

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

Vivian Vo and Heaven Le, on behalf
of themselves and all others similarly
situated;

CASE NO: 20-447

Plaintiff,

v.

Class Representation

Asset Campus USA, LLC;

Defendant.

_____ /

CLASS ACTION COMPLAINT

Plaintiffs Vivian Vo and Heaven Le, on their own behalf and on behalf of all others similarly situated, alleges to the best of their knowledge, information and belief, formed after inquiry reasonable under the circumstances, the following:

INTRODUCTION AND NATURE OF THE ACTION

1. This is a putative class action brought through Rule 23 of the Federal Rules of Civil Procedure against a national apartment managing company for claims arising out of its practices in response to the national Covid pandemic. Plaintiffs (Vivan Vo is mother and Heaven Le is her daughter) leased a Tallahassee apartment intending to occupy it through the school year. That plan was interrupted by the national Covid pandemic, which triggered a multitude of orders and directives from all levels of government. These directives caused all Florida colleges and universities – public and private – to cancel on-campus classes in favor of remote instruction. In response to the

social distancing requirements, Heaven Le returned home to complete her school year through remote instruction. But when plaintiffs contacted defendant Asset Campus USA, LLC - which manages the apartment complex in which they leased - they learned that Asset Campus USA, LLC did not view the national pandemic and resulting social distancing requirements as an excuse to not pay the remaining months on the lease, nor did it view the pandemic as a reason to return the plaintiffs' security deposit.

2. Asset Campus USA, LLC's position is untenable. Plaintiffs could not remain in their apartments and comply with social distancing rules. The lease agreement was impossible to perform after the pandemic orders took effect.

3. This lawsuit seeks three things. It seeks, *first*, to recover all funds paid by all class members in the form of lease payments made after the pandemic social distancing orders took effect. *Second*, it seeks a return of all security deposits to all class members. And *third*, it seeks to enjoin defendant from any further collection activities for lease payments that came due after the pandemic social distancing rules took effect. And because defendant's practice applied across the board to all Florida apartment lessees, the claim is brought as a class action.

PARTIES, JURISDICTION AND VENUE

4. Vivian Vo, a resident of Coral Springs, Florida, is the mother of Heaven Le, also of Coral Springs. Together, they entered into a lease agreement with the Leon County Educational Facilities Authority for a 10-month occupancy of a two-bed, single-room apartment at the Southgate Campus Centre at 675 West Jefferson Street, in Tallahassee. Defendant Asset Campus USA LLC ("Asset Campus") is not mentioned in

the lease, which is attached to this Complaint at **Exhibit A**. Asset Campus was hired by the Leon County Educational Facilities Authority to manage this apartment complex.

5. Asset Campus considers itself to be independent from Leon County. In correspondence with plaintiffs, Asset Campus explained that “[t]hough we partner with the university, we are a privately owned dorm and have policies and procedures separate from the university. *We are not issuing refunds or waiving room and board during this time.*”

6. Asset Campus is a Texas corporation with its headquarters located in Houston, Texas. Asset Campus manages “campus living” apartment complexes around the country, including at least 16 in Florida: Southgate, Seminole Trails, Vox Tallahassee, Villa San Michele, Bradford Oaks, Urban Enclave, Stadium Enclave and Heritage Grove, all of which serve students from Florida State University, Tallahassee Community College and Florida Agricultural and Mechanical University; The Pointe at Central, Knights Circle and The Marquee, which serve students from the University of Central Florida; 4th Street Commons, which serves students from Florida International University; Canopy and Varsity House Gainesville, which serves students from the University of Florida; and The Residences at University Village, which serves students from Florida Gulf Coast University.

7. In this Complaint, “Asset Campus” refers to the named defendant and all successor, predecessor, parent, subsidiary and related entities to which these allegations pertain.

8. Jurisdiction in this Court is proper via 28 U.S.C. § 1332(d) in that the amount in controversy exceeds \$5 million, the class is comprised of at least 100 plaintiffs and there is at least “minimal diversity” between the parties because at least one plaintiff class member is diverse from at least one defendant.

