STATE OF MINNESOTA FOURTH JUDICIAL DISTRICT COURT

COUNTY OF HENNEPIN Case Type: Rent Escrow

Gwendolyn Gilmore,

Plaintiff, File No._____

v. **AFFIDAVIT FOR ESCROW OF RENT**

Centerpointe Apartments,
f/k/a Summerchase Apartments
Halverson and Blaiser Group,
Wolf Protective Agency,

Defendants.

Plaintiff, Gwendolyn Gilmore, states upon oath that:

1. Within the meaning of Minn. Stat. § 504B.001, Subd. 12, she is a Residential Tenant occupying the premises located at

Apt. No. 204
2936 Northway Drive
City of Brooklyn Center
Zip Code 55430
County of Hennepin
State of Minnesota.

2. Within the meaning of Minn. Stat. § 504B.001, Subd. 7, Defendants are her Landlords. Defendants' addresses are

Center Point Apartments
(Summerchase Apartments)
Rental Office
2900 Northway Drive
Brooklyn Center, MN 55430

Halverson and Blaiser Group
7800 Metro Pkwy, #300
Bloomington, MN 55425

Wolf Protective Agency
10732 Hanson Blvd
Coon Rapids, MN 55433

3. As part of her lease, Plaintiff has had, and continues to have, the right to give a license to others to visit her as her

guests. See e.g. State v. Hoyt,304 N.W.2d 884 (Minn. 1981).

4. There had been a possible dispute as to whether or not Plaintiff had given a license to her son, Chavez Gilmore, to visit her as a guest. Therefore, on April 30, 2003, at Plaintiff's request, her attorney sent the letter attached as Exhibit A to Defendant Centerpointe/Summerchase Apartments. (Summerchase recently started doing business as Centerpointe.)

5. Among other things, the letter alerted Summerchase to the fact that Plaintiff had given Chavez a continuing license to visit her. The letter asked Defendants not to interfere with this license and to withdraw, within two weeks, an outstanding threat to do so.

6. Defendants did not extend the courtesy of reply. Regardless, for a period of about five weeks, Chavez's use of the license Plaintiff had given him to visit her was not impeded. However, on or about June 18, 2003, an employee of Defendant Wolf Agency seized and handcuffed Chavez when he was asserting the continuing license. Confronted with a copy of the letter (Ex. A) by Plaintiff, the Wolf employee said he had been given no such information beforehand, and furthermore that he was seizing Chavez based on instructions from Summerchase, which had retained Wolf as its agent. The employee continued to detain Chavez, called the police, and forced him to leave the grounds of Summerchase.

7. Subsequently, Plaintiff's attorney wrote Defendant's main corporate headquarters a certified letter seeking the previously requested relief and the courtesy of a reply. The sum total of Defendants' responses have been a voice-mail message that a reply

would be made and a fax dated 7/2/03, 63 days after the first letter was sent, which stated in pertinent part merely that "I will be making a written response to your letter as soon as I can satisfy my research requirements...." No relief has been afforded or even discussed. Plaintiff's license to her son to visit her remains compromised.

8. Based on the above and on the reasons set forth in the attached copy of tenant's notice to landlord (Ex. A), a notice received by Defendants' agent at the rent-payment office on or about 5/2/03, a "violation" under Minn. Stat. § 504B.001, Subd. 14(2)-(3) exists and remains uncorrected even after 14 days notice.

9. The estimated cost, under $200 (including dealing with the aftermath of Chavez's seizure), to make the necessary corrections to the above violation falls at or below the maximum dollar amount of the jurisdiction of Conciliation Court.

10. The total amount of rent due and owing to the landlord for these premises on this date is $268. (This is a voucher lease. Presumably a July Housing Assistance Payment ("HAP") has been paid, but that is irrelevant because the HAP is not rent. Westminster Corp. v. Anderson, 536 N.W.2d 340 (Minn. Ct. App. 1995).)

11. The purpose of this affidavit and deposit of rent is to request the court to schedule a hearing based on these facts, and grant an order as follows:

[1] Order Defendants to remedy the violation set out in paragraphs 3-7 above by henceforth honoring the license Plaintiff has given, and not revoked, to Chavez Gilmore to visit her.

