriculture
14th & Independence Avenue, S.W.
Washington, DC

4. Facts of the Case:

Heather Creek Apartments, a 21 unit apartment complex mostly for the elderly, in Chisago City, Minnesota, is owned and operated by defendant Paddington Investors. From 1977 until 1988, the complex operated under defendant Farmers Home Administration's (FmHA) Section 515 Rural Rental Housing Program, a program designed to provide affordable rental housing in rural areas for low and moderate income families and

individuals. In addition, defendant Paddington received, and continues to receive, funding under the Section 8 Rental Assistance Program through the United States Department of Housing and Urban Development (HUD), enabling the tenants of Heather Creek to pay no more than 30 percent of their incomes for rent. Plaintiffs are the current residents of Heather Creek, mostly elderly, all very low income and heavily dependent on Heather Creek as their source of affordable housing.

On July 5, 1988, defendant Paddington applied in writing to defendant **FmHA** for authorization to prepay its **FmHA** mortgage and withdraw from the Section 515 Program. This prepayment request was governed by procedures established under the “Emergency Low Income Housing Preservation Act of 1987,” a statute enacted by Congress, in part, to place restrictions on the rights of **FmHA** project owners, such as Paddington, to prepay their loans and remove projects from the low-income housing inventory. **FmHA** District Director, William Slininger, forwarded this request to the State **FmHA** office, recommending the prepayment request be approved since Paddington intended to retain Section 8 assistance until 1998. At the same time, Slininger mailed a “Notice of Owner’s Intent to Prepay” to each of the plaintiffs informing them that the prepayment will be accepted, but that tenants will have 30 days to present evidence contrary to the basis for **FmHA**’s decision. After reading this notice, plaintiffs took no action since it appeared any objections to the prepayment would be futile as it was already approved.

On August 15, 1988, the **FmHA** state office notified the District Office that the prepayment had been approved, on the condition that a designated restrictive use clause, provided for in the prepayment regulations, be inserted in the Satisfaction of Mortgage so as to bind Paddington. **FmHA** made no attempt to negotiate with Paddington an extension

of low-income use restrictions, in return for financial incentives, as required by the statute. The particular restrictive use clause chosen, known as Exhibit E-2, would require Paddington to agree to ensure in perpetuity that none of the current tenants would be displaced, due to a change in the use of housing or an increase in rent, because of the prepayment. **FmHA** apparently chose this clause as appropriate on the basis of Paddington's promise to retain Section 8 benefits until 1998, overlooking the fact that Paddington had made no promises past that year.

On August 18, 1988, Slininger notified Paddington the prepayment was approved. On August 23, the mortgage balance was paid off. On September 14, Slininger executed a Satisfaction of the **FmHA** mortgage, but neglected to include any restrictive use clause language.

After learning they are entitled to more protections under the law than had been provided in connection with the prepayment, plaintiffs, through their attorneys, wrote to **FmHA** on May 22, 1989. Plaintiffs asserted that **FmHA** and Paddington had failed to comply with the prepayment statute and regulations in several respects, and that the prepayment should be set aside. On August 24, 1989, **FmHA** responded by acknowledging its oversight in not inserting appropriate restrictive use clause language in the Satisfaction but defended its handling of the prepayment in all other respects. Meanwhile, **FmHA** officials approached Paddington seeking their consent to the insertion of Exhibit E-2 language. Paddington declined to so consent, whereupon **FmHA** unilaterally filed an amended Satisfaction of Mortgage with a restrictive use clause. However, instead of the Exhibit E-2 language originally chosen and discussed in conversations with Paddington, **FmHA** now inserted the language in Exhibit E-1 of the regulations. This language provides,

among other things, that Paddington agrees to offer Heather Creek for sale to a qualified nonprofit organization or public agency in 1997 for the purpose of transferring the property to an entity dedicated to preserving its long-term affordability. Paddington asserts that it **has** never agreed to this condition.

The result is that the prepayment was approved with no resort to a provision which could have extended low-income use protections until the year 2009, and no restrictive clauses were properly inserted in the Satisfaction to effectively protect tenants during that time.

