IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

Ability Center of Greater Toledo, et al.,

Plaintiffs,

v.

James E. Moline Builders Inc., et al.,

Defendants.

Case No. 3:18CV1120

ORDER

This is a suit under § 3604(f)(3)(C)(i) of the Fair Housing Amendments Act of 1998, (FHAA). That provision states: "the public use and common use portions of . . . dwellings [covered by the FHAA] are readily accessible to and usable by handicapped persons; . . . ." At issue are the front entrances to the free-standing, separate units at the Brooklyn Park senior citizen residential development in Toledo.

The three plaintiffs include two public interest advocacy groups, The Ability Center of Greater Toledo and Fair Housing Opportunity of Northwest Ohio, and a Brooklyn Park resident. The defendants are various entities and individuals allegedly responsible for the design and construction of the Brooklyn Park senior citizen residential development in Toledo, Ohio.

Pending are defendants' motion for partial summary judgment (Doc. 69), plaintiffs' cross-motion for partial summary judgment and opposition to defendants' motion (Doc. 79; Brief, Doc. 80), defendants' opposition to the plaintiffs' cross-motion and reply (Doc. 82), and plaintiffs' reply in support of their cross-motion. (Doc. 85).

For the reasons that follow, I deny the defendants' motion for partial summary judgment and grant the plaintiffs' motion for partial summary judgment.[1]

Background

The dispositive issue is whether the front entrance to the Brooklyn Park units is FHAA compliant; the dispositive issue is not, as defendants contend, whether "The FHAA Requires an Accessible Entrance Into The Unit. The FHAA Does Not Require an Accessible Primary Entrance." (Doc. 69, pgID 440).[2]

The core fact - that the front entrance to the Brooklyn Park units is not handicap accessible is not disputed.[3] The means that the dispositive issue is the applicability of the mandate of § 3604(f)(3)(C)(i) of barrier-free access for "public use and commercial use" to the Brooklyn Park's noncompliant front doors.

In finding for the plaintiffs on this issue, I apply Fed. R. Civ. P 56. *See generally Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986).

Discussion

When boiled down, the parties' voluminous briefs leave a single distillate: whether the FHAA mandates that the front entrance to a Brooklyn Park unit is, as § 3604(f)(1)(C)(i) commands, a "public use . . . portion[] of . . . [the] dwelling[],".

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[1] Also pending is plaintiffs' motion to strike an affidavit and an expert report that defendants submit in support of their motion for partial summary judgment. (Doc. 76). Because I am able to adjudicate the parties' summary judgment motions without reference to the issues plaintiffs raise in their motion to strike, I overrule that motion as moot.

[2] I agree with the plaintiffs that defendants' claim that the FHAA only requires *a* handicap accessible entrance. While indisputably there is one such entrance - through the side door to the attached garage – that fact does not respond to plaintiffs' claim that the *front* door must comply with § 3604(f)(3)(C)(i) because that doorway is for "public use and common use." The defendants' contentions re: a "primary entrance" are not relevant to this inquiry.

[3] At least two features of the front door's construction: 1) to get to the door, one must go up a non-FHAA-compliant step; and 2) the door's hardware is also non-FHAA compliant.

This is a matter of straightforward statutory interpretation as to which there are two questions: 1) grammatically, must the front door serve both "public use" *and* "common use," or need it only serve one or the other use; and 2) if the latter, what constitutes "public use" under the FHAA?

With regard to the grammatical question, the statute's structure is that of a compound subject with a single verb. As such, separate actors interact with that verb. Each does so independently. As a result, the FHAA ensures those engaged in public use unimpeded access when and as they desire; the same is true for those undertaking common use. The statute does not desire that those seeking unimpeded access be simultaneously engaged in both public use and common use, as would be the case if the statute read "public and common use." Indeed, to read the FHAA that way – as protecting those with both a public use and a common use purpose simultaneously would severely narrow its scope. That result would, of course, be contrary to the doctrine that courts must interpret remedial statutes liberally to fulfill the legislative purpose. *E.g.*, *Lilly v. Grand Trunk Ry. Co.*, 317 U.S. 481 (1943); *Marshall v. Whirlpool Corp.*, 593 F.2d 715, 721–22 (6th Cir., 1979) (citation and quote marks omitted) ("this court must interpret the Act liberally in light of its primary purpose.").

That leave the question of what constitutes a "public use . . . portion[]" of a Brooklyn Park unit. As plaintiffs point out, HUD's Regulations define "public use areas," *inter alia,* as "exterior . . . spaces of a building that are made available to the general public." 24 C.F.R. § 100.201.[4]

[4] Further making clear that "public use" and "common use" are different concepts, the Regulations define "common use areas" as "rooms, spaces or elements inside or outside of a building that are made available for the use of *residents* of a building *or the guests* thereof." *Id.*

Inclusion of the "general public" within the FHAA right of barrier-free access ensures such access to any handicapped individual. Whether one is a wheel-chair bound neighbor, friend, or family member, a political candidate, or a repairman - all are making "public use" as they approach a Brooklyn Park unit's sidewalk-adjoining front door.[5]

Not to let them get there unimpeded, and, in effect, to send them away as if unwelcome, is precisely the discrimination the FHAA forbids.

Conclusion

I conclude that "public use" under the FHAA requires that the front entrance to the Brooklyn Park units be handicap accessible.

It is, accordingly,

ORDERED THAT:

1. Defendants' motion for partial summary judgment (Doc. 69) be, and the same hereby is denied;

2. Plaintiff's cross-motion for summary judgment (Doc. 78 and 79) be, and the same hereby is granted, and

3. Plaintiff's motion to strike (Doc. 76) be, and the same hereby is overruled as moot.

The Clerk shall forthwith schedule a status/scheduling conference; the parties shall submit status report(s) not later than ten days before that conference

So ordered.

/s/ James G. Carr
Sr. U.S. District Judge

[5] I agree with plaintiffs' contention that the fact that the walkway to the front door is privately owned is entirely immaterial.