[2] Enter judgment for retroactive rent abatement sufficiently to compensate Plaintiff for the damages

associated with Chavez's seizure and inability to have him visit.

[3] Award Plaintiff her costs and disbursements and award as appropriate costs and disbursements to Hennepin County pursuant to Minn. Stat. § 563.01 (the in forma pauperis statute).

[4] Award Plaintiff her reasonable attorney fees.

[5] Authorize Plaintiff to collect judgments awarded in the case by deducting them from Plaintiff's rent.

[6] Order any other relief as the Court deems just and proper.

/conformed copy/
Signature of Tenant

Subscribed and sworn to before me
this ____ day of _____ 20__.

_____

The tenant will be represented by the undersigned law firm:

HOME Line, Attys for Tenant/s

Dated:_____

/conformed copy/
By: Paul R. Birnberg
Attorney No. 227572
3455 Bloomington Avenue South
Minneapolis, MN 55407
612/728-5770, ext. 101

ACKNOWLEDGMENT

Plaintiff/s hereby acknowledge/s that sanctions may be imposed pursuant to M.S.A. § 549.211.

Dated: _____

/conformed copy/

[Exhibit A]

April 30, 2003

Brenda Spencer
Manager
Summerchase Apts. Rental Office
2900 Northway Drive
Brooklyn Center, MN 55430

Dear Ms. Spencer:

Please be advised that this office has been retained by Gwen Gilmore with regard to her tenancy at 2936 Northway Drive (#204), Brooklyn Center, MN 55430.

I write with regard to Ms. Gilmore's right to have guests. I enclose a Minnesota Supreme Court case called State v. Hoyt. The Supreme Court, in Hoyt, clearly adopts the holding of Richardson (the case discussed in Hoyt) that a tenant has a right to give his or her visitors a license to visit, and the landlord has no right to deny or interfere with the license. I think the case is best summarized in the second paragraph of Justice Scott's dissent at page 892. You may agree with Scott, but the law is what the other six justices ruled.

The only possible exception to this rule is if the lease has a very unusual clause that allows the landlord to pick and chose the tenant's visitor and guests. Such as clause is probably not enforceable because Minn. Stat. § 504B.161 voids clauses that interfere with the tenant's right to have the unit "fit for the use intended", but if you can identify a pertinent "we can pick your guests for you" clause in the lease, please let me know.

In summary, absent an enforceable lease clause to the contrary, if Ms. Gilmore wants to have a visitor/guest, that guest has a "claim of right" to visit her -- to take a direct route to her door, to socialize with her in her unit, and to socialize with her (not by himself) in the common areas that she can herself visit.

You apparently have given or had your agent Wolf Protective Agency give a "trespass notice" to a son of Ms. Gilmore, Chavez Gilmore (copy of fax of notice attached).

Please take notice that my client has granted, and has neither revoked nor intends to revoke, a license to Chavez to visit her from time to time. This license includes all steps involved in making these visits, including but not limited to walking to the

entry of 2936 Northway Drive, standing in the entryway awaiting entry, walking to #204, entering #204, and walking with my client and socializing with her as she or they use/s the facilities of Summerchase.

Please rescind your apparent intent to have Chavez seized, arrested or the like should he exercise this license. If you do not do so within the next two weeks, my client will take appropriate legal action to enforce this license as needed, likely under the Tenant Remedies or Rent Escrow Acts. Under these acts, she would seek attorney fees as well other relief. In the meantime, I trust that you will not violate the law and interfere with Ms. Gilmore's rights to have guests nor with the guest's claim of right to be there.

I would appreciate it if you would call me upon receipt of this letter. I think we can work together on this and avoid a court appearance in housing court.

I await your reply.

Very truly yours,

/conformed copy/

Paul R. Birnberg
Senior Housing Attorney
direct phone 612/728-5770, ext. 101

enclosures
State v. Hoyt
notice to Chavez Gilmore

cc: G. Gilmore

STATE OF MINNESOTA FOURTH JUDICIAL DISTRICT COURT

COUNTY OF HENNEPIN Case Type: Rent Escrow

Gwendolyn Gilmore,

Plaintiff, File No. HC-030703900

v. **PLAINTIFF'S PRE-TRIAL MEMORANDUM AND LEGAL ARGUMENT**

Centerpointe Apartments,
f/k/a Summerchase Apartments
Halverson and Blaiser Group,
Wolf Protective Agency,

Defendants.

