

IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS
CIVIL DIVISION

STATE OF ARKANSAS, *ex rel.*
LESLIE RUTLEDGE, ATTORNEY GENERAL

PLAINTIFF

v. CASE NO. _____

BIG COUNTRY CHATEAU, LLC;
APEX BIG CHATEAU AR, LLC; and
APEX EQUITY GROUP, LLC

DEFENDANTS

COMPLAINT

The State of Arkansas, *ex rel.* Leslie Rutledge, Attorney General (“the State”),
for its Complaint against Big Country Chateau, LLC; Apex Big Chateau AR, LLC;
and Apex Equity Group, LLC states:

I. INTRODUCTION

1. This is a consumer protection action brought to redress and restrain
violations of the Arkansas Deceptive Trade Practices Act (“ADTPA”), Ark. Code Ann.
§ 4-88-101 *et. seq.*

2. Big Country Chateau, LLC (“Big Country”) is a real estate company that
owns and manages the rental of apartments throughout Pulaski County, Arkansas.

3. Upon information and belief, Big Country is wholly-owned by Apex Big Chateau AR, LLC (“Apex AR”), which is in turn wholly-owned by Apex Equity Group, LLC (“Apex Equity”).

4. Defendants knowingly rented properties that had existing City of Little Rock Housing Code violations that could affect the health and safety of a resident.

5. Knowingly renting properties that have code violations affecting the health and safety of a resident prior to clearing the code violation with the proper authority violates Little Rock Housing Code and the ADTPA.

6. Defendants accepted payments from tenants with the understanding that such monies would be used to pay the complex’s utility bills; however, Defendants failed to pay the water and electric bills for the apartment complex, taking the tenants’ money and leaving them at risk of losing utilities necessary for a habitable residence.

7. Accepting consumer payments for an agreed-upon purpose and failing to use the funds for such purpose is a deceptive, false, and unconscionable business practice and is violative of the ADTPA.

8. The State seeks restitution for affected consumers, an injunction, an order imposing civil penalties, the suspension or forfeiture of franchises, corporate charters, licenses, permits, and authorizations to do business in Arkansas, and other relief against Defendants.

II. PARTIES

9. Plaintiff is the State of Arkansas, *ex rel.* Leslie Rutledge, Attorney General. Attorney General Rutledge is the chief legal officer of the State. Pursuant to Ark. Code Ann. §§ 4-88-104 and 4-88-113, the State may seek civil enforcement of the ADTPA.

10. Defendant Big Country is a dissolved Arkansas limited liability company, which was registered with the Arkansas Secretary of State by Christopher Carl Schultz in 2009.

11. Defendant Apex AR is an Arkansas limited liability company, which was registered with the Arkansas Secretary of State by Laura Bohan in 2019. It currently has a “not current” status with the Secretary of State. Its principal address is 2365 Nostrand Avenue, Brooklyn, New York, and its registered agent is Vcorp Agent Services, Inc., 124 West Capitol Avenue, Suite 1900, Little Rock, Arkansas.

12. Defendant Apex Equity is a New York limited liability company, which was registered with the New York Secretary of State in 2017. Its registered agent is The LLC, 2365 Nostrand Avenue, Brooklyn, New York. It is not registered as a foreign entity with the Arkansas Secretary of State. Apex Equity has conducted business in the state of Arkansas through its subsidiary Apex AR.

III. JURISDICTION

13. This Court has jurisdiction over this matter pursuant to Ark. Code Ann. § 4-88-104 and the common law of the State of Arkansas.

14. This Court has jurisdiction over the Defendants pursuant to Ark. Code Ann. § 16-4-101. At all times relevant to this lawsuit, the Defendants systematically and continuously did business and availed themselves of the privilege of conducting activities within the State of Arkansas. Such activities are sufficient to subject the Defendants to the personal jurisdiction of the court.

15. Venue is proper pursuant to Ark. Code Ann. §§ 4-88-104 and 4-88-112, and the common law of the State of Arkansas.

IV. FACTUAL ALLEGATIONS

16. Big Country manages 151 units and 11 buildings in Pulaski County, Arkansas, located at 6200 Colonel Glenn Road, Little Rock, Arkansas. This property is owned by Apex AR. Big Country then rents residential housing units to consumers.

17. The dwelling units at this apartment complex are connected to central utility meters for water and electricity, meaning that individual tenants do not receive utility bills directly from the utility providers, but instead these tenants include the cost of their utility use in their monthly payments to Defendants.

