

U.S. DISTRICT COURT  
SAVANNAH, GA.

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF GEORGIA  
SAVANNAH DIVISION

CLERK ~~SO. DIST. OF GA.~~

SAVANNAH-CHATHAM COUNTY  
FAIR HOUSING COUNCIL, INC.,

Plaintiff,

v.

GENESIS DESIGNER HOMES, LLC, et al.,

Defendants.

Civil Action No. CV406-096

UNITED STATES OF AMERICA,

Plaintiff,

v.

GENESIS DESIGNER HOMES, LLC, et al.,

Defendants.

**PARTIAL CONSENT ORDER RESOLVING PLAINTIFFS'  
CLAIMS AGAINST DEFENDANT MALPHRUS CONSTRUCTION CO., INC.**

**I. INTRODUCTION**

**A. Background**

1. This Consent Order is entered into between Plaintiffs Savannah-Chatham County Fair Housing Council, Inc. and the United States of America ("Plaintiffs") and Defendant Malphrus Construction Co., Inc. ("Malphrus").

2. On April 12, 2006, SCFHC filed a Complaint in Civil Action No. CV406-096 alleging violations of Section 804(f)(1)-(3) of the Fair Housing Act, as amended by the Fair Housing Amendments Act of 1988, 42 U.S.C. §§ 3601-3619 (the "FHA" or the "Act"). Specifically, the complaint alleged that Defendants Genesis Designer Homes ("GDH") and Genesis Real Estate Group ("GREG") engaged in a pattern or practice of discrimination against persons with disabilities by failing to design and construct Stonelake Townhomes and Highlands Crossing Townhomes (the "Subject Properties") with the features of accessible and adaptable design set forth in 242 U.S.C. § 3604(f)(3)(C). Stonelake Townhomes ("Stonelake") is located at Berwick Plantation, 89 Travertine Circle, in Savannah, Georgia. Highlands Crossing Townhomes ("Highlands Crossing") is located at Godley Station, 15 Falkland Avenue, in Pooler, Georgia. On October 6, 2006, the Complaint was amended to add the Stonelake Association as a Rule 19 defendant in whose absence full relief could not be granted. On October 4, 2007, the Complaint was amended again to add Thomas & Hutton Construction Co. ("Thomas & Hutton"), Malphrus, Richard Fitzer III ("Fitzer") and Carrie Schmelter ("Schmelter") as defendants.<sup>1</sup>

3. On September 26, 2007, the United States filed its Complaint in case number CV407-139, alleging violations of Sections 804(f)(1), (f)(2), and (f)(3)(C) of the Fair Housing Act, 42 USC §§ 3604(f)(1), (f)(2) and (f)(3). Specifically, the United States' Complaint alleges that Defendants GDH, GREG, Thomas & Hutton and Malphrus have failed to design and construct the Subject Properties with the features of accessible and adaptable design set forth in 42 U.S.C. § 3604(f)(3)(C); and thereby, have engaged in a pattern or practice of resistance to the full

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<sup>1</sup> Richard Fitzer, III and Carrie Schmelter are named defendants in the private Plaintiffs' case, Civil Action No. CV406-096, but are not named defendants in the United States' case, Civil Action No. CV407-139. Carrie Schmelter has not been served and is not a party to this Consent Order.

enjoyment of rights granted by the Act and denied to a group of persons rights granted by the Act, which denial raises an issue of general public importance.

