

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

MICHAEL LOWREY,

Plaintiff,

and

FAIR HOUSING CENTER OF
SOUTHEASTERN MICHIGAN, INC.

Intervenor-Plaintiff

vs.

BEZTAK PROPERTIES, INC.;
BEZTAK COMPANIES, INC.;
BILTMORE PROPERTIES
COMPANIES, INC.; UPTOWN
INVESTORS, LLC; UPTOWN
INVESTORS, LLC II; MONOGRAM
HOMES; WARNER, CANTRELL &
PADMOS, INC., and LOONEY RICKS
KISS,

Defendants.

Case No.: 2:06-CV-13408-NGE-MKM

Judge Nancy G. Edmunds
Magistrate Mona Majzoub

JURY DEMAND

**INTERVENOR-PLAINTIFF FAIR HOUSING CENTER OF SOUTHEASTERN
MICHIGAN, INC.'S COMPLAINT FOR DECLARATORY AND INJUNCTIVE
RELIEF**

PRELIMINARY STATEMENT

1. This action is brought by the Fair Housing Center of Southeastern Michigan, Inc., by and through its counsel, 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 (the "FHAA"), 42 U.S.C. §§ 3601 *et seq.*, the Americans with Disabilities Act (the "ADA"), 42 U.S.C. §§12181-12189, and the Michigan Persons with Disabilities Civil

Rights Act, MCL Sections 37.1301a and b and Section 37.1506a(1)(c) (“PWDCRA”), and to remedy the violations of these civil rights laws by the Defendants in the design and construction of Uptown Apartments in Canton, Michigan (the “subject property”).

2. Defendants Beztak Properties, Inc., Beztak Companies, Inc., Biltmore Properties Companies, Inc., Uptown Investors LLC, Uptown Investors LLC II, Monogram Homes, Warner Cantrell and Padmos, Inc., and Looney Ricks Kiss, (collectively “Defendants”), through the actions referred to herein, have discriminated against people with disabilities and/or handicaps¹ in violation of the FHA, the ADA, and the PWDCRA by designing and/or constructing dwellings and public and common use areas that deny people with disabilities the access to, and use of, these facilities required under these federal and state civil rights laws.

3. A person using a wheelchair is just as effectively excluded from the opportunity to live in a particular dwelling by the lack of access into a unit and around common use areas as by a posted sign saying “No Handicapped People Allowed.” (U.S. House of Rep. Report on the FHAA, H.R. Rep. No. 100-711 at 25 (1988)). In considering passage of the FHAA, Congress determined that enforcement of these civil rights laws is necessary to protect people with disabilities from the devastating impact of housing discrimination, including the architectural barriers erected by developers who fail to construct dwellings accessible and adaptable to people with disabilities. *Id.* As the Committee noted, such barriers, even if not the product of invidious intent, “can be just as devastating as intentional discrimination.” *Id.* The purpose of the accessibility requirements of the Fair Housing Act, and similar state laws such as the PWDCRA, is to

¹ This Complaint uses the term “handicap” as defined by the Fair Housing Act, 42 U.S.C. § 3602(h), and the term “disability” as defined by the ADA and the PWDCRA interchangeably.

increase the stock of housing available to people with disabilities, so as to include them in the American mainstream. *See* H.R. Rep. No. 100-711 at 18 (1988). Enforcement of the Fair Housing Act and the PWDCRA against Defendants is necessary because of the clear accessibility violations at Uptown Apartments.

4. The Fair Housing Center of Southeastern Michigan, Inc. seeks to ensure equal housing opportunity through the elimination of unlawful housing discrimination and the promotion of decent and affordable housing through advocacy and education. As a result of Defendants' wrongful conduct complained of herein, the Fair Housing Center of Southeastern Michigan, Inc. has been damaged by frustration of its mission, and by having to divert significant resources that could have been used to provide counseling, education, and referral services to instead identify and counteract Defendants' discriminatory conduct through investigation and litigation of this conduct.

JURISDICTION, VENUE AND PARTIES

5. This is an action for declaratory and injunctive relief and damages as a result of discrimination in violation of the Fair Housing Act, 42 U.S.C. §§ 3601 *et seq.*, the Americans with Disabilities Act, 42 U.S.C. §§12181-12189, and the Michigan Persons with Disabilities Civil Rights Act, MCL Sections 37.1301 and 37.1506a. The Court has jurisdiction pursuant to 28 U.S.C. § 1331, §1343, §§ 2201 and 2202, and 42 U.S.C. § 3613(a). Supplemental jurisdiction is provided under 28 U.S.C. § 1367. Further, this Court may exercise personal jurisdiction over each of the Defendants.

6. Venue is proper in the Eastern District of Michigan pursuant to 28 U.S.C. § 1391(b)(2) in that a substantial part of the events and omissions giving rise to the claims herein occurred in this District, and the subject property is located in this District.

