

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

UNITED STATES OF AMERICA,	§	
Plaintiff,	§	
v.	§	CIVIL ACTION NO. 3:09-cv-0412-B
JPI CONSTRUCTION L.P., et al.,	§	
Defendants.	§	

ANSWER AND DEMAND FOR JURY TRIAL

Defendants JPI Construction, L.P.; Multifamily Construction, L.L.C.; JPI Apartment Development, L.P. d/b/a JPI Campus Quarters ; Lifestyle Apartment Development Service, L.L.C.; Jefferson Bend, L.P. d/b/a Jefferson at Mission Gate Apartments; Jefferson Lake Creek, L.P. d/b/a Jefferson Center Apartments; and Apartment Community Realty, L.L.C. (collectively "Defendants"), by undersigned counsel, hereby answer the Complaint filed by the United States of America ("Plaintiff") as follows:

1. Paragraph 1 is Plaintiff's assessment of the Complaint to which no response is required. If a response is required, Defendants deny that they violated the Fair Housing Act or the Americans with Disabilities Act, that they discriminated against persons with disabilities, and that there is any need to enforce these Acts in this instance.

This lawsuit is the culmination of Plaintiff's discussions with Defendants over many years preceding its filing. Despite those many years of Plaintiff's indecision about whether to proceed at all, Plaintiff has now chosen to assert claims which, if validated, would change and expand the requirements of the Fair Housing Act and Americans with Disabilities Act far beyond both Congress' intent and the letter of the statutes.

The Fair Housing Act, as adopted by Congress and interpreted by the courts, includes seven modest accessibility requirements. Congress did not mandate any specific technical

design criteria as necessary to be met in order to satisfy the seven requirements of the Act. Instead, the requirements were intended to be modest and to not add significant additional costs. Accessibility is the ultimate touchstone by which conformity with the FHA is determined. The United State Department of Housing and Urban Development ("HUD") has never issued any regulation under the Administrative Procedures Act that seeks to make any particular technical design or national building code mandatory.

When it comes to implementing the seven modest requirements, the Fair Housing Act recognizes there is great flexibility as to how to demonstrate that a property is accessible to and usable by persons with disabilities. Although one recognized means is by designing and constructing a building in accordance with one of the non-mandatory HUD "safe harbors," such as the Fair Housing Act Guidelines, which include suggested dimensions for particular amenities within an apartment, it is well-established that the safe harbors are not mandatory and that any creative approach may be used to achieve accessibility. Ultimately, satisfying the seven modest requirements of the Fair Housing Act is all that is required.

To the extent that Plaintiff's claim of discrimination against the Defendants is based upon demonstrating that the amenities within the apartments deviate from the recommended dimensions in the non-mandatory safe harbors, such a showing cannot and will not establish non-compliance with the Fair Housing Act. The safe harbors are not a minimum standard that must be satisfied; they are not the exclusive means of assessing compliance. Rather, the dispositive question at issue in a Fair Housing Act design and construction case is whether the dwelling units and common areas as designed and constructed are reasonably accessible to most persons with disabilities. Defendants believe that they are.

The properties at issue in this litigation—Jefferson at Mission Gate ("Mission Gate"), Jefferson Center Apartments ("Jefferson Center"), and the 205 or more other unidentified

properties referenced in the Complaint—do not violate the Fair Housing Act or the Americans with Disabilities Act. Not all of the properties were designed or constructed by Defendants. As to those properties that were designed or constructed by one or more of the Defendants, each such property complies with governing accessibility requirements and thus is accessible and usable to persons with disabilities within the full meaning and protection of the Fair Housing Act and the Americans with Disabilities Act. Any issues that may exist with a building are minor, isolated, and are best able to be resolved through the adaptability of the units. As will be demonstrated throughout this litigation, Plaintiff's assertions of discrimination by these Defendants are wholly unfounded.

JURISDICTION AND VENUE

2. Paragraph 2 is a legal conclusion to which no response is required. To the extent a response is required, Defendants admit that the Court has subject-matter jurisdiction over this action as it relates to the named Defendants and the two named properties.

3. Paragraph 3 is a legal conclusion to which no response is required. To the extent a response is required, Defendants admit that venue is proper in this Court with respect to the named Defendants and the two named properties. However, to the extent Paragraph 3 is construed as containing allegations that any events or omissions took place which could give rise to a cause of action, the allegations are denied.

THE PROPERTIES

4. Defendants admit the allegations in sentence one of Paragraph 4, and further aver that Mission Gate was designed and constructed in accordance with the accessibility requirements of the federal Fair Housing Act and the Americans with Disabilities Act. With respect to the allegation in sentence 2 of Paragraph 4, no defendant is a current owner of Mission

Gate, and Defendants therefore lack information sufficient to form a belief as to the truth or falsity of that allegation.

