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Recent Developments: Montgomery County v. Glenmont Hills Assocs. Privacy World: Landlords Who Refuse Tenants Solely Because Tenants Intend to Use Section 8 Vouchers Violate Montgomery County's Housing Discrimination Law, Regardless of the Landlord's Lack of Intent to Discriminate

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RECENT DEVELOPMENT

***MONTGOMERY COUNTY V. GLENMONT HILLS ASSOCS.
PRIVACY WORLD: LANDLORDS WHO REFUSE
TENANTS SOLELY BECAUSE TENANTS INTEND TO USE
SECTION 8 VOUCHERS VIOLATE MONTGOMERY
COUNTY'S HOUSING DISCRIMINATION LAW,
REGARDLESS OF THE LANDLORD'S LACK OF INTENT TO
DISCRIMINATE.***

By: Paul Lamari

The Court of Appeals of Maryland held that refusing to accept a tenant solely because the tenant intends to use section 8 vouchers for the payment of rent is a form of "source of income" housing discrimination. *Montgomery County v. Glenmont Hills Assocs. Privacy World*, 402 Md. 250, 936 A.2d 325 (2007). A violation of Montgomery County's anti-discrimination laws occurs regardless of a landlord's lack of ill will toward low-income tenants, participation in other affordable housing initiatives, "administrative burdens" on the landlord, or the "voluntary" nature of the section 8 program under federal statute. *Id.* at 278-79, 936 A.2d at 342.

Glenmont Hills Associates Privacy World at Glenmont Metro Centre ("Glenmont"), a multi-unit apartment complex subject to section 27-12 of the Montgomery County Code ("M.C.C. § 27-12"), refused to lease an apartment to Ms. Walker, an otherwise qualified tenant, who intended to use Federal Housing Choice Voucher Program ("section 8" or "FHCVP") vouchers for the partial payment of her rent. Although Glenmont participated in other low-income housing assistance programs, the complex refused to participate in the section 8 program because it felt that participation was too onerous. After it was confirmed by a "tester" that Glenmont did not accept section 8 tenants, the Montgomery County Human Rights Commission ("Commission") filed a complaint against Glenmont with the Director of the County Office of Human Rights. The Director found a violation of Montgomery County's anti-discrimination laws.

The Commission held that section 8 vouchers were "sources of income" covered by M.C.C. § 27-12, and refusing otherwise qualified tenants based solely on their intent to use the vouchers constituted a "source of income" violation. Furthermore, the Commission determined that "administrative burdens" for refusing section 8 tenants were legally irrelevant, and that the county prohibition was not preempted by Article I, Section 8, Clause I of the United States Constitution ("Spending Clause") or the text of FHCVP, in which landlord participation is voluntary.

On judicial review, the Circuit Court for Montgomery County reversed the Commission's decision, holding that although there was no preemption by federal law, and the Montgomery County Council clearly envisioned M.C.C. § 27-12 to include section 8 vouchers, the county may not force landlords to enter into a contract with the federal government. Additionally, the court found no violation because Glenmont's decision to refuse section 8 tenants was based on a desire to "avoid the administrative hassle," and lacked "the necessary discriminatory animus." Montgomery County appealed to the Court of Special Appeals of Maryland, but prior to proceedings in that court, the Court of Appeals of Maryland granted certiorari.

The Court disagreed with the circuit court, reasoning that M.C.C. § 27-12 prohibits certain landlords from refusing to lease or rent housing to any person based on their "source of income." *Glenmont Hills*, 402 Md. at 260, 936 A.2d at 330-31. Furthermore, the Court noted that the term "source of income" includes "any lawful source of money, paid directly or indirectly to a renter or buyer of housing." *Id.* at 260, 936 A.2d at 331. The Court found further support for its construction of M.C.C. § 27-12 in the ordinance's legislative history, which expressly included section 8 vouchers in the definition of "source of income." *Glenmont Hills*, 402 Md. at 265-66, 936 A.2d at 333-34.

