

FILED

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

2009 JUL 31 P 4:04

CLEGG, JUDGE
ALEXANDRIA, VIRGINIA

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.)
)
 SUMMERLAND HEIGHTS GP, L.L.C.;)
 SUMMERLAND HEIGHTS II GP, L.L.C.;)
 SUMMERLAND HEIGHTS, L.P.;)
 SUMMERLAND HEIGHTS II, L.P.;)
 CHARLES P. JOHNSON &)
 ASSOCIATES, INC.; AND MARLYN)
 DEVELOPMENT CORPORATION.)
)
 Defendants.)

Civil Action No. 1:09CV860 - JCC/IDD

CIVIL COMPLAINT

The United States of America alleges:

1. This action is brought by the United States to enforce Title VIII of the Civil Rights Act of 1968 (the "Fair Housing Act"), as amended by the Fair Housing Amendments Act of 1988, 42 U.S.C. §§ 3601-3619, and Title III of the Americans with Disabilities Act of 1990 (the "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, 42 U.S.C. § 3614(a), and 42 U.S.C. § 12188(b)(1)(B). Venue is proper in this judicial district pursuant to 42 U.S.C. § 1391(b), because the events giving rise to this action occurred in this judicial district.

SUBJECT PROPERTY

3. Summerland Heights Apartments is a rental property located at 13671 Cidercrest Place, Woodbridge, Virginia. There are 12 residential buildings the majority of which have four stories on one side and three stories on the other side, with a separate rental office/clubhouse. There are a total of 318 units in the complex, of which 92 are ground floor units. Summerland Heights Apartments was built in two phases. Certificates of occupancy for the eight buildings in Phase I were issued on July 11, 1997. Certificates of occupancy for the four residential buildings in Phase II were issued between September 30, 1998 and December 14, 1998. Summerland Heights Apartments has a separate rental office/clubhouse and was designed and constructed for first occupancy, after January 26, 1993, and has a certificate of occupancy issued on December 31, 1997. The complex was designed and constructed for first occupancy after March 13, 1991.

4. Summerland Heights Apartments identified in paragraph 3, above, is a "dwelling" within the meaning of 42 U.S.C. § 3602(b).

5. Twenty-four of the 92 ground floor units at Summerland Heights Apartments are "covered multi-family dwellings" within the meaning of 42 U.S.C. § 3604(f)(7)(B), and are subject to the accessibility requirements of 42 U.S.C. § 3604(f)(3)(C).

6. The rental office/clubhouse at Summerland Heights Apartments as identified in paragraph 3, above, is a public accommodations within the meaning of 42 U.S.C. § 12181(7). It is subject to the requirements of 42 U.S.C. §§ 12181-12183.

THE DEFENDANTS

7. Summerland Heights GP, L.L.C., is a developer of Summerland Heights Phase I and was involved in the development and construction of Phase I of Summerland Heights.

Summerland Heights GP, L.L.C., was organized under the laws of the Commonwealth of Virginia and has its principal place of business in Norfolk, Virginia.

8. Summerland Heights II GP, L.L.C., is a developer of Summerland Heights Phase II and was involved in the development and construction of Phase II of Summerland Heights. Summerland Heights GP, L.L.C., was organized under the laws of the Commonwealth of Virginia and has its principal place of business in Norfolk, Virginia.

9. Summerland Heights, L.P., is an owner of Summerland Heights Phase I and was involved in the development and construction of Phase I of Summerland Heights. Summerland Heights, L.P., was organized under the laws of the Commonwealth of Virginia and has its principal place of business in Norfolk, Virginia.

10. Summerland Heights II, L.P., is an owner of Summerland Heights Phase II and was involved in the development and construction of Phase II of Summerland Heights. Summerland Heights II, L.P., was organized under the laws of the Commonwealth of Virginia and has its principal place of business in Norfolk, Virginia.

11. Charles P. Johnson & Associates, Inc., is an engineering firm licensed to do business in the Commonwealth of Virginia, with its principal place of business in Silver Spring, Maryland. It provided engineering design services during the development and construction of Summerland Heights Apartments.

12. Marlyn Development Corporation was the general contractor for Summerland Heights Apartments, and it was responsible for the construction of Summerland Heights Apartments. Marlyn Development Corporation was organized under the laws of the Commonwealth of Virginia and has its principal place of business in Virginia Beach, Virginia.