9. Venue in this Court is proper in conformity with the lease, which requires that “any litigation involving the lease or [plaintiffs’] occupancy of the leased premises shall be in the county where the leased premises are located.” (**Exhibit A, at 11-12**).

FACTS

10. Heaven Le is a student at Florida State University; in the academic year 2019-2020 she was a freshman.

11. On April 5, 2019, plaintiffs applied to lease one half of a two-bed, single room apartment at the Southgate Campus Centre, 675 West Jefferson Street, Tallahassee. Heaven Le signed the lease as principal signatory; Vivian Vo signed as guarantor. All payments under the lease were made personally by Vivian Vo.

12. The lease duration was 10 months, beginning July 1, 2019, which roughly coincides with the academic calendar year. The monthly lease payment was \$1,150; an additional \$200 was required as a security deposit.

13. Plaintiffs performed all of the required conditions of the lease through March 1, 2020.

14. On March 9, 2020, Florida Governor Ron DeSantis issued Executive Order 20-52, which declared a state of emergency for the entire state of Florida in response to the Covid pandemic.

15. On March 13, 2020, President Donald Trump issued a Proclamation Declaring a National Emergency, also in response to the Covid pandemic.

16. Various federal, state and local authorities have since issued multiple directives that require Florida residents to maintain social distancing as a means to reducing the spread of the Covid virus.

17. By the end of March, all public and private schools and colleges in Florida physically closed. Students were required to transition to remote learning through the end of the spring 2020 semester.

18. Plaintiffs' apartment did not allow for social distancing, which was ordered by the state as a means of reducing the spread of the Covid virus. The beds in the double apartment were well within six feet apart and, given the dimensions of the apartment, it was not possible to reconfigure the beds to achieve a six-foot distance between them.

19. Additionally, the apartment did not have kitchen facilities; instead, food services were offered in an onsite dining room facility which also did not comply with the Governor's Executive Order.

20. Le returned home and finished her semester remotely while living there. During this period, plaintiffs began a correspondence with Asset Campus, both by email and telephone, requesting that it release the \$200 deposit and agree that no further lease payments were required because of the extenuating circumstances caused by the national emergency.

21. Asset Campus refused. It refused to release the \$200 deposit and maintains that all lease payments through the termination of the lease are due and owing, notwithstanding that plaintiffs' apartment is inhabitable, based on various governmental decrees.

CLASS ALLEGATIONS

22. ***Definition of the Class.*** The class, as defined under Federal Rule of Civil Procedure 23(a)(1)-(4) and (b)(1), (b)(2) and/or (b)(3), consists of all persons who, leased one or more apartments in Florida managed by Asset Campus and at any time after March 1, 2020 and who moved out of their apartment(s) because of school closures.

23. ***Size of Class.*** The Class consists of hundreds of persons, rendering joinder of all members of the Class impracticable. The disposition of the claims in a class action will benefit both the parties and the Court.

24. ***Class Representatives Vo and Le.*** Named plaintiffs Vo and Le performed all of the conditions required of them under their lease up to the Covid-related school closures. Vo and Le are members of the Class and will fairly and adequately represent the interests of the Class.

25. ***Common Questions of Law and Fact.*** This action requires a determination of whether Asset Campus's actions violate the protections afforded under the Florida Deceptive and Unfair Trade Practices, Fla. Stat. § 501.201, *et seq.*, and if they violate those duties what is the appropriate monetary and injunctive remedy.

26. ***Separate Suits Would Create Risk of Varying Conduct Requirements.*** The prosecution of separate actions by Class members against Asset Campus would

create a risk of inconsistent or varying adjudications with respect to individual class members that would establish incompatible standards of conduct. Certification is proper under Rule 23(b)(1).