Defendants are corporations that may be found within the District for purposes of 28 U.S.C. § 1391(b)(3) and are subject to personal jurisdiction in this judicial district.

7. Plaintiff Fair Housing Center of Southeastern Michigan, Inc. is a private non-profit fair housing advocacy organization serving Southeastern Michigan and organized under the laws of Michigan with its principal place of business in Ann Arbor, Michigan. It is a membership organization whose mission includes the promotion of equal housing opportunity, freedom of housing choice, housing integration, and the elimination of housing discrimination. This mission includes ensuring that people with disabilities have equal access to housing in Southeastern Michigan.

8. The Fair Housing Center of Southeastern Michigan fulfills its mission by educating the public about fair housing rights and requirements, educating and working with consumers on fair housing compliance, and providing advice and advocacy to persons either looking for housing or affected by discriminatory housing practices. The Center promotes fair housing enforcement and voluntary compliance with fair housing laws by conducting fair housing investigations, including testing, and providing education and outreach for housing consumers. Its services include responding to complaints from consumers regarding newly constructed multifamily developments, requests for reasonable accommodations to existing policies, and requests for modifications to existing structures, so as to make housing accessible to people with disabilities.

9. Defendant Beztak Properties, Inc. is a corporation organized under the laws of Michigan that conducts business in the Eastern District of Michigan. Defendant Beztak Properties is responsible for the design, construction, building, and/or operation of

a number of apartment complexes, including the Uptown Apartments, located in Canton Michigan (the subject property).

10. Defendant Beztak Companies, Inc. engaged in a joint venture with Defendant Biltmore Properties Companies, Inc., and some or all of the other Defendants to design, construct, build and/or to operate the subject property and/or nearby adjacent sidewalks and facilities that are not reasonably accessible to and usable by persons with disabilities.

11. Defendant Biltmore Properties Companies, Inc. engaged in a joint venture with some or all of the Defendants to design, construct, build and/or to operate the subject property and nearby adjacent sidewalks and facilities that are not reasonably accessible to and usable by persons with disabilities.

12. Defendant Uptown Investors L.L.C. and Defendant Uptown Investors L.L.C. II are both corporations organized under the laws of Michigan that conduct business in the Eastern District of Michigan. Defendant Uptown Investors L.L.C and Defendant Uptown Investors L.L.C. II. are or have been owners of Uptown Apartments or are or have been responsible for the design, construction, building, and/or operation of the Uptown Apartments.

13. Defendant Monogram Homes is a Michigan Corporation and upon information and belief was and is responsible for the design, construction, building, and/or operation of the Uptown Apartments.

14. Defendant Warner, Cantrell, & Padmos, Inc., is a civil engineering firm. Upon information and belief, it was and is responsible for the design, construction, building, and/or operation of the Uptown Apartments and adjacent facilities.

15. Defendant Looney Ricks Kiss is the architect for the Uptown Apartments and adjacent facilities. Upon information and belief, it was and is responsible for the design, construction, and/or building of the Uptown Apartments and adjacent facilities.

FACTS

16. Each Defendant either designed, built, constructed, and/or operates the Uptown Apartments and/or the sidewalks and other facilities adjacent thereto. The Uptown Apartment complex consists of approximately 30 apartment buildings, containing a total of approximately 300 apartments. The complex also contains areas of common use, including a pool, club house, exercise gym, meeting areas and a business office. The Uptown Apartments complex has several streets and intersections, and sidewalks throughout.

17. The subject property includes approximately 100 units that are “covered multifamily dwellings” within the meaning of the Fair Housing Act and the PWDCRA. They were built for first occupancy after March 13, 1991, and are subject to the design and construction requirements set forth in 42 U.S.C. § 3604(f)(3)(C) of the Fair Housing Act and § 37.1506a of the PWDCRA. The public and common use areas at the subject property are also subject to the design and construction requirements of the Fair Housing Act, 42 U.S.C. § 3604(f)(3)(C), and § 37.1506a of the PWDCRA. In addition, some areas of Uptown apartments (such as the rental office) are places of “public accommodation” subject to the accessibility requirements of the Americans with Disabilities Act.

18. In May, 2006, the Fair Housing Center of Southeastern Michigan received a complaint that the subject property was not in compliance with these laws. The Center

expended limited resources, conducted an investigation, and confirmed that the covered multifamily dwellings at Uptown Apartments were not compliant with the design and construction requirements of these laws.

