

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

FILED
U.S. DISTRICT COURT
INDIANAPOLIS DIVISION

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SOUTHERN DISTRICT
OF INDIANA
LAURA A. BRIGGS
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National Fair Housing Alliance, Inc.; Savannah-Chatham
County Fair Housing Council, Inc.; and Metro Fair Housing
Services, Inc.,

Plaintiffs,

v.

1010-cv-0993 RLY-DML

S.C. Bodner Company, Inc.; MBA Construction, LLC;
Steven C. Bodner; Retreat Apartments of Mobile, LLC;
Huntsville Main Street Apartments LLC; Mountain Ranch
Apartments LLC; Village at Rice Hope Apartments LLC;
Pavilion Apartments at Plantation Way LLC; LBM Realty,
LLC; Spring Lake Apartments Limited Partnership;
Brooklyn Place TIC I, LLC; Brooklyn Place TIC II, LLC;
Brooklyn Place TIC III, LLC; Brooklyn Place TIC IV, LLC;
Brooklyn Place TIC V, LLC; Brooklyn Place TIC VI, LLC;
Brooklyn Place TIC VII, LLC; Brooklyn Place TIC VIII,
LLC; Brooklyn Place TIC IX, LLC; Brooklyn Place TIC X,
LLC; Brooklyn Place TIC XI, LLC; Brooklyn Place TIC
XII, LLC; Brooklyn Place TIC XIII, LLC; Brooklyn Place
TIC XIV, LLC; Brooklyn Place TIC XV, LLC; Brooklyn
Place TIC XVI, LLC; Brooklyn Place TIC XVII, LLC;
Brooklyn Place TIC XVIII, LLC; Brooklyn Place TIC
XIX, LLC; Brooklyn Place TIC XX, LLC; Brooklyn Place
TIC XXI, LLC; Brooklyn Place TIC XXII, LLC; Brooklyn
Place TIC XXIII, LLC; Brooklyn Place TIC XXIV, LLC;
Brooklyn Place TIC XXV, LLC; Brooklyn Place TIC
XXVI, LLC; Brooklyn Place TIC XXVII, LLC; Brooklyn
Place TIC XXVIII, LLC; Brooklyn Place TIC XXIX, LLC;
Reserve Apartments, LLC; Cross Lake Apartments, LLC;
Twin Creek Apartments, LLC; Whispering Ridge
Apartments LLC; Enclave Apartments Covell Village
LLC; Village at Quail Springs Apartments, LLC;
Morgan Overlook Apartments LLC; Morgan Crescent at
Wolfchase Apartments LLC,

Defendants.

Docket No.

COMPLAINT

JURY DEMAND

I. INTRODUCTION AND SUMMARY OF CLAIMS

1. This civil rights action is brought by the National Fair Housing Alliance and two of its members, Savannah-Chatham County Fair Housing Council, Inc., and Metro Fair Housing Services, Inc., against the builders, designers, and current owners of multifamily apartment complexes designed and/or built by S.C. Bodner Company, Inc., MBA Construction, LLC and Steven C. Bodner, for violations of the accessibility requirements of the Fair Housing Act, Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988 (hereinafter "FHAA"), 42 U.S.C. §§ 3601-3619.

2. Since at least 1998, the Design/Build Defendants, who are later identified herein, have engaged in a continuous pattern or practice of discrimination against people with disabilities in violation of the FHAA by designing and/or constructing multifamily dwellings, and the common use and public use areas associated with those dwellings (hereafter referred to as "covered units" or "covered apartment complexes"), at six apartment complexes tested by Plaintiffs, in such a manner as to deny people with disabilities full access to, and the use of, these facilities as required under the FHAA. The Design/Build Defendants' violations of the FHAA are serial and frequent, and continue more than 19 years after the effective date of the FHAA accessibility requirements.

3. The Owner Defendants, who are the current owners of the six apartment complexes tested by Plaintiffs and who are later identified herein, have engaged in an ongoing and continuous pattern and practice of discrimination in the rental of dwellings, in violation of the FHAA, by offering for rent apartments which they knew or could have known, with the exercise of reasonable care, failed to provide the accessible and adaptable features required by the FHAA for persons with physical disabilities. Consequently, these Defendants have made and

are making dwellings unavailable to people with physical disabilities and/or have discriminated against them in the terms, conditions or privileges of the rental of dwellings in violation of the FHAA.

