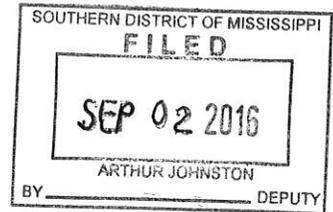


UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION



UNITED STATES OF AMERICA,)
Plaintiff,)

v.)

Case No. 1:14-cv-224-LG-JCG

DAWN PROPERTIES, INC.,)
SOUTHERN CROSS CONSTRUCTION)
COMPANY, INC.,)
RIDGELAND CONSTRUCTION ONE, LLC,)
THE BEACH CLUB, LLC,)
THE BELMONT OF LAMAR, LLC,)
GRAND BISCAYNE APTS., LLC,)
SEAINN, LLC, and)
IKE W. THRASH,)
Defendants,)

and)

SUMMER MISS, LLC,)
14510 LEMOYNE BOULEVARD, LLC,)
LEXINGTON MILL MISSISSIPPI OWNER, LLC,)
INN BY THE SEA HOME OWNERS)
ASSOCIATION, INC., and)
RS BELMONT APARTMENTS, LLC,)
Rule 19 Defendants,)

and)

14510 LEMOYNE BOULEVARD, LLC,)
Cross-claimant,)

v.)

GRAND BISCAYNE APTS., LLC and)
IKE W. THRASH,)
Cross-defendant and)
Rule 19/20 Defendant to)
Crossclaim.)

_____)

**CONSENT ORDER BETWEEN THE UNITED STATES
AND RULE 19 DEFENDANT RS BELMONT APARTMENTS, LLC**

I. INTRODUCTION

A. Background

1. This Consent Order (hereinafter “Consent Order”) is entered into between Plaintiff United States of America and Rule 19 Defendant RS Belmont Apartments, LLC (“RS Belmont”), the owner of the Belmont apartment complex (“Belmont”), located at 14891 Lemoyne Boulevard in Biloxi, Mississippi.

2. On May 23, 2014, the United States filed a Complaint to enforce the provisions of the Fair Housing Act (FHA), 42 U.S.C. §§ 3601-3619. Specifically, the United States' Complaint alleges that Defendants Dawn Properties, Inc., *et al* (“the design and construction defendants”) have designed and constructed various multi-family properties, including Belmont, without required accessible features, and that this conduct constitutes a pattern or practice of discrimination or a denial of rights to a group of persons because of disability, in violation of 42 U.S.C. §§ 3604(f)(1), (f)(2), and (f)(3)(C).

3. The United States' Complaint further alleges that the design and construction defendants have, among other things, failed to design and construct Belmont with the features of accessible and adaptable design and construction required by Title III of the Americans with Disabilities Act (“ADA”), 42 U.S.C. §§ 12181-12213, and its implementing regulation, the ADA Standards for Accessible Design, 28 C.F.R. § 36.104; 28 C.F.R. Pt. 36 Appendix A (1991 ADA Standards for Accessible Design), as amended at 28 C.F.R. Pt. 36 Appendix D (2010 ADA Standards for Accessible Design) (hereinafter, the “ADA Standards”).

4. The United States filed an amended complaint on June 23, 2016, that *inter alia* named Belmont Beekwilder, LLC as a Rule 19 Defendant. On or about June 29, 2016, the Belmont apartments were purchased by RS Belmont. On August 30, 2016, the Court granted

the United States' and Belmont Beekwilder's joint motion to dismiss Belmont Beekwilder and substitute RS Belmont Apartments, LLC as the current owner of the Belmont apartments and proper Rule 19 Defendant. ECF No. 534.

5. RS Belmont is a Delaware limited liability company whose principal place of business is 2089 East Fort Union Boulevard, Salt Lake City, Utah. RS Belmont is named in the United States' Complaint as a necessary party to this lawsuit in whose absence complete relief cannot be afforded to the United States. *See* Fed. R. Civ. P. 19.

6. The parties acknowledge that this Consent Order does not constitute, and should not be construed as, an admission of wrongdoing by RS Belmont. The parties further acknowledge that RS Belmont has no responsibility for any costs associated with any retrofits that may be agreed to and/or ordered as a result of this lawsuit.

B. Relevant Requirements of the Fair Housing Act

7. The FHA provides that, for non-elevator residential buildings with four or more dwelling units, all ground-floor units that are designed and constructed for first occupancy after March 13, 1991, are "covered multifamily dwellings." 42 U.S.C. § 3604(f)(3)(C) & (7)(B). Such dwellings must be designed and constructed to include certain basic features of accessible and adaptive design to make such units accessible to, or adaptable for use by, a person who has or develops a disability.