5. All claims raised by plaintiffs:

A. By failing to make reasonable efforts to enter into an agreement under which Paddington would make a binding commitment to extend the low-income use of the project 20 years from the date of the agreement, defendants have violated 42 U.S.C. §1472(c)(4)(A) and 5 U.S.C. §§ 702, 706.

B. By failing to either bind Paddington to offer the project for sale to a nonprofit organization or public agency or to properly apply the statutory exceptions to this requirement, together with the restrictive use clauses which must result, defendants have violated 43 U.S.C. § 1472(c)(5)(A) and (G), 7 C.F.R. Part 1965, Subpart B, Exhibit E, as amended at 53 Fed. Reg. 13244 (April 22, 1988), and 55 Fed. Reg. 4985 (Feb. 13, 1990), and 5 U.S. C. §§ 702, 706.

C. By making a decision to permit prepayment before providing the affected residents with any effective notice or opportunity to comment upon or object to the determination, defendant FmHA officials have violated plaintiffs' rights under the Due Process clause of the Fifth and Fourteenth Amendments to the U.S. Constitution, and

7 C.F.R. § 1965.909(d)(2) and Exhibit E of Subpart B, 7 C.F.R. Part 1965, Section IIIc, as amended at 53 Fed. Reg. 13244, 13249 (April 22, 1988).

6. **All known exhibits to be offered at trial:**

- A. letter, FMS Company to Slininger, 7-5-88
- B. **FmHA** memo to State Director, 7-8-88
- C. Notice of Owners' Intent to Prepay, 7-8-88
- D. **FmHA** memo to MFHSPM Division, **7-20-88**
- E. **FmHA** State memo to District Director, 8-15-88
- F. Original Satisfaction, 9-14-89
- G. letter, Bjorhus to Stark, 8-24-89
- H. Corrective Satisfaction, 8-19-89
- I. Arnstead application
- J. Hazel Anderson application
- K. Liebgott application
- L. letter, Slininger to Schroepfer, 7-8-88
- M. letter, Slininger to DeZurik, 8-18-88
- N. letter, Slininger to DeZurik, 6-21-88 with accompanying report form and instructions
- O. letter, Folsom to DeZurik, 6-5-89, with enclosures
- P. **FmHA** Form 2006-6, Directives and Forms Clearance and Approval Sheet, 12-21-89
- Q. Comments to Proposed Rule, 1988
 - 1) letter from California Coalition for Rural Housing, 6-20-88
 - 2) letter from Housing Assistance Council Inc., 6-20-88
 - 3) letter from National Housing Law Project, 6-17-88
- R. **FmHA** training materials: Prepayment Policies & Incentive offers
- S. **FmHA** memo labeled "recollections for discussion with Norwood"
- T. such other exhibits as plaintiffs may obtain

7. **Amendments to the pleadings:**

Plaintiffs cannot tell if amendments to the complaint will be necessary until discovery is complete.

8. Discovery procedures necessary for trial:

(a) list of discovery completed to date:

Plaintiffs have submitted document requests to private and federal defendants and received responses. Plaintiffs have also submitted two rounds of interrogatories to defendants and received responses. Federal defendants have submitted admission requests to private defendants and received responses. Federal defendants have also submitted document requests and interrogatories to both plaintiffs and private defendants and received responses.

(b) list of discovery to be completed:

Plaintiffs anticipate one more round of interrogatories and document requests to all defendants. Depending upon responses received, several depositions may perhaps be necessary.

(c) date when all discovery will be completed:

January 1, 1991.

9. Estimated trial time: two days.

Dated: Aug. 3, 1990

MID-MINNESOTA LEG&ASSISTANCE, INC.

By: Timothy L. Thompson

Virginia Stark
Attorney ID: No. 178433
Route 5, Box 21
Cambridge, MN 55008
(612) 427-4613

Timothy L. Thompson
Attorney ID No. 109447
222 Grain Exchange Building
323 Fourth Avenue South
Minneapolis, MN 55415
(612) 332-1441

Attorneys for Plaintiffs