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**I. INTRODUCTION AND STATEMENT OF WHY THIS CASE DOES NOT RAISE A CONSTITUTIONAL QUESTION AND IS NOT OF GREAT GENERAL OR PUBLIC INTEREST.**

This case concerns a landlord's duty under R.C. Chapter 4112 to address the severe racial harassment of one tenant by another. When placed on notice, a landlord has a duty under both Ohio and federal law to take measures to prevent and correct racial harassment that is so severe and pervasive, it affects the tenant's enjoyment of property. Ohio's fair housing laws are substantially similar to Title VIII, the Fair Housing Act of 1968, and virtually every federal court to examine the issue has held that a landlord can be responsible for tenant-on-tenant harassment. The Ninth District Court of Appeals (appellate court), therefore correctly held that landlords have a duty to prevent and correct racial harassment under Ohio law.

While the issue is one of first impression in Ohio, this Court should decline to hear the case for several reasons. The appellate court is the first appeals court in Ohio to address this issue directly. In addition, this case was first dismissed on summary judgment by the Summit County Common Pleas Court (trial court) and is not based on evidence and testimony submitted at a trial. This Court should therefore allow other courts of appeals to consider and refine the issue before asserting jurisdiction, or at the very least allow trial to take place to establish and refine the record before considering the issue.

Secondly, no constitutional issue is presented. Appellants Akron Metropolitan Housing Authority and June Davidson inaccurately assert that the decision of the appellate court requires them to violate the due process rights of their tenants. A landlord is not required by either R.C. Chapter 4112 or the decision below to deny a tenant a hearing before eviction, nor is it required to evict before taking less drastic measures to stop racial harassment and aggression. Therefore, this Court should decline jurisdiction.

## II. STATEMENT OF THE CASE

Appellant Akron Metropolitan Housing Authority (“AMHA”) owns and operates Van Buren Homes, which is a public housing development in Summit County. Appellant June Davidson (“Davidson”) is the property manager of Van Buren Homes and an employee of AMHA. Appellee Fontella Harper (“Ms. Harper”) is an African-American resident of Van Buren Homes and a tenant of AMHA. Fair Housing Advocates Association (“FHAA”) is a Summit County organization, dedicated to ensuring citizens have opportunity to equal and affordable housing.

Ms. Harper and FHAA filed charges of discrimination with Appellee Ohio Civil Rights Commission (“Commission”) against AMHA and Davidson, charging they discriminated against Ms. Harper and her two minor sons on the basis of race. They allege a Caucasian family, the Kaisks, who were their neighbors and co-tenants of AMHA, created a severe and pervasive racially hostile housing environment for them. Ms. Harper and FHAA assert AMHA and Davidson violated R.C. 4112.02(H) because the Harpers repeatedly notified them about the hostile environment; yet, they failed to take any action to remedy the unlawful conduct.

The Commission investigated the charges and determined that there was a sufficient basis to refer the matter to the Attorney General’s Office for prosecution. Ms. Harper and FHAA elected to have the matter heard in a common pleas court instead of administratively under R.C. 4112. See, R.C. 4112.051(A)(2)(a). The election required the Attorney General’s Office to file a complaint on behalf of the Commission in the trial court. Ms. Harper and FHAA intervened in that action as co-plaintiffs with the Commission.

After conducting extensive discovery, the parties filed cross-motions for summary judgment. The key legal dispute between the parties was whether a cause of action exists under

Ohio law when a landlord fails to take steps to eliminate a hostile housing environment. On December 22, 2005, the trial court issued an Order granting AMHA's and Davidson's Motion for Summary Judgment. In doing so, the trial court side-stepped the key issue, namely whether a cause of action for a hostile housing environment is cognizable under R.C. Chapter 4112. Rather, the trial improperly weighed credibility. Instead of construing the facts in the plaintiffs' favor and rendering a judgment as a matter of law, the trial court simply rejected the Harpers' testimony. The court held that even if Ohio law encompasses a claim against a landlord, the plaintiffs had failed to present sufficient evidence to support one.

