

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

FILED
MAY 06 2009

CLERK

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.)
)
EQUITY HOMES, INC., PBR, LLC, BBR, LLC,)
SHANE HARTUNG d/b/a/ HARTUNG DESIGN,)
SCOTT SNOOZY, MYRON R. VAN BUSKIRK,)
WAYNE HANSEN, as Trustee of the HANSEN)
FAMILY TRUST AGREEMENT,)
MARTIN MCGEE, as Trustee of the MARTIN)
H. MCGEE TRUST, and SERTOMA HILLS)
VILLAS ASSOCIATION, Inc.,)
)
Defendants.)
)

Civil Action No. 09-4059

COMPLAINT

The United States of America alleges:

NATURE OF ACTION

1. This action is brought by the United States to enforce the Fair Housing Act, Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988, 42 U.S.C. §§ 3601-3619 (“FHA”).

JURISDICTION & VENUE

2. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1345, and 42 U.S.C. §§ 3612(o) and 3614(a).
3. Venue is proper in this jurisdiction, pursuant to 28 U.S.C. § 1391(b) and 42 U.S.C. § 3612(o), because the Defendants are located in this judicial district and the events or omissions giving rise to the claims alleged in this action occurred in this judicial district.

SUBJECT PROPERTIES

4. East Briar Estates (“East Briar”) is a multi-unit apartment complex located on East 15th Street, Sioux Falls, South Dakota 57110. The complex consists of four buildings with eight units each. None of the buildings has an elevator. East Briar was designed and constructed for first occupancy after March 13, 1991. Each unit at East Briar is a “dwelling” within the meaning of 42 U.S.C. § 3602(b). Each of the ground floor units (sixteen units across four buildings), are “covered multifamily dwellings” within the meaning of 42 U.S.C. § 3604(f)(7)(B), and are subject to the design and construction requirements of 42 U.S.C. § 3604(f)(3)(C).
5. West Briar Estates (“West Briar”) is a multi-unit apartment complex located on West 26th Street, Sioux Falls, South Dakota 57106. The complex consists of four buildings with eight units each. None of the buildings has an elevator. West Briar was designed and constructed for first occupancy after March 13, 1991. Each unit at West Briar is a “dwelling” within the meaning of 42 U.S.C. § 3602(b). Each of the ground floor units (sixteen units across four buildings), are “covered multifamily dwellings” within the meaning of 42 U.S.C. § 3604(f)(7)(B), and are subject to the design and construction requirements of 42 U.S.C. § 3604(f)(3)(C).
6. Beverly Gardens Apartments (“Beverly Gardens”) is a multi-unit apartment complex located on South Williams Avenue, Sioux Falls, South Dakota 57104. The complex consists of two buildings. Each unit at Beverly Gardens is a “dwelling” within the meaning of 42 U.S.C. § 3602(b). One of these two buildings at Beverly Gardens was designed and constructed for first occupancy after March 13, 1991, and has four total

units. The building does not have an elevator. Both of the two ground floor units in that building are “covered multifamily dwellings” within the meaning of 42 U.S.C. § 3604(f)(7)(B), and are subject to the design and construction requirements of 42 U.S.C. § 3604(f)(3)(C).

7. Kensington Apartments (“Kensington”) is a multi-unit apartment complex located on South Pillsberry Avenue, Sioux Falls, South Dakota 57103. The complex consists of six buildings with eight units each. None of the buildings has an elevator. Kensington was designed and constructed for first occupancy after March 13, 1991. Each unit at Kensington is a “dwelling” within the meaning of 42 U.S.C. § 3602(b). Each of the ground floor units (twenty-four units across six buildings), are “covered multifamily dwellings” within the meaning of 42 U.S.C. § 3604(f)(7)(B), and are subject to the design and construction requirements of 42 U.S.C. § 3604(f)(3)(C).
8. Sertoma Hills Apartments (“Sertoma Apartments”) is a multi-unit apartment complex located on West 56th Street, Sioux Falls, South Dakota 57106. The complex consists of six buildings with eight units each. None of the buildings has an elevator. Sertoma Apartments was designed and constructed for first occupancy after March 13, 1991. Each unit at Sertoma Apartments is a “dwelling” within the meaning of 42 U.S.C. § 3602(b). Each of the ground floor units (twenty-four units across six buildings), are “covered multifamily dwellings” within the meaning of 42 U.S.C. § 3604(f)(7)(B), and are subject to the design and construction requirements of 42 U.S.C. § 3604(f)(3)(C).
9. Sertoma Hills Villas (“Sertoma Villas”) is a multi-unit condominium development located on West 56th Street, Sioux Falls, South Dakota 57106. The development consists