8. The FHA specifically requires that such covered multifamily dwellings be designed and constructed in such a manner that: (i) the public use and common use portions of such dwellings are readily accessible to and usable by persons with a disability; (ii) all the doors designed to allow passage into and within all premises within such dwellings are sufficiently wide to allow passage by persons with a disability using wheelchairs; and (iii) all

premises within such 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) usable kitchens and bathrooms such that an individual using a wheelchair can maneuver about the space. 42 U.S.C. § 3604(f)(3)(C).

9. Belmont was first occupied after March 13, 1991, and therefore the ground-floor units at Belmont are “covered multifamily dwellings” within the meaning of the FHA, 42 U.S.C. § 3604(f)(7)(B). Accordingly, such ground-floor units and the public and common use areas at Belmont must be designed and constructed to comply with the accessible design requirements of 42 U.S.C. § 3604(f)(3)(C).

C. Relevant Requirements of the Americans with Disabilities Act

10. The ADA and the applicable ADA Standards, 28 C.F.R. pt. 36, app. A, which have been issued by the U.S. Department of Justice to implement the design and construction requirements of Title III of the ADA, require that all “public accommodations” designed and constructed for first occupancy after January 26, 1993, and the goods, services, facilities, privileges, advantages, or accommodations of those public accommodations, be readily accessible to and usable by persons with disabilities in accordance with certain accessibility standards promulgated under that Act. 42 U. S.C. §§ 12182(a) and 12183(a)(1). A rental or sales office for an apartment, condominium, or patio home complex is a “public accommodation” under the ADA. 42 U.S.C. § 12181(7)(E).

11. The leasing office/clubhouse for Belmont was designed and constructed for first occupancy after January 26, 1993. Therefore, the leasing office/clubhouse and the facilities and

privileges provided at that office, such as public parking for the leasing office, are required to be designed and constructed in accordance with the standards promulgated under the ADA.

D. Consent of RS Belmont to Entry of this Order

12. RS Belmont does not dispute that the ground-floor apartments and the public and common-use areas of Belmont are subject to the design and construction requirements of the FHA, 42 U.S.C. §§ 3601-3619.

13. RS Belmont does not dispute that the leasing office/clubhouse at Belmont and the facilities and privileges provided at that leasing office, such as public parking for the leasing office, are subject to the requirements of the ADA, 42 U.S.C. §§ 12181, *et seq.*, and its implementing regulation, the ADA Standards.

14. RS Belmont agrees that this Court has jurisdiction over the subject matter of this case pursuant to 28 U.S.C. §§ 1331 and 1345, and 42 U.S.C. § 3614(a).

15. As indicated by the signatures appearing below, the United States and RS Belmont agree to the entry of this Consent Order. This Order is final and binding. It sets forth all the obligations incumbent on, and all the relief sought from, RS Belmont and its successors and assigns arising out of or resulting from the claims the United States has or may have brought against it for alleged violation of the FHA, the ADA, and the ADA Standards.

Accordingly, it is hereby ORDERED, ADJUDGED AND AGREED as follows:

II. GENERAL INJUNCTION

16. Subject to the terms set forth herein, RS Belmont and each of its officers, employees, agents, successors and assigns, and all other persons in active concert or participation with them shall refrain from engaging in conduct that denies the United States or other persons or parties designated by the United States or the Court access to the public

and common use areas, the covered multifamily dwellings, or the public accommodations areas at Belmont for the purpose of investigating or correcting any of the FHA and/or ADA violations alleged or identified by the United States in this litigation, and from engaging in any other action to impede any retrofits required to bring Belmont into compliance with the FHA, the ADA and the ADA Standards. In view of the prior inspection conducted by the United States, the United States agrees to provide reasonable advance notice of , and explain the nature and scope of, any request for an additional inspection. Any such additional inspection shall be governed by the terms of the Case Management Order in this litigation.

III. DISCOVERY AND RETROFITS AT BELMONT

17. As of the date of this Consent Order, the United States has already had the opportunity to inspect all types of ground-floor units and the public/common use areas at Belmont. Should the United States wish to perform additional investigation of any kind at Belmont during the pendency of this litigation, the United States agrees to make any such request for additional inspection pursuant to Paragraph 16 above.

18. Consistent with Section V below, RS Belmont shall preserve all records it currently possesses related to this Consent Order, including but not limited to all current and former tenant files, all lists of current and former residents, by unit, and all documents in its possession, custody, or control relating to the design and construction of Belmont. This obligation shall be effective only as long as the entirety of this Consent Order remains effective (*see* Section V below).

19. RS Belmont shall respond to any future discovery requests by the United States related to this litigation pursuant to Fed. R. Civ. P. 30, 33, and 34, without the need for the United States' issuance of subpoenas pursuant to Fed. R. Civ. P. 45.