4. The Design/Build and the Owner Defendants' violations of the FHAA accessibility requirements have serious and significant consequences for people with disabilities. As outlined below, many complexes have features such as steps, accessible routes which can be blocked by parked cars, high thresholds, environmental controls beyond the reach range of wheelchair users, insufficient clear floor space in bathrooms for persons in wheelchairs to use the facilities, and insufficient centered clear floor space at kitchen sinks and bathroom lavatories for use by persons in wheelchairs. There are public and common use areas with inaccessible features such as accessible parking spaces which lack the required signage to designate them as reserved for persons with disabilities, leasing office restrooms which lack grab bars and required clear floor space for persons with mobility impairments, and shower stalls that are not accessible for persons in wheelchairs due to their size – all in violation of the FHAA's accessibility requirements. These blatant violations, and many others, effectively communicate that people with disabilities are not welcome at the Owner Defendants' properties.

5. According to the 2004 American Community Survey conducted by the U.S. Census Bureau, more than 51 million Americans (nearly one in five) have some form of disability, and one in eight has a severe disability. Of that number, more than 2.7 million people over the age of 15 years use a wheelchair, and that number is expected to increase as the population ages and medical care allows people with disabilities to live longer and fuller lives. Another 7 million use a cane, crutches, a walker or other mobility aid. Accessible housing is an

essential means of ensuring that people with disabilities are able to fully participate in community life.

6. A person using a wheelchair or other mobility aid is just as effectively excluded from the opportunity to live in a particular dwelling by steps, excessively high thresholds at building or unit entrances or by excessive running slopes on the route to covered units as by a posted sign saying “No Handicapped People Allowed.” In considering the 1988 disability amendments to the FHA, Congress stressed that enforcement of civil rights laws is necessary to protect people with disabilities from the “devastating” impact of housing discrimination, including the “architectural barriers” erected by developers and builders who fail to construct dwellings and public accommodations accessible to, and adaptable by, people with disabilities. H.R. REP. NO. 100-711, at 25 (1988), *reprinted in* 1988 U.S.C.C.A.N. 2173, 2186.

7. The Design/Build and the Owner Defendants’ flagrant, systematic, and continuing violations of the FHAA have thwarted Congressional efforts to eradicate housing discrimination against people with disabilities, rendered units unavailable to people with disabilities, frustrated the missions of Plaintiffs, and caused Plaintiffs to divert their scarce resources in an attempt to redress these violations. Enforcement of the FHAA against these Defendants is necessary because of the extensive and continuing nature of the civil rights violations at the numerous apartment complexes throughout the United States that have been designed and/or constructed and/or are being operated by them.

8. To the date of this filing, Plaintiffs have also identified ten additional covered apartment complexes designed and/or built by Defendants Steven C. Bodner, S.C. Bodner Company, Inc. and MBA Construction LLC and currently owned by the Remedial Defendants, who are later identified herein. On information and belief, these additional properties share

common design features with the tested apartment complexes and Plaintiffs have reason to believe that similar FHAA accessibility violations may exist at these properties as well. Plaintiffs request as a remedy, *inter alia*, that the Remedial Defendants be enjoined from refusing to permit any survey and, where necessary, any retrofits of their respective property that may be ordered by this Court to bring these properties into full compliance with the FHAA.

II. JURISDICTION AND VENUE

9. This Court may exercise subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1332, 2201 and 2202 and 42 U.S.C. § 3613(a).

10. Venue is proper in the Southern District of Indiana pursuant to 28 U.S.C. § 1391(b) in that a substantial part of the events and omissions giving rise to these claims occurred in this District, and these claims concern or otherwise relate to real property located in this District. In addition, most of the Defendants are either incorporated or doing business in the State of Indiana, and may be found in this District.

III. PARTIES

A. Plaintiffs

11. Plaintiff National Fair Housing Alliance, Inc. (“NFHA”) is a national non-profit public service organization incorporated under the laws of the Commonwealth of Virginia with its principal place of business at 1101 Vermont Avenue, N.W., Suite 710, Washington, DC 20005. NFHA is a nationwide alliance of private, non-profit, fair housing organizations, including organizations in 28 states. NFHA’s mission includes advocating for the rights of people with disabilities to accessible housing. NFHA is the only national organization dedicated