Ms. Harper, FHAA and the Commission timely appealed that decision. The appellate court reversed. The court held that landlords have a duty to act when one tenant creates a racially hostile living environment for another tenant if the landlord is aware of that harassment. In reaching this decision the appellate court fell squarely in line with a vast majority of federal cases that have had opportunity to consider the issue.

AMHA and Davidson have appealed to this Court.

### **III. STATEMENT OF THE FACTS**

Ms. Harper and her two minor sons have resided at Van Buren Homes since 1991. In 1998, they moved to a different property in Van Buren Homes, 254 Illinois Place. They experienced no racial hostility until August 2001, when Beverly Kaisk, along with her two children, Kimberly Lewis and Keith Kaisk, moved in just two doors down from the Harpers.

In September 2001, Ms. Harper went with her cousin to a baptism. When they returned to Ms. Harper's apartment, Kimberly Lewis got into a confrontation with them. She began swearing at Ms. Harper's relatives, calling them "niggers" and "Black bitches." When Ms. Harper's cousin told Kimberly Lewis to stop, a Caucasian male, believed to be the father of one

of Ms. Kask's children and an unauthorized tenant of the Kask household, entered the fray. This man threatened Ms. Harper's cousin: *"I'm going to cut you from your throat to your ass."* (Emphasis added). He grabbed a butcher knife and brandished it. Knife in hand, he approached them, threatening to kill Ms. Harper and her cousin. The confrontation only ended when the police arrived to separate the families.

Immediately after this incident, Ms. Harper called the rental office of Van Buren Homes. She complained about what had happened. She also reported the details about Kimberly Lewis shouting racial epithets at her and her family. Ms. Harper followed up by submitting a written complaint detailing the dates of the incidents and the physical threats by the Kask family and their guests. AMHA and Davidson did nothing about the racial harassment.

AMHA property managers can initiate a lease cancellation for the violation of any provision in an AMHA lease. The lease agreement for Van Buren Homes contains numerous restrictions on the conduct of the tenants. One of these restrictions is that it is unlawful for tenants or their visitors to disturb their neighbors' peaceful enjoyment of housing accommodations. AMHA and Davidson have the clear legal right to issue a notice of termination when one tenant makes threats of physical harm against another tenant. In fact, AMHA has evicted tenants from Van Buren Homes for making such threats. For example, AMHA evicted a tenant because that tenant's son threatened a co-tenant with a knife. Yet, AMHA took no action against the Kask household for similar conduct.

With no threat of eviction, the Kask family continued its campaign of racial slurs and physical threats during the time that they lived next to the Harpers. Despite the fact that Ms. Harper submitted several written complaints to AHMA through Davidson, about this harassment, AHMA took no action whatsoever.

In her deposition, June Davidson testified she was aware of racial tensions at Van Buren Homes. She testified Ms. Kask put in for a “hardship transfer” in 2002. AMHA approved the transfer request in July of 2002 and placed the Kask family on a transfer waiting list. On August 27, 2002, Ms. Kask submitted a complaint in support her request for a transfer – the reason – problems with “many black residents.” When Ms. Kask dropped off her written complaint, she spoke with Davidson, who took notes about what Ms. Kask told her.

On the same day Ms. Kask submitted the complaint in support of her transfer request, Ms. Harper also submitted a written complaint alleging that Kimberly Lewis was again directing racial slurs at her family. Later, Ms. Harper submitted an additional complaint of racial harassment. However, it was not until October 2002 that AMHA took any action on the complaints. AMHA security officers interviewed Ms. Harper. She complained to them that Kimberly Lewis had called her family “nigger[ers].” She showed them a videotape she had made of Keith Kask threatening to smash Ms. Harper’s video camera with a stick. Despite this evidence, AHMA took no further action.

Shortly before the Kasks moved out of 252 Illinois Place, Ms. Kask screamed at Ms. Harper; “*You Black bitch, I’m moving, and you can’t do anything about it.*” (Emphasis added). Ms. Harper filed another written complaint with AMHA and took it directly to Davidson. Again, AHMA did nothing about the complaint.

Ultimately, the Kask family voluntarily moved out after being charged with allowing unauthorized persons to live in their home. While that resolved the racial harassment, it was not an affirmative action intended to alleviate the pain, humiliation, and suffering the Harpers endured because of the actions of the Kask family.