I. THE FACTS.

If this matter is set for trial, Plaintiff Gwen Gilmore is prepared to prove the facts set out below. Most of these facts are already verified in her Affidavit for Escrow of Rent.

1. Ms. Gilmore is a residential tenant at Centerpointe/ Summerchase Apartments.

2. Her lease has no special provisions regarding visitors.

3. She has an adult son named Chavez Gilmore. Chavez lives in Columbia Heights, MN.

4. There had been a possible dispute as to whether or not Plaintiff wanted Chavez to visit her, i.e. whether she had given a license to Chavez to visit her at Summerchase as her guest.

5. Therefore, on April 30, 2003, at Ms. Gilmore's request, I wrote a letter (Exhibit A of the Affidavit for Escrow of Rent) to Summerchase Apartments reiterating Ms. Gilmore's right to have guests of her choosing, putting Summerchase on notice that one of her regular guests was her son Chavez and that she had given him a

license to visit.

6. The letter also asked Summerchase not to interfere with this license and to withdraw, within two weeks, an outstanding threat to do so.

7. Summerchase did not extend the courtesy of a reply.

8. Regardless, for a period of about five weeks, Chavez was allowed to visit Ms. Gilmore without incident.

9. On or about June 18, 2003, Chavez drove to Summerchase (now renamed Centerpointe Apartments) and parked in the visitor parking lot. He got out of the car. Without asking why he was at Summerchase, an employee of Wolf Protective Agency seized and handcuffed Chavez.

10. Chavez attempted to explain that he was at Summerchase to visit his mother. At some point, Ms. Gilmore came downstairs from her apartment and joined the conversation. She and Chavez showed the Wolf guard the letter (Ex. A) and explained again that Chavez was simply asserting his right to visit his own mother.

11. The Wolf guard said he had been given no such information beforehand, and furthermore that he didn't care and that he was seizing Chavez based on instructions from Summerchase, which had retained Wolf as its agent.

12. The guard continued to detain Chavez, called the police, and forced him to leave the grounds of Summerchase. At the guard's request, the police tab-charged Chavez with trespassing.

13. Within the next week or so, I wrote Defendant's main corporate headquarters a certified letter seeking the previously

requested relief and the courtesy of a reply.

14. The sum total of Defendants' responses have been a voice-mail message that a reply would be made and a fax dated 7/2/03, 63 days after the first letter was sent, which stated in pertinent part merely that "I will be making a written response to your letter as soon as I can satisfy my research requirements...." No relief has been afforded or even discussed and no written response has been sent.

15. Ms. Gilmore still cannot have her son visit her, for fear that he will be thrown in jail.

16. Ms. Gilmore filed this case to get some compensation for the weeks she has been unable to visit with her son and to have the court order Defendants to cease and desist their interference with his visiting.

II. DEFENDANTS ARE VIOLATING GWEN GILMORE'S LEASE AND THE COVENANTS OF HABITABILITY BY INTERFERING WITH HER SON'S VISITS.

As discussed above, Defendant has prevented, and continues to prevent, Ms. Gilmore from having her own son visit her in her apartment. Defendant has achieved this by hiring guards to use physical force to remove her son from the grounds. Functionally this is no different than Defendant building a moat around Centerpointe Apartments, erecting a drawbridge that raises and lowers by electronic control, and failing maintain it well enough to allow Chavez Gilmore or his mother to lower the drawbridge and let him in to visit her.

Defendant thus is violating both the covenants of habitability and the lease. Both are thus "violations" within the meaning of

Minn. Stat. § 504B.001, Subd. 14. because "violation" includes violation of Minn. Stat. § 504B.161, the covenants of habitability, and violation of lease. See Minn. Stat. § 504B.001, Subd. 14, (2) and (3) respectively. Both kinds of violations give the court jurisdiction over this rent escrow case provided that the tenant has given the landlord 14 days notice of the problem and an opportunity to cure. Minn. Stat. § 504B.385, Subd. 1(c). Here, by way of Exhibit A to the Affidavit for Escrow of Rent, Plaintiff Gwen Gilmore gave the required notice and Defendant has not cured.

