

No. 21-35567

**IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

CHONG and MARILYN YIM, KELLY LYLES, EILEEN, LLC, and
RENTAL HOUSING ASSOCIATION OF WASHINGTON,

Plaintiffs-Appellants,

v.

CITY OF SEATTLE,

Defendant-Appellee.

On Appeal from the United States District Court for the
Western District of Washington, Case No. 2:18-cv-00736-JCC
Honorable John C. Coughenour, District Judge

**BRIEF OF GRE DOWNTOWNER LLC AS *AMICUS CURIAE*
IN SUPPORT OF APPELLANTS' REQUEST FOR
REVERSAL**

Jill D. Bowman
STOEL RIVES LLP
600 University St., Ste. 3600
Seattle, WA 98101
(206) 624-0900
jill.bowman@stoel.com

Attorneys for *Amicus Curiae*
GRE Downtowner LLC

CORPORATE DISCLOSURE STATEMENT

Amicus curiae GRE Downtowner LLC is a Washington limited liability company. Its members are GRE Downtowner Manager LLC, Stratford Downtowner Investors Limited Partnership, and Stratford SLP, Inc.

GRE Downtowner Manager LLC is a Washington limited liability company whose members are individuals affiliated with Goodman Real Estate, Inc., a privately held real estate investment company. Stratford Downtowner Investors Limited Partnership is a Massachusetts limited partnership and Stratford SLP, Inc. is a Delaware corporation.

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I. STATEMENT OF INTEREST¹

GRE Downtowner LLC (GRE) is the owner and operator of an apartment building located in Seattle, Washington. As such, its actions are constrained by the provisions of Seattle's Fair Chance Housing Ordinance, Seattle, Wash., Mun. Code (SMC) ch. 14.09 (Ordinance). GRE offers this amicus brief to describe its experiences before and after the Ordinance went into effect in February 2018.

II. ARGUMENT

Amicus curiae GRE appreciates the opportunity to submit an amicus brief in this matter and to share information with the Court about GRE's experience owning and operating a federally assisted housing project in downtown Seattle for the last eight years. As detailed below, its experience for the two years immediately after the Ordinance went into effect was drastically different than its experience during the prior years.²

¹ Pursuant to Federal Rule of Appellate Procedure 29(a)(2), *amicus curiae* represents that the parties have consented to the filing of this brief. Pursuant to Federal Rule of Appellate Procedure 29(a)(4)(E), *amicus curiae* states that no party or party's counsel has authored this brief, in whole or in part, or contributed money that was intended to fund preparing or submitting the brief, and no person other than *amicus curiae* contributed money that was intended to fund preparing or submitting the brief.

² A moratorium on residential evictions went into effect in Seattle in May 2020 due to the COVID-19 pandemic. GRE is limiting its discussion of its post-Ordinance
(continued . . .)

A. Development of the Addison

The Addison on Fourth (the Addison) is an apartment building located in Seattle's Chinatown-International District. Built in 1911 as a hotel, the building was closed in the early 1960s and then reopened in 1969 as housing for low-income residents. In 2012, GRE purchased the property for \$12 million. It invested \$27 million more in major renovations to convert the property to 254 apartment homes,³ artist lofts, and musician studios. GRE's goal with the renovations was to maintain the historic character of the building, while bringing the systems and finishes up to current code and standards.⁴

Although the acquisition and renovations were financed primarily with tax exempt bonds issued by the Washington State Housing Finance Commission, the project was federally subsidized. Provided the project continues to comply with certain requirements of the Internal Revenue Code, interest on the bonds is expected to remain exempt from federal income tax. The requirements include limits on the income of apartment residents and limits on the amount of rent that can be charged for an apartment.

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experience to the two years following the Ordinance's February 2018 effective date so that any effects of the moratorium do not affect the comparisons.

³ Twenty-five of the apartment homes are reserved for tenants with disabilities.

⁴ The renovation project qualified for federal historic and solar energy tax credits.

