

IN THE UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

UNITED STATES OF AMERICA, )  
Plaintiff, )  
v. )  
PALAZZOLO & LOMBARDO OF MICHIGAN, )  
L.L.C., and ROBERT LIPKA, )  
ARCHITECT, P.C., )  
Defendants. )

Case: 4:07-cv-12838  
Assigned To : Gadola, Paul V  
Referral Judge: Whalen, R. Steven  
Assign. Date : 7/9/2007  
Description: CMP USA VS  
PLAZZOLO & LAMBARDO OF MI

**COMPLAINT**

The United States of America alleges:

1. This action is brought by the United States to enforce the Fair Housing Act, Title VIII of the Civil Rights Act of 1968, 42 U.S.C. §§ 3601-3619, and Title III of the Americans with Disabilities Act ("ADA"), 42 U.S.C. §§ 12181-12189.

Jurisdiction and Venue

2. This Court has jurisdiction over this action under 28 U.S.C. §§ 1331 and 1345 and 42 U.S.C. §§ 3614(a) and 12188(b)(1)(B).

3. Venue is proper because the claims alleged in this action arose in Sterling Heights, Michigan, in the Eastern District of Michigan, and concern or otherwise relate to real property located therein.

The Property

4. The Preserves Apartments is a residential apartment complex located at 3737 Cherry Creek Lane in Sterling Heights, Michigan. The complex consists of 37 two-story apartment buildings with a total of 54 completed ground floor units, each containing eight to ten dwelling units, as well as public and common use areas, including a clubhouse/rental office, a swimming pool, parking areas, sidewalks, trash disposal enclosures, clustered mail boxes and a

picnic gathering area.

5. In addition, The Preserves has eight two-story condominium buildings, containing 62 units, 16 of which are ground-floor units.

6. The rental and condominium units at The Preserves are "dwellings" within the meaning of 42 U.S.C. § 3602(b).

7. The Preserves was designed and constructed for first occupancy after March 13, 1991. Its ground-floor units are "covered multifamily dwellings" within the meaning of 42 U.S.C. § 3604 (f)(7)(B). The complex is subject to the accessibility requirements of 42 U.S.C. § 3604(f)(3)(C).

8. The rental office at The Preserves and its attendant public-use areas were designed and constructed for first occupancy after January 26, 1993. The rental office is a public accommodation within the meaning of 42 U.S.C. § 12181(7) and is subject to the ADA's accessibility requirements.

#### The Defendants

9. Palazzolo & Lombardo of Michigan, L.L.C., a Michigan limited liability corporation, is the builder, developer and owner of The Preserves, and, in those capacities, designed and constructed the complex and is referred to hereinafter as the "Developers."

10. Robert Lipka, Architect, P.C., is a Michigan professional corporation that drew the architectural plans for The Preserves and, in that capacity, participated in the design and construction of the complex.

#### Fair Housing Claims

11. Plaintiff re-alleges and herein incorporates by reference the allegations set forth in

paragraphs 1-11, above.

12. Defendants violated 42 U.S.C. § 3604(f)(3)(C) by failing to design and construct The Preserves in such a manner that: (a) the public use and common use portions of the dwellings are readily accessible to and usable by persons with disabilities; (b) all doors designed to allow passage into and within the ground-floor units are sufficiently wide to allow passage by handicapped persons in wheelchairs; (c) all premises within such ground-floor dwellings contain the following features of adaptive design: i) an accessible route into and through the dwelling; ii) light switches, electrical outlets, thermostats, and other environmental controls in accessible locations; iii) reinforcements in bathroom walls to allow later installation of grab bars; and iv) useable kitchens, such that an individual using a wheelchair can maneuver about the space.

13. Defendants, through the actions and conduct referred to in the preceding paragraph, have:

- a. Discriminated in the sale or rental or otherwise made unavailable or denied dwellings to buyers or renters because of handicap, in violation of 42 U.S.C. § 3604(f)(1);
- b. Discriminated against persons in the terms, conditions or privileges of the sale or rental of a dwelling, or in the provision of services or facilities in connection with a dwelling, because of handicap, in violation of 42 U.S.C. § 3604(f)(2); and
- c. Failed to design and construct dwellings in compliance with the accessibility and adaptability features mandated by 42 U.S.C. § 3604(f)(3)(C).