of two buildings with eight units each. Neither of the buildings has an elevator. Sertoma Villas was designed and constructed for first occupancy after March 13, 1991. Each unit at Sertoma Villas is a “dwelling” within the meaning of 42 U.S.C. § 3602(b). Each of the ground floor units (eight units across two buildings), are “covered multifamily dwellings” within the meaning of 42 U.S.C. § 3604(f)(7)(B), and are subject to the design and construction requirements of 42 U.S.C. § 3604(f)(3)(C).

DEFENDANTS

10. Defendant Equity Homes, Inc. (“Equity Homes”) is a South Dakota corporation with its principal place of business in Sioux Falls, South Dakota. Equity Homes is, or was at times relevant to this action, the builder and/or building contractor for East Briar, West Briar, Beverly Gardens, Kensington, Sertoma Apartments, and Sertoma Villas (collectively, the “Subject Properties”).
11. Defendant PBR, LLC (“PBR”) is a South Dakota limited liability company with its principal place of business in Sioux Falls, South Dakota. PBR owned East Briar and West Briar during construction.
12. Defendant BBR, LLC (“BBR”) is a South Dakota limited liability company with its principal place of business in Sioux Falls, South Dakota. BBR owned Kensington, Sertoma Apartments, and Sertoma Villas, during construction.
13. Defendant Shane Hartung is a draftsman residing in Sioux Falls, South Dakota. While doing business as Hartung Design, Hartung drafted the floor plan of a multifamily apartment building at Beverly Gardens that was designed and constructed for first occupancy after March 13, 1991. Defendant Hartung also drafted plans that Equity

- Homes used in constructing Sertoma Apartments and Sertoma Villas. The plans drafted by Defendant Hartung included accessibility barriers in violation of the FHA.
14. Collectively, Equity Homes, PBR, BBR, and Hartung are referred to herein as “the FHA Defendants.”
 15. Defendant Scott Snoozy is a resident of Sioux Falls, South Dakota. Defendant Snoozy is the current owner of East Briar, and is a necessary party in this action in whose absence complete relief cannot be afforded to the United States.
 16. Defendant Myron R. Van Buskirk is a resident of Sioux Falls, South Dakota. Defendant Van Buskirk is the current owner of West Briar, and is a necessary party in this action in whose absence complete relief cannot be afforded to the United States.
 17. Defendant Wayne Hansen is a resident of Rapid City, South Dakota, and is the trustee of the Hansen Family Trust Agreement (“Hansen”). Hansen is the current owner of Kensington, does business in the District of South Dakota, and is a necessary party in this action in whose absence complete relief cannot be afforded to the United States.
 18. Defendant Myron McGee is a resident of California, and is the trustee of the Myron H. McGee Trust (“McGee”). McGee is the current owner of Sertoma Apartments, does business in the District of South Dakota, and is a necessary party in this action in whose absence complete relief cannot be afforded to the United States.
 19. Defendant Sertoma Hills Villas Association, Inc. (“SHVA”) is a South Dakota non-profit corporation with its principal place of business in Sioux Falls, South Dakota. Defendant SHVA currently governs Sertoma Villas, and is a necessary party in this action in whose absence complete relief cannot be afforded to the United States.

