

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).

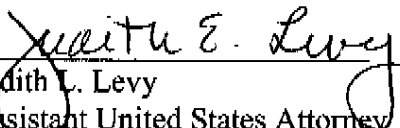
4. Enjoins the Developers, their employees, agents, successors, and all other persons in active concert or participation with any of them, from :

- 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

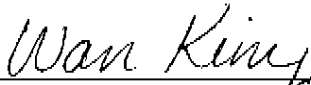
5. Awards appropriate monetary damages, pursuant to 42 U.S.C. § 3614(d)(1)(B) and 42 U.S.C. § 12188(b)(2)(B), to each person harmed by Defendants' and/or the Developers' discriminatory conduct and practices.

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

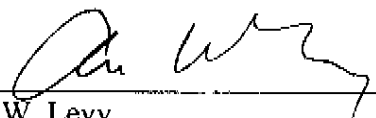
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The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial 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.)

I. (a) PLAINTIFFS

UNITED STATES OF AMERICA,

(b) County of Residence of First Listed Plaintiff WAYNE
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

JUDITH E. LEVY, AUSA
211 W. Fort Street
Detroit, MI 48226 PHONE: (313) 226-9727

DEFENDANTS

PALAZZOLO & LOMBARDO OF MICHIGAN, L.L.C AND ROBERT LIPKA, ARCHITECT, P.C.

County of Residence of First Listed Defendant MACOMB
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

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	PERSONAL INJURY <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	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 630 ...	<input type="checkbox"/> 422 Approval ...	<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
<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	CIVIL RIGHTS <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	<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 PERSONAL PROPERTY <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"/> 423 Approval ...	<input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))
	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <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"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	

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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 Judgement

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 :
