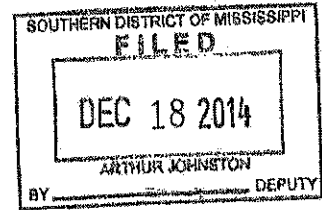


UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION



UNITED STATES,)

Plaintiff,)

v.)

Case No. 1:14cv224LG-JCG

DAWN PROPERTIES, INC.,)

SOUTHERN CROSS CONSTRUCTION)

COMPANY, INC.)

RIDGELAND CONSTRUCTION ONE, LLC,)

THE BEACH CLUB, LLC,)

THE BEACH CLUB II, LLC)

THE BELMONT OF LAMAR, LLC,)

GRAND BISCAYNE APTS., LLC, and)

SEAINN, LLC,)

Defendants,)

and)

SUMMER MISS, LLC,)

14510 LEMOYNE BOULEVARD, LLC)

LEXINGTON MILL MISSISSIPPI OWNER, LLC,)

and INN BY THE SEA HOME OWNERS)

ASSOCIATION, INC.,)

Rule 19 Defendants.)

**CONSENT ORDER BETWEEN THE UNITED STATES
AND RULE 19 DEFENDANT 14510 LEMOYNE BOULEVARD, LLC**

I. INTRODUCTION

A. Background

1. This Consent Order (hereinafter "Consent Order") is entered into between Plaintiff United States and Rule 19 Defendant 14510 Lemoyne Boulevard, LLC ("Lemoyne"), the owner

of the Grand Biscayne apartment complex (“Grand Biscayne”), located at 14510 Lemoyne Boulevard in Biloxi, Mississippi.

2. On May 23, 2014, the United States filed a Complaint to enforce the provisions of the Fair Housing Act (FHA), 42 U.S.C. §§ 3601-3619. Specifically, the United States’ Complaint alleges that Defendants Dawn Properties, Inc., *et al.* (“the design and construction defendants”) have designed and constructed various multi-family properties, including Grand Biscayne, without required accessible features, and that this conduct constitutes a pattern or practice of discrimination or a denial of rights to a group of persons because of disability, in violation of 42 U.S.C. §§ 3604(f)(1), (f)(2), and (f)(3)(C).

3. The United States’ Complaint further alleges that the design and construction defendants have, among other things, failed to design and construct Grand Biscayne with the features of accessible and adaptable design and construction required by Title III of the Americans with Disabilities Act (“ADA”), 42 U.S.C. §§ 12181-12213, and its implementing regulation, the ADA Standards for Accessible Design, 28 C.F.R. § 36.104; 28 C.F.R. Pt. 36 Appendix A (1991 ADA Standards for Accessible Design), as amended at 28 C.F.R. Pt. 36 Appendix D (2010 ADA Standards for Accessible Design) (hereinafter, the “ADA Standards”).

4. Sometime after its design and construction, Grand Biscayne’s mortgage was purchased by Lemoyne, which currently owns Grand Biscayne.

5. Lemoyne is a Delaware limited liability company whose principal place of business is 14510 Lemoyne Boulevard in Biloxi, Mississippi. Lemoyne is named in the United States’ complaint as a necessary party to this lawsuit in whose absence complete relief cannot be afforded to the United States. *See* Fed. R. Civ. P. 19.

6. The parties acknowledge that this Consent Order does not constitute, and should not be

construed as, an admission of wrongdoing by Lemoyne.

B. Relevant Requirements of the Fair Housing Act

7. The FHA provides that, for non-elevator residential buildings with four or more dwelling units, all ground-floor units that are designed and constructed for first occupancy after March 13, 1991, are “covered multifamily dwellings” and must include certain basic features of accessible and adaptive design to make such units accessible to, or adaptable for use by, a person who has or develops a disability. 42 U.S.C. §§ 3604(f)(3)(C) and (f)(7)(B).

8. The accessible and adaptive design provisions of the FHA require that for covered multifamily dwellings: (i) the public use and common use portions of such dwellings are readily accessible to and usable by persons with a disability; (ii) all the doors designed to allow passage into and within all premises within such dwellings are sufficiently wide to allow passage by persons with a disability using wheelchairs; and (iii) all premises within such 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) usable kitchens and bathrooms such that an individual using a wheelchair can maneuver about the space. 42 U.S.C. § 3604(f)(3)(C).