Housing Code Violations and Failure to Pay Utility Bills

18. Landlords are required under Ark. Code. Ann. § 18-17-502(a) to ensure that both at the time of the rental and throughout the rental period, the rented dwelling unit has “(1) An available source of hot and cold running water; (2) An available source of electricity; (3) A source of potable drinking water; (4) A sanitary sewer system and plumbing and conform to applicable building and housing codes in existence at the time of installation; (5) A functioning roof and building envelope; and

(6) A functioning heating and air conditioning system to the extent the heating and air conditioning system served the premises at the time the landlord and the tenant entered into the lease or rental agreement.”

19. The City of Little Rock has housing code enforcement systems that monitor and regulate properties and structures used for housing. The housing code enforcement department aims to eliminate neighborhood blight and ensure that people live in safe, sanitary, and, most importantly, habitable conditions.

20. Property owners in Little Rock may receive code violations for such things as unkempt lawns and failure to remove large amounts of trash. Owners may also be issued code violations when properties have plumbing, electrical, or structural issues. If a violation poses “an immediate danger to human health, safety, or welfare,” it is considered a “life safety violation.”¹

21. Municipal housing code regulations set a minimum acceptable standard for safety. For example, the Little Rock Municipal Code provides that “all electrical fixtures, receptacles, equipment and wiring shall be maintained in a state of good repair, safe, capable of being used and installed and connected to the source of electric power in accordance with the electrical code.”²

22. Additionally, “[e]very interior floor, wall, and ceiling shall be rodent-proof and, shall be kept in sound condition and good repair, and be properly covered

¹ Little Rock, Ark., CODE OF ORDINANCES ch. 8, art. IX, § 8-574 (2022).

² See Little Rock Municipal Code § 8-405(a).

or finished to allow adequate sanitary conditions, and shall be safe to use and capable of supporting the load which normal use may cause to be placed thereon.”³

23. The Little Rock Municipal Code provides that a dwelling unit shall not be rented or sublet to another for occupancy while the dwelling is not in compliance with the minimum standards set forth by the code.⁴

24. These housing codes and similar ordinances require safe, adequate, and structurally sound housing for renters in Little Rock. Properties failing to meet municipal housing code standards cannot be rented until those code violations are abated.⁵ Furthermore, Little Rock municipal housing codes make clear that the onus of repairing these structures is placed on the owner of the property, not the tenant.

25. Notwithstanding the above requirements, Defendants failed to ensure its dwelling units were safe, adequate, and structurally sound.

26. For example, on July 15, 2022, Central Arkansas Water, which is the water service provider for Big Country tenants, distributed a single-page flyer to the tenants, which stated water services would be indefinitely discontinued after September 1, 2022. The flyer stated that there were no plans to resume services. A copy of this flyer is attached as “Exhibit A.” The flyer came as a surprise to the tenants, who had been making their utility payments directly to Big Country as part

³ See Little Rock Municipal Code § 8-433.

⁴ See Little Rock Municipal Code § 8-401.

⁵ Little Rock, Ark., CODE OF ORDINANCES ch. 8, art. IX, § 8-579 (2022).

of their rental agreement. Big Country was required, in turn, to submit those payments to Central Arkansas Water.

27. On July 27, 2022, Entergy Arkansas, Inc. (“Entergy”), the electric service provider for Big Country Chateau and its tenants, sent a courtesy notice of disconnection to Big Country tenants. The notice stated that payment for electric service for Big Country had not been received and was past due, and that electrical service would be disconnected on September 1, 2022. A copy of the Entergy notice is attached as “Exhibit B.” The notice also came as a surprise to the tenants, because they had been submitting their payments to Big Country, who was required, in turn, to submit those payments to Entergy.

28. Defendants failed to submit utility payments on behalf of their tenants, instead pocketing the tenants’ water and electric service payments for their own ill-gotten profit. Thus, Defendants sought to enrich themselves at the expense of the safety of their tenants.

29. As of the latest invoice dated July 21, 2022, Defendants were so far behind in paying Central Arkansas Water that they owe the water company \$222,931.70. A copy of this invoice is attached as “Exhibit C.”

30. Defendants received shut-off notices from Utility Billing Services, the third-party billing company used by Central Arkansas Water to collect payments, as long ago as December of 2019. Throughout the year 2020, Utility Billing Services sent several past-due notices to Defendants, informing them that while their past-due balance would usually make the account eligible for disconnection, the utility had

suspended shut-offs due to the COVID-19 novel coronavirus pandemic. These shut-off and past-due notices are attached as “Exhibit D.”

31. This failure to pay utility bills not only created a violation of municipal housing code regulations, but it was also a direct violation of the rental agreement between Defendants and the tenants living at Big Country Chateau.

32. Most importantly, the failure to pay utility bills risked the health and safety of the tenants, which would have forced them to live in homes without water or electricity.