Compliance with substantially identical restrictions on income levels and maximum rent amounts allowed the project also to qualify for federal low-income housing tax credits. The Addison provided housing for Seattle residents earning up to 60 percent of the area's median income (in 2020, that was \$45,600 for one person). In 2020, the monthly rent for a studio apartment was capped at \$1,162, while the maximum monthly rent for a one-bedroom unit was \$1,245. The income and rent limits were tied (and remain tied) to the Area Median Income calculations set by the U.S. Department of Housing and Urban Development (HUD) for the Seattle-Bellevue, WA HUD Metro Fair Market Rent Area. Rental payments for many of the apartments were subsidized with federal Housing Choice Vouchers (formerly Section 8) and other rental assistance programs.

When the renovations were completed, the Addison re-opened in November 2013, under the management of American Management Services Northwest LLC (American), a third-party manager. American served as manager of the property until mid-May 2019, when GRE Management LLC (GRE Management) took over.⁵ GRE Management is affiliated with Goodman Real Estate, Inc., a privately

⁵ When GRE bought the property, the building was called The Downtowner. GRE renamed it The Addison on Fourth. During the renovations, GRE's management team worked closely with tenants to keep as many of them in place as possible. (continued . . .)

held real estate investment company that specializes in multifamily, retail and commercial real estate and has been headquartered in Seattle for more than 30 years. The goal of the Addison's owner and management teams always has been to provide safe, clean, comfortable, stable, and affordable housing for the Addison's residents.

During the first years after the Addison's reopening, that goal was met. New and long-term residents were happy with the renovations and respectful of the rules for occupancy. The project was economically viable and a going concern.

B. Effects of the Ordinance

Six months into 2018, there was a noticeable change. Uncertain whether the Ordinance, which went into effect in February 2018, applied to the Addison at all or in part,⁶ management elected to abide by the new prohibition against obtaining criminal background information for existing and prospective new tenants. Before that change in procedure, to determine an individual's eligibility to become a

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The building officially re-opened in November 2013 when the City issued a new Certificate of Occupancy.

⁶ The Ordinance excludes "adverse action[s] taken by landlords of federally assisted housing subject to federal regulations that require denial of tenancy," SMC § 14.09.115B, but does not define the term "federally assisted housing." *See id.*; *see also* SMC § 14.09.010. It also does not indicate whether a Seattle landlord may rely on the definitions in 42 U.S.C. 13664(a)(2) or 24 C.F.R. § 5.100.

tenant, management had in place an application process that included a criminal background check by a reporting agency.⁷ If the applicant had a history of criminal convictions, the agency would look at the type of crime and length of time since the crime was committed and determine whether the applicant satisfied pre-established criteria (which were tied to an assessment as to whether the criminal conduct indicated a demonstrable risk to resident safety and/or property). Then, without including any underlying information about the criminal history, the reporting agency would notify management whether an applicant was “approved” (i.e., passed the screening process), should be “declined” (did not pass the screening process), or might be “approved with conditions” (such as an increased deposit). The procedure was intended to eliminate bias, but also allowed some protection of the landlord.⁸ With the discontinuation of that procedure, living conditions at the Addison declined precipitously.

⁷ Alternatively, if the applicant was a referral from the Seattle Housing Authority, the applicant was pre-screened by that agency pursuant to a memorandum of understanding between the agency and the Addison’s management. That agreement between the agency and the Addison’s management was discontinued, however, and the agency began screening only for lifetime sex offender registration and conviction of manufacturing or producing methamphetamines on the premises of federally assisted housing.

⁸ *Cf.* U.S. Department of Housing and Urban Development, Office of General Counsel Guidance on Application of Fair Housing Act Standards to the Use of Criminal Records by Providers of Housing and Real Estate-Related Transactions (continued . . .)

During that six-month period and over the next 18 months, the number of 911 calls from the Addison more than doubled. Fights broke out in the lobby of the building; used needles, trash, and feces were left in stairways and hallways; fire alarms were set off repeatedly in the middle of the night. In response, the Addison's management installed cameras in the hallways on every floor and in other public areas, upgraded door hardware, installed a controlled access system for the elevator, gave residents fobs that allowed them access only to their respective floors, and replaced the main lobby door. It hired additional janitors and armed security guards. The new security measures greatly increased operating costs, but the problems continued, and the Addison's annual insurance deductible climbed from \$5,000 to \$100,000.

