

U.S. DISTRICT COURT
DISTRICT OF VERMONT
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V.

CITY OF BARRE and

in receipt of, and continued, water service; a service essential to their health and safety.

Plaintiffs are subject to this deprivation without being given the opportunity to exercise any pre- or post-termination process. Further, while ratepayer landlords or owners are able to appeal their bills, receive a health exclusion to termination of water service, and enter into a payment arrangement, non-ratepayer tenants are given no such opportunities under the language of the Vermont statutes and Barre ordinances. These are irrational distinctions given that both ratepayers and non-ratepayers will suffer the same consequence – the inability to bathe in their homes, flush the toilet, get water out of the faucet, clean, and so forth – should the City not be reimbursed for the cost of water services. Thus, the statutes, ordinances, regulations, policies, and practices at issue in this case violate the due process and equal protection clauses of the Fourteenth Amendment to the United States Constitution.

Plaintiffs seek permanent injunctive and declaratory relief to enjoin further action and enforcement of such statutes, ordinances, regulations, policies, and practices and for recovery of monetary damages incurred as a result of Defendants' unlawful actions.

JURISDICTION

2. The District Court has original jurisdiction pursuant to 28 U.S.C. §1331 over this civil action.

3. The District Court has original jurisdiction pursuant to 28 U.S.C. §1343(a)(3) over this civil action.

PARTIES

4. Plaintiff Brenda Brown is a citizen of the United States and resided in the City of Barre, Vermont at the time her claim arose.

5. Plaintiff Earl Brooks is a citizen of the United States and is a resident of the City of

Barre, Vermont.

6. Defendant City of Barre, Vermont is a municipal corporation, which provides water services to occupants of residential rental units and the general public in the City of Barre pursuant to 24 V.S.A § 5142 *et seq.* and 24 V.S.A. App. § 1-507 and Barre, Vt., Rev. Ordinances ch. 19, art. II, § 36 (hereinafter “Barre City Ordinances Sec. 19-36”).

7. Carol Dawes (hereinafter “Ms. Dawes”) is agent for the Defendant City in her capacity as City Clerk, and delinquent tax collector, for the City of Barre. She is responsible for collection of delinquent water bills pursuant to the above statute.

CLASS DEFINITION AND COMMONALITY

8. The Defendants have acted or refused to act on grounds that apply generally to the class so that final injunctive relief, and corresponding declaratory relief, is appropriate respecting the class as a whole and thus this action is maintainable as a class action pursuant to Fed. R. Civ. P. 23(b)(2).

9. The Plaintiff class is composed of “all tenants in the City of Barre, Vermont from February 17, 2007 to the present whose leases include City water paid for by the landlord/ratepayer and who have had, or are at risk of having, their water service disconnected by the City because their landlord/ratepayer’s water bill was, or is, in default.” Reiss, J., Opinion and Order Granting Mot. for Class Action Cert. and Granting Mot. to Intervene ¶ 13 (Dec. 13, 2010).

10. The class consists of a fluctuating number of tenants whose landlords are in default or at risk of default on their water bills making joinder of all members impracticable.

11. There are questions of law and fact common to the entire class including but not limited to:

- a) whether non-ratepayer tenants have a cognizable property interest in municipal water service;
- b) whether the City of Barre may require that non-ratepayer tenants pay a ratepayer's delinquency in order to secure continued water service;
- c) whether the City may legally disconnect non-ratepayer tenants occupying units where water service is included in the rental agreement with the ratepayer landlord;
- d) whether the City may do so without a pre- or post-termination hearing;
- e) whether the City's treatment of tenants and ratepayers with respect to access to municipal water is arbitrary and capricious action which violates the tenants rights to equal protection under the law;
- f) whether the City's treatment of ratepayers compared to non-ratepayer tenants is arbitrary and capricious and violates the tenants' rights to equal protection under the law; and
- g) whether the City's treatment of the class of tenants whose landlords are in default on their payment for water service is different than the class of tenants whose landlords are not in default, and whether such treatment is arbitrary and capricious action which violates the tenants rights to equal protection under the law;

12. The claims of the representative parties are typical of the claims of the class.

13. Brenda Brown, one of the representative parties, is a low income tenant who until recently resided in the City of Barre. Earl Brooks, one of the representative parties is a low income tenant who resides in the City of Barre.

Plaintiffs are represented by Vermont Legal Aid, which has experience in issues affecting low income Vermonters, in issues relating to code enforcement and in complex litigation and they will therefore fairly and adequately protect the interests of the entire class. This Court appointed counsel for the named-Plaintiffs to represent the class. Reiss, J., Entry Order Granting Plaintiffs' Mot. to Appoint Class Counsel (May 10, 2011).