5. Defendants admit the allegations in sentence one of Paragraph 5, and further aver that Jefferson Center was designed and constructed in accordance with the accessibility requirements of the federal Fair Housing Act and the Americans with Disabilities Act. With respect to the allegation in sentence 2 of Paragraph 5, no defendant is a current owner of Jefferson Center, and Defendants therefore lack information sufficient to form a belief as to the truth or falsity of that allegation.

DEFENDANTS

6. Defendants admit the allegations in sentence one of Paragraph 6 to the extent that JPI Construction, L.P. ("JPI Construction") is a Delaware limited partnership with its corporate offices located at 600 E. Las Colinas Boulevard, Suite 1800, Irving, Texas 75039-5625. With respect to the allegations in sentences two and three of Paragraph 6, Defendants admit that JPI Construction has served as a contractor for certain multi-family housing projects built for first occupancy after March 13, 1991, and that in that capacity, JPI Construction has worked with specific JPI-affiliates. Regarding the allegations in sentence four of Paragraph 6, Defendants state that JPI Construction, as a contractor, was involved in the construction of Mission Gate and Jefferson Center. However, as to the final clause in sentence four, because Plaintiff has not identified or specified the "other covered multi-family dwellings" it alleges were designed and constructed by JPI Construction, Defendants cannot fully respond to the allegations as written and therefore deny said allegations. Defendants deny all remaining allegations in Paragraph 6.

7. Defendants admit the allegations in sentence one of Paragraph 7 to the extent that Multifamily Construction, L.L.C. ("Multifamily Construction") is a Delaware limited liability company with its corporate offices located at 600 E. Las Colinas Boulevard, Suite 1800,

Irving, Texas 75039-5625. With respect to the allegations in sentences two and three of Paragraph 7, Defendants admit that Multifamily Construction is a general partner in JPI Construction. Defendants deny all remaining allegations in Paragraph 7.

8. Defendants admit the allegations in sentence one of Paragraph 8 to the extent that JPI Apartment Development, L.P. d/b/a JPI Campus Quarters ("JPI Apartment Development") is a Delaware limited partnership registered to do business in Texas, and that its corporate offices are located at 600 E. Las Colinas Boulevard, Suite 1800, Irving, Texas 75039-5625. With respect to the allegations in sentence two of Paragraph 8, Defendants aver that JPI Apartment Development was involved in the design and construction of Mission Gate and Jefferson Center. However, as to the final clause in sentence two, because Plaintiff has not identified or specified the "other covered multi-family dwellings" it alleges were designed and constructed by JPI Apartment Development, Defendants cannot fully respond to the allegations as written and therefore deny said allegations. Defendants deny all remaining allegations in Paragraph 8.

9. Defendants admit the allegations in sentence one of Paragraph 9 to the extent that Lifestyle Apartment Development Service, L.L.C. ("Lifestyle Apartment Development") is a Delaware limited liability company, and that its corporate offices are located at 600 E. Las Colinas Boulevard, Suite 1800, Irving, Texas 75039-5625. With respect to the allegations in sentences two and three of Paragraph 9, Defendants admit that Lifestyle Apartment Development is a general partner in JPI Apartment Development. Defendants deny all remaining allegations in Paragraph 9.

10. Defendants admit the allegations in sentence one of Paragraph 10 to the extent that Jefferson Bend, L.P. d/b/a Jefferson Mission Gate ("Jefferson Bend") is a Delaware limited partnership registered to do business in Texas, and that its corporate offices are located at 600 E. Las Colinas Boulevard, Suite 1800, Irving, Texas 75039-5625. With respect to the allegations in

sentences two and three, Defendants aver that Jefferson Bend is a former owner of Mission Center and was the owner of property at the time it was designed and constructed. Defendants deny all remaining allegations in Paragraph 10.

11. Defendants admit the allegations in sentence one of Paragraph 11, except that Jefferson Lake Creek, L.P. d/b/ a Jefferson Center Apartments ("Jefferson Lake Creek") is registered to do business in Texas, and that its corporate offices are located at 600 E. Las Colinas Boulevard, Suite 1800, Irving, Texas 75039-5625. With respect to the allegations in sentences two and three, Defendants aver that Jefferson Lake Creek is a former owner of Jefferson Center and was the owner of property at the time it was designed and constructed. Defendants deny all remaining allegations in Paragraph 11.