14. The conduct of Defendants described above constitutes:

- a. A pattern or practice of resistance to the full enjoyment of rights granted by the Fair Housing Act, 42 U.S.C. §§ 3601-19; or
- b. A denial to a group of persons of rights granted by the Fair Housing Act, 42 U.S.C. §§ 3601-3619, which denial raises an issue of general public importance.

15. Persons who have been the victims of Defendants' discriminatory housing practices are aggrieved persons as defined in 42 U.S.C. § 3602(I) and may have suffered injuries as a result of Defendants' conduct described above.

16. Defendants' discriminatory actions and conduct described above were intentional, willful, and taken in disregard for the rights of others.

Americans with Disabilities Act Claims

17. Plaintiff re-alleges and herein incorporates by reference the allegations set forth in paragraphs 1-11 above.

18. The Developers have violated 42 U.S.C. § 12183(a)(1) by failing to design and construct the rental office at the Preserves and its attendant public use areas such that they are readily accessible to and usable by individuals with disabilities, as required by 42 U.S.C. §12183(a)(1) and the Department of Justice's regulations implementing Title III of the ADA, 28 C.F.R. Part 36, including the Standards for Accessible Design, 28 C.F.R. Part 36, Appendix A ("the Standards").

19. The conduct of the Developers described in the preceding paragraph constitutes:

- a. A pattern or practice of discrimination within the meaning of

42 U.S.C. § 12188(b)(1)(B)(I) and 28 C.F.R. § 36.503(a); and

- b. Unlawful discrimination that raises an issue of general public importance within the meaning of 42 U.S.C. § 12188(b)(1)(B)(ii) and 28 C.F.R. § 36.503(b).

20. Upon information and belief, persons who have been the victims of the Developers' discriminatory housing practices are aggrieved persons as defined in 42 U.S.C. § 12188(b)(2)(B) and may have suffered injuries as a result of the Developers' conduct described above.

21. The Developers' discriminatory actions and conduct described above were intentional, willful, and taken in disregard for the rights of others.

Prayer for Relief

WHEREFORE, the United States prays that the Court enter an order that:

1. Declares that the policies and practices of Defendants, as alleged herein, violate the Fair Housing Act and/or the Americans with Disabilities Act;
2. Declares that Defendants have engaged in a pattern or practice of discrimination in violation of the Fair Housing Act and have denied rights under the Fair Housing Act to a group of persons raising an issue of public importance, and that the Developers have engaged in a pattern or practice of discrimination in violation of the ADA and have denied rights to a group of persons raising an issue of public importance;
3. Enjoins Defendants, their officers, employees, agents, successors, and all other persons in active concert or participation with any of them, from
  - a. Failing or refusing to bring the ground-floor dwelling units and public use

and common use areas at The Preserves into compliance with 42 U.S.C. § 3604(f)(3)(C);

- b. Failing or refusing to take such affirmative steps as may be necessary to restore, as nearly as practicable, persons harmed by Defendants' unlawful practices to the position they would have been in but for the discriminatory conduct; and
- c. Designing and/or constructing any covered multifamily dwellings in the future that do not contain the accessibility and adaptability features required by 42 U.S.C. § 3604(f)(3)(C).

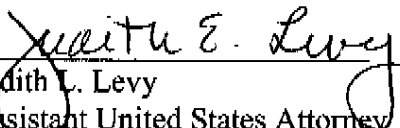
4. Enjoins the Developers, their employees, agents, successors, and all other persons in active concert or participation with any of them, from :

- a. Failing or refusing to bring the public accommodations at The Preserves into compliance with 42 U.S.C. § 12183(a)(1), 28 C.F.R. §§ 36.401 and 36.406, and 28 C.F.R. Part 36, Appendix A;
- b. Failing or refusing to take such affirmative steps as may be necessary to restore, as nearly as practicable, persons harmed by the Developers' unlawful practices to the position they would have been in but for the discriminatory conduct; and
- c. Designing and/or constructing any public accommodations or commercial facilities that are not readily accessible to and usable by individuals as required by 42 U.S.C. § 12183(a)(1), 28 C.F.R. §§ 36.401 and 36.406, and 28 C.F.R. Part 36, Appendix A; and