FACTS

14. Plaintiff Brenda Brown was a tenant in a residential rental apartment unit located at 74 Summer Street, Apt. 2, in Barre, Vermont.

15. Ms. Brown occupied the apartment at issue pursuant to a month to month lease from approximately August 2008 until September 1, 2010. She lived with her son and daughter-in-law. Her rent was \$650 per month; water was included in the rent.

16. Jeffrey and Marybeth Tevis were the owners and ratepayers of the property at 74 Summer Street in Barre throughout Ms. Brown's tenancy.

17. A judgment of foreclosure was entered against the Jeffrey and Marybeth Tevis with regard to the property at 74 Summer Street in Barre, Vermont. *See National City Mortgage v. Tevis*, Docket No. 211-3-09 Wncv (Washington Super. Ct., March 3, 2010).

18. On or about January 18 or 19, 2010, Plaintiff Brenda Brown received hand-delivered notice from an employee of the City of Barre that her water service would be terminated on the following day for nonpayment by the ratepayer landlords of their \$571 water bill.

19. The notice given to Ms. Brown did not provide information on how to contest or appeal the determination, nor afford her an opportunity for hearing.

20. The Defendant City demanded payment of \$571.57 by Ms. Brown by the close of business on January 19, 2010 in order to avoid disconnection, plus reconnect fees.

21. Upon inquiry by Plaintiff Brown, the Defendant City through its agent, Ms. Dawes, informed her that in order to keep the water on, Ms. Brown would be required to pay the sum of \$722.49 (consisting of \$571.57 which was the monthly bill plus \$150.92 on the ratepayer landlords' repayment agreement towards the ratepayers' outstanding balance of over \$2000).

22. On or about January 20, 2010, Plaintiff Brown received a second hand-delivered notice stating that her water was disconnected due to the ratepayer's failure to pay. The City reconnected the water service the same day believing erroneously that the heat to the premises was hot water supplied.

23. On or about January 20, 2010, Plaintiff filed an appeal of the City's decision while continuing to work towards a resolution of the underlying issue.

24. On or about that same date, Ms. Dawes informed Plaintiff's counsel that she was mistaken and no appeal was available to the tenant as the tenant was not the "ratepayer".

25. On January 28, 2010, Plaintiff, through counsel sent another letter to the City advising it that shutting off water to the premises was illegal as the Plaintiff was not the responsible party on the bill and the lack of water would be a health hazard.

26. Ms. Dawes insisted that the Defendant City had no discretion with regard to its decision to terminate water service and on February 3, 2010, the City terminated water service to Plaintiff Brown's apartment depriving her and the other occupants of water.

27. On or about February 4, 2010, the plaintiff had foot surgery. Post-surgical care required washing and cleaning of the affected area of her foot.

28. Due to the lack of water, plaintiff was forced, despite her injured foot, to carry numerous gallon jugs of water up and down stairs into the apartment in order to provide water for cleaning and caring for her foot, cooking, general cleaning and flushing the toilet.

29. As a result of the lack of water, plaintiff was unable to properly care for her foot, was forced to eat foods that could be cooked in a microwave due to the lack of water for cooking, was unable to clean her apartment, or have visits from her grandchildren and was forced to live in an apartment where human waste could not be regularly and properly disposed of without great inconvenience and expense.

30. By its actions, the Defendant City of Barre has caused immediate and irreparable harm to the plaintiffs including, but not limited to, inadequate shelter, hygiene, sanitation, inconvenience, anxiety and suffering.

31. On February 18, 2010, the Washington Superior Court (Crawford, J.) entered a temporary order in the original state court action, *Brown v. City of Barre, et al.*, Docket No. 113-2-10 Wncv, ordering that Defendants restore water service to the premises occupied by the Plaintiff and not to terminate it, except upon further order of the court, based on the tenant's evidence of a medical problem meeting the criteria of 24 V.S.A. §5143(5) [sic].

32. On March 8, 2010 the Washington Superior Court (Crawford, J.) entered a second temporary order in the original state court action that the Defendant City continue providing water service to Ms. Brown and that she make payment directly to the city for her water usage.

33. Ms. Brown continued to occupy the premises and to receive water services pursuant to the March 8, 2010 court order until she eventually moved out on or about September 1, 2010 in order to secure safe, habitable and permanent housing.

34. Plaintiff Earl Brooks is a tenant in a residential rental apartment unit located at 37 Summer Street, in Barre, Vermont.