#### IV. LAW AND ARGUMENT

**Appellee's Proposed Proposition of Law: Under R.C. Chapter 4112, a landlord, who is placed on notice that a tenant is being subjected to severe or pervasive racial harassment, has the obligation to take prompt and remedial corrective action.<sup>1</sup>**

If adopted, the proposition of law advanced by AMHA and Davidson would authorize landlords to remain passive when they become aware that one of their tenants is racially harassing another tenant. This inaction would exist regardless of the severity of the harassment or the landlord's ability to remedy the conduct. The trial court's grant of summary judgment deprived the Harpers of protection against racial aggression and chipped away at Ohio's Anti-Discrimination Laws. In reversing, the appellate court correctly rejected the position advanced by AMHA and Davidson.

**A. The appellate court's ruling does not require public housing landlords to violate the constitutional rights of their tenants.**

The due process claim asserted by AHMA and Davidson is unfounded. Neither Ohio law nor the appellate court's holding requires them to evict their tenants without a hearing. (Appellants' Memorandum, p. 2). The appellate court did not suggest that remedying unlawful harassment mandates eviction without a hearing. As AMHA and Davidson acknowledge, the decision simply requires a landlord to take immediate and appropriate corrective action to end tenant-on-tenant racial harassment. (Appellant's Memorandum, p. 8, citing, Decision and Journal Entry at p. 9).

Nor does applying hostile environment precedent to a public housing provider raise a constitutional claim as AMHA suggests. When a housing provider is aware of a hostile housing environment, the landlord has an affirmative duty to take whatever steps are necessary and in its

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<sup>1</sup> Appellants phrase the Proposition as: Ohio does not, and should not, recognize a hostile housing environment claim under its fair housing law.

power to eliminate that environment. *Miller v. Towne Oaks East Apts.* (E.D. Tex. 1992), 797 F. Supp. 557, 561-2; *Bradley v. Carydale Ents.* (D. Va. 1989), 707 F. Supp. 217, 224. However, courts acknowledge that in determining the steps a landlord is required to take, it is necessary to take into consideration any limitations on that landlord's ability to act. *Reeves v. Carrollsburg Condo. Unit Owners Ass'n.* (D.C.C. 1997), 1997 U.S. Dist. LEXIS 21762 at \*26. Thus, if a hearing is necessary to protect a tenant's due process rights, AMHA may hold one before terminating a lease.

Indeed, AMHA twice noticed the Kask family for such a hearing. The first occurred when AMHA sent them a notice of lease cancellation for allegedly housing a dog in their unit. A hearing was held, but AMHA did not cancel their lease. AMHA issued a second notice of lease termination to the Kask family for unauthorized residents. However, the Kask family voluntarily moved out, so the issue of their lease termination became moot.

As the appellate court noted, the conduct of the Kask family in using racial epithets and physically threatening the Harpers also violated the provisions of their lease. (Decision, pp. 3, 8). AMHA could have sent the Kask family a notice of termination, just as they had done twice before and for far less egregious conduct. There is no valid reason AMHA could not have scheduled a hearing for the Kask family, just as they had done when another tenant's son threatened co-tenants with a knife. AMHA and Davidson do not suggest that eviction violated that tenant's rights. Simply, no constitutional issue is presented for this Court.

Furthermore, eviction is not the only option in dealing with tenants who create a hostile housing environment. This is the most extreme measure. For example, in the employment context, employers have options to address a hostile work environment, short of termination. See, *Fenton v. HiSAN, Inc.* (C.A.6 1999), 174 F.3d 827, 830-831; *Blankenship v. Park Care*

*Ctrs.* (C.A.6 1997), 123 F.3d 868, 870-4; *Fleenor v. Hewitt Soap Co.* (C.A.6 1996), 81 F.3d 48, 50-1, cert. denied, (1996), 519 U.S. 863, 117 S.Ct. 170. As long as the measure taken is “reasonably calculated to end the harassment,” the resolution precludes legal liability. *Minnich v. Cooper Farms* (C.A.6 2002), 39 Fed. Appx. 289, 294.