33. This and other information obtained by the Attorney General prompted the beginning of the Attorney General’s investigation.

Little Rock Code Enforcement Inspection

34. The City of Little Rock Code Enforcement officials inspected the Big Country Chateau apartment complex on July 27, 2022. Also present were representatives on behalf of the Little Rock Fire Department, the Little Rock Police Department, the Little Rock Mayor’s Office, and the Office of the Arkansas Attorney General.

35. This inspection revealed uninhabitable living conditions in the apartment complex. Outside the buildings, trash, animal feces, and debris were found scattered throughout the lawn and around the pool; doors were missing, with empty doorways boarded up; windows were shattered; electrical boxes were open, with wires tangled and exposed; and the fire extinguisher hooks were all empty.

36. The inside of the apartment units revealed more appalling conditions. For example, law enforcement officials entered Units 163 and 176 to find mold and mildew throughout the apartments. Unit 163 had a hole in the closet that the tenant said leaked when it rained and warped carpet that created a tripping hazard. The tenant in Unit 176 stated that the unit had not had smoke detectors since she moved in. Several tenants have not had air conditioning for days and even weeks, despite the heatwave of temperatures over one hundred degrees Fahrenheit for multiple days on end.

37. Ms. Felicia Peterson, a tenant who has lived at the apartment complex for several years, said that the unit she rents was half-finished when she moved in and has not been completed since. The unit's stove has not been adequately installed, resulting in a gas leak, and the apartment has cockroaches.

38. The Code Enforcement Inspection found 337 life safety violations and 975 other violations in the apartment complex.⁶ Furthermore, Planning and Development found that some units had electrical issues that included "improper electrical receptacles," and "loose or missing conduit connectors," as well as missing or nonfunctioning smoke and carbon monoxide detectors.⁷ The Memorandum containing the Code Enforcement Inspection is attached herein as "Exhibit E."

⁶ Memorandum from Ken Howard, Director of Housing and Neighborhood Programs to The Honorable Frank Scott, Jr., Mayor, Little Rock Ark.; Bruce T. Moore, City Manager, Little Rock, Ark.; and Tom Carpenter, City Attorney, Little Rock, Ark. (Aug. 4, 2022), attached herein as "Exhibit E."

⁷ Exhibit E.

39. Defendants were aware of many of the problems in the apartment complex, as evidenced by a letter dated July 19, 2022, sent by Big Country to all tenants. This letter was provided to the Attorney General's Office by Big Country's manager Mr. Aaron Healey. The letter informs tenants that Big County Management "has been in contact with the corporate office and has made them aware of the water situation." It goes on to say that "corporate has set aside funds" for several items, including repair of continued plumbing issues, resurfacing the parking lot, and "finishing the gate." The letter concludes with a paragraph urging tenants to "pull together and do their part." A copy of this letter is attached as "Exhibit F."

40. These conditions created an uninhabitable environment, and Defendants' continued business practice of leasing of these units despite knowing of their shocking state is deceptive and unconscionable. Defendants gain profits at the expense of their tenants' well-being and safety.

V. VIOLATIONS OF LAW

24. The ADTPA sets forth the State's statutory program prohibiting deceptive and unconscionable trade practices.⁸

25. The business practices of Defendants constitute the sale of "goods" or "services."⁹ The same business practices constitute business, commerce, or trade.¹⁰

⁸ Ark. Code Ann. §§ 4-88-101, *et seq.*

⁹ Ark. Code Ann. § 4-88-102(4) and (7).

¹⁰ Ark. Code Ann. § 4-88-107.

26. It is a violation of the ADTPA to engage in unconscionable, false, or deceptive acts or practices in business, commerce, or trade.¹¹ An “unconscionable act” is one that “affronts the sense of justice, decency, or reasonableness, including acts that violate public policy or a statute.”¹²

27. The Arkansas Residential Landlord-Tenant Act requires residential landlords to provide tenants with a dwelling unit with the amenities described in Ark. Code Ann. § 18-17-502(a): “(1) An available source of hot and cold running water; (2) An available source of electricity; (3) A source of potable drinking water; (4) A sanitary sewer system and plumbing and conform to applicable building and housing codes in existence at the time of installation; (5) A functioning roof and building envelope; and (6) A functioning heating and air conditioning system to the extent the heating and air conditioning system served the premises at the time the landlord and the tenant entered into the lease or rental agreement.” The City of Little Rock prohibits the lease of a rental housing unit that has an existing code violation.¹³ Inasmuch as the code protects the health and safety of tenants, it is unconscionable to lease properties that harbor existing code violations.

¹¹ Ark. Code Ann. § 4-88-107(a)(10).