35. Mr. Brooks occupied the apartment at issue pursuant to a month to month lease. He lives with his wife. His rent is \$650 per month; water is included in the rent.

36. Barrett and Linda Gregoire are the ratepayers of the building located at 37 Summer Street in Barre.

37. On or about April 20, 2010, Plaintiff Earl Brooks was served with a notice of foreclosure on the property in the Washington Superior Court action of *Vermont State Employees Credit Union v. Barrett Gregoire and Linda Gregoire*, Docket No. 171-3-10 Wncv (March 10, 2010).

38. On or about May 12, 2010, Plaintiff Earl Brooks received hand-delivered notice from an employee of the City of Barre that his water service would be terminated on the following day, May 13, 2011 due to nonpayment by the ratepayer landlords of their \$1,238.39 water bill.

39. The notice given to Mr. Brooks did not provide information on how to contest or appeal the determination, nor afford him an opportunity for hearing.

40. Upon inquiry, Defendant City of Barre demanded payment of \$1,238.39 to be paid by the close of business on May 13, 2010 in order to avoid disconnection, plus reconnect fees.

41. Defendant City of Barre advised Plaintiff Brooks that it was communicating with the ratepayer or its agent in the matter.

42. Mr. Brooks continues to occupy the premises and to receive water services from the City of Barre subject to its policies and procedures with respect to water shut-offs, and therefore continues to be at risk of immediate water shut-off if the ratepayer fails to pay Defendant, or otherwise defaults.

CLAIMS

COUNT I - Violation of Plaintiffs' Procedural Due Process Rights Pursuant to 42 U.S.C. § 1983 and the Fourteenth Amendment of the U.S. Constitution

43. Paragraphs 14-42 are realleged as though set forth in their entirety.

44. 42 U.S.C. § 1983 provides as follows:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress . . .

45. The Fourteenth Amendment to the United States Constitution provides that “[n]o State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”

46. Plaintiffs have a property interest in water service by virtue of:

a) Barre City Charter, 24 V.S.A. App. § 1-507: “The City of Barre is authorized and empowered to provide a suitable supply of water *for the city and the inhabitants* that live along or near its line of pipes in other municipalities, against fire and for sanitary, domestic, and industrial uses, *beneficial to the public...*” [emphasis added].

b) Barre City Ordinances, Sec. 19-36 Concerning Water and Sewer Services: “The water committee may withhold the water supply from any person failing or refusing to comply with the provisions or requirements of this chapter or regulations approved by the council.” As a remedy the city may cause the water to be shut off and remain off from the premises until the non-compliant person has fully complied with all requirements and paid the sum of \$2.00. If water is to be shut off, the “user of water on the premises in question” must be given “not less than three (3) days notice” of the impending shut off.

c) Barre City Ordinances, Sec. 7-6(b)(1) Minimum Rental Housing Standards: “The federal housing quality standards § 982.401 shall be adopted as the minimum housing standards

for the City of Barre...”

d) 24 C.F.R. § 982.401 Housing Quality Standards require the following:

i) The bathroom must... have a flush toilet in proper operating condition. 24 C.F.R. § 982.401(b)(2)(i).

ii) The dwelling unit must have a fixed basin in proper operating condition, with a sink trap and hot and cold running water. 24 C.F.R. § 982.401(b)(2)(ii).

iii) The dwelling unit must have a shower or tub in proper operating condition with hot and cold running water. 24 C.F.R. § 982.401(b)(2)(iii).

iv) The dwelling unit must have a kitchen sink in proper operating condition, with a sink trap and hot and cold running water. 24 C.F.R. § 982.401(c)(2)(ii).

v) The water supply must be served by an approvable public or private water supply that is sanitary and free from contamination. 24 C.F.R. § 982.401(i)(2).

e) Water Works Charges and Lien provisions, 24 V.S.A. § 3306. “The owner *or occupant* of any tenement, house, or building who takes the water of such municipal corporation shall be liable for the rent or price of the same...” (emphasis added).

f) Vermont Rental Housing Health Code, Sanitation Facilities, Water Supply, 12-5-16 Vt. Code R. § III(D)(1): All rental dwellings are required to “be connected to: a supply of water sufficient in quantity and pressure to meet the ordinary needs of the occupant(s).”

g) Residential Rental Agreement Act, Landlord Obligations, Habitability, 9 V.S.A. § 4457: To be “safe, clean and fit for human habitation,” pursuant to the warranty of habitability, a dwelling unit must have “an adequate amount of water.”

