IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

UNITED STATES OF AMERICA	§	
v.	§	Case No. 4:08-CV-142
AIR PARK - DALLAS ZONING COMMITTEE, et al.	§	

ORDER GRANTING MOTION FOR PRELIMINARY INJUNCTION

The United States brought this action on April 24, 2008 against Defendants for violations of the Fair Housing Act. This action arises out of a dispute over the presence of a footbridge on land owned and controlled by Defendants. Before the Court is the United States' Motion for Preliminary Injunction (Doc. No. 15). The United States seeks to enjoin Defendants from removing or tampering with the footbridge in question.

On March 5, 2009, the Court held an evidentiary hearing and heard oral arguments on the United States' Motion for Preliminary Injunction. Having considered the evidence submitted by the parties and pursuant to Federal Rule of Civil Procedure 52(a)(2), the Court makes the findings of fact and conclusions of law outlined below. Any finding of fact more properly characterized as a conclusion of law should be construed as such. Any conclusion of law more properly characterized as a finding of fact should be construed as such.

FINDINGS OF FACT

1. Alfred and Sheryl Pick have lived in the Air Park Estates community in Dallas since 1983.

2. Ms. Pick suffers from adrenomyeloneuropathy, a neurological disorder. Due to her disability, Ms. Pick has limited mobility.

3. The Picks installed a footbridge across a ditch in front of their home so that Ms. Pick could access the street in case of an emergency. This footbridge extends past the Picks' property line and into the right of way, violating restrictive covenants placed on the land.

4. Other residents in the Air Park Estates community have decorative items in the right of way.

5. Ms. Pick would almost certainly suffer personal injuries trying to leave her home if the footbridge was removed or if she had to use a less suitable alternative.

6. The Air Park - Dallas Zoning Committee, which enforces the restrictive covenants in the Air Park Estates community, sent Mr. Pick two letters dated September 15 and 30, 2004. The letters demanded that the Picks remove the footbridge.

7. Ms. Pick responded in a letter dated October 8, 2004. Ms. Pick's letter notified the Zoning Committee of her disability and of her need for the bridge to accommodate her related mobility issues.

8. The Zoning Committee sent another letter dated October 22, 2004 and again demand that the Picks remove the offending footbridge.

9. A year later, on October 18, 2005, the Zoning Committee again repeated its demand that the Picks remove the footbridge.

10. On November 23, 2005, the Zoning Committee's attorney sent a final demand letter asking the Picks to remove the footbridge. When the Picks refused, the Zoning Committee filed an action in the District Court of Collin County, Texas, against Mr. Pick. The Zoning Committee sought an order to compel Mr. Pick to remove the offending footbridge.

11. Mr. Pick filed a counterclaim against the Zoning Committee for violations of the Fair Housing Act. The counterclaim alleged that the Zoning Committee discriminated against the

Picks by failing to make reasonable accommodations and failing to permit reasonable modifications.

12. On February 26, 2007, while the state action was pending against her husband, Ms. Pick again requested that she be allowed to keep the footbridge to accommodate her limited mobility. She attached a letter from her doctor confirming Ms. Pick's need for a footbridge. Ms. Pick's letter did not refer to the pending litigation.

13. Ms. Pick's February 2007 request to keep the footbridge was both reasonable and necessary.

14. The Court declines to find at this preliminary juncture that Ms. Pick's February 2007 letter was an offer of settlement.

15. The Zoning Committee voted on March 2, 2007 to deny Ms. Pick's February 2007 request to keep the existing footbridge. The Zoning Committee agreed to entertain plans for an alternative design.

16. Ms. Pick sent a formal settlement offer on March 26, 2007. In this offer, Ms. Pick agreed to a "footbridge which would not be ideal" in order to resolve the pending state lawsuit against her husband.

17. The Picks filed a complaint with the Department of Housing and Urban Development (HUD) on July 19, 2007, while the state action was still pending. The Picks alleged that Defendants refused to authorize the footbridge in violation of the Fair Housing Act.

18. Mr. Pick and the Zoning Committee ultimately reached a settlement agreement in the state action on August 13, 2007. The parties released each other from all claims and counterclaims. Specifically, Mr. Pick agreed not to pursue any related HUD claims.