9. Grand Biscayne was first occupied after March 13, 1991, and therefore the ground-floor units at Grand Biscayne are “covered multifamily dwellings” within the meaning of the FHA, 42 U.S.C. § 3604(f)(7)(B). As such, those units and the public and common use areas at Grand Biscayne must comply with the accessible design requirements of 42 U.S.C. § 3604(f)(3)(C).

C. Relevant Requirements of the Americans with Disabilities Act

10. The ADA and the ADA Standards, 28 C.F.R. pt. 36, app. A, which have been issued by the U.S. Department of Justice to implement the design and construction requirements of Title III of the ADA, require that all “public accommodations” designed and constructed for first occupancy after January 26, 1993, and the goods, services, facilities, privileges, advantages, or accommodations of those public accommodations, be readily accessible to and usable by persons with disabilities in accordance with certain accessibility standards promulgated under that Act. 42 U.S.C. §§ 12182(a) and 12183(a)(1). A rental or sales office for an apartment, condominium, or patio home complex is a “public accommodation” under the ADA. 42 U.S.C. § 12181(7)(E).

11. The clubhouse/leasing office for Grand Biscayne was designed and constructed for first occupancy after January 26, 1993. Therefore, the clubhouse/leasing office and the facilities and privileges provided at that office, such as public parking, are required to be designed and constructed in accordance with the standards promulgated under the ADA.

D. Consent of Lemoyne Boulevard to Entry of this Order

12. Lemoyne agrees that the ground-floor apartments and the public and common use areas of Grand Biscayne are subject to the requirements by the FHA, 42 U.S.C. §§ 3601-3619.

13. Lemoyne agrees that the clubhouse/leasing office at Grand Biscayne and the facilities and privileges provided at that clubhouse/leasing office, such as public parking, are subject to the requirements of the ADA, 42 U.S.C. §§ 12181, *et seq.*, and its implementing regulation, the ADA Standards.

14. Lemoyne agrees that this Court has jurisdiction over the subject matter of this case pursuant to 28 U.S.C. §§ 1331 and 1345, and 42 U.S.C. § 3614(a).

15. As indicated by the signatures appearing below, the United States and Lemoyne agree to the entry of this Consent Order. This Order is final and binding. It sets forth all of the

obligations incumbent on, and all of the relief sought from, Lemoyne and its successors and assigns arising out of or resulting from the claims the United States has or may have brought against it for alleged violation of the ADA, the ADA Standards, and/or the FHA.

Accordingly, it is hereby ORDERED, ADJUDGED AND AGREED as follows:

II. GENERAL INJUNCTION

16. Subject to the terms set forth herein, Lemoyne and each of its officers, employees, agents, successors and assigns, and all other persons in active concert or participation with them shall refrain from engaging in conduct that denies the United States or other persons or parties designated by the United States or the Court access to the public and common use areas, the covered multifamily dwellings, or the public accommodations areas at Grand Biscayne, and from engaging in any other action to impede any retrofits required to bring Grand Biscayne into compliance with the FHA, the ADA and the ADA Standards.

III. DISCOVERY AND RETROFITS AT GRAND BISCAYNE

17. Upon reasonable notice, Lemoyne shall allow the United States access to the ground-floor units (including unit interiors) at Grand Biscayne for inspection, including, but not limited to photographing, by the United States' expert(s), including providing required notice to tenants. Access shall be provided on reasonable notice from the United States.

18. Upon reasonable notice, Lemoyne shall allow access to all types of ground-floor units (including unit interiors) at Grand Biscayne, to be determined by the United States in its sole discretion, including but not limited to: Unit Type A, one bedroom and one bath; Unit Type B, two bedroom and two bath; and Unit Type E, three bedroom and two bath. Lemoyne agrees that, to the best of its knowledge, all units of a similar type are substantially similar in design and construction to other units of that type (*e.g.*, Unit Type A is substantially similar to all Unit Type A's at the apartment complex).

19. Lemoyne shall allow the United States access to the public and common use areas at Grand Biscayne, to be determined by the United States in its sole discretion, including but not limited to the leasing office/clubhouse, swimming pool, playground, mail facility/kiosks, dumpsters, and gazebo for inspection, including but not limited to photographing, by the United States' expert(s). Access shall be provided on reasonable notice from the United States.

20. Lemoyne shall preserve all records it currently possesses related to this Consent Order, including but not limited to all current and former tenant files, all lists of current and former residents, by unit, and all documents in its possession, custody, or control relating to the design and construction of Grand Biscayne.