Defendant violates the covenants of habitability, Minn. Stat. § 504B.161, Subd. 1(1) -- that "the premises and all common areas are fit for the use intended by the parties" -- because the parties intended that Ms. Gilmore use the premises as her home. One of the things one does in one's home is to socialize with family and friends. Had Defendant wanted to limit this obvious use, it would have included in the lease a limitation on guests at the time Ms. Gilmore moved in. Whether such a limitation would have survived analysis under Minn. Stat. § 504B.161, is an open question, but since no such limitation was mentioned, Defendant cannot ex post facto add such limitation.

Defendant violates the parties' lease as well. On this point there is case law directly on point. It is well established that the right of quiet enjoyment is a part of every lease as a matter of law. Wilkinson v. Clauson, 21 Minn. 91,___ 12 N.W. 147,148 (1882) ("words 'demise' or 'let' or their equivalent ... imply a covenant ... for quiet enjoyment"); 49 Am.Jur.2d § 602 ("a covenant

of quiet enjoyment is implied in every lease absent some provision in the lease negating such an implied covenant").

"Quiet enjoyment" is a well established legal doctrine. It means a "covenant ... promising that the tenant or grantee shall enjoy the possession and use of the premises without disturbance." BLACK'S LAW DICTIONARY 1248 (6th ed. 1990); accord 49 Am.Jur.2d § 601. The Minnesota case coming closest to defining the term "quiet enjoyment" is Collins v. Lewis, 53 Minn. 78, __, 54 N.W. 1056,1057 (1893), where the court states that "the landlord has interfered with the tenant's possession of the demised premises .... This amounted to a breach of the covenant for quiet enjoyment."

Here, Defendant is interfering with Ms. Gilmore's use of her own apartment as a place to entertain guests, including her own son. Thus Defendant is violating Ms. Gilmore's lease and must be ordered to cease and desist as well as compensate her for its past interference.

Defendant may consider arguing that the courts have not dealt with the specific right to have visitors as part of one's right to quiet enjoyment. Unfortunately for Defendant, the courts have dealt with this precise question.

The leading case in Minnesota is State v. Hoyt, 304 N.W.2d 884 (Minn. 1981). Jane Douglass Hoyt was a close friend of Sharon Siebert. Ms. Siebert suffered a severe brain injury and was moved to a long-term-care nursing home. Management of the home did not like Ms. Hoyt and "trespassed" her -- it warned her not to enter the home again to visit Ms. Siebert. When Ms. Hoyt did, she was

seized by the staff, who called the police, and she was arrested. She was convicted by the trial court of trespassing.

The Minnesota Supreme Court reversed. Even though the record was not clear whether the brain-damaged Ms. Siebert or her guardian had ever specifically invited Ms. Hoyt to visit Ms. Siebert, Hoyt had not been disinvited. This was sufficient to allow her to visit.

The court based its analysis on Commonwealth v. Richardson, 313 Mass. 632, 48 N.E.2d 678 (1943). Hoyt, 304 N.W. at 889-890. In Richardson, the defendant was a Jehovah's Witness ringing doorbells at an apartment complex to spread the word of God (or at least to awaken the tenants and give them the chance to talk). The landlord "trespassed" Richardson just as Centerpointe trespassed Chavez Gilmore. The court held that since at least some of the tenants might want to talk to Richardson, the tenants (or at least a tenant) had impliedly given him a license to visit. The landlord could not revoke this license, which was one of the rights the tenant purchased as part of the lease. "This was a license for the tenants to grant or withhold, one embraced within the easement conferred upon them by the letting, one which subsisted until revoked by the tenant, and one which the tenants could exercise notwithstanding objection of the landlord...." Hoyt, 304 N.W.2d at 889, quoting Richardson, 48 N.E.2d at 683 (emphasis added). The Hoyt court summarized the rule by stating, "A person visiting a nursing home resident with express or impled consent of the resident ... is no less a licensee entitled to use the means of ingress and egress to make such visitation possible than is a

person visiting an apartment building tenant." 304 N.W.2d at 890.