20. Except as set forth in this Paragraph, RS Belmont hereby waives all rights to object to any retrofits of Belmont that may be requested by the United States against the design and construction defendants in connection with any subsequent settlement, consent order, or court proceeding in this litigation. Prior to any final, binding settlement, consent order, or court order, RS Belmont reserves the right to be heard by the Court and/or the relevant design and construction parties regarding: (a) the aesthetic aspects of any retrofits; (b) the labor and materials to be utilized related to any retrofits; and (c) the timing and process of any retrofits on its property. RS Belmont agrees to make every reasonable attempt to reach agreement with the United States and/or the relevant design and construction parties with respect to any dispute arising about such issues. RS Belmont's recognized interest in the proposed retrofits will be limited to proposals intended to ensure that all retrofits are performed in a good and workmanlike manner and will not unreasonably interfere with RS Belmont's apartment rental business.

21. Upon reasonable notice, and subject to the terms set forth in this Order, RS Belmont shall allow any of the design and construction defendants or other persons or entities (other than RS Belmont) as the Court may order to make retrofits at Belmont. Upon reasonable notice, RS Belmont shall allow access to Belmont to the United States or other persons or parties designated by the United States or the Court for purposes of planning, photographing, evaluating and performing any action required under a subsequent consent order or other order by the Court to bring Belmont into compliance with the FHA, the ADA and the ADA Standards.

22. RS Belmont shall abide by the final decision of any neutral, expert individual or entity identified by the United States or the Court as to whether retrofits at Belmont have been

completed in accordance with the requirements of any settlement, consent order, or other order by the Court.

23. RS Belmont, its agents and affiliated companies, may not raise rents or impose fees on any dwelling unit at Belmont because of anticipated or actual retrofits or because of other costs in connection with this litigation. RS Belmont shall otherwise retain an unimpeded right to raise rents and/or impose fees on its dwelling units for any and all other lawful reasons, and shall not be subject to special scrutiny or oversight in this regard.

IV. TRANSFER OF INTEREST IN BELMONT

24. Should RS Belmont decide to sell or transfer ownership of Belmont or any portion thereof prior to the resolution of this lawsuit or any retrofits ordered by the Court, RS Belmont agrees to: (a) prior to completion of sale or transfer, provide each prospective buyer a copy of the complaint, this Consent Order, and, if applicable, a copy of a subsequent consent order or other final order by the Court relating to Belmont; and (b) upon completion of the sale, within fourteen (14) days provide to the United States, by facsimile, electronic mail, and overnight delivery, written notice of the sale or transfer of ownership, along with a copy of the notice sent to each buyer prior to the completion of the sale or transfer, and each buyer's name, address, and telephone number.

V. DURATION OF CONSENT ORDER AND TERMINATION OF LEGAL ACTION

25. This Consent Order shall remain in effect until the end date of a subsequent consent order(s) or other order(s) by the Court that relate, in whole or in part, to the property located at 14891 Lemoyne Boulevard in Biloxi, Mississippi.

26. The Court shall retain jurisdiction for the duration of this Consent Order to enforce the terms of this Consent Order. The United States may move the Court to extend the duration of this Consent Order in the interests of justice, to which RS Belmont may object.

27. The United States and RS Belmont shall endeavor in good faith to resolve informally any differences regarding interpretation of and compliance with this Consent Order prior to bringing such matters to the Court for resolution. In the event of a failure by RS Belmont to perform in a timely manner any act required by this Consent Order or any subsequent consent order(s) or other order(s) by the Court, or to otherwise act in conformance with any provision thereof, the United States may move this Court to impose any remedy authorized by law or equity, including, but not limited to, an order requiring performance of such act.

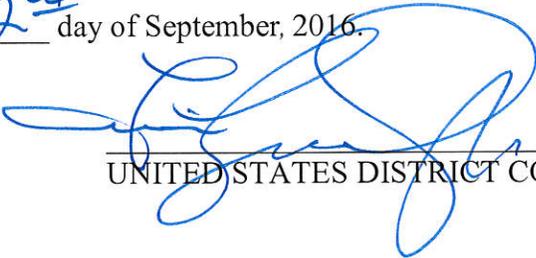
VI. TIME FOR PERFORMANCE

28. Any time limits for performance imposed by this Consent Order may be extended by the mutual written agreement of the United States and RS Belmont.

VII. COSTS OF LITIGATION

29. RS Belmont shall bear its own fees and costs related to this litigation and compliance with this Consent Order.

SO ORDERED this 2nd day of September, 2016.



UNITED STATES DISTRICT COURT CHIEF JUDGE

The undersigned apply for and consent to the entry of this Order:

For Plaintiff United States of America:

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Southern District of Mississippi

VANITA GUPTA
Principal Deputy Assistant Attorney General
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/s/ Pshon Barrett

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For RS Belmont Apartments, LLC

Fed. R. Civ. P. 19 Necessary Party:

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