INACCESSIBLE DESIGN & CONSTRUCTION

20. Equity Homes and PBR, individually or through their respective agents, have engaged in discriminatory housing practices at East Briar and West Briar. These discriminatory housing practices include, but are not limited to, failing to design and construct these properties such that:

- a. the public use and common use portions are readily accessible to and usable by individuals with disabilities;
- b. all doors within the ground floor units are sufficiently wide to allow passage by persons with disabilities who use wheelchairs; and
- c. the ground floor units contain the following features of adaptive design:
 - (i) an accessible route into and through the dwelling;
 - (ii) electrical outlets, thermostats and other environmental controls in accessible locations; and
 - (iii) usable kitchens and bathrooms such that an individual using a wheelchair can maneuver about the space.

21. Equity Homes, BBR, and Hartung, individually or through their respective agents, have engaged in discriminatory housing practices at Sertoma Apartments, and Sertoma Villas. These discriminatory housing practices include, but are not limited to, failing to design and construct these properties such that:

- a. the public use and common use portions are readily accessible to and usable by individuals with disabilities;
- b. all doors within the ground floor units are sufficiently wide to allow passage by persons with disabilities who use wheelchairs; and

- c. the ground floor units contain the following features of adaptive design:
 - (i) an accessible route into and through the dwelling; (ii) electrical outlets, thermostats and other environmental controls in accessible locations; and (iii) usable kitchens and bathrooms such that an individual using a wheelchair can maneuver about the space.

22. Equity Homes and Hartung, individually or through their respective agents, have engaged in discriminatory housing practices at Beverly Gardens. These discriminatory housing practices include, but are not limited to, failing to design and construct these properties such that:

- a. the public use and common use portions are readily accessible to and usable by individuals with disabilities; and
- b. the ground floor units contain the following features of adaptive design: (i) an accessible route into and through the dwelling; (ii) electrical outlets, thermostats and other environmental controls in accessible locations; and (iii) usable kitchens and bathrooms such that an individual using a wheelchair can maneuver about the space.

23. Equity Homes and BBR, individually or through their respective agents, have engaged in discriminatory housing practices at Kensington. These discriminatory housing practices include, but are not limited to, failing to design and construct these properties such that:

- a. the public use and common use portions are readily accessible to and usable by individuals with disabilities;
- b. all doors within the ground floor units are sufficiently wide to allow passage

by persons with disabilities who use wheelchairs; and

c. the ground floor units contain the following features of adaptive design: (i) an accessible route into and through the dwelling; (ii) electrical outlets, thermostats and other environmental controls in accessible locations; and (iii) usable kitchens and bathrooms such that an individual using a wheelchair can maneuver about the space.

COUNT I

24. Plaintiff re-alleges and incorporates by reference herein the allegations set forth above.
25. Complainant Fair Housing of the Dakotas (“FHD”) is a non-profit fair housing enforcement agency with its principal place of business at 909 Basin Avenue, Suite 2, Bismarck, North Dakota 58504.
26. On or about May 6, 2004, FHD received a citizen complaint indicating that Kensington was not accessible to persons with disabilities. FHD investigated the complaint and found information indicating that the Subject Properties were not accessible to persons with disabilities.
27. On or about July 6, 2004, FHD filed timely HUD complaints under 42 U.S.C. § 3610(a) alleging that Equity Homes, PBR, and BBR had discriminated against it on the basis of disability in violation of the Fair Housing Act, as amended, 42 U.S.C. § 3601 et seq. Specifically, FHD alleged that Equity Homes and PBR had discriminated against it on the basis of disability by designing and constructing East Briar and West Briar to be inaccessible in violation of the FHA. FHD also alleged that Equity Homes and BBR had discriminated against it on the basis of disability by designing and constructing Sertoma

Apartments and Sertoma Villas to be inaccessible in violation of the FHA. FHD further alleged that Equity Homes had discriminated against it on the basis of disability by designing and constructing Beverly Gardens and Kensington to be inaccessible in violation of the FHA. FHD subsequently amended its complaints to add Shane Hartung as a respondent with respect to the design and construction of Beverly Gardens, Sertoma Apartments, and Sertoma Villas, BBR as a respondent with respect to Kensington, and the current owners or governing entity of the complexes, Van Buskirk, Hansen, McGee, and SHVA, as parties necessary to obtain complete relief.