12. Defendants admit the allegations in sentence one of Paragraph 12 to the extent that Apartment Community Realty, L.L.C. ("Apartment Community Realty") is a Delaware limited liability company, and that its corporate offices are located at 600 E. Las Colinas Boulevard, Suite 1800, Irving, Texas 75039-5625. With respect to the allegations in sentence 2, Defendants aver that Apartment Community Realty was a general partner in Jefferson Bend and Jefferson Lake Creek at the time that the Mission Gate and Jefferson Center properties were designed and constructed. Defendants deny all remaining allegations in Paragraph 12.

OTHER PROPERTIES

13. Defendants aver that the allegations contained in Paragraph 13 are vague and ambiguous and, without further clarification, Defendants are unable to fully respond to the allegations as written. Specifically, Plaintiff has failed to identify or specify the "205 or more other multi-family housing properties" that it alleges were designed and constructed by Defendants. Notwithstanding this ambiguity, Defendants deny any inference that any other multi-family apartment projects, not specified or identified by Plaintiff, somehow violate the

accessibility requirements of the Fair Housing Act or the Americans with Disabilities Act. Moreover, to the extent the allegations in Paragraph 13 are intended to provide factual support for Plaintiff's allegations that Defendants have engaged in a pattern or practice of designing, constructing, controlling, managing, and/or owning apartment properties in violation of the Fair Housing Act, or that Defendants have engaged in a pattern or practice of designing and constructing rental or sales offices in violation of the Americans with Disabilities Act, Defendants specifically deny these allegations.

FACTUAL ALLEGATIONS

14. Defendants admit the allegations in Paragraph 14 as they relate to Mission Gate and Jefferson Center. However, regarding the properties described in Paragraph 13, because Plaintiff has not identified or specified the "205 or more other covered multi-family dwellings" it alleges were designed and constructed by Defendants, Defendants cannot fully respond to the allegations as written and therefore deny said allegations.

15. The allegations in Paragraph 15 consist of legal conclusions to which no response is required. However, to the extent that Paragraph 15 is deemed to contain facts, such facts are denied.

16. The allegations in Paragraph 16 consist of legal conclusions to which no response is required. However, to the extent that Paragraph 16 is deemed to contain facts, such facts are denied.

17. The allegations in Paragraph 17 consist of legal conclusions to which no response is required. However, to the extent that Paragraph 17 is deemed to contain facts, such facts are denied.

18. Defendants deny the allegations in Paragraph 18, including all subsections.

19. Defendants aver that the allegations in Paragraph 19 are vague and ambiguous because Plaintiff has failed to identify or specify in any way the properties to which it refers. Notwithstanding this ambiguity, Defendants deny the allegations in Paragraph 19, including all subsections.

20. The allegations in Paragraph 20 consist of legal conclusions to which no response is required. However, to the extent that paragraph 20 is deemed to contain facts, such facts are denied. Furthermore, regarding the properties described in Paragraph 13, Defendants aver that the allegations in Paragraph 20 are vague and ambiguous because Plaintiff has failed to identify or specify in any way the properties to which it refers.

21. Defendants admit the allegations in Paragraph 21 as they relate to Mission Gate and Jefferson Center. However, regarding the properties described in Paragraph 13, because Plaintiff has not identified or specified the "205 or more other covered multi-family dwellings" it alleges contain rental or sales offices, Defendants cannot fully respond to the allegations as written and therefore deny said allegations.

22. The allegations in Paragraph 22 consist of legal conclusions to which no response is required. However, to the extent that paragraph 22 is deemed to contain facts, such facts are denied. Furthermore, regarding the properties described in Paragraph 13, Defendants aver that the allegations in Paragraph 22 are vague and ambiguous because Plaintiff has failed to identify or specify in any way the properties to which it refers.

23. Defendants deny the allegations in Paragraph 23.

24. Defendants aver that the allegations in Paragraph 24 are vague and ambiguous because Plaintiff has failed to identify or specify in any way the properties to which it refers. Notwithstanding this ambiguity, Defendants deny the allegations in Paragraph 24.

FAIR HOUSING ACT CLAIMS

25. Defendants hereby incorporate by reference, as if fully set forth herein, their responses to the allegations in Paragraphs 1 through 24 of the Complaint with respect to the allegations contained in Paragraph 25.

26. Defendants deny the allegations contained in Paragraph 26.

27. Defendants deny the allegations contained in Paragraph 27.

28. Defendants deny the allegations contained in Paragraph 28, including all subsections

29. Defendants deny the allegations contained in Paragraph 29.

30. Defendants deny the allegations contained in Paragraph 30.

AMERICANS WITH DISABILITIES ACT CLAIMS

31. Defendants hereby incorporate by reference, as if fully set forth herein, their responses to the allegations in Paragraphs 1 through 30 of the Complaint with respect to the allegations contained in Paragraph 31.