In other words, implied in every lease in Minnesota is the right of the tenant to license visitors to visit. If Ms. Hoyt had the right to visit because Ms. Siebert had not disinvited her, and Richardson had the right to try to visit because some tenant might want him to visit (even though most almost surely did not want to be interrupted by Jehovah's Witnesses), clearly Chavez Gilmore can visit his mother when she specifically invited him and told her landlord, Centerpointe/Summerchase Apartments, that she had invited him.

This rule from Hoyt is no aberration. It is in accord with standard American law. See e.g. 49 Am.Jur.2d § 629[1]; RESTATEMENT (SECOND) OF TORTS § 189 cmt b[2]. Courts consistently apply this rule

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[1]Section 629 states:

[U]nless otherwise limited or restricted by the contract between the landlord and the tenant, third persons who come upon the premises at the express or implied invitation of a tenant ... have the right ... to make reasonable use of the tenant's means of ingress to and egress from the demised premises.... The easement which a tenant has for the purposes of access to the premises extends to the members of the tenant's family and to guests and invitee. [emphasis added]

[2]Section 189 states:

(1) A lessee is privileged to be at reasonable time and in a reasonable manner on those portions of the premises retained in the possession of the lessor which are maintained or held open by him for the common use of his tenants or for the particular use of the lessee.

(2) Persons entering the premises in the right of the tenant have the same privileges as is stated in Subsection (1).

Comment: ... (b) The phrase "in the right of the tenant" is used to denote that a person is privileged to enter the land because of the fact that he is a licensee or an invitee of the lessee of

and require the landlord to allow the tenant to have visitors, even those considered obnoxious by the landlord, absent a very specific no-visitor clause in the lease. Recent cases include *In re Jason Allen,* 733 A.2d 351 (Md.App.1999); *State v. Dixon*, 725 A.2d 920 (Vt.1999); *City of Kent v. Hermann*, 1996 WL 210780 (Ohio App. 11 Dist.); *State of Ohio v. Hites*, 2000 WL 1114809 (Ohio App. 3rd Dist.); *Branish v. NHP Property Management* , 694 A.2d 1106 (Pa.Super.1997); *Souza v. Fall River Housing Authority*, 699 N.E.2d 30 (Mass.App.Ct.1998); *Jones v. Commonwealth,* 443 S.E.2d 189 (Va.App.1994); *Diggs v. Housing Authority of the City of Frederick,* 67 F.Supp.2d 522 (D.Md.1999).

Defendant may argue that it needs to "trespass" unwanted visitors to maintain order. Theoretically, the legislature could decide that landlords should have such a right and pass a law giving them the right to "trespass" "undesirables", but the legislature has not done so. Indeed, Justice Scott, dissenting in Hoyt made exactly this argument, writing:

> Under the majority opinion, only the guardian [the tenant] has authority to prevent disruptive individuals from visiting nursing home patients [tenants]. The nursing home [landlord] has no similar authority.... The operators of nursing homes and similar institutions [apartment complexes] will be powerless to use the trespass statute regardless of an individual's actions.

304 N.W.2d at 892. This was the dissent. The majority in the 6-1 decision did exactly what Scott wished they hadn't and authorized the tenant/nursing-home patient, not the operator/landlord, to decide who can visit her.

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the premises.

Twenty years have passed, and the legislature has left this rule of law in place. If Defendant wishes to have the right to seize and handcuff its tenants' guests, it has two choices: (i) it can lobby the legislature for a change in the law; or (ii) it can write leases giving it the right to pick and choose visitors and see if it manages to fill any of its units with tenants willing to give up the right to invite over their friends and relatives. In the meantime, Defendant is violating the law and Ms. Gilmore's lease. It must cease and desist.

HOME Line, Attys for Plaintiff

Dated:_____

/conformed copy/
By: Paul R. Birnberg
Attorney No. 227572
3455 Bloomington Avenue South
Minneapolis, MN 55407
612/728-5770, ext. 101

Pursuant to Minn. Stat. § 549.211, the undersigned acknowledges that sanctions may be imposed under Minn. Stat. § 549.211.

Dated:_____

/conformed copy/