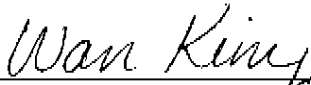
5. Awards appropriate monetary damages, pursuant to 42 U.S.C. § 3614(d)(1)(B) and 42 U.S.C. § 12188(b)(2)(B), to each person harmed by Defendants' and/or the Developers' discriminatory conduct and practices.

The United States further prays for such additional relief as the interests of justice may require.

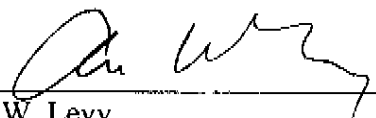
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The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

<p><b>I. (a) PLAINTIFFS</b> UNITED STATES OF AMERICA,</p> <p><b>(b)</b> County of Residence of First Listed Plaintiff <u>WAYNE</u> (EXCEPT IN U.S. PLAINTIFF CASES)</p> <p><b>(c)</b> Attorney's (Firm Name, Address, and Telephone Number) JUDITH E. LEVY, AUSA 211 W. Fort Street Detroit, MI 48226 PHONE: (313) 226-9727</p>	<p><b>DEFENDANTS</b> PALAZZOLO &amp; LOMBARDO OF MICHIGAN, L.L.C AND ROBERT LIPKA, ARCHITECT, P.C.</p> <p>County of Residence of First Listed Defendant <u>MACOMB</u> (IN U.S. PLAINTIFF CASES ONLY)</p> <p>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.</p> <p>Attorneys (If Known)</p>
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**II. BASIS OF JURISDICTION** (Select One Box Only)

1 U.S. Government Plaintiff

2 U.S. Government Defendant

3 Federal Question (U.S. Government Not a Party)

4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Select One Box for Plaintiff and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business in This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

