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Housing - Virginia Attacks Blockbusting

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RECENT LEGISLATION

Housing—VIRGINIA ATTACKS BLOCKBUSTING—VA. CODE ANN. § 36-89 (Cum. Supp. 1972).

Discrimination in housing along racial, religious, ethnic, and class lines has long been a problem in the United States. The most widespread methods of housing discrimination have included preferential advertising, soliciting, and showings in housing sales and rentals. In recent years another type of discriminatory scheme, commonly referred to as blockbusting,¹ has surfaced. Blockbusting has been defined as “the practice of inducing owners of property to sell because of the actual or rumored advent into the neighborhood of a member of a racial, religious or ethnic group.”² Typically, the blockbuster preys upon the fears and prejudices of white property owners by representing that the white neighborhood is “‘going colored,’”³ and that a decline in property values and quality of housing is inevitable.⁴ As a result, property owners often sell their homes for less than the actual value to the blockbuster, who in turn resells to blacks at inflated rates, thus cheating both the white seller and the black purchaser.⁵

To prevent discrimination and the creation of ghettos, to promote fairness in real estate transactions, and to promote community stability and interracial harmony,⁶ blockbusting regulations⁷ have been promulgated

¹ Blockbusting is also called “panic peddling.” *Chicago Real Estate Bd. v. City of Chicago*, 36 Ill.2d 530, 224 N.E.2d 793, 797 (1967).

² *Summer v. Township of Teaneck*, 53 N.J. 548, 251 A.2d 761, 762-63 (1969).

³ *Brown v. State Realty Co.*, 304 F. Supp. 1236, 1237 (N.D. Ga. 1969). The blockbuster may also spread the rumor that other owners in the neighborhood have already sold and even place “sold” signs throughout the neighborhood attempting to show evidence of this. *Id.* at 1238. See also Glassberg, *Legal Control of Blockbusting*, 1972 URBAN L. ANNUAL 145, 145-46 nn. 1 & 2 [hereinafter cited as Glassberg], noting that “the blockbuster may hire black welfare mothers to parade up and down the block, or vandals to throw bricks through windows, in order to foster the impression of a black invasion.”

⁴ *United States v. Mitchell*, 327 F. Supp. 476, 478 (N.D. Ga. 1971).

⁵ *Contract Buyers League v. F & F Investment Co.*, 300 F. Supp. 210, 214 (N.D. Ill. 1969); *Summer v. Township of Teaneck*, 53 N.J. 548, 251 A.2d 761, 763 (1969).

⁶ Glassberg, *supra* note 3, at 148 & nn. 15,16,17.

⁷ Cf. Note, *Blockbusting*, 59 GEO. L. J. 170, 171, 172 & nn. 12, 13, 14 (1970) [hereinafter cited as *Blockbusting*]. Neighborhood associations have also been formed to combat blockbusting attempts. Although these groups have strong persuasive powers within the community, their powers are limited to just that—persuasion and influence. They cannot prevent homeowners from selling nor can they control the actions of realtors.

on federal,⁸ state,⁹ and local¹⁰ levels. When they first appeared, a very real concern emerged as to their constitutionality in light of the first amendment. These statutes have survived the challenge, however, and a major basis for their survival has been the courts' reliance on the United States Supreme Court's ruling that speech in a commercial context is not an absolute right and can be regulated.¹¹ Some courts have shunned this basis when interstate commerce cannot be shown, and have relied instead upon the thirteenth amendment, which "clothed Congress with power to pass all laws necessary and proper for abolishing all badges and incidents of slavery."¹² Considering these decisions, future blockbusting legislation should weather well any constitutional challenge it might face.

In an effort to expand Virginia law to encourage fair dealing in housing, and to prevent this often subtle form of discrimination, a blockbusting provision¹³ was recently enacted within the Virginia Fair Housing Law of 1972.¹⁴ This provision, Va. Code Ann. § 36-89 (Cum. Supp. 1972), is divided into two paragraphs each aimed at a particular discriminatory evil.

⁸ 42 U.S.C. § 3604(e) (1970).