47. Defendant City of Barre is a municipal corporation operating under color of state law.

48. Defendant City of Barre's actions in terminating the water service of Plaintiff tenants is pursuant to its custom and practices in situations where the ratepayer is in default on the water bill in an amount greater than \$15.00.

49. The named plaintiffs and class members are, or were, users of the City of Barre water system. They have not "fail[ed] to or refuse[d] to comply with the provisions or requirements of [Chapter 19 of the Barre City Ordinances] or regulations of the department approved by the council." Thus, the City has no basis to withhold water service pursuant to Section 19-36 of the Barre City Ordinances, and Plaintiffs have a property interest in continued water service.

50. Section 5143(b)(4) of Title 24 allows the ratepayer to avoid shut off upon a showing that disconnection would represent an immediate and serious hazard to the health of the *ratepayer or a resident within the ratepayer's household.*" [emphasis added]. Under the terms of the statute, nonratepayer tenants are not afforded an opportunity to avoid shut-off even if it would represent an immediate and serious health hazard to their health.

51. Section 5145 of Title 24 provides that when "service is disconnected or interrupted *at the premises of the ratepayer*, the individual making the disconnection shall immediately inform a responsible adult *on the premises* that service has been disconnected or interrupted..." [emphasis added]. The statute does not require notice to be provided to a responsible adult on the premises of a nonratepayer, even if that nonratepayer is the individual subjected to the termination of service.

52. Section 5146 of Title 24, requires the municipality to restore service upon the customer's request when an agreement is reached with the *ratepayer*. The statute does not allow non-ratepayers to make payment agreements so as to restore service.

53. Section 5147 of Title 24 allows for an appeal by the *ratepayer* after notice to all

interested parties and upon appeal, disconnection is postponed. The opportunity to appeal is not provided to a non-ratepayer subject to termination of service because of the ratepayer's failure to pay the water bill.

54. Refusal to allow the plaintiff class members to appeal the decision to disconnect their water service because they are not ratepayers deprives plaintiff class members of any meaningful way to challenge the Defendants' arbitrary and capricious actions.

55. Defendants have made no provision in their City ordinances, rules, regulations or practices to afford Plaintiffs, Brenda Brown, Earl Brooks or members of the Plaintiff class a means, or opportunity, to appeal the validity of the charges or the Plaintiffs' liability prior to discontinuance of water service, thereby violating their procedural due process rights.

56. Defendants have made no provision in their City ordinances, rules, regulations or practices to afford Plaintiffs, Brenda Brown, Earl Brooks or members of the Plaintiff class a pre- or post-termination hearing to determine the validity of the charges or the Plaintiffs' liability prior to discontinuance of water service, thereby violating their procedural due process rights.

57. By their actions, the Defendants have caused and continue to cause immediate and irreparable harm to the plaintiffs including, but not limited to, inadequate shelter, hygiene, sanitation, inconvenience, anxiety and suffering for which they have no adequate remedy at law.

COUNT II - Violation of Plaintiffs' Substantive Due Process Rights Pursuant to 42 U.S.C. § 1983 and the Fourteenth Amendment of the U.S. Constitution

58. Paragraphs 14-42, and 44-56 are realleged as though set forth in their entirety.

59. The municipal statutes pertaining to water disconnections are directed to enforcement of the contract between the Defendant City and the ratepayers, in this case the ratepayers referenced herein. *See*, 24 V.S.A. § 5141 *et seq.*, Barre City Ordinances, Sec. 19-36.

60. The purpose of the Uniform Water and Sewer Disconnect is to serve as a “delinquency collection procedure.” 24 V.S.A. § 5141.

61. The Defendant City of Barre’s operation and application of the ordinance and statutes concerning water shut-offs to tenants in properties where the ratepayer is in default are taken pursuant to its normal custom and practice, and result in termination of water service to Plaintiffs and other members of the class, who have bona fide disputes with the City over the amount owed and their individual liability for the existing debt.

62. The Defendant City of Barre’s actions are attempts to coerce the Plaintiffs and other class members into paying the debts of the actual ratepayers.

63. Disconnection of water service to the plaintiff-class members or a requirement that they assume the debt, or on-going obligation, of the ratepayer in order to continue to have water service is inconsistent with the statutory framework and the unambiguous language of the statutes which only call for disconnection of a ratepayer, as opposed to “users” or “consumers;” it is therefore not rationally related to the City of Barre’s attempts to collect a debt. While administratively convenient, collection of ratepayer delinquencies from non-ratepayer occupants is not the only statutorily prescribed means available to the Defendant to collect its debts. See 24 V.S.A. § 3306 together with Chapter 133 of Title 32 providing for collection of monies owed for municipal water service by placing a lien upon the property of a delinquent ratepayer.

