

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

Plaintiff,

- v. -

GINSBURG DEVELOPMENT COMPANIES, LLC,

Defendant.
-----X

16 Civ. 7301 (NSR)

~~PROPOSED~~
CONSENT ORDER OF
PRELIMINARY INJUNCTION

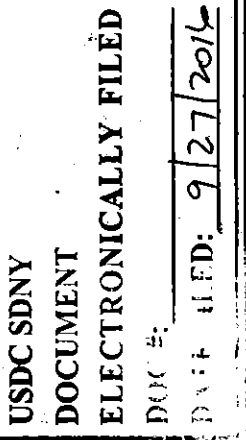
INTRODUCTION

This Consent Order of Preliminary Injunction (the "Consent Injunction") is entered into between plaintiff the United States (the "Government") and defendant Ginsburg Development Companies, LLC, along with its subsidiaries and affiliates that own and operate the following rental complexes: Saw Mill Lofts in Hastings-on Hudson, Harbor Square Crossings in Ossining, and River Tides and 1177 Warburton Avenue in Yonkers (collectively, "GDC" or "Ginsburg Development");

WHEREAS, the accessible design and construction provisions of the Fair Housing Act, 42 U.S.C. § 3601 *et seq.* (the "FHA"), provide that residential buildings with four or more dwelling units and one or more elevators that are designed and constructed for first occupancy after March 13, 1991, are Covered Multifamily Dwellings and accordingly must include certain basic accessible features as set forth in 42 U.S.C. §§ 3604(f)(3)(C), *id.* § 3604(f)(7)(A);

WHEREAS, the accessible and adaptive design provisions of the FHA require the following basic accessible features at Covered Multifamily Dwellings:

- 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.

See 42 U.S.C. § 3604(f)(3)(c) (these provisions and features are referred to herein as the "FHA's Accessible Design Requirements");

WHEREAS, the Government brought the above-captioned action (the "Action") to enforce the accessible design and construction provisions of the FHA against GDC, alleging, among other things, that GDC is developing rental properties that contain inaccessible conditions;

WHEREAS, the Government alleges that two rental properties that GDC designed and constructed — Riverside At Harbor and Parkside Harbors in Haverstraw, New York, which together contain more than 200 rental units — have conditions that fail to comply with the FHA's Accessible Design Requirements, including, *inter alia*:

- Excessively high thresholds at bedroom and balcony entrances;
- Insufficient clear opening width of bedroom doors;
- Insufficiently wide kitchens;
- Insufficient maneuvering space in bathrooms within individual units;
- Inaccessible primary entrance to The Parkside; and
- Insufficient width of doorway to the private cinema at The Parkside.

WHEREAS, GDC intends to file an answer disputing the allegations in the Action;

WHEREAS, GDC, operating through certain subsidiaries and affiliates, currently is

designing and constructing four rental complexes in Westchester County — Saw Mill Lofts in Hastings-on Hudson, Harbor Square Crossings in Ossining, and River Tides and 1177 Warburton Avenue in Yonkers (collectively, the "GDC Buildings under Construction") — that, upon completion of construction, will contain elevators and several hundred rental apartment units;

WHEREAS, absent this consensual resolution, the Government intends to seek a preliminary injunction to compel GDC to ensure that the GDC Buildings under Construction will be constructed in accordance with the FHA's Accessible Design Requirements;

WHEREAS, the Government and GDC have agreed to resolve the dispute concerning the GDC Buildings under Construction without further proceedings or an evidentiary hearing;

WHEREAS, the Government and GDC also are engaging in negotiations toward a full and final settlement of the allegations in the Action;

WHEREAS, GDC has agreed to retain an FHA compliance Reviewer (the "FHA Reviewer" or "Reviewer") to review the design documents for the GDC Buildings under Construction and to inspect the as-built features at the GDC Buildings under Construction so as to ensure that both the designs and the as-built features comply with the FHA's Accessible Design Requirements;

WHEREAS, the Government and GDC agree to the entry of this Consent Injunction;

ACCORDINGLY, IT IS HEREBY ORDERED THAT:

1. For the duration of this Consent Injunction, GDC and their officers, agents, servants, employees, and any other persons or entity in active concert or participation with any of them, shall design and construct all Covered Multifamily Dwellings in compliance with the FHA's Accessible Design Requirements.

2. Within fifteen (15) days of the entry of this Consent Injunction, GDC shall retain Dominic Marinelli of United Spinal Association as the FHA Reviewer. The agreement

between GDC and United Spinal Association shall include a copy of this Consent Injunction as an attachment and shall specify that Dominic Marinelli is being retained as the FHA Reviewer as set forth here.

I. THE FHA REVIEWER'S REVIEW OF AND PROPOSED MODIFICATIONS TO THE DESIGNS OF THE GDC BUILDINGS UNDER CONSTRUCTION

3. Within fourteen (14) days of retaining the FHA Reviewer, GDC shall provide the Reviewer with copies of the blueprints and other architectural or design drawings and/or specifications for the GDC Buildings under Construction. GDC also shall promptly provide to the Reviewer such additional design documents as requested by the Reviewer that are in the possession of, or otherwise available to, GDC.
4. Within sixty (60) days of receiving the design documents for the GDC Buildings under Construction, the FHA Reviewer shall provide GDC with an analysis of the design documents, which shall include, at a minimum, (i) a list of the design elements that do not comply with the Fair Housing Accessibility Guidelines, Design Guidelines for Accessible/Adaptable Dwellings, 56 Fed. Reg. 9,472 (Mar. 6, 1991) (the "FHA Guidelines") and (ii) recommended modifications to make those elements compliant with the FHA Guidelines.
5. Upon receipt of the analysis from the FHA Reviewer, GDC shall have forty-five (45) days to confer with the Reviewer regarding the non-compliant elements identified by the Reviewer and to explore possible alternatives to the modifications recommended by the Reviewer.
6. Within 75 days of its receipt of the Reviewer's analysis of the design drawings and/or specifications for the GDC Buildings under Construction or any subsequent revised analysis thereof by the Reviewer, GDC shall make modifications to the design drawings and/or specifications for the GDC Buildings under Construction based on the Reviewer's

recommendations that GDC deems necessary to comply with the FHA's accessibility requirements and submit the modified design drawings and/or specifications to the Reviewer.