Applying these principles to housing cases, a landlord, such as AMHA, has options short of eviction, such as moving tenants, conducting training, imposing fines, issuing warnings, or taking other affirmative measures to end the harassment. One helpful comparison is how a landlord reacts to non-racially related complaints and issues. *Bradley*, 707 F. Supp. at 219, 223-4. Therefore, imposing a duty on landlords to prevent and correct harassment in housing does not violate the Due Process Clause.

**B. Though a case of first impression in Ohio, federal courts clearly recognize a claim of racial harassment in housing under federal laws, which are substantially equivalent to R.C. Chapter 4112.**

A vast majority of federal courts have already held that a claim of hostile housing environment is cognizable under the Title VIII, the Fair Housing Act of 1968.<sup>2</sup> Courts that have had opportunity to further determine whether a landlord has a duty to take action to eliminate such an environment have uniformly found that such a duty does exist. See, e.g., *Williams v. Poretsky Mgm't., Inc.* (D. Md. 1996), 955 F. Supp. 490, 496-7; *Bradley v. Carydale Ents.* (D. Va. 1989), 707 F. Supp. 217, 224; *Miller v. Towne Oaks East Apts.* (E.D. Texas 1992), 797 F. Supp. 557, 561. In reversing the trial court, the appellate court fell in line with the federal courts that have held that when a landlord has authority over co-tenants, one of whom is racially harassing the other, the landlord has a duty to take action to end the racially hostile environment.

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<sup>2</sup> After extensive research, the Commission found just one case that rules the opposite. *Lawrence v. Courtyards at Deerwood Assoc.* (S.D. Fla. 2004), 318 F. Supp.2d 1133.

The appellate court correctly noted that normal neighbor-on-neighbor disputes will not establish a cause of action. Rather, as in this case, the harassment must be sufficiently severe or pervasive to alter the victim's living conditions and create an abusive environment. The appellate court ruled that the Ms. Harper's testimony alone provided the basis for a hostile living environment claim sufficient to overcome summary judgment. The evidence in this case includes not only repeated use of racial slurs, but also overt threats of violence towards the victims. Noting these facts, the appellate court correctly ruled that such a severe level of harassment, coupled with a landlord's knowledge of it, triggers a duty by a landlord to take action designed to eliminate the hostile environment.

**C. Ohio's Anti-Discrimination Laws, R.C. Chapter 4112, provide the same protection from racial harassment in housing as in employment; therefore, there is no reason for this Court to accept review of this case.**

In the employment context, the duty to protect employees from harassment by co-employees is well established under Ohio law. *Hampel v. Food Ingredients Specialties, Inc.* (2000), 89 Ohio St.3d 169, 176-7; 2000-Ohio-128. This duty is founded on the statutory provision prohibiting discrimination against any person with respect to terms or conditions of employment. See, R.C. 4112.02(A); *Hampel*, 89 Ohio St.3d at 175-177; *Blankenship v. Park Care Ctrs.* 123 F.3d at 872. A similar provision is found in Ohio's fair housing laws, R.C. 4112.02(H).

The prohibition against discrimination in housing has the same purpose as the law against discrimination in employment, namely "to end bias and prejudice." *Reeves*, 1997 U.S. Dist. LEXIS 21762 at \*20 ("To recognize conduct prohibited in the workplace as also constituting an infringement forbidden in one's housing is amply justified \* \* \*"). As many federal courts have recognized, hostile environment claims under the Title VIII, 42 U.S.C. 3601, et seq., are as valid

and cognizable as they are in employment cases filed under Title VII of the Civil Rights Act, 42 U.S.C. 2000e, et seq. See, e.g., *Dicenso v. Cisneros* (C.A.7 1996), 96 F.3d 1004, 1008; *Honce v. Vigil* (C.A.10 1993), 1 F.3d 1085, 1090; *Neudecker v. Boisclair Corp.* (C.A.8 2003), 351 F.3d 361, 364; *United States v. Koch* (D. Neb. 2004), 352 F. Supp.2d 970; *Smith v. Mission Assocs. Ltd. Ptship.* (D. Kan. 2002), 225 F. Supp.2d 1293; *Williams v. Poretsky Mgm't., Inc.* (D. Md. 1996), 955 F. Supp. 490; *Bradley v. Carydale Ents.* (D. Va. 1989), 707 F. Supp. 217; *Ohana v. 180 Prospect Place Realty Corp.* (E.D. N.Y. 1998), 996 F. Supp. 238.