4. On November 7, 2007, the Court consolidated the two cases “for all purposes.”
5. On November 10, 2008, the United States amended its complaint to add the Highlands Crossing Association as a Rule 19 defendant after it acquired ownership and management of the common and public use areas of Highlands Crossing from GDH on October 16, 2008.
6. On January 18, 2011, the Court ruled that certain features of Stonelake and Highlands Crossing do not meet the accessibility requirements of the Fair Housing Act. *See Savannah-Chatham County Fair Hous. Council v. Genesis Designer Homes LLC, et al.*, No 06-cv-096, slip op. (S. D. Ga. Jan. 18, 2011); *see also* HUD Fair Housing Accessibility Guidelines, 24 C.F.R. Part 100 (Mar. 6, 1991) and the HUD Supplement to Notice of Fair Housing Accessibility Guidelines, 24 C.F.R. Ch. I (June 28, 1994) (“the Guidelines”).
7. Defendant Malphrus 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). The Parties further agree that the controversy should be resolved without further proceedings and without an evidentiary hearing or trial. As indicated by the signatures appearing below, the Parties agree to entry of this Consent Order.
8. This Consent Order does not in any way affect the Plaintiffs’ claims against the remaining defendants in this case.

**B. Complexes**

9. Stonelake is a townhome development, located in Savannah Georgia, which consists of attached single-story and multi-story dwelling units. Stonelake consists of 47 buildings containing four or more dwellings, which comprise 174 ground-floor units. Each of the ground-

floor units was designed and constructed for first occupancy after March 13, 1991, and therefore have been found by this Court to be subject to the design and construction requirements of the FHA.

10. Highlands Crossing is a townhome development property in Pooler, Georgia. Highlands Crossing consists of attached single-story and multi-story dwelling units. It consists of six buildings containing four or more dwellings, which comprise a total of 19 ground-floor units. Each of these 19 ground-floor units was designed and constructed for first occupancy after March 13, 1991, and therefore have been found by this Court to be subject to the design and construction requirements of the FHA.

**C. The Defendant**

11. Defendant Malphrus, a South Carolina corporation, provided building and construction services for the Subject Properties. As of the date of this Order, Malphrus represents that it no longer has direct or indirect ownership, management, or other financial interest, in whole or in part, in any business related to the construction of multi-family housing. Malphrus further represents that it currently has no plans to acquire any such interest in any design and construction business.

**D. Relevant Requirements of the Fair Housing Act**

12. The Fair Housing Act 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” and must include certain basic features of accessible and adaptable design to make such units accessible to or adaptable for use by a person who has or who develops a disability. 42 U.S.C. §§ 3604(f)(3)(C) and (f)(7)(B). The features of accessible and adaptable design required by the Act include: (a) public use and

common use portions of such dwellings that are readily accessible to and usable by persons with disabilities; (b) doors for passage into and within all premises that are sufficiently wide to allow passage by persons with a disability using wheelchairs; and (c) an accessible route into and through the dwelling; (d) light switches, electrical outlets, thermostats, and other environmental controls in accessible locations; (e) reinforcements in bathroom walls to allow later installation of grab bars; and (f) usable kitchens and bathrooms such that an individual using a wheelchair can maneuver about the space. 42 U.S.C. § 3604(f)(3)(C).

13. The 193 ground-floor units at the Subject Properties<sup>2</sup> have been found by this Court to be “covered multifamily dwellings” within the meaning of the Act, 42 U.S.C. § 3604(f)(7)(b). As such, those units and the public and common use areas at the Subject Properties must comply with the design and construction requirements of 42 U.S.C. § 3604(f)(3)(C).

**Therefore, it is hereby, ORDERED, ADJUDGED and DECREED:**

## II. GENERAL INJUNCTION

14. For the term of this Order, Defendant Malphrus shall notify the Department of Justice within fifteen (15) days of re-entering the business of constructing multi-family housing.<sup>3</sup>

15. In the event that Malphrus engages in the business of constructing multi-family housing during the term of this Order, then Malphrus, and its agents, employees, assigns, successors in

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<sup>2</sup> This statement of the number of covered dwellings is based on the site inspection conducted on July 31, 2006, as well as several inspections the United States conducted after that date.

