

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

Selden Apartments v. United States Department of Housing and Urban Development

54 U.S.L.W. 2494 (6th Cir. 1986) · No. No. 85-1048 · Decided March 7, 1986

SUMMARY

The Sixth Circuit affirmed the dismissal of Selden Apartment Associates' claims under 42 U.S.C. §§ 1981 and 1982 on sovereign-immunity grounds and upheld a jury verdict for HUD under the Fair Housing Act. The court held that HUD's statutory "sue and be sued" provisions did not waive sovereign immunity for damages claims based on alleged racial discrimination, and that any dismissal error was harmless because the claims relied on the same proof. The court also upheld the jury instructions and the exclusion of evidence concerning the purchaser's subsequent performance and other HUD sales.

CASE DETAILS

COURT	United States Court of Appeals for the Sixth Circuit
WRITING FOR THE COURT	Contie, Circuit Judge; Milburn, Circuit Judge; Celebrezze, Senior Circuit Judge
JURISDICTION	Federal
DECIDED	March 7, 1986
DOCKET	No. 85-1048
DISPOSITION	affirmed
PROCEDURAL POSTURE	Selden Apartments appealed the dismissal on sovereign-immunity grounds of its claims under 42 U.S.C. §§ 1981 and 1982 and appealed the jury verdict for HUD on its Fair Housing Act claim. The Sixth Circuit affirmed.
STANDARD OF REVIEW	The court reviewed the sovereign-immunity jurisdictional ruling de novo in substance, applied harmless-error review under Federal Rule of Civil Procedure 61 to the asserted dismissal error, reviewed jury instructions for adequacy in light of the governing legal standards, and reviewed evidentiary rulings for abuse of discretion.
PRECEDENTIAL VALUE	Published federal appellate opinion; binding precedent within the Sixth Circuit subject to later modification or overruling.

PARTIES

Selden Apartments v. United States Department of Housing and Urban Development

TOPICS

sovereign immunity

civil rights

burden of proof

evidence

appellate procedure

PRACTICE AREAS

Sovereign immunity

Fair housing and civil rights

Federal administrative law

Evidence

Appellate procedure

QUESTIONS PRESENTED

1. Whether HUD's statutory sue-and-be-sued provisions waived sovereign immunity for Selden's damages claims under 42 U.S.C. §§ 1981 and 1982.
2. Whether any error in dismissing the §§ 1981 and 1982 claims required reversal when the claims relied on the same proof as the Fair Housing Act claim and the jury found for HUD.
3. Whether the district court adequately instructed the jury on the McDonnell Douglas and Burdine burden-shifting framework and the ultimate issue of intentional discrimination.
4. Whether the district court abused its discretion by excluding evidence of Ye Olde Realty's post-sale management performance and evidence concerning HUD sales under its Minority Business Enterprise Program.

HOLDINGS

1. The sue-and-be-sued provisions in 12 U.S.C. § 1702 and 42 U.S.C. § 1404a do not waive HUD's sovereign immunity for civil-rights damages claims based on alleged racial discrimination rather than violations arising from HUD's commercial housing transactions.
2. Even assuming the district court improperly dismissed the §§ 1981 and 1982 claims, reversal was not required because Selden suffered no prejudice.
3. The district court adequately instructed the jury by presenting the ultimate factual issue of whether HUD intentionally discriminated against Selden.
4. The district court did not abuse its discretion by excluding either category of evidence because neither was relevant to whether HUD intentionally discriminated when it evaluated the bids and awarded the sale.

KEY QUOTATIONS

"The United States, as sovereign, is immune from suit save as it consents to be sued ... and the terms of its consent to be sued in any court define that court's jurisdiction to entertain the suit." (¶ 13)

"A waiver of sovereign immunity "cannot be implied but must be unequivocally expressed."" (¶ 13)

“Baker is the only decision which has held the waiver provisions of the Housing Acts waive sovereign immunity with respect to civil rights damages actions, and we believe that decision is incorrect.” (¶ 22)

“At this stage, the McDonnell-Burdine presumption “drops from the case,” and “the factual inquiry proceeds to a new level of specificity.”” (¶ 36)

“Having found all of Selden's claims to be unpersuasive, we accordingly AFFIRM the judgment of the district court.” (¶ 49)

FACTUAL BACKGROUND

HUD offered the Selden Court Apartments for sale under a Section 8 housing-assistance program and evaluated purchase proposals using twenty-two stated criteria. Selden, a partnership organized by Black individuals, offered a higher purchase price than Ye Olde Realty, a white-owned company, but received a lower evaluation score because of comparative experience, management, tenant-services, community-involvement, and financial-strength factors. HUD awarded the property to Ye Olde Realty, after which Selden alleged that HUD had discriminated against it on the basis of race.

PROCEDURAL HISTORY

Selden challenged HUD's award of the Selden Court Apartments to Ye Olde Realty, alleging racial discrimination in HUD's bid evaluation and selection process. The district court dismissed the §§ 1981 and 1982 damages claims for lack of jurisdiction based on sovereign immunity, denied or excluded several items of proffered evidence, and submitted the Fair Housing Act claim to a jury. The jury returned a verdict for HUD, and Selden appealed.

DISPOSITION

affirmed

CASES CITED

- McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973)
- Texas Department of Community Affairs v. Burdine, 450 U.S. 248 (1981)
- United States Postal Service Board of Governors v. Aikens, 460 U.S. 711 (1983)
- FHA v. Burr, 309 U.S. 242 (1940)
- United States v. Sherwood, 312 U.S. 584 (1941)
- United States v. King, 395 U.S. 1 (1969)
- Soriano v. United States, 352 U.S. 270 (1957)
- Baker v. F & F Investment Co., 489 F.2d 829 (7th Cir. 1973)
- United States v. Yonkers Board of Education, 594 F. Supp. 466 (S.D.N.Y. 1984)
- Little Earth of United Tribes v. HUD, 584 F. Supp. 1292 (D. Minn. 1983)
- Abrams v. Hills, 547 F.2d 1062 (9th Cir. 1976)
- Industrial Indemnity, Inc. v. Landrieu, 615 F.2d 644 (5th Cir. 1980)

- S.S. Silberblatt, Inc. v. East Harlem Pilot Block, 608 F.2d 28 (2d Cir. 1979)
- Bor-Son Building Corp. v. Heller, 572 F.2d 174 (8th Cir. 1978)
- United States v. Adams, 634 F.2d 1261 (10th Cir. 1980)
- Land v. Dollar, 330 U.S. 731 (1947)
- Dugan v. Rank, 372 U.S. 609 (1963)
- Garrett v. City of Hamtramck, 503 F.2d 1236 (6th Cir. 1974)
- Jaimes v. Toledo Metropolitan Housing Authority, 758 F.2d 1086, 1105 n.40 (6th Cir. 1985)
- Lopez v. Arraras, 606 F.2d 347 (1st Cir. 1979)
- Miller v. Apartments & Homes of New Jersey, Inc., 646 F.2d 101 (3d Cir. 1981)
- Geisler v. Folsom, 735 F.2d 991, 997 (6th Cir. 1984)

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