⁹ See, e.g., KAN. STAT. ANN. § 44-1016 (Cum. Supp. 1971); KY. REV. STAT. ANN. § 344.380 (1971); MD. CODE ANN. art. 56, § 230A (1972); MASS. GEN. LAWS ANN. ch. 112, § 87AAA (Cum. Supp. 1972); OHIO REV. CODE ANN. § 4112.02(H)(9) (1971); W. VA. CODE ANN. § 5-11-9 (i)(4) (1971);

¹⁰ ALEXANDRIA, VA., CODE § 17A-4 (1969); Chicago, Ill., Fair Housing Ordinance, Sept. 11, 1963; Teaneck, N.J., Ordinance 1274 (1966).

¹¹ *Breard v. Alexandria*, 341 U.S. 622, 642 (1951); *United States v. Bob Lawrence Realty, Inc.*, 313 F. Supp. 870, 872 (N.D. Ga. 1970); *Chicago Real Estate Bd. v. City of Chicago*, 36 Ill.2d 530, 224 N.E. 2d 793, 807 (1967).

¹² *Jones v. Alfred H. Mayer Co.*, 392 U.S. 409, 439 (1968). This court concluded that it was not irrational to consider discrimination in the sale or rental of housing as a badge of slavery. *Id.* at 440. This in effect furnished a constitutional basis for the advent of fair housing laws. Both *Brown v. State Realty Co.*, 304 F. Supp. 1236, 1239 (N.D. Ga. 1969) and *United States v. Mintzes*, 304 F. Supp. 1305, 1313 (D. Md. 1969) followed the reasoning of *Jones* and held that blockbusting legislation was a rational and reasonable means of effectuating a policy of providing fair housing throughout the United States.

¹³ VA. CODE ANN. § 36-89 (Cum. Supp. 1972):

Attempting to Induce or Discourage Transfer of Property; Soliciting Listing of Dwellings for Sale or Lease—It shall further be an unlawful discriminatory housing practice:

(a) For any person, firm, corporation or association, acting for monetary gain, knowingly to induce or attempt to induce another person to transfer an interest in real property or to discourage another person from purchasing real property, by representations regarding the existing or potential proximity of real property owned, used, or occupied by persons of any particular race, color, religion or national origin.

(b) For any person, firm, corporation or association to solicit or attempt to solicit the listing of dwellings for sale or lease, by door to door solicitation, in person or by telephone, or by mass distribution of circulars, for the purpose of changing the racial composition of the neighborhood.

¹⁴ VA. CODE ANN. §§ 36-86 to -96 (Cum. Supp. 1972). This new housing law was

Paragraph (a), the core of the anti-blockbusting statute, deals with the actual attempt of the blockbuster to discourage or encourage sales of real property.¹⁵ To come under its provisions a person or organization must be acting for monetary gain.¹⁶ This stipulation is similar to the federal requirement that a blockbuster must be acting for profit.¹⁷ "For profit" has been interpreted to mean for the purpose of obtaining financial gain in any form.¹⁸ However, the federal statute does not require that profit or monetary gain actually be realized, although the financial motive is essential.¹⁹ The Virginia statute will probably be interpreted similarly. One should note that not only may the blockbuster fail in his quest for monetary gain, but that he may also fail to persuade his victims to transfer or purchase real property interests, and still be prosecuted; mere attempts are punishable.²⁰

The test of liability is not success in blockbusting, but rather the making of "representations regarding the existing or potential proximity of real

sponsored by Dr. William P. Robinson, Sr., a member of the Virginia House of Delegates and Chairman of the Department of Political Science of Norfolk State College. With the assistance of the Virginia Department of Statutory Research and Drafting, Dr. Robinson's fair housing bill was drafted several times before it reached the House of Delegates. In its final form it closely resembled the Federal Fair Housing Law of 1968, 42 U.S.C. §§ 3601-31 (1970). The blockbusting provision in particular was originally modeled after MD. CODE ANN. art. 49B, § 22A (1966), but underwent significant changes on the floor of the House. See note 16 *infra*. Telephone interview with Dr. William P. Robinson, Sr., Sept. 8, 1972.

¹⁵ VA. CODE ANN. § 36-89 (a) (Cum. Supp. 1972).