**IV. NATURE OF SUIT** (Select One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<p><b>PERSONAL INJURY</b></p> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<p><b>PERSONAL INJURY</b></p> <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <p><b>PERSONAL PROPERTY</b></p> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 630	<input type="checkbox"/> 422 Appeal of... <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
<p><b>REAL PROPERTY</b></p> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<p><b>CIVIL RIGHTS</b></p> <input type="checkbox"/> 441 Voting <input checked="" type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<p><b>PRISONER PETITIONS</b></p> <input type="checkbox"/> 510 Motions to Vacate Sentence <p><b>Habeas Corpus:</b></p> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 423 Appeal of... <input type="checkbox"/> 424 Appeal of... <input type="checkbox"/> 425 Appeal of... <input type="checkbox"/> 426 Appeal of... <input type="checkbox"/> 427 Appeal of... <input type="checkbox"/> 428 Appeal of... <input type="checkbox"/> 429 Appeal of... <input type="checkbox"/> 430 Appeal of... <input type="checkbox"/> 431 Appeal of... <input type="checkbox"/> 432 Appeal of... <input type="checkbox"/> 433 Appeal of... <input type="checkbox"/> 434 Appeal of... <input type="checkbox"/> 435 Appeal of... <input type="checkbox"/> 436 Appeal of... <input type="checkbox"/> 437 Appeal of... <input type="checkbox"/> 438 Appeal of... <input type="checkbox"/> 439 Appeal of... <input type="checkbox"/> 440 Appeal of... <input type="checkbox"/> 441 Appeal of... <input type="checkbox"/> 442 Appeal of... <input type="checkbox"/> 443 Appeal of... <input type="checkbox"/> 444 Appeal of... <input type="checkbox"/> 445 Appeal of... <input type="checkbox"/> 446 Appeal of... <input type="checkbox"/> 447 Appeal of... <input type="checkbox"/> 448 Appeal of... <input type="checkbox"/> 449 Appeal of... <input type="checkbox"/> 450 Appeal of... <input type="checkbox"/> 451 Appeal of... <input type="checkbox"/> 452 Appeal of... <input type="checkbox"/> 453 Appeal of... <input type="checkbox"/> 454 Appeal of... <input type="checkbox"/> 455 Appeal of... <input type="checkbox"/> 456 Appeal of... <input type="checkbox"/> 457 Appeal of... <input type="checkbox"/> 458 Appeal of... <input type="checkbox"/> 459 Appeal of... <input type="checkbox"/> 460 Appeal of... <input type="checkbox"/> 461 Appeal of... <input type="checkbox"/> 462 Appeal of... <input type="checkbox"/> 463 Appeal of... <input type="checkbox"/> 464 Appeal of... <input type="checkbox"/> 465 Appeal of... <input type="checkbox"/> 466 Appeal of... <input type="checkbox"/> 467 Appeal of... <input type="checkbox"/> 468 Appeal of... <input type="checkbox"/> 469 Appeal of... <input type="checkbox"/> 470 Appeal of... <input type="checkbox"/> 471 Appeal of... <input type="checkbox"/> 472 Appeal of... <input type="checkbox"/> 473 Appeal of... <input type="checkbox"/> 474 Appeal of... <input type="checkbox"/> 475 Appeal of... <input type="checkbox"/> 476 Appeal of... <input type="checkbox"/> 477 Appeal of... <input type="checkbox"/> 478 Appeal of... <input type="checkbox"/> 479 Appeal of... <input type="checkbox"/> 480 Appeal of... <input type="checkbox"/> 481 Appeal of... <input type="checkbox"/> 482 Appeal of... <input type="checkbox"/> 483 Appeal of... <input type="checkbox"/> 484 Appeal of... <input type="checkbox"/> 485 Appeal of... <input type="checkbox"/> 486 Appeal of... <input type="checkbox"/> 487 Appeal of... <input type="checkbox"/> 488 Appeal of... <input type="checkbox"/> 489 Appeal of... <input type="checkbox"/> 490 Appeal of... <input type="checkbox"/> 491 Appeal of... <input type="checkbox"/> 492 Appeal of... <input type="checkbox"/> 493 Appeal of... <input type="checkbox"/> 494 Appeal of... <input type="checkbox"/> 495 Appeal of... <input type="checkbox"/> 496 Appeal of... <input type="checkbox"/> 497 Appeal of... <input type="checkbox"/> 498 Appeal of... <input type="checkbox"/> 499 Appeal of... <input type="checkbox"/> 500 Appeal of...	

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**V. ORIGIN** (Select One Box Only)

1 Original Proceeding

2 Removed from State Court

3 Remanded from Appellate Court

4 Reinstated or Reopened

5 Transferred from another district (specify)

6 Multidistrict Litigation

7 Appeal to District Judge from Magistrate Judgment

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
42 U.S.C 3601 -3619

Brief description of cause:  
FAIR HOUSING ACCESSIBILITY

**VII. REQUESTED IN COMPLAINT:**

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$ \_\_\_\_\_

CHECK YES only if demanded in complaint:  
JURY DEMAND:  Yes  No

**VIII. RELATED CASE(S) IF ANY**

(See instructions): JUDGE \_\_\_\_\_ DOCKET NUMBER \_\_\_\_\_

DATE: July 9, 2007

SIGNATURE OF ATTORNEY OF RECORD: *Judith Ellen Levy*

FOR OFFICE USE ONLY

RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_

1. Is this a case that has been previously dismissed?

Yes

No

If yes, give the following information:

Court: \_\_\_\_\_

Case No.: \_\_\_\_\_

Judge: \_\_\_\_\_

2. Other than stated above, are there any pending or previously discontinued or dismissed companion cases in this or any other court, including state court? (Companion cases are matters in which it appears substantially similar evidence will be offered or the same or related parties are present and the cases arise out of the same transaction or occurrence.)

Yes

No

If yes, give the following information:

Court: \_\_\_\_\_

Case No.: \_\_\_\_\_

Judge: \_\_\_\_\_

Notes :

\_\_\_\_\_

\_\_\_\_\_