R.C. Chapter 4112 is substantially equivalent to federal discrimination laws. *Genaro v. Central Transport, Inc.* (1999), 84 Ohio St. 3d 293 (federal case law interpreting R.C. 4112 is generally applicable to state law claims); 24 CFR 115.100(c) (OCRC is a certified agency of HUD). Ohio courts recognize a cause of action for harassment in employment. *Hampel, supra*. Therefore, application of harassment standards used in employment cases to housing cases is a natural extension of state law.

AHMA and Davidson argue that landlords should not be under the same duty as employers to take prompt and appropriate corrective action to eliminate a racially hostile environment. (Appellants' Memorandum in Support of Jurisdiction, pp. 6-8). However, this Court has previously held, "there is no place in this state for any sort of discrimination no matter its size, shape, or form or in what clothes it might masquerade." *Genaro* at 296. AMHA and Davidson reject this Court's view by arguing that landlords should be allowed to tolerate racial hostility despite their ability to remove the aggressor. They argue their goal is to maintain adequate housing for the economically disadvantaged, while simultaneously maintaining that the same persons they are entrusted to protect can lawfully be harassed by co-tenants.

There is simply no reason to prohibit a racially hostile environment in the workplace and permit one in housing, when, in fact, harassment in the home has been viewed as even more oppressive than harassment at work. *Beliveau v. Caras* (C.D. Cal. 1995), 873 F. Supp. 1393, 1397, fn. 1. Contrary to AHMA's arguments, there is no reason that the persons R.C. Chapter 4112 was created to protect should be safe from racial harassment at work, yet vulnerable to it in the privacy of their homes and neighborhoods.

To summarize, courts have consistently imposed the same duty on landlords to prevent and correct harassment of one tenant by another tenant as that imposed on employers to protect their employees from harassment in the workplace. See, e.g., *Miller v. Towne Oaks East Apts.*, 797 F. Supp. at 561; *Williams v. Poretzky Mgm't, Inc.*, 955 F. Supp. at 496-7; and *Bradley*, 707 F. Supp. at 223-4. Ohio law provides for the same protection. In Ohio, landlords must be responsible for failing to take appropriate action to address harassment, just as employers are liable for failing to correct harassment amongst co-workers. The protections all fall within the umbrella of R.C. 4112. The appellate court correctly recognized that Ohio's Anti-Discrimination laws are as stringent, if not more so, than federal laws and remedied any wrong that may have resulted from the trial court's ruling. Therefore, there is no issue of great general or public importance for this Court to review.

## V. CONCLUSION

The legal premise underlying the appellate court's decision is well-founded. Courts have consistently recognized claims of harassment in housing and have imposed a duty on landlords to, when notified, take appropriate action to end racial harassment. Meeting this duty violates no constitutional rights, as AHMA suggest.

AHMA and Davidson seek immunity from prosecution under Ohio law and in doing so, ask this Court to distinguish R.C. Chapter 4112 from federal law and thereby dilute Ohio's fair housing laws. In seeking review, AHMA and Davidson petition this Court to validate their legally unfounded position. The appellate court correctly held landlords, like AMHA, have the same duty under R.C. Chapter 4112 as employers to remedy unlawful harassment. Because the appellate court remedied any potential injustice, this case presents no issue of great public or general import.

Therefore, Appellee Ohio Civil Rights Commission respectfully requests that this Court decline jurisdiction over this matter and in doing so, uphold the decision of the appellate court, which recognizes this case must proceed before a trial court.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

This is to certify that a true copy of the Memorandum in Response of the Ohio Civil Rights Commission has been served upon to Counsel for Appellants, Michelle Morris, The United Building, 1 South Main Street, Suite 301, Akron, Ohio 44308 and Richard Green, 100 W. Cedar Street, Akron, Ohio 44307 and Counsel for Co-Appellees, Andrew Margolius and Emily Warren, 55 Public Square, Unit 1100, Cleveland, Ohio 44113, by placing said copies in the United States Regular mail, postage prepaid, on this 12<sup>th</sup> day of March, 2007.

  
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