¹⁶ *Id.* Originally VA. CODE ANN. § 36-89 (Cum. Supp. 1972) had contained a phrase from MD. CODE ANN. art. 49B, § 22A (1972) prescribing punishment for the blockbuster "whether or not [he was] acting for monetary gain," but it was deleted by Dr. Robinson, who felt that this phrase severely and unconstitutionally restricted one's freedom of speech. Telephone interview with Dr. William P. Robinson, Sr., Sept. 8, 1972. Recently the Maryland statute withstood the test of constitutionality in *State v. Wagner*, —Md.—, 291 A.2d 161 (1972). The court stated that nothing in the statute itself made mere speech unlawful; instead, the statute prohibited "a *course of conduct* manifested in part by the making of proscribed representations. . . . [W]here speech is an integral part of unlawful conduct, it has no constitutional protection." *Id.* at —, 291 A.2d at 166.

¹⁷ 42 U.S.C. § 3604(e) (1970).

¹⁸ *United States v. Mintzes*, 304 F. Supp. 1305, 1311 (D. Md. 1969). The court was quick to stress that "for profit" includes, but is *not* limited to, the purchase of property with hopes of selling it for an increased price. "[The words 'for profit'] were evidently included [in the federal statute] to distinguish and eliminate from [its] operation, . . . statements made in social, political or other contexts, as distinguished from a commercial context. . . ." *Id.* at 1312.

¹⁹ *Brown v. State Realty Co.*, 304 F. Supp. 1236, 1241 (N.D. Ga. 1969). *But see* MD. CODE ANN. art. 56, § 230A (1972). Although the federal statute makes this limitation, a slight majority of state statutes and municipal ordinances, recognizing that persons motivated by political and social beliefs alone may be instrumental in blockbusting, have omitted this requirement from their statutes. Glassberg, *supra* note 3, at 159 nn. 87, 88, 89.

²⁰ *Brown v. State Realty Co.*, 304 F. Supp. 1236, 1241 (N.D. Ga. 1969).

property owned, used or occupied by persons of any particular race, color, religion or national origin."²¹ This type of general language exists in all blockbusting statutes and has been interpreted to include such statements as "going colored,"²² "a changing neighborhood,"²³ or "undesirable element."²⁴ It has been held that the only intent necessary to violate such statutes is the intent to make these representations for the purpose of inducing property transfers.²⁵

Paragraph (b), an ancillary to paragraph (a), deals with the offenders' attempts at soliciting the listings of dwellings for discriminatory purposes.²⁶ This particular area of blockbusting is rarely included in anti-blockbusting regulations. Although some states have passed sweeping anti-solicitation laws applicable to all door-to-door solicitors,²⁷ Virginia has chosen a more limited approach by confining its anti-solicitation restriction to blockbusters. Anti-solicitation laws of other jurisdictions, which have not been limited to those solicitors whose purpose is to change "the racial composition of the neighborhood,"²⁸ have left some areas of solicitation, such as advertising in newspapers, television, and magazines, unaffected.²⁹ These omissions allow such statutes to sufficiently comply with the due process test, that prevents unreasonable restraint on the pursuit of lawful occupation.³⁰ Paragraph (b) also omits reference to advertising, leaving open that channel of solicitation. However, because it also is directed so pointedly at an unlawful occupation, paragraph (b) might not have needed these open channels to survive a due

²¹ VA. CODE ANN. § 36-89(a) (Cum. Supp. 1972). Compare *United States v. Mintzes*, 304 F. Supp. 1305 (D.Md. 1969), holding that such representations need not be false to be actionable under 42 U.S.C. § 3604(e) (1970), which like the Virginia provision omits reference to falsity or truthfulness, with *Abel v. Lomenzo*, 25 App. Div.2d 104, 267 N.Y.S.2d 265, *aff'd mem.*, 18 N.Y.2d 619, N.Y.2d 287, 272 N.Y.S.2d 771 (1966) holding the truth of the representations to be a defense to blockbusting.

²² *Brown v. State Realty Co.*, 304 F. Supp. 1236, 1237 (N.D. Ga. 1969).

²³ *United States v. Mintzes*, 304 F. Supp. 1305, 1310 (D. Md. 1969).

²⁴ *Id.*

²⁵ *Id.* at 1311. In *Mintzes* the defendant contended that the plaintiff must also prove that the defendant had made the alleged representations with the intent to deny persons protected by the statute, a right granted by the statute; the court disagreed. In *Brown v. State Realty Co.*, 304 F. Supp. 1236, 1241 (N. D. Ga. 1969), the court stated that the statute required one to "refrain absolutely from any such representations."

²⁶ VA. CODE ANN. § 36-89(b) (Cum. Supp. 1972).