Building managers started to keep a growing list of individuals banned from the building for starting fights or damaging property. A staff member was

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(April 4, 2016),

https://www.hud.gov/sites/documents/HUD_OGCGUIDAPPFHASTANDCR.PDF (acknowledging that a housing provider's use of criminal history to deny housing to particular prospective tenants may not constitute unlawful intentional discrimination if necessary to achieve a substantial, legitimate, nondiscriminatory interest of the landlord, such as protecting property and the safety of other residents).

assaulted. Employees were afraid to work alone, so they started working in teams. Turnover among employees grew to 400 percent.

In November 2019, a resident who had been living at the Addison for six months stabbed his guest in the chest during an argument. It was only after the resident was arrested that building managers learned the resident had several outstanding arrest warrants. Other residents sold drugs out of their apartments. Over 500 people lived in the Addison over the two-year period of February 2018 through February 2020, but management found out about a resident's criminal past only when the police arrived and arrested someone on the premises.

Evictions tripled in the same two-year period, without solving the problems. While it would seem a simple matter to evict a problem tenant who is endangering others, damaging property, and violating the lease agreement, the process sometimes took several months. Costs associated with a single eviction easily climbed to \$4,000, not including lost rents and the expense of refurbishing a trashed apartment. In just the second of the two years, the Addison had to pursue judicial evictions of tenants in 42 of its apartments. That was more than 16 percent of the apartments in the building. Thirty of the 42 evictions were for behavioral issues: a stabbing; allowing drug dealers to take over the apartment; bringing

trespassers into the building; harassing/assaulting staff; being aggressive with neighbors; damaging the building; and prostitution.

The problems led many longtime residents to move out. “A” is an African American man over 70 years old who worked in housekeeping at T-Mobile Park. A former counselor for homeless veterans, in 2020, he had lived at the Addison for five years and he saw the changes. He said he didn’t know the people who lived on his floor anymore because the turnover was so high. In his view, the “good people” were leaving. Online reviews showed the Addison’s reputation for being a safe, clean, and comfortable place to live suffered greatly. Tenant turnover averaged 50 percent during each of the two years.

It is telling to examine comparative metrics for the periods two years before and two years after the Ordinance went into effect:

- negative social media reviews increased 186 percent;
- average occupancy declined over 5 percent;
- average monthly number of evictions climbed from 1.48 to 3.96 (168 percent);
- average monthly evictions expense per unit climbed from \$1,442 to \$2,983 (107 percent);

- average monthly total security costs climbed from \$2,350 to \$9,581 (308 percent); and
- average monthly non-recurring capital expenditures climbed from \$4,573 to \$15,704 (243 percent).

Over the same four-year period, average monthly rents increased only three percent per year, or about \$30. The project moved from cash flow positive to cash flow negative – a drop of over 400 percent.

The City of Seattle’s refusal to let private landlords screen applicants for criminal history, to ensure that new tenants will not threaten the health, safety, or right to peaceful enjoyment of the community by other tenants and will not threaten physical damage to property, imposed an unduly oppressive and irrational burden on GRE.

III. CONCLUSION

GRE respectfully urges the Court to grant Appellants’ request for reversal of the District Court’s ruling on the parties’ cross motions for summary judgment.

DATED this 4th day of November, 2021.

STOEL RIVES LLP

/s/ Jill D. Bowman

Jill D. Bowman, WSBA # 11754

600 University Street, Ste. 3600

Seattle, WA 98101

(206) 624-0900

jill.bowman@stoel.com

Attorneys for GRE Downtowner LLC

CERTIFICATE OF COMPLIANCE

1. This document complies with the type-volume limitations of Fed. R. App. P. 29(a)(5) and Fed. R. App. P. 32(a)(7)(B) because, excluding the parts of the document listed in Fed. R. App. P. 32(f), this document contains 1,910 words.

2. This document complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because this document has been prepared in a proportionally spaced typeface using Word in 14 font, Times New Roman.

DATED: November 4, 2021.

By: *s/ Jill D. Bowman*
Jill D. Bowman, WSBA No. 11754

CERTIFICATE OF SERVICE AND FILING

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on November 4, 2021.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

STOEL RIVES LLP

By *s/ Jill D. Bowman*

Jill D. Bowman

WSBA No. 11754

jill.bowman@stoel.com