19. For example, at least the following unlawful conditions exist at the subject property:

- a. Insufficient accessible parking spaces throughout the complex;
- b. Parking spaces that are designated as “accessible” are sloped inappropriately and do not have adequate signage;
- c. Inaccessible sidewalks along routes to and from dwelling units and areas of common and public use, including but not limited to excessive sloping;
- d. Unusable and inaccessible mailboxes;
- e. Inadequate accessibility to common and public use areas;
- f. Inadequate accessibility to covered units;
- g. Interior doorways that are too narrow;
- h. Inaccessible or unusable window locks, closet doors, medicine cabinets, and door hardware;
- i. Inadequate framing or spacing for bathroom grab bars;
- j. Inaccessible areas of public accommodation.

20. Defendants have designed and constructed Uptown Apartments in violation of the accessibility requirements of the Fair Housing Act, the ADA, and the PWDCRA in such a way as to make living there or visiting there difficult, if not impossible, for people with disabilities, specifically those who use a wheelchair. Upon

information and belief, the violations identified by the Fair Housing Center are representative of similar violations that are repeated throughout the subject property's covered dwelling units.

21. By illegally designing and constructing the ground floor units and the common and public use areas in the subject property, Defendants have denied, and will continue to deny, any existing or potential renters or visitors with disabilities, including individuals assisted by the Fair Housing Center of Southeastern Michigan, an equal opportunity to rent, access, use, and enjoy the premises in the same way offered to citizens without physical disabilities.

22. Uptown Apartments remains inaccessible to persons with disabilities in clear violation of federal and state accessibility requirements.

23. In carrying out the aforementioned actions, Defendants acted intentionally and willfully, and with callous disregard for the rights of persons with disabilities and the Fair Housing Center.

INJURY TO PLAINTIFF

24. As a result of Defendants' actions described above, the Fair Housing Center of Southeastern Michigan has been directly and substantially injured and frustrated in its mission to educate the public about fair housing rights and requirements, to educate and work with consumers on fair housing compliance, and to provide advice and advocacy to persons either looking for housing or affected by discriminatory housing practices. The Fair Housing Center of Southeastern Michigan has also been damaged by having to divert scarce resources that could have been used to provide these services to instead identify and counteract the Defendants' discriminatory conduct.

25. The unlawful discriminatory conduct of the Defendants will continue to injure the Fair Housing Center of Southeastern Michigan by inter alia:

- a. Interfering with efforts and programs intended to bring about equality of opportunity in housing, including ensuring that multifamily developments are accessible to people with disabilities;
- b. Requiring the commitment of scarce resources, including substantial staff time, to investigate the discriminatory conduct of Defendants, and counteract the Defendants' discriminatory conduct, thus diverting those resources from other services; and
- c. Frustrating its mission and purpose of promoting equal availability of housing to all persons without regard to any protected category, including disability.

26. Defendants' discriminatory conduct will also deprive individuals to whom the Fair Housing Center of Southeastern Michigan provides services and others living in and near Uptown Apartments of the benefit of living in a diverse community that includes persons who have disabilities and who may use wheelchairs.

FIRST CAUSE OF ACTION
(Violation of the Fair Housing Act)

27. Plaintiff adopts and realleges the allegations above.

28. The Defendants, together and separately, have failed to design and construct the subject property so that:

- a. the public use and common use portions are readily accessible to and usable by persons with disabilities;

- b. all doors within the ground floor units are sufficiently wide to allow passage into and within such units by persons with disabilities who use wheelchairs; and
- c. all the ground floor units 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; and
 - iii. usable kitchens and bathrooms such that a person in a wheelchair can maneuver about the space.

29. Through the actions and inactions described above, the Defendants, together and separately, have:

- a. Discriminated in the rental of, or otherwise made unavailable, or denied dwellings to persons because of their disabilities in violation of the Fair Housing Act, 42 U.S.C. § 3604(f)(1);
- b. Discriminated against persons because of their disabilities in the terms, conditions, or privileges of rental of a dwelling, or in the provision of services or facilities in connection with the rental of a dwelling, in violation of the Fair Housing Act, 42 U.S.C. § 3604(f)(2); and
- c. Failed to design and construct dwellings in compliance with the requirements mandated by the Fair Housing Act, 42 U.S.C. § 3604(f)(3)(C), and the applicable regulations, 24 C.F.R. Part 100.205.

30. The Defendants' conduct described herein has been intentional, willful, and with callous disregard for the rights of people with disabilities.

31. As a result of Defendants' wrongful conduct, Plaintiff the Fair Housing Center of Southeastern Michigan and all persons who utilize the services of this organization have been injured by a discriminatory housing practice and are, therefore, "aggrieved person[s]" as defined by the Fair Housing Act, 42 U.S.C. § 3602(i), and as used in 42 U.S.C. § 3613(a)(1)(A).

SECOND CAUSE OF ACTION
(Violation of the Americans with Disabilities Act)

32. Plaintiff adopts and realleges the allegations above.

33. The rental office at the Uptown Apartments is a sales or rental establishment, the operations of which affect commerce, and therefore is a "public accommodation" within the meaning of 42 U.S.C. § 12181(7).