²⁷ Nicknamed the Green River Ordinances, because the Green River, Wyoming ordinance was the first tested and upheld, these laws vary in their approach. They generally prohibit all solicitation made without prior consent of the homeowner. *Green River v. Fuller Brush Co.*, 65 F.2d 112 (10th Cir. 1933). However, they may also require permits to solicit. *Mogolefsky v. Schoem*, 50 NJ. 588, 236 A.2d 874, 882 (1967).

²⁸ VA. CODE ANN. § 36-89(b) (Cum. Supp. 1972).

²⁹ *Alexandria, La.*, Penal Ordinance 500 quoted in *Breard v. Alexandria*, 341 U.S. 622, 624 (1951); *Green River, Wyo.*, Ordinance 175, November 16, 1931.

³⁰ In *Breard v. Alexandria*, 341 U.S. 622, 631-32 (1951) the court sustained an anti-

process challenge.³¹ Nevertheless, it is a positive step towards discouraging blockbusting in one of its more subtle forms.

Perhaps the most significant features behind Virginia's anti-blockbusting law lie in its method of enforcement and limits of punishment provided in Va. Code Ann. §§ 36-94 and 95 (Cum. Supp. 1972).³² These sections provide direct avenues of remedy without long waiting periods or resort to conciliation before going to court.³³ Individuals may make complaints through the Attorney General without fear of statutory delay before instituting private suit should their complaint to him prove unavailing.³⁴ The one major encumbrance of the section on civil action by the Attorney General³⁵ is

solicitation ordinance on grounds that only door-to-door solicitations were forbidden. Since solicitation through other means was not restricted, the ordinance was not an unreasonable restraint of lawful occupation.

³¹ See also Ch. 493, tit. C, § C1-4.0 [1970] LAWS OF N.Y. 1133-34, which expressly excludes certain methods of solicitation from its prohibitions. *But see* Glassberg, *supra* note 3, at 167. For a general discussion of the New York law see Note, *Blockbusting: A Novel Statutory Approach to an Increasingly Serious Problem*, 7 COLUM. J. L. & Soc. PROB. 538, 558-70 (1971).

³² VA. CODE ANN. § 36-94:

Powers of Attorney General; Action by Private Person for Injunction and Liquidated Damages—(a) The Attorney General has the power for the purposes of this chapter to receive complaints, conduct investigations and enforce by civil injunction, in the name of the Commonwealth, any violation of . . . § 36-89.

(b) Any person adversely affected by use of a discriminatory practice prohibited under § 36-89 . . . may institute an action for injunction and liquidated damages against the person responsible for such discriminatory practice in the court of record having equity jurisdiction in the county or city in which such practice was employed. If the court find that the defendant was responsible for such a practice and that the plaintiff was adversely affected thereby, it shall enjoin the defendant from use of such practice, and in its discretion award the plaintiff up to two hundred fifty dollars liquidated damages.

VA. CODE ANN. § 36-95 (Cum. Supp. 1972):

Civil Action by Attorney General—If at any time after a complaint has been filed, the Attorney General has reasonable cause to believe that appropriate civil action to preserve the status quo or to prevent irreparable harm is advisable, the Attorney General may bring an action necessary to preserve such status quo or to prevent such irreparable harm, including but not limited to an action to obtain a temporary restraining order and for a preliminary injunction. Such action shall be brought in the circuit or corporation court of the county or city where is located the dwelling which is the subject of the alleged discrimination.

³³ Such conciliation procedures, as required in 42 U.S.C. § 3608-11 (1970), were what Dr. Robinson, the Virginia sponsor, hoped to avoid for he considers the federal procedures "a house of horrors." Telephone interview with Dr. William P. Robinson, Sept. 8, 1972. For a discussion of federal enforcement procedures see *Blockbusting*, *supra* note 7, at 176-82.

³⁴ *Contra*, 42 U.S.C. § 3610(d) (1970), where the defendant who files with the Department of Housing and Urban Development faces at least a thirty day statutory delay before instituting suit.