28. Pursuant to the requirements of 42 U.S.C. §§ 3610(a) and (b), the Secretary of HUD (“the Secretary”) conducted an investigation of the above-mentioned complaints regarding the Subject Properties, attempted conciliation without success, and prepared final investigatory reports.
29. Based on the information gathered in this investigation, the Secretary, pursuant to 42 U.S.C. § 3610(g)(1), determined that reasonable cause exists to believe that illegal discriminatory housing practices occurred at East Briar, West Briar, Beverly Gardens, Sertoma Apartments, and Sertoma Villas. Accordingly, on or about September 30, 2008 (East Briar), March 10, 2009 (West Briar), and March 25, 2009 (Beverly Gardens, Sertoma Apartments and Sertoma Villas), the Secretary issued Determinations of Reasonable Cause and Charges of Discrimination. The Secretary charged: Defendant Equity Homes with engaging in discriminatory housing practices in violation of the FHA with respect to East Briar, West Briar, Beverly Gardens, Sertoma Apartments and Sertoma Villas; Defendant PBR with engaging in discriminatory housing practices in

violation of the FHA with respect to East Briar and West Briar; Defendant BBR with engaging in discriminatory housing practices in violation of the FHA with respect to Sertoma Apartments and Sertoma Villas; and Defendant Shane Hartung with engaging in discriminatory housing practices in violation of the FHA with respect to Beverly Gardens, Sertoma Apartments, and Sertoma Villas.

30. On or about October 9, 2008 (East Briar), March 20, 2009 (West Briar), and March 27, 2009 (Beverly Gardens, Sertoma Apartments and Sertoma Villas), Complainant FHD elected to have the claims asserted in HUD's Charges of Discrimination resolved in a federal civil action, pursuant to 42 U.S.C. § 3612(a).
31. The Secretary subsequently authorized the Attorney General to commence this action, pursuant to 42 U.S.C. § 3612(o), with respect to East Briar, West Briar, Beverly Gardens, Sertoma Apartments, and Sertoma Villas.
32. The FHA Defendants, through the actions referred to in paragraphs 20 – 22, have:
 - a. Discriminated in the rental of, or otherwise made unavailable or denied, dwellings to renters because of handicap, in violation of 42 U.S.C. § 3604(f)(1);
 - b. Discriminated against persons in the terms, conditions or privileges of rental of a dwelling, or in the provision of services or facilities in connection with a dwelling, because of handicap, in violation of 42 U.S.C. § 3604(f)(2); and
 - c. Discriminated in the rental of, or otherwise made unavailable or denied, dwellings to renters because of handicap by failing to design and construct covered multifamily dwellings with the required accessibility features, in violation of 42 U.S.C. § 3604(f)(3).

33. The FHA Defendants' failure to design and construct East Briar, West Briar, Beverly Gardens, Sertoma Apartments, and/or Sertoma Villas with the requisite accessible features constitutes a continuing violation of the Fair Housing Act.
34. FHD is an aggrieved person within the meaning of the Fair Housing Act, 42 U.S.C. § 3602(i), and has suffered damages as a result of FHA Defendants' conduct described above.
35. The discriminatory actions of the FHA Defendants were intentional, willful, and taken in disregard for the rights of others.