19. The state court entered a final judgment interpreting and enforcing the parties' settlement

agreement on July 24, 2008. The Final Judgment ordered Mr. Pick to submit plans for an alternative footbridge to the Zoning Committee for its approval.

20. This action arises out of the HUD complaint filed in July 2007. The United States brought this action on behalf of Ms. Pick for alleged violations of the FHA by Defendants. Defendants elected to forgo an administrative hearing and proceed directly to the district court.

21. The footbridge has stood undisturbed since 2002. Thus, Defendants will suffer no harm if the footbridge remains in place pending final resolution of this action.

CONCLUSIONS OF LAW

1. The Anti-Injunction Act does not bar entry of this injunction. The Anti-Injunction Act does not extend to an action in which the United States is the plaintiff. *Leiter Minerals, Inc. v. United States*, 352 U.S. 220, 225 (1957); *Mitchum v. Foster*, 407 U.S. 225, 235-36 (1972). This exception to the Anti-Injunction Act is broad and applies to this action. *See United States v. Wood*, 295 F.2d 772, 779 (5th Cir. 1961).

2. A preliminary injunction is an extraordinary and drastic remedy, and as such, should not be granted routinely. *Holland Am. Ins. Co. v. Succession of Roy*, 777 F.2d 992, 997 (5th Cir. 1985). The United States must "clearly carry the burden" before an injunction should issue. *Id.* at 573.

3. The United States must prove: 1) a substantial likelihood of success on the merits; 2) a substantial threat of irreparable injury if the injunction does not issue; 3) that the threatened injury to Ms. Pick outweighs the threatened harm Defendant will suffer if the injunction issues; and 4) the injunction will not disserve the public interest. *Canal Auth. v. Callaway*,

762 F.2d 464, 572 (5th Cir. 1974).

4. The elements which the United States must prove should not be considered independent of the others. *Texas v. Seatrain Intern., S.A.*, 518 F.2d 175, 180 (5th Cir. 1975). Instead, all four elements should be evaluated on a sliding scale in which the weight of evidence on one element may impact the necessary showing on the other elements. *See id.*

Substantial Likelihood of Success on the Merits

5. The United States must prove the following to prevail on its reasonable accommodation claim: (1) a person who resides in or intends to reside in a dwelling after it is sold, rented or made available has a disability as defined in 42 U.S.C. § 3602(h); (2) Defendants had knowledge of the disability; (3) the requested accommodation in Defendants' rules, policies, practices, or services was reasonable and necessary for the disabled person's use and enjoyment of the dwelling; and 4) Defendants refused to make a reasonable accommodation. 42 U.S.C. § 3604(f)(2) & (f)(3); *see United States v. Cal. Mobile Home Park Mgmt. Co.*, 107 F.3d 1374, 1380 (9th Cir. 1997).

6. The United States has presented evidence sufficient to support a finding in its favor on each of these elements. Defendants have not disputed the first two elements. As to the second two elements, the Court's findings of facts based on the evidence received at this preliminary stage supports the United States' position.

7. Delay may constitute a failure to provide a reasonable accommodation. *Groome Res. Ltd. v. Parish of Jefferson,* 235 F.3d 192, 199 (5th Cir. 2000). In this case, the Picks suffered both delay and expense before Defendants agreed to some form of accommodation. Thus,

Defendants cannot rely on the fact that the parties ultimately agreed to an alternate bridge as a bar to this action.

8. The United States is entitled at this preliminary stage to rely on Defendants' denial of Ms. Pick's February 2007 request for a reasonable accommodation, notwithstanding Defendants' claim of protection under the *Noerr Pennington* doctrine.

9. Although Defendants' *Noerr Pennington* defense is not without merit, the Court does not have sufficient evidence before it at this stage to find that Defendants' denial of Ms. Pick's February 2007 request was protected by *Noerr Pennington*.

10. Also, the United States' claim is not barred by claim preclusion. The United States is the Plaintiff in this action, and therefore is entitled to relief independent of Ms. Pick. *See Gen. Tel. Co. of the Nw. v. E.E.O.C.*, 446 U.S. 318, 326 (1980).