¹² *Pfizer, Inc.*, 534 F.Supp.2d at 886 (E.D. Ark. 2008) (citing *Baptist Health v. Murphy*, 365 Ark. 115, 226 S.W.3d 800, 811 (2006)).

¹³ Little Rock, Ark., CODE OF ORDINANCES ch. 8, art. IX, § 8-579 (2022).

28. By holding out these units as available for rent, Defendants indicated that these dwelling units met the standards set by both the State of Arkansas and the City of Little Rock.

29. Knowingly renting properties that do not meet these requirements and failing to repair problems throughout the lease term are deceptive and unconscionable trade practices.

30. Defendants have rented and are currently renting properties with existing code violations, and these actions constitute violations of the ADTPA.

31. That Defendants knowingly continue to lease properties with significant housing code violations that pose a danger to the consumers living in these units “affronts the sense of justice, decency, or reasonableness.”

32. Furthermore, it is both deceptive and unconscionable to accept consumer money given for the agreed-upon purpose of paying the rental housing units’ utility bills and to spend that money elsewhere, leaving the consumers without utilities necessary for a habitable residence.

33. Defendants violated the ADTPA when they rented housing units despite housing code violations; when they failed to rectify housing code violations in units that were currently under lease; and when they took consumer funds for the purpose of paying utility bills but failed to pay such bills.

VI. PRAYER FOR RELIEF

34. The Attorney General may bring a civil action to seek to prevent persons from engaging in the use or employment of prohibited practices.¹⁴

35. Likewise, the Attorney General may bring a civil action to seek to restore to any purchaser who has suffered any ascertainable loss by reason of the use or employment of the prohibited practices any moneys or real or personal property which may have been acquired by means of any practices declared to be unlawful, together with other damages sustained.¹⁵

36. The Attorney General may seek an injunction prohibiting any person from engaging in any deceptive or unlawful practice.¹⁶

37. Any person who violates the provisions of the ADTPA may be assessed a civil penalty of up to \$10,000 per violation.¹⁷

38. In addition, any person who violates the provisions of the Arkansas Deceptive Trade Practices Act shall be liable to the Office of the Attorney General for all costs and fees, including but not limited to, expert witness fees and attorney's fees, incurred by the Office of the Attorney General in the prosecution of such actions.¹⁸

¹⁴ Ark. Code Ann. § 4-88-113(a)(1).

¹⁵ Ark. Code Ann. § 4-88-113(a)(2)(A).

¹⁶ Ark. Code Ann. §§ 4-88-104 and 4-88-113(a)(1).

¹⁷ Ark. Code Ann. § 4-88-113(a)(3).

¹⁸ Ark. Code Ann. § 4-88-113(e).

39. A “person” is an individual, organization, group, association, partnership, corporation, or any combination thereof.¹⁹

40. The State demands a trial by jury.

WHEREFORE, the above premises considered, the State of Arkansas, *ex rel.* Leslie Rutledge, Attorney General, respectfully requests that this Court:

- a. To issue such orders, pursuant Ark. Code Ann. §§ 4-88-104 and 4-88-113(a)(1), as may be necessary to prevent the use or employment by the Defendant of the practices described herein which are violations of the Arkansas Deceptive Trade Practices Act;
- b. Issue an order, pursuant to Ark. Code Ann. § 4-88-113(a)(1), requiring Defendants to stop entering into lease agreements with potential tenants prior to abating the code violations with appropriate code enforcement officials;
- c. Issue an order, pursuant to Ark. Code Ann. § 4-88-113(a)(1), requiring Defendants to remit payments to utility companies, as promised by the lease agreements, to ensure their tenants have the necessary utilities, including water and electricity;
- d. Issue an order, pursuant to Ark. Code Ann. § 4-88-113(a)(1), directing that Defendants immediately cease engaging in deceptive and

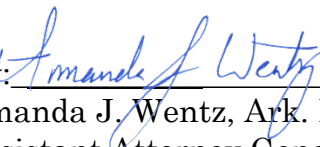
¹⁹ Ark. Code Ann. § 4-88-102(5).

unconscionable business practices that endanger the lives of their tenants.

- e. Impose civil penalties pursuant to Ark. Code Ann. § 4-88-113(b), to be paid to the State by the Defendants in the amount of \$10,000.00 for each violation of the Arkansas Deceptive Trade Practices Act proved at a trial of this matter;
- f. Issue an order, pursuant to Ark. Code Ann. § 4-88-113(e), requiring Defendants to pay the State's costs in this investigation and litigation, including, but not limited to, attorneys' fees and costs; and
- g. For all other just and proper relief to which the State may be entitled.

Respectfully submitted,

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