7. Within twenty-one (21) days of receipt of the modified designs from GDC, the FHA Reviewer shall submit a statement to the Government certifying, *inter alia*, that (i) the Reviewer has reviewed the designs for the GDC Buildings under Construction to identify elements that do not comply with the FHA Guidelines; (ii) the Reviewer has recommended modifications to make those design elements compliant with the FHA Guidelines; and (iii) GDC has adopted all modifications proposed by the Reviewer except for such instances where, based on discussion with GDC, the Reviewer agrees that no modification is needed or an alternative modification is equally accessible and safe. In the event that the Reviewer is unable to make any of these certifications, the Reviewer's statement shall specify each such instance and provide an explanation of the circumstances preventing the Reviewer from making the relevant certification.

8. Upon written request from the Government, GDC shall within twenty (20) days of receipt of the request provide to the Government copies of all design documents that it provided to the FHA Reviewer and the final modified designs. In the event that GDC and the Reviewer disagree over whether to implement a modification recommended by the Reviewer, the Government may request communications between GDC and the Reviewer related to the recommended modification, and GDC shall not unreasonably refuse to provide such communication.

II. THE FHA REVIEWER'S INSPECTION OF THE GDC BUILDINGS UNDER CONSTRUCTION

9. GDC shall direct its employees, agents, and/or contractors to seek the FHA Reviewer's advice regarding the selection of fixtures (e.g., thresholds, doors, base cabinets, and lavatories) and appliances (e.g., ranges and refrigerators); the effect of any deviation from the architects' drawings on the accessibility of conditions at a building; as well as other issues that

arise during construction that may affect accessibility at the GDC Buildings under Construction.

10. Prior to the completion of construction of each GDC Building under Construction, GDC shall arrange for the FHA Reviewer to conduct an inspection of the building to identify any construction issues that have resulted in conditions that fail to comply with the FHA Guidelines and to recommend appropriate solutions.

11. Within 60 days of the completion of all construction at each GDC Building Under Construction, the FHA Reviewer shall submit to the Government a final report (the "Final Reviewer's Report") that sets forth (i) the Reviewer's findings from his inspection of the building, including any condition that fails to comply with the FHA Guidelines; and (ii) whether GDC has implemented the solutions recommended by the Reviewer.

III. GENERAL PROVISIONS

12. During the term of this Consent Injunction, the FHA Reviewer shall submit, every 120 days, a report to the Government that (i) indicates whether GDC has complied with all requests for information made by the Reviewer, and (ii) identifies each instance, if any, where GDC refused to adopt the Reviewer's recommendation concerning any construction decision or any retrofit to be made to achieve compliance with the FHA's Accessible Design Requirements.

13. Any notice required to be made to the Government under this Consent Injunction shall be in writing and shall be sent (i) by e-mail to li.yu@usdoj.gov and natasha.teleanu@usdoj.gov and (ii) by overnight mail to the attention of AUSA Li Yu, AUSA Natasha Teleanu, and the Chief of the Civil Rights Unit at the U.S. Attorney's Office, 86 Chambers Street, 3rd Floor, New York, NY 10007. Any notice required to be made to GDC under this Consent Injunction shall be in writing and shall be sent by e-mail to (i) mdginsburg@grlawpc.com and sbagwin@grlawpc.com; and (ii) by overnight mail to Mark D. Ginsburg, Esq. and Steven C. Bagwin, Esq. at Ginsburg & Redmond, LLC, 245 Saw Mill River

Road, Hawthorne, New York 10532.

14. For the duration of this Consent Injunction, the Government shall have the right to verify compliance with this Consent Injunction, through any means available to the general public, including by initiating communications to determine whether GDC is complying with the FHA's Accessible Design Requirements.

15. If GDC, or any other party subject to this Consent Injunction, fails to comply with any of the terms of this Injunction, the Government, prior to seeking relief from the Court, shall notify GDC in writing of what specific terms of the Injunction are not being complied with. Upon receipt of any such notice GDC shall have ten (10) days to cure any noncompliance set forth therein. If GDC does not cure such noncompliance within such 10-day period, the Government may seek appropriate relief from the Court.

16. Any time limit for performance specified by this Consent Injunction may be extended by the mutual written agreement of the Government and GDC, which shall not be unreasonably denied, withheld or conditioned.

17. This Consent Injunction shall remain in effect until sixty (60) days after the Government's receipt of the Final Reviewer's Reports for all three GDC Buildings under Construction. The Government and GDC each may seek an extension of the term of this Consent Injunction for good cause shown.

18. Because this Consent Injunction does not resolve all claims and defenses in this case, the Action shall remain active on the Court's docket.

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Attorneys for GDC

DATED: 9/27/16, 2016
New York, New York

SO ORDERED


HON. NELSON S. ROMAN
UNITED STATES DISTRICT JUDGE