COUNT II

36. Plaintiff re-alleges and incorporates by reference herein the allegations set forth above.
37. On or about March 24, 2009, pursuant to 42 U.S.C. § 3610(e)(2), the Secretary referred to the Attorney General FHD's HUD complaint alleging that Equity Homes and BBR had discriminated against it on the basis of disability by designing and constructing Kensington to be inaccessible in violation of the Fair Housing Act, as amended, 42 U.S.C. § 3601 et seq.
38. The FHA Defendants, through the actions referred to in paragraphs 20 – 23, have:
 - a. Discriminated in the rental of, or otherwise made unavailable or denied, dwellings to renters because of handicap, in violation of 42 U.S.C. § 3604(f)(1);
 - b. Discriminated against persons in the terms, conditions or privileges of rental of a dwelling, or in the provision of services or facilities in connection with a dwelling, because of handicap, in violation of 42 U.S.C. § 3604(f)(2); and
 - c. Discriminated in the rental of, or otherwise made unavailable or denied,

dwelling to renters because of handicap by failing to design and construct covered multifamily dwellings with the required accessibility features, in violation of 42 U.S.C. § 3604(f)(3).

39. With respect to the Subject Properties, the conduct of the FHA Defendants described in the allegations set forth above in paragraphs 20 – 23 and 38 constitutes:
- (a) a pattern or practice of resistance to the full enjoyment of rights granted by the Fair Housing Act, 42 U.S.C. §§ 3601-3619, or
 - (b) a denial to a group of persons of rights granted by the Fair Housing Act, 42 U.S.C. §§ 3601-3619, which denial raises an issue of general public importance.
40. In addition to FHD, there may be other victims of the FHA Defendants' discriminatory actions and practices who are aggrieved persons as defined in 42 U.S.C. § 3602(i). These persons may have suffered actual injury and damages as a result of the above actions and practices.
41. The discriminatory actions of the FHA Defendants were intentional, willful, and taken in disregard for the rights of others.

PRAYER FOR RELIEF

WHEREFORE, the United States prays that the Court enter an order that:

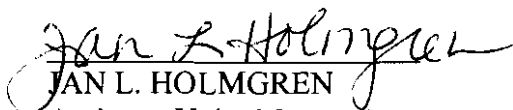
1. Declares that the FHA Defendants' policies, practices, and conduct, as alleged herein, violate the Fair Housing Act;
2. Declares that the FHA Defendants have engaged in a pattern or practice of resistance to the full enjoyment of rights granted by the Fair Housing Act, and that a group of persons has been denied rights granted by the Fair Housing Act and that such denial raises an

issue of general public importance;


3. Enjoins the FHA Defendants, their officers, employees, agents, successors and all other persons in active concert or participation with any of them, from:
 - a. Failing or refusing to bring the ground floor units and public use and common use areas at the Subject Properties into compliance with 42 U.S.C. § 3604(f)(3)(C);
 - b. Failing or refusing to take such affirmative steps as may be necessary to restore, as nearly as practicable, victims of the FHA Defendants' unlawful practices to the position they would have been in but for the discriminatory conduct; and
 - c. Designing or constructing covered multifamily dwellings in the future that do not contain the accessibility and adaptability features required by 42 U.S.C. § 3604(f)(3)(C);
4. Enjoins the Defendants described above in Paragraphs 15 – 19 from engaging in conduct that denies access to the common and public use areas and the covered multifamily dwellings under their ownership or management or from failing to take any other action appropriate to ensure that any retrofits required to bring the living units and public use and common use areas into compliance with the accessibility provisions of the Fair Housing Act be done in a prompt and efficient manner;
4. Awards monetary damages pursuant to 42 U.S.C. §§ 3612(o)(3), 3613(c)(1), and 3614(d)(1)(B), to all persons harmed by the FHA Defendants' discriminatory practices, including FHD.

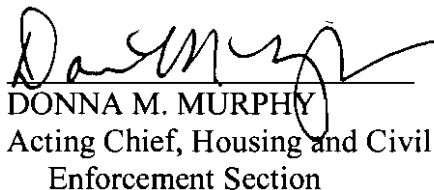
The United States further prays for such additional relief as the interests of justice may require.

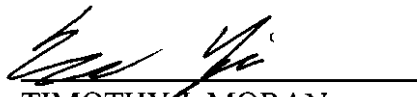
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