COUNT I

13. The allegations of paragraphs 1-12 are hereby incorporated by reference.

14. Defendants Summerland Heights GP, L.L.C., Summerland Heights II GP, L.L.C., Summerland Heights L.P., Summerland Heights II, L.P., Charles P. Johnson and Assoc. Inc., and the Marlyn Development Corporation have failed to design and construct the Summerland Heights Apartments so that:

(a) the public use and common use portions of the covered multi-family dwellings are readily accessible to and usable by individuals with disabilities;

(b) all doors within the ground floor units are sufficiently wide to allow passage by persons with disabilities who use wheelchairs; and

(c) all of the ground floor units contain the following features; (i) an accessible route into and through the dwelling; (ii) electrical outlets, and other environmental controls in accessible locations; (iii) reinforcements in bathroom walls to allow later installation of grab bars; and (iv) usable bathrooms such that an individual using a wheelchair can maneuver about the space.

15. Defendants, through the actions referred to in the preceding paragraphs, have:

(a) discriminated in the rental of, or otherwise made unavailable or denied, dwellings to 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 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).

16. The conduct of the 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. §§ 3601-3619; 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.

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

18. Defendants' conduct as described in this count was intentional, willful and taken in disregard for the rights of others.

COUNT II

19. The allegations of paragraphs 1 through 18 are hereby realleged and incorporated by reference.

20. The rental office/clubhouse of the apartment complex described in paragraph 3, above, is a public accommodation within the meaning of Section 301(7)(E) of the Americans with Disabilities Act, 42 U.S.C. § 12181(7)(E).

21. The rental office/clubhouse of Summerland Heights Apartments described in paragraphs 3, above, was designed and constructed for first occupancy after January 26, 1993.

22. Defendants Summerland Heights GP, L.L.C., Summerland Heights II GP, L.L.C., Summerland Heights, L.P., and Summerland Heights II, L.P., failed to design and construct Summerland Heights Apartments so that its rental office/clubhouse is 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.

23. The conduct of these defendants described in the preceding paragraphs 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).

24. Persons who have been the victims of defendants' discriminatory housing practices are aggrieved persons as defined by 42 U.S.C. § 12188(b)(2)(B) and may have suffered injuries as a result of defendants' conduct as described in this count.

PRAYER FOR RELIEF

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

1. Declares that the policies and practices of defendants alleged herein violate the Fair Housing Act, and that the policies and practices of defendants, Summerland Heights GP, L.L.C., Summerland Heights II GP, L.L.C., Summerland Heights, L.P., Summerland Heights II, L.P., alleged herein violate the Americans with Disabilities Act;

2. Enjoins the 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 units at Summerland Heights Apartments into compliance with 42 U.S.C. § 3604(f)(3)(C);

(b) failing or refusing to bring the public use and common use areas at

Summerland Heights into compliance with 42 U.S.C. § 3604(f)(C)(3);

3. Enjoins defendants, Summerland Heights GP, L.L.C., Summerland Heights II GP, L.L.C., Summerland Heights, L.P., Summerland Heights II, L.P., Charles P. Johnson and Assoc. Inc., and the Marlyn Development Corporation, their officers, employees, agents, successors and all other persons in active concert or participation with any of them from failing or refusing to bring the rental office and any other public accommodations at Summerland Heights Apartments 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;

4. Enjoins the 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 take such affirmative steps as may be necessary to restore, as nearly as practicable, the victims of the defendants' unlawful practices to the position they would have been in but for the discriminatory conduct;

(b) designing or constructing covered multi-family dwellings in the future that do not contain the accessibility and adaptability features required by 42 U.S.C.

§ 3604(f)(3)(c);

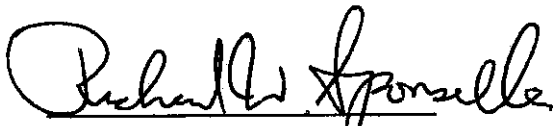
5. Enjoins defendants, Summerland Heights GP, L.L.C., Summerland Heights II GP, L.L.C., Summerland Heights, L.P., Summerland Heights II, L.P., Charles P. Johnson and Assoc. Inc., and the Marlyn Development Corporation, their officers, employees, agents, successors and all other persons in active concert or participation with any of them from designing or constructing public accommodations in the future that are not readily accessible to and usable by individuals with disabilities, 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

6. 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 aggrieved by the discriminatory housing practices of defendants.


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

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Respectfully submitted,



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