<sup>3</sup> Unless otherwise specified, all documents or other communications required by this Consent Order to be sent to counsel for the United States shall be sent by overnight courier and addressed as follows: Chief, Housing and Civil Enforcement Section, Civil Rights Division, DJ 175-20-108, United States Department of Justice, 1800 G Street, NW, 7th Floor, Washington, DC 20006, or as otherwise directed by the United States. If this Order requires transmission by facsimile, the communication shall also be sent via facsimile to (202) 514-1116.

interest, and all persons in active concert or participation with them, to the extent they are so engaged, are hereby enjoined from discriminating on the basis of disability as prohibited by the Fair Housing Act, 42 U.S.C. § 3604(f).

### **III. NON-DISCRIMINATION IN FUTURE CONSTRUCTION**

16. In the event that Malphrus engages in the business of constructing multi-family housing during the term of this Order, then Malphrus shall ensure that all its future construction of covered multi-family dwelling units complies with the features of accessible and adaptable design set forth in 42 U.S.C. § 3604(f)(3)(C) of the Fair Housing Act and the Guidelines.

### **IV. EMPLOYEE TRAINING**

17. In the event that Malphrus engages in the business of constructing multi-family housing during the term of this Order, then within thirty (30) days after doing so, Malphrus shall provide a copy of this Order to its then employees, agents, and persons acting under their direction, whose duties, in whole or in part, involve the construction of multi-family dwelling units, and each agent or employee who supervises such activities ("employees"), and secure the signed statement from each such employee acknowledging that he or she has received and read this Order, has had the opportunity to have his or her questions about this Order, if any, answered by Malphrus' then counsel, and agrees to abide by the relevant provisions of this Order. This statement shall be in the form of Appendix A. Malphrus' then counsel shall review these policies and procedures with, and conduct a question and answer session(s) with, such employees, on an annual basis thereafter.

18. In the event that Malphrus engages in the business of constructing multi-family housing during the term of this Order, then Malphrus shall provide semi-annual fair housing training to its supervisory employees. The training shall be conducted by a qualified organization not

associated with Malphrus or its counsel. The organization shall be selected by Malphrus, subject to approval by the United States. The program shall include training on the features of accessible and adaptable design set forth in 42 U.S.C. § 3604(f)(3)(C) and the Guidelines. Any and all costs and fees associated with attending the training shall be borne by Malphrus. Attendance at such training will be certified by securing a signed statement, appearing at Appendix B, from each person attending the training stating that he or she has attended such training and received a copy of this Order.

#### **V. REPORTING REQUIREMENTS**

19. In the event that Malphrus engages in the business of constructing multi-family housing during the term of this Order, then Malphrus shall notify counsel for the United States, in writing, within fifteen (15) days of receipt of any written or oral complaint originating from its construction work on "covered multifamily dwellings."<sup>4</sup> If the complaint is written, Malphrus shall provide a copy of it with the notification. The notification shall include the full details of the complaint, including the complainant's name, address, and telephone number. Malphrus shall also promptly provide the United States all information it may request concerning any such complaint and shall inform the United States within fifteen (15) days of any resolution of such complaint.

#### **VI. SCOPE AND DURATION OF CONSENT ORDER**

20. The provisions of this Consent Order shall apply to all of Malphrus' members, officers, agents, representatives, employees, successors and assigns, who in such capacities engage in the business of constructing multi-family housing during the term of this Order.

21. This Consent Order shall remain in effect for five (5) years after the date of its entry.

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<sup>4</sup> See fn.3, supra.

22. The Court shall retain jurisdiction for the duration of this Consent Order to enforce its terms, after which time the case shall be dismissed with prejudice. The United States may move the Court to extend the duration of the Consent Order if Malphrus fails to comply with any provision of this Order or in the interests of justice.

#### VII. TIME FOR PERFORMANCE

23. Any time limits for performance imposed by this Consent Order may be extended by the mutual agreement of the Parties.

#### VIII. COSTS OF LITIGATION

24. Plaintiffs and Malphrus shall bear their own costs and attorneys' fees associated with this litigation.

**IT IS SO ORDERED:**

This 22<sup>ND</sup> day of JUNE, 2011.

  
UNITED STATES DISTRICT COURT