11. The Supreme Court has held in an employment discrimination action that "the EEOC is not merely a proxy for the victims of discrimination." *Id.* In an employment discrimination action, the aggrieved party files a complaint with the EEOC, and the EEOC investigates the claim. 42 U.S.C. § 2000e-5(b). If the EEOC finds reasonable cause to believe that employment discrimination occurred, the EEOC will engage the parties in informal dispute resolution. *Id.* If informal attempts fail, the EEOC may then bring a civil action against the respondent. 42 U.S.C. § 2000e-5(f)(1). The Court held that even when the EEOC files an action on behalf of a complainant, the EEOC also acts to serve the public interest by preventing employment discrimination. *General Telephone*, 446 U.S. at 326. The Court's reasoning rested largely on the existence of the aggrieved party's independent rights to pursue legal action, including the right to intervene in the EEOC action and the right to bring

a private civil action if the EEOC does not. *Id.*

12. The procedure under the FHA is similar to the procedure applied to employment discrimination complaints. Specifically, the aggrieved party files a complaint, and HUD investigates the allegations. 42 U.S.C. § 3610. Upon a finding of reasonable cause to believe that discrimination occurred, HUD initiates legal proceedings. 42 U.S.C. § 3610(g). Under the FHA, the proceedings are before an administrative law judge, unless one of the parties elects to proceed directly to the district court. 42 U.S.C. § 3612. The Attorney General handles litigation in the district court, and the aggrieved party has an independent right to intervene. 42 U.S.C. § 3612(o). (The aggrieved party also has the right to bring an independent civil action prior to the start of an administrative hearing. 42 U.S.C. § 3613(a)(2) & (3).) As with an EEOC action, the United States may seek relief on behalf of the aggrieved party. 42 U.S.C. § 3612(o). But as the Supreme Court determined with employment discrimination actions, the United States pursues an FHA action in a dual capacity–for the benefit of the aggrieved party and to advance the public's interest in eradicating discrimination.

13. Because the United States acts both on behalf of the aggrieved party and to further the public's interest in preventing discrimination, the United States is not barred by claim preclusion for any prior actions by or on behalf of Ms. Pick.

14. Furthermore, the plain language of the FHA also contemplates that an administrative proceeding and a civil action by an aggrieved party are distinct. *See* 42 U.S.C. § 3613(a)(2) & (3) (describing the relationship between an aggrieved party's civil action and the administrative process). The United States brought this case pursuant to Defendants'

election to forgo the administrative hearing. Thus, this action is more akin to an administrative action under the FHA than a private civil action, or at the most a hybrid of the two. Accordingly, Ms. Pick's right to bring a civil action and the United States' obligation to pursue a civil action under 42 U.S.C. § 3612(o) are not mutually exclusive. Thus, the United States is not barred by claim preclusion for any prior actions by or on behalf of Ms. Pick.

Substantial Threat of Irreparable Injury

15. The United States has shown a substantial threat of irreparable injury to Ms. Pick if the footbridge in front of her home is removed. Specifically, Ms. Pick is likely to suffer personal injury if the footbridge is removed.

Threatened Injury to Ms. Pick Outweighs the Threatened Harm to Defendants

16. The Court has weighed the fact that Defendants will suffer little or no harm if the footbridge remains in place (as it has since 2002) during the pendency of this action against the fact that Ms. Pick faces a substantial threat of irreparable injury. This balance of threatened harm weighs heavily in favor of granting the preliminary injunction.

An Injunction Will Not Disserve the Public Interest

17. The United States has filed this action on behalf of Ms. Pick and to further the public's interest. An injunction that prohibits discriminatory acts that violate the FHA will not disserve the public interest.

PRELIMINARY INJUNCTION

For the reasons stated herein, the Court GRANTS the United States' Motion for Preliminary Injunction (Doc. No. 15). Accordingly, the Court orders the following during the pendency of this lawsuit:

1) Defendants shall not take any actions directed at, intended to cause, or likely to result in the removal of the footbridge located in front of Sheryl Pick's home at 6345 Douglas Street, Plano, Texas;

2) Defendants shall not take any action that would interfere with access to the footbridge located in front of Sheryl Pick's home at 6345 Douglas Street, Plano, Texas.

It is SO ORDERED.

SIGNED this 29th day of June, 2009.

MICHAEL H. SCHNEIDER
UNITED STATES DISTRICT JUDGE