

'This is about skin tint,' lawyer for condo owner says of lawsuit

A case unfolding in Fulton County Superior Court adds a new twist to complaints that police officers use overly tinted windows as a pretext for traffic stops that are actually based on racial or ethnic profiling.

An attorney for Deon Grant, the NFL safety who helped power the New York Giants to a Super Bowl victory last year, said his client was baffled when he was told the reflective tinting on his condominium unit's windows was blinding passing motorists and had to be removed. Grant's home is on the 22nd floor of The Phoenix on Peachtree in Buckhead.

"You can't even see his place from the street because there are concrete balconies, not flat surfaces," said Grant's attorney, **Richard Robbins of Robbins Ross Alloy Belinfante Littlefield**. "I've been all around the building. The only reflective glass is on the first two floors."

Robbins, who is white, and his African-American client claim there's more than sunlight reflected in the association's complaint.

"This is about skin tint, not window tint," said Robbins.

According to Robbins, Grant is not the only Phoenix resident with tinted or reflective windows, but he is apparently the only one singled out for punitive action: In October, the condo board ordered him to remove the tinting or face daily fines of \$25.

Robbins said Grant had, on the referral of the association president, hired a contractor who was familiar with the Phoenix's specifications from having tinted other residents' windows. The only difference he and his client can think of is that Grant is one of four African-American owners at the 70-unit condo tower.

Winter Capriola Zenner partner Marvin Pastel II, who represents the condo association, takes vigorous exception to that charge.

"I can't make out where he's coming from on that," said Pastel. "This is not about Deon Grant. It's about the condominium association rules."

According to Pastel, the condo association has a duty to enforce all of its rules uniformly. Simply because a nonwhite resident is asked to follow the same rules everyone else must follow doesn't imply any racial bias, he said.

Pastel also said the association president denied ever having heard of the contractor Grant used, let alone recommending him.

Pastel was asked how reflective windows 21 stories above the ground could annoy drivers. He said Grant's unit is on a point on the north side of the building, so "as you're driving south on Peachtree ... it's coming right at you."

In December, the Phoenix association filed a 5-page complaint against Grant. It said Phoenix residents are required to obtain written approval prior to placing "any object, sign or thing in or on any window," with an exception for specified window treatments and holiday lights.

"On or before October 17, 2012," it said, "the Association became aware that [Grant] had installed window tint with a reflective appearance" on his windows, and sent a letter demanding that the tinting be removed.

Grant declined to do so.

Robbins, firm partner **Jason Alloy** and associate **Rachel Gage** filed an answer and counterclaim earlier this month. It said that Grant had approached the association president, Steven Marshall, in January 2011 to discuss having his windows tinted.

Grant knew that Marshall had recommended tinting vendors to other residents, it said. Marshall recommended a contractor, Solar Eclipse, and told Grant that The Phoenix had a "relationship" with the company because it had "installed most of the tinting on The Phoenix building windows."

"Even though the governing documents do not require prior approval" before installing tinting, Marshall also told Grant that, if he used the company, no further approval would be needed from the board because "Marshall was the President of the Board and because Solar Eclipse would know what tint was allowed" on the windows.

At some point in early 2011, according to the filing and Grant's lawyers, he had the windows tinted.

In February 2012, Grant was playing for the Giants when they topped the New England Patriots to win the Super Bowl 21-17, "and his profile (and race) were much more publicly known," according to the defense filing.

In May 2012, more than a year after the windows were tinted, according to the filing, the association board asked Grant to attend a meeting during which the property manager, Eric Henning, "stated that the tinting on the windows of Grant's unit was reflective and was blinding to cars on Peachtree Street."

"Grant found Henning's allegation to be ridiculous," it continued, "as his unit is twenty-two stories above Peachtree Street, and other units on lower floors of the building have more reflective window tinting."

Grant also told the board about his conversation with Marshall the previous year concerning Solar Eclipse's relationship with The Phoenix.

The board took no further action until its October letter, it said. After the association filed its suit, Grant's lawyers wrote a letter to Pastel "stating that the claims against Grant had been brought for the purpose of discriminatory harassment based on race, and asking that they be dropped."

Pastel responded with his own letter, writing that he found it "offensive that you would attempt to play the

race card," by implying that the association "let white people do whatever they want, while holding the feet to the fire of the few black residents."

Grant's March 7 counterclaim alleges breach of contract, breach of fiduciary duty and interference with Grant's property rights and right to quiet enjoyment, and violation of the Georgia Fair Housing Act.

It includes allegations that the board adopted a new rule barring reflective windows after Grant installed his, "in an attempt to force Grant and other black residents to remove their window tinting."

"Unfortunately," said the counterclaim, "this is not the first instance of African-American unit owners being treated differently than white unit owners."

"Most tellingly," it said, "the Board has not taken action against other residents whose windows have darker or more reflective tinting than Grant's windows."

Pastel said he was "able to disagree categorically" with several of those allegations. He recalled finding an invoice proving that Grant's tinting had been installed less than a year before the association voiced its concerns, he said.

"Mr. Marshall claims he has never heard of Solar Eclipse," said Pastel, and he said he also thought at least one other resident had been asked to remove a unit's window tinting, and had complied.

"I don't know why he won't just replace it," said Pastel, "This [litigation] has got to cost more than that."

Robbins agreed, saying the "few thousand dollars" he thought Grant had spent on the treatment was undoubtedly less than fighting the association.

"He just feels like, 'It's been there a year and a half, and now they want to pick on me? I'm not going to take it,'" said Robbins. "I think it's refreshing when a client says, 'I just don't like being treated this way.'"

Pastel said he regretted that Grant felt he was being unfairly singled out and was fighting as a matter of principle.

"I'm saddened that he feels that way, because nobody's trying to jerk him around," said Pastel. "It's always a shame in litigation when it comes down to, 'OK, now we're into principles.'"

The case is *The Phoenix on Peachtree Condominium Association Inc. v. Grant*, No. 2012CV224840.