34. The rental office at the Uptown Apartments was designed and constructed for first occupancy after January 26, 1993. The rental office and the facilities, privileges, and accommodations provided for the public appurtenant to the use of the rental offices, including the parking and sidewalks are covered by the prohibition on discrimination in 42 U.S.C. § 12182(a), and are subject to the design and construction requirements of 42 U.S.C. § 12183(a)(1).

35. The Defendants failed to design and construct the rental office and its appurtenant parking and sidewalks in such a manner that the facilities are readily accessible to and useable by persons with disabilities.

36. The actions of the Defendants, as described above, constitute:

- a. Discrimination against individuals with disabilities in the full and equal enjoyment of the services, facilities, privileges, and accommodations of a place of public accommodation, in violation of 42 U.S.C. § 12182(a); and
- b. A failure to design and construct public accommodations in compliance with the requirements mandated by 42 U.S.C. § 12183(a)(1).

37. The conduct described in paragraphs above constitutes a violation of the Americans with Disabilities Act, entitling Plaintiff to declaratory and injunctive relief, and a reasonable attorney's fee and costs.

THIRD CAUSE OF ACTION
(Violation of the Michigan Persons with Disabilities Civil Rights Act)

38. Plaintiff adopts and realleges the allegations above.

39. Through the actions and inactions described above, the Defendants, together and separately, have:

- a. Discriminated in the rental of, or otherwise made unavailable, or denied dwellings to persons because of their disabilities in violation of Section 37.1502 of the PWDCRA;
- b. Discriminated against persons because of their disabilities in the terms, conditions, or privileges of rental of a dwelling, or in the provision of services or facilities in connection with the rental of a dwelling, in violation of Section 37.1502 of the PWDCRA;
- c. Failed to design and construct dwellings in compliance with the requirements mandated by Section 37.1506a of the PWDCRA; and

- d. Denied persons the full and equal enjoyment of the services, facilities, privileges, advantages, and accommodations of a place of public accommodation because of disability in violation of Section 37.1302 of the PWDCRA.

40. The Defendants' conduct described herein has been intentional, willful, and with callous disregard for the rights of people with disabilities.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectively prays that this Court enter an order against Defendants, together and individually, as follows:

- A. Declaring that the conduct of Defendants in designing and constructing Uptown Apartments is in violation of the Fair Housing Act, the Americans with Disabilities Act, and the Michigan Persons with Disabilities Civil Rights Act.
- B. Permanently enjoining Defendants, their officers, directors, employees, agents, successors, assigns, and all other persons in active concert or participation with any of them, from:
 - 1) Failing or refusing to bring the covered dwelling units, and the public use and common use areas, at Uptown Apartments into immediate compliance with the requirements of 42 U.S.C. § 3604(f)(3)(C), and the applicable regulations,
 - 2) Failing or refusing to bring the covered dwelling units, and the public use and common use areas at Uptown Apartments into immediate

compliance with the requirements of the Michigan Persons with Disabilities Civil Rights Act; and

3) Failing or refusing to design and construct any covered multifamily dwellings in the future in compliance with the Fair Housing Act and the Michigan Persons with Disabilities Civil Rights Act.

- C. Permanently enjoining Defendants, their officers, directors, employees, agents, successors, assigns, and all other persons in active concert or participation with any of them, from failing or refusing to bring the covered places of public accommodation at Uptown Apartments into immediate compliance with the requirements of the Americans with Disabilities Act;
- D. Order Defendants to take such affirmative actions as are necessary to bring Uptown Apartments into compliance with the Fair Housing Act, the Americans with Disabilities Act, the Michigan Persons with Disabilities Civil Rights Act, and the applicable regulations.
- E. Award such compensatory damages as would fully compensate the Plaintiff for the injuries incurred as a result of the discriminatory housing conduct of Defendants.
- F. Award such punitive damages against Defendants as are proper under the law.
- G. Award Plaintiff its costs, attorney's fees, and expenses.
- H. Award such other relief as this Court deems just and proper.

JURY DEMAND

Plaintiff demands a trial by jury on all issues so triable.

Dated this 6th day of June, 2007.

Respectfully submitted,

/s/ Stephen M. Dane

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CERTIFICATE OF SERVICE

I hereby certify that on June 6, 2007, I electronically filed the foregoing paper with the Clerk of Court using the ECF system which will send notification of such filing to the following:

J. Mark Finnegan, Esq.
Leigh R. Greden, Esq.
Kevin J. Gleeson, Esq.
Theresa L. Kitay, Esq.
Brett A. Rendeiro, Esq.
Gerard Mantese, Esq.

/s/ Stephen M. Dane, Esq.

*Attorney for Plaintiff Fair Housing Center
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