64. Defendant’s refusal to provide water service unless the plaintiff-class pays the landlord-ratepayers’ debts violates the plaintiff class members’ right to substantive due process.

65. Defendant’s arbitrary refusal to contract directly with plaintiff and other class member tenants for prospective water service violates Plaintiffs’ substantive due process rights.

66. By its actions, the Defendant has caused and continues to cause immediate and

irreparable harm to the plaintiffs including, but not limited to, inadequate shelter, hygiene, sanitation, inconvenience, anxiety and suffering for which they have no adequate remedy at law.

COUNT III- Violation of Plaintiffs' Rights to Equal Protection of the Laws; 42 U.S.C. § 1983 and the Fourteenth Amendment of the U.S. Constitution

67. Paragraphs 14-42, and 44-56, and 59-65 are realleged as though set forth in their entirety.

68. The Fourteenth Amendment to the United States Constitution prohibits the Defendants from denying Brenda Brown, Earl Brooks, and the Plaintiff class the "equal protection of the laws."

69. The Defendant City of Barre's use of 24 V.S.A. §5141 *et seq.* and Barre City Ordinances Sec. 19-36 to deny non-ratepayer tenants or occupants of rental properties access to municipal water accounts violates Plaintiffs' equal protection rights under the Fourteenth Amendment by treating them differently from owner-ratepayers.

70. The Defendant City of Barre's use of 24 V.S.A. §5141 *et seq.* and Barre City Ordinances 19-36 to terminate water service to tenants who do not owe the Defendant City a debt, violates the Plaintiffs' equal protection rights under the Fourteenth Amendment by treating tenants whose landlords are in default in their payments for water service differently than the class of tenants whose landlords are not in default.

71. The Defendant City's classification scheme has a determinative effect on a tenants' chances of securing or maintaining water service.

72. The Defendant City's actions in terminating water service to Plaintiffs constitute a denial of Plaintiffs' property rights to water service.

73. The purpose of the Defendant City's custom, practice and policy in terminating water

service is collection of the debt. 24 V.S.A. § 5141.

74. The defendant City's legislative and administrative classification for debt collection purposes cannot be justified by administrative convenience or cost and therefore violates Plaintiff and the subject classes' constitutional rights.

75. The Defendant City's actions are unreasonable and arbitrary, and lack a fair and substantial relationship to the object of the legislation as termination of the water service to innocent tenants bears no rational relationship to the debt collection remedy or the ultimate accountability for the debt.

76. By its actions, the Defendant City of Barre has caused and continues to cause immediate and irreparable harm to the Plaintiffs including, but not limited to, inadequate shelter, hygiene, sanitation, inconvenience, anxiety and suffering.

CLAIMS FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court:

1. Assume jurisdiction of this matter.
2. Declare this action to be a proper class action.
3. Declare that the City of Barre Ordinances Sec. 19-36 violate state law and/or are unconstitutional and void on their face or as applied to Plaintiffs and the Plaintiff-class.
4. Declare that the applicable provisions of Title 24 of the Vermont Statutes, specifically 24 V.S.A. §§ 5143, 5145, 5146, and 5147 are unconstitutional and void on their face, or as applied to Plaintiffs or the plaintiff-class.
5. Issue temporary and permanent injunctive relief ordering the Defendants to restore water service to any rental units occupied by class members whose water service has been disconnected due to nonpayment by a landlord/ratepayer and to refrain from terminating the

water service to such Plaintiffs in the future.

6. Award Plaintiff Brenda Brown damages in such amount as the proofs show are justified.

7. Award Plaintiff Earl Brooks damages in such amount as the proofs show are justified.

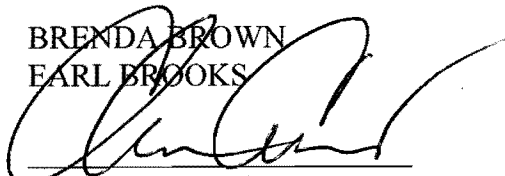
8. Award the Plaintiffs, Brenda Brown and Earl Brooks, their reasonable attorney fees pursuant to 42 U.S.C. § 1983.

9. Award such other legal and equitable relief as the court deems necessary under the circumstances of this case.

Dated at Montpelier, Vermont this day of September, 2011.

BRENDA BROWN
EARL BROOKS

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