Regarding Glenmont's claim of federal preemption, the Court determined that M.C.C. § 27-12 is not preempted by the federal provisions set forth by section 8. *Glenmont Hills*, 402 Md. at 273, 936 A.2d at 338. The thrust of Glenmont's argument was that M.C.C. § 27-12 makes landlord participation in section 8 mandatory while the text of section 8 itself envisions voluntary participation, thereby creating a conflict. *Glenmont Hills*, 402 Md. at 268, 936 A.2d at 336. In rejecting this argument, the Court explained that for the preemption doctrine to apply, absent an express congressional statement showing intent to preempt state law or exclusively occupy a certain field, there must be direct conflict between federal and state law. *Id.* at 267-68,

936 A.2d at 334-35 (citing *Wells v. Chevy Chase Bank, F.S.B.*, 377 Md. 197, 832 A.2d 812 (2003)).

Glenmont argued that voluntary participation in the section 8 program differs from the mandatory participation of M.C.C. § 27-12. *Glenmont Hills*, 402 Md. at 268, 936 A.2d at 336. If that were the case, then federal preemption would occur only if a landlord's ability to participate in the section 8 program was Congress' primary purpose in enacting section 8. *Glenmont Hills*, 402 Md. at 268-69, 936 A.2d at 336. However, the Court observed that the only objective declared by Congress was to "assist State and local governments in expanding housing for low-income families," not to make landlord participation in section 8 voluntary. *Id.* at 269, 936 A.2d at 336. Therefore, preemption was not an issue. *Id.* at 273-74, 936 A.2d at 339.

Glenmont also contended that because it accepted federal funds, the Spending Clause required Montgomery County to keep participation in section 8 voluntary. *Glenmont Hills*, 402 Md. at 273, 936 A.2d at 338-39. The Court noted that Spending Clause legislation is contractual in nature because States agree to comply with federally-imposed conditions in exchange for federal funds. *Id.* at 274, 936 A.2d at 339. Because of the contractual nature of the Spending Clause, terms are only binding on the State if they are so unambiguous that a "[s]tate official 'would clearly understand' the alleged obligation" of the terms imposed by the Spending Clause. *Id.* at 274, 936 A.2d at 339 (quoting *Arlington Cent. Sch. Dist. v. Murphy*, 126 S. Ct. 2455, 2459 (2006)). Since nothing in section 8 imposed a requirement of "voluntary participation," Montgomery County was not required to make landlord participation voluntary. *Glenmont Hills*, 402 Md. at 275, 936 A.2d at 339.

Finally, the Court discussed whether certain mandatory terms of section 8 leases were so onerous that they constituted a defense to non-participation. *Id.* at 275-76, 936 A.2d at 339-40. While it recognized that it may be possible for imposed requirements to interfere with property rights, the court found that no such burden existed here. *Id.* at 278, 936 A.2d at 341. The Court stated the Maryland rule that unless the burden equals a "taking of property" or a violation of due process, administrative burden is no defense. *Id.* at 278, 936 A.2d at 341-42. To that end, malevolent intent is not required to establish a violation of M.C.C. § 27-12. *Glenmont Hills*, 402 Md. at 278-79, 936 A.2d at 342. The Court held that even though Glenmont's motivation in refusal lacked "personal animus toward those prospective tenants," and the complex participated in other housing assistance programs, all

that was required for a violation of M.C.C. § 27-12 was for Glenmont to have refused an otherwise qualified section 8 tenant. *Glenmont Hills*, 402 Md. at 279, 936 A.2d at 342.

By granting a writ of certiorari before proceedings had taken place in the Court of Special Appeals of Maryland, the Court is showing how important this issue is to the property rights of landlords in Maryland. As the Court's holding makes clear, local governments may mandate participation in the section 8 voucher program, and landlords who fall under the scope of county code provisions similar to M.C.C. § 27-12 are not entitled to refuse qualified tenants simply because they intend to pay rent with section 8 vouchers. Since the vouchers were a "source of income" envisioned by the Montgomery County Council, Glenmont's refusal to accept tenants based on section 8 status was a violation of law and a form of housing discrimination, regardless of its lack of ill will.