27. *Asset Campus Has Acted on Grounds Generally Applicable to the Class.* Asset Campus has acted on grounds generally applicable to the Class by refusing to release security deposits and demanding lease payments after the Covid-related school closings, rendering declaratory relief appropriate respecting the class and subclass. Certification is proper under Rule 23(b)(2).

28. *Questions of Law and Fact Common to the Class Predominate Over Individual Issues.* The claims of the individual class members are more efficiently adjudicated on a class-wide basis. Any interest that individual members of the class may have in individually controlling the prosecution of separate actions is outweighed by the efficiency of the class action mechanism. This action can be efficiently prosecuted as a class action in this district. Issues as to Asset Campus's conduct in applying standard policies and practices towards all members of the Class predominate over questions, if any, unique to members of the class and subclass. The certification of the class would allow litigation of claims that, in view of the expense of the litigation, may be an insufficient amount to support separate actions.

29. Certification is therefore additionally proper under Rule 23(b)(3).

30. *Class Counsel.* Vo and Le have retained experienced and competent class counsel.

COUNT I

**VIOLATION OF THE FLORIDA DECEPTIVE AND UNFAIR
TRADE PRACTICES ACT, FLA. STAT. § 501.201, *ET SEQ.***

31. Plaintiff realleges the allegations of paragraphs 1 through 30 above as if fully set forth.

32. Count 1 is brought under the Florida Deceptive and Unfair Trade Practices Act, Fla. Stat. § 501.201, *et seq.*

33. Section 501.204 of the Act provides a private cause of action for those harmed by “unconscionable acts or practices, and unfair or deceptive acts in the conduct of any trade or commerce . . .”

34. The Act “shall be construed liberally to promote” the policies of simplifying, clarifying and modernizing the law governing consumer protection and “deceptive and unfair trade practices,” and to “protect the consuming public . . . from those who engage in unfair methods of competition, or unconscionable, deceptive, or unfair acts or practices in the conduct of any trade or commerce.” Fla. Stat. § 501.202.

35. Vo and Le and class members are “consumers” as defined in Fla. Stat. § 501.203 and Asset Campus is not otherwise exempt as it conducts trade or commerce as defined under Florida law.

36. Asset Campus engaged in and continues to engage in a trade or commerce and committed unconscionable acts or practices and used unfair or deceptive acts in the conduct of their trade and/or commerce in the state of Florida. Specifically, Asset Campus’s continued demand for lease payments in circumstances where continued

occupation of the apartments in question are impossible under the Covid social distancing rules violates the Act.

37. Plaintiffs and the class members seek protection under the Act from Asset Campus's unfair practices involving the unjustified imposition of lease payments and retention of security deposits where occupation of the apartments in question are impossible under required social distancing rules.

38. Asset Campus's conduct is unfair and unconscionable in that it is patently unreasonable to demand full payment from the lessees whose apartments it manages during a Covid pandemic.

39. Asset Campus's conduct was unfair and unconscionable as its effect was to demand that lessees violate social distancing rules to maintain occupancy in their apartments.

40. Plaintiffs and class members suffered actual damages as a result of Asset Campus's violation of § 501.204, namely, the improper and unwarranted imposition of charges for lease payments after Covid social distancing rules were effective and the retention of their security deposits.

41. Plaintiffs and class members are entitled to all relief stated in Fla. Stat. § 501.2105 & Fla. Stat. § 501.211, including actual damages, a declaratory judgment that Asset Campus's conduct is unfair and deceptive, within the meaning of the Act, and an injunction preventing further similar practices against lessees.

WHEREFORE, plaintiffs on behalf of themselves and the class, demand the following relief:

- a. The entry of an Order certifying the proposed class and appointing the undersigned attorneys as class counsel;
- b. An injunctive Order requiring that Asset Campus cease imposing lease charges for payments due after the Covid social distancing rules were in effect;
- c. An order requiring Asset Campus to pay back to class members all security deposits;
- d. Interest, attorneys' fees and costs where applicable;

Dated: September 11, 2020

By: /s/ Jessica Kerr

Jessica L. Kerr

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