32. Defendants deny the allegations contained in Paragraph 32.

33. Defendants deny the allegations contained in Paragraph 33.

34. Defendants deny the allegations contained in Paragraph 34, including all subsections.

35. Defendants deny the allegations contained in Paragraph 35.

36. Defendants deny the allegations contained in Paragraph 36.

37. All allegations set forth in the Complaint, whether express or implied, that are not specifically admitted, denied, or qualified herein are hereby denied.

PRAYER FOR RELIEF

Defendants deny that the Plaintiff is entitled to any of its requested relief.

AFFIRMATIVE AND OTHER DEFENSES

FIRST DEFENSE

In general, Plaintiff's Complaint fails in whole or in part to state a claim upon which relief may be granted pursuant to Federal Rule of Civil Procedure 12(b)(6).

SECOND DEFENSE

Specifically, the Complaint fails to state a claim upon which relief may be granted because, as discussed in response to Paragraph 1 above, Mission Gate, Jefferson Center, and the 205 or more other properties referenced in the Complaint were designed and constructed to comply with governing accessibility requirements and thus to be accessible and usable to persons with disabilities within the full meaning and protection of the Fair Housing Act and the Americans with Disabilities Act.

THIRD DEFENSE

Plaintiff's claims for civil penalties are barred in whole or in part by the federal five-year statute of limitation pursuant to 28 U.S.C. § 2462.

FOURTH DEFENSE

Plaintiff's claims for monetary damages are barred in whole or in part by the three-year statute of limitations pursuant to 28 U.S.C. § 2415.

FIFTH DEFENSE

Plaintiff's claim for equitable relief, including its request to retrofit non-compliant properties, is time-barred.

SIXTH DEFENSE

Even if liability could be proven, given Plaintiff's delay in pursuing the relief, the equitable relief sought is inappropriate, unfair, and unnecessary.

SEVENTH DEFENSE

Plaintiff has failed to join the current owners and the various design professionals involved in the design and construction of Mission Gate, Jefferson Center or the 205 or more other properties referenced in the Complaint as necessary parties under Rule 19 of the Federal Rules of Civil Procedure.

The properties in this litigation were sold long ago, and the Defendants have no interest in, or even any access to, the properties at issue. Accordingly, the current owners are necessary parties to this litigation, because without their participation, Plaintiff cannot obtain the remedial relief it seeks, including its request to retrofit non-compliant properties.

The current owners' participation is further necessitated because they have a substantial financial interest in the outcome of the litigation. More specifically, a judgment ordering redesign and renovations of units and common areas of such properties will affect the value of, or impair or impede the marketability of, the current owners' titles. Finally, the absence of the current owners would leave Defendants subject to substantial risk of incurring double, multiple, or otherwise inconsistent obligations.

In addition, the design professionals, including architectural firms and civil engineers, were the entities who designed the properties and therefore are also liable for any alleged design and construction violations. The design professionals are necessary parties to the litigation because disposing of the action in favor of the plaintiff and in the design professionals' absence may create a negative precedent against the design professionals in future proceedings, and may

constitute a finding against the design professionals regarding their fulfillment of contractual duties.

Plaintiff must either add the necessary parties or this Complaint should be dismissed by the Court under Rule 19 of the Federal Rules of Civil Procedure.

EIGHTH DEFENSE

The alleged actions or omissions at issue in this litigation were not intentional, willful, taken in disregard of the rights of others, or otherwise based on any discriminatory animus.

NINTH DEFENSE

The alleged violations, if any, resulted from the acts, fault, negligence or omissions of individuals or parties other than Defendants.

TENTH DEFENSE

The remedies sought by Plaintiff are inequitable or improper.

ELEVENTH DEFENSE

Plaintiff's claims may be barred in whole or in part by the doctrines of res judicata and/or collateral estoppel.

Defendants the right to assert additional defenses as discovery proceeds and reveals facts not currently known or available to them.

WHEREFORE, having fully answered the allegations contained in the Complaint, Defendants request entry of judgment in their favor on the Complaint along with an award of appropriate fees and costs and such other and further relief as the Court may find proper.

DEMAND FOR JURY TRIAL

Defendants hereby demand a trial by jury on all issues so triable.

Respectfully submitted,

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ATTORNEYS FOR DEFENDANTS

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing document with the clerk of court for the U.S. District Court, Northern District of Texas, using the electronic case filing system of the court. The electronic case filing system sent a "Notice of Electronic Filing" to the following attorneys of record who have consented in writing to accept this notice as service of this document by electronic means:

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And I hereby certify that I served a copy of the foregoing document via first class mail postage prepaid on the following:

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May 8, 2009
Date

s/ William L. Sessions
William L. Sessions