

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CHERYL MILLER, on behalf of herself and
all others similarly situated,

Plaintiff,

v.

EQUITY RESIDENTIAL MANAGEMENT
LLC,

Defendant.

Civil Action No. 1:12-cv-10836-RWZ

**EQUITY RESIDENTIAL MANAGEMENT, L.L.C.'S MOTION TO DISMISS
PLAINTIFF'S CLASS ACTION COMPLAINT**

Pursuant to Federal Rule of Civil Procedure 12(b)(6), Defendant Equity Residential Management, L.L.C. ("Equity Residential Management" or "Defendant")¹ moves to dismiss the Class Action Complaint of Cheryl Miller ("Miller" or "Plaintiff") in the above-captioned action.

All of Plaintiff's claims arise from the lease contract that she signed to become a tenant in an apartment complex in Boston known as "Emerson Place." The lease contract documents are attached to Plaintiff's Complaint. They were signed by Equity Residential Management as agent for the "owner" of Emerson Place. The lease documents also expressly limit any liability to the "owner" of Emerson Place, and expressly exclude liability against the "management company."

Equity Residential Management, as its name suggests, is in fact the "management company" for Emerson Place. It is *not* the "owner" of Emerson Place, and only signed Plaintiff's lease contract in its expressly disclosed capacity as *agent* for the "owner." Plaintiff admits as much in the Complaint. Thus, due to the express terms of the lease contract into which she entered, Equity Residential Management is not a proper defendant in this case. Even if

¹ Plaintiff's case caption lists Defendant as "Equity Residential Management LLC." Defendant's formal name is "Equity Residential Management, L.L.C."

Plaintiff's allegations were facially plausible, the source of any recovery would be limited to the "owner" of Emerson Place, and would not include Equity Residential Management, the "management company." Miller's Complaint against Equity Residential Management must therefore be dismissed.

REQUEST FOR ORAL ARGUMENT

Pursuant to Local Rule 7.1, Defendant requests oral argument on this motion.

Respectfully submitted,

EQUITY RESIDENTIAL MANAGEMENT,
L.L.C.,

By its attorneys,

/s/ Thomas H. Wintner

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Dated: June 6, 2012

CERTIFICATE OF COMPLIANCE WITH LOCAL RULE 7.1

The undersigned counsel for Defendant certifies that they have conferred with counsel for Plaintiff in a good faith effort to resolve or narrow the issues raised by this motion, with the following result: Plaintiff will oppose this motion.

/s/ Thomas H. Wintner
Thomas H. Wintner

CERTIFICATE OF SERVICE

I certify that the above document was filed electronically using the CM/ECF system on June 6, 2012, and thereby delivered by electronic means to all counsel of record.

/s/ Thomas H. Wintner
Thomas H. Wintner

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