³⁵ VA. CODE ANN. § 36-95 (Cum. Supp. 1972).

the restriction that he may bring an action only after a complaint is filed with him.³⁶

Once enforcement procedures have been initiated, the injured party in a private suit may receive injunctive relief and liquidated damages up to \$250.³⁷ Although injunctive relief attempts to prevent further infringements upon individual rights, it is clearly an inadequate remedy for those who have already sold their homes at depressed prices or bought from the blockbuster at an inflated price. While other statutes have specifically stated that a plaintiff may seek actual damages,³⁸ Virginia's statute is silent, leaving the injured party to resort to equitable remedies.³⁹ The liquidated damages provision does attempt to introduce a financial deterrent to the blockbuster, and offers some benefit to his victim. As a practical matter, however, \$250 is woefully inadequate to deter those blockbusters who reap large pecuniary profits, or to reimburse defrauded home owners for their usually heavy losses.⁴⁰

Viewing its purposes, prohibitions, and penalties, the Virginia statute represents a progressive step for Virginia in the field of civil rights. Its weakest points lie in the leniency of punishment prescribed for the blockbuster and its silence concerning the receipt of actual damages by the victims. Its strongest point lies in its strict anti-solicitation policy which, although urgently needed in all blockbusting statutes, is often not included.

A. W. W.

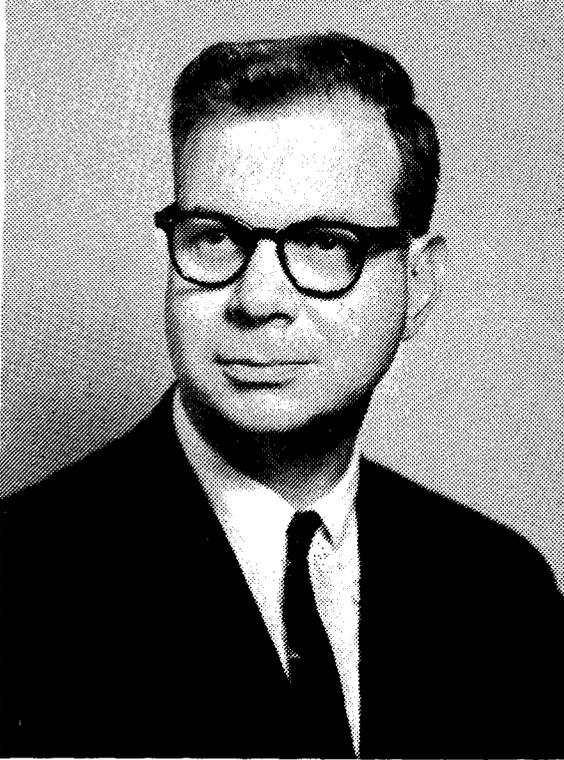
³⁶ This could be a drawback to the prevention of blockbusting which was well known throughout the community but of which no one had filed a complaint. See also *United States v. Mitchell*, 327 F. Supp. 476, 480-83 (N.D. Ga. 1971) and *United States v. Bob Lawrence Realty, Inc.*, 327 F. Supp. 487, 492-93 (N.D. Ga. 1971) discussing federal law. Under 42 U.S.C. § 3613 (1968) the United States Attorney General may bring a civil action "[w]hensoever [he] has reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of resistance to the full enjoyment of any rights granted by [the Fair Housing Law of 1968]." Although the action here requires no prior complaint to the United States Attorney General, it may involve proof problems concerning the definition of "pattern or practice," which are not faced by the Virginia Attorney General.

³⁷ VA. CODE ANN. § 36-94(b) (Cum. Supp. 1972).

³⁸ 42 U. S. C. § 3612 (1970); Ch. 493, tit. C, § CI-8.0 [1970] LAWS OF N.Y. 1134-35.

³⁹ There is a split of authority concerning the plaintiff's right to seek relief through remedies not specifically provided for by the statute. One line of cases follows *Everett v. Harron*, 300 Pa. 123, 110 A.2d 383, 385-87 (1955) reasoning that: "[I]f [one] neglects or refuses to perform [a specific duty imposed upon him by statute, then] he is liable for injury caused by such neglect or refusal" regardless of a damage provision's inclusion in the statute. The other line of thought states that "[w]here [a] statute creates a new right and at the same time provides remedies or penalties for its violation, the courts may not intervene and impose an additional remedy." *Fletcher v. Coney Island, Inc.*, 165 Ohio St. 150, 134 N.E.2d 371, 374 (1956).

⁴⁰ Even the federal statute which allows up to \$1,000 punitive damages has been criticized as being too lenient. *Blockbusting*, *supra* note 7, at 180 n. 81.



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