21. Lemoyne shall respond to discovery requests by the United States related to this litigation pursuant to Fed. R. Civ. P. 30, 33, and 34, without the need for the United States' issuance of subpoenas pursuant to Fed. R. Civ. P. 45.

22. Lemoyne hereby waives all rights to object to any retrofits of Grand Biscayne that may be requested by the United States against the design and construction defendants in connection with any subsequent settlement, consent order, or court proceeding in this case. Prior to any final, binding settlement, consent order, or court order, Lemoyne reserves the right to be heard by the Court and/or the relevant design and construction parties regarding: (a) the aesthetic aspects of any retrofits; (b) the labor and materials to be utilized related to any retrofits; and (c) the timing and process of any retrofits on its property. Lemoyne's input will be limited to proposals intended to ensure that all retrofits are performed in a good and workmanlike manner and will not unreasonably interfere with Lemoyne's apartment rental business.

23. Upon reasonable notice, and subject to the terms set forth in this Order Lemoyne shall allow any of the design and construction defendants or other persons or entities (other than

Lemoyne) as the Court may order to make retrofits at Grand Biscayne. Upon reasonable notice, Lemoyne shall allow access to Grand Biscayne to the United States or other persons or parties designated by the United States or the Court for purposes of planning, photographing, evaluating and performing any action required under a subsequent consent order or other order by the Court to bring Grand Biscayne into compliance with the FHA, the ADA and the ADA Standards.

24. Lemoyne shall abide by the final decision of any neutral, expert individual or entity identified by the United States or the Court as to whether retrofits at Grand Biscayne have been completed in accordance with the requirements of any settlement, consent order, or other order by the Court.

25. Lemoyne, its agents and affiliated companies, may not raise rents or impose fees on any dwelling unit at Grand Biscayne because of anticipated or actual retrofits or because of other costs in connection with this litigation. Lemoyne shall otherwise retain an unimpeded right to raise rents and/or impose fees on its dwelling units for any and all other lawful reasons, and shall not be subject to special scrutiny or oversight in this regard.

IV. TRANSFER OF INTEREST IN GRAND BISCAYNE

26. Should Lemoyne decide to sell or transfer ownership of Grand Biscayne or any portion thereof prior to the resolution of this lawsuit or any retrofits ordered by the Court, Lemoyne agrees to: (a) prior to completion of sale or transfer, provide each prospective buyer a copy of the complaint, this Consent Order, and, if applicable, a copy of a subsequent consent order or other final order by the Court relating to Grand Biscayne; and (b) upon completion of the sale, within fourteen (14) days provide to the United States, by facsimile, electronic mail, and overnight delivery, written notice of the sale or transfer of ownership, along with a copy of the notice sent to each buyer prior to the completion of the sale or transfer, and each buyer's name, address, and telephone number.

V. DURATION OF CONSENT ORDER AND TERMINATION OF LEGAL ACTION

27. This Consent Order shall remain in effect until the end date of a subsequent consent order(s) or other order(s) by the Court that relate, in whole or in part, to the property located at 14510 Lemoyne Boulevard in Biloxi, Mississippi.

28. The Court shall retain jurisdiction for the duration of this Consent Order to enforce the terms of this Consent Order. The United States may move the Court to extend the duration of this Consent Order in the interests of justice, to which Lemoyne may object.

29. The United States and Lemoyne shall endeavor in good faith to resolve informally any differences regarding interpretation of and compliance with this Consent Order prior to bringing such matters to the Court for resolution. However, in the event of a failure by Lemoyne to perform in a timely manner any act required by this Consent Order or any subsequent consent order(s) or other order(s) by the Court, or to otherwise act in conformance with any provision thereof, the United States may move this Court to impose any remedy authorized by law or equity, including, but not limited to, an order requiring performance of such act.

VI. TIME FOR PERFORMANCE

30. Any time limits for performance imposed by this Consent Order may be extended by the mutual written agreement of the United States and Lemoyne.

VII. COSTS OF LITIGATION

31. Lemoyne shall bear its own fees and costs related to this litigation and compliance with this Consent Order.

SO ORDERED this 18TH day of DECEMBER, 2014.


UNITED STATES DISTRICT COURT CHIEF JUDGE

The undersigned apply for and consent to the entry of this Order:

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