

*Rec'd
6/25/06*

12

**IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

U.S. DIST. COURT CLERK
EAST DIST. MICH.
ANN ARBOR
2006 JUL 27 P 3 08 PM

FILED

MICHAEL LOWERY,

Plaintiff

v.

BEZTAK PROPERTIES, INC.,

Defendant.

Case No.:

06-13408

Judge

NANCY G. EDMUNDS

Magistrate

MAGISTRATE JUDGE MONA K. MAJORS

J. Mark Finnegan (P68050)
Denise M. Heberle (P64145)
Heberle & Finnegan, PLLC
2580 Craig Road
Ann Arbor, MI 48103
734-302-3233
734-302-3234 fax
hffirm@comcast.net

JURY DEMANDED

Attorneys for Plaintiff

**COMPLAINT
Preliminary Statement**

Plaintiff Michael Lowery alleges:

1. In the State of Michigan and nationwide, there is an acute shortage of accessible rental housing available to persons with disabilities and their families. As a result, Congress directed over ten years ago that newly constructed multi-family housing units on ground floors must meet accessibility standards. Unfortunately, many architects, builders and apartment companies have wantonly ignored the law, and continue to construct ground floor multi-family housing that that is not accessible to persons with mobility impairments. This is illegal discrimination, and denies housing to persons with disabilities. In addition,

non-disabled tenants who rent these inaccessible apartments are unable to host friends and family who have mobility impairments. This failure to build apartments correctly stigmatizes persons with disabilities and their families and friends. This lawsuit is brought to help remedy this wanton discrimination in Southeastern Michigan.

2. This action is brought 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 ("Fair Housing Act"), 42 U.S.C. §§ 3601-3619, and Title III of the Americans with Disabilities Act ("ADA"), 42 U.S.C. §§ 12181-12189.

3. This Court has jurisdiction over this action under 28 U.S.C. §§ 1331 and 1345, 42 U.S.C. § 3614(a), and 42 U.S.C. § 12188(b)(1)(B). Venue is proper pursuant to 28 U.S.C. § 1391(b) because defendants resides or does business in the Eastern District of Michigan.

PARTIES

4. Plaintiff Michael Lowery is a U.S. citizen and a resident of the Uptown Apartments in Canton Michigan. He has a mobility impairment and requires a wheelchair for ambulation. He is a person with a disability as that term is defined by the Fair Housing Act and the ADA.

5. Defendant Beztak Properties, Inc. is a corporation organized under the laws of Michigan that conducts business in the Eastern District of Michigan. Defendant Beztak Properties is responsible for the design, construction, and

operation of a number of apartment complexes, including the Uptown Apartments, located in Canton Michigan, where Plaintiff Mike Lowery lives.

FACTS

6. Defendant designed, constructed, and operates the Uptown Apartments in Canton, Michigan. The complex consists of approximately 30 apartment buildings, containing a total of approximately 300 apartments. The complex also contains a pool, club house, exercise gym, meeting areas and a business office. The Uptown Apartments complex has several streets and intersections, and sidewalks throughout.

7. The Uptown Apartments became available for lease approximately one year ago. Plaintiff Mike Lowery has been a tenant there for the last several months. Mr. Lowery uses a wheelchair to ambulate. Because there are no elevators and no ramps or any other way for a person using a wheelchair to access the second and third floor apartments at Uptown, Mr. Lowery needed a ground floor unit.

8. When he first inquired about renting an apartment at Uptown, the rental agent told Mr. Lowery that the complex had "three handicap accessible apartments" in the complex. The law requires that *all* ground floor units in a complex like Uptown must be accessible; Uptown should have had at least ninety accessible units, not just three.

9. The rental agent showed Mr. Lowery one of the units identified as "handicap accessible." The agent assured Mr. Lowery that this apartment was

specifically designed for tenants who use a wheelchair. Mr. Lowery agreed to rent the unit. A few days later, Uptown informed Mr. Lowery that another of the three "handicap accessible" apartments was available, and Mr. Lowery agreed to rent that unit instead.

10. After moving in, Mr. Lowery discovered numerous accessibility problems in his unit. For example, the bedroom and bathroom doors are too narrow, causing Mr. Lowery to scrape his fingers, toes, knees and chair wheels against the door frames when he tries to maneuver through them. Mr. Lowery can not operate his washer or dryer and he can not reach other closet spaces, because the doors and shelves are improperly configured. He can reach only one of the electrical outlets in his kitchen, and as a result he often shorts out his electricity when using more than two appliances in the kitchen. The thresholds to his entrance doors are too high, jostling him every time he enters or leaves his apartment. The bathrooms have no grab bars and lack proper blocking for their installation. As a result, transferring from his chair to the toilet and using the shower are dangerous activities for Mr. Lowery.

11. Outside the front of Mr. Lowery's apartment, concrete steps block access to and from the sidewalks. Instead of entering and exiting his apartment like any other Uptown resident, he must pass through his garage or through the back of his apartment. He must travel through the driveway and parking lots behind several apartments. This route contains running slopes well in excess of 5% and cross-slopes exceeding 5%, forcing his chair into the flow of traffic. If he successfully overcomes these problems and makes it to the sidewalks, the

sidewalks and their curb ramps offer the same barriers. As a result, Mr. Lowery is virtually trapped in his apartment. He has no ready access to the pool, exercise room, club house or meeting rooms. Even his mail box is not accessible to him. He has no accessible route to the nearby ice cream shop and convenience store, or to public transportation.

12. Mr. Lowery is unable to visit his neighbors. There are steps blocking the front access to his and to each of the neighboring ground floor apartments. If he enters those apartments through the garage, he risks damaging the door posts and he scrapes his fingers and toes. Because he can not access Uptown's common areas, it is virtually impossible for him to meet and interact with his neighbors. Since he can only use his back door, his only chance to meet his neighbors as they come and go is to lurk behind the apartments in the steeply sloping parking lots, dodging cars. This is just the sort of isolation the Fair Housing Act and the Americans With Disabilities Act were passed to eradicate.

13. Mr. Lowery has repeatedly complained to Uptown about these and other accessibility defects. Mr. Lowery and his mother even gave Uptown's agent a newspaper clipping from the Detroit Free Press about a lawsuit that the United States Attorney brought against another Southeastern Michigan apartment builder. The lawsuit was *United States vs. Edward Rose and Sons*, and was filed in Federal Court in Detroit. The article explains the accessibility requirements for new apartment complexes, and what happens when builders ignore the law. Despite this notice and Mr. Lowery's requests, Uptown has refused to correct any of the accessibility defects.

FAIR HOUSING ACT CLAIMS

15. Uptown Apartments contains residential apartment units that are "dwellings" within the meaning of 42 U.S.C. § 3602(b).

16. The ground floor units at Uptown Apartments that were designed and constructed for first occupancy after March 13, 1991 are "covered multi-family dwellings" within the meaning of 42 U.S.C. § 3604(f)(7)(A) and are subject to the requirements of 42 U.S.C. § 3604(f)(3)(C).

17. Uptown Apartments comprises approximately 30 buildings containing residential rental dwellings built since the effective date of the accessible design requirements of the Fair Housing Act. These buildings contain approximately 100 ground floor units that are subject to the accessibility requirements of the Fair Housing Act. These units, including the one rented by Mr. Lowery were built for first occupancy approximately one year ago.

18. Defendant failed to design and to construct the covered dwelling units and common use and public use areas in the Uptown Apartments in such a manner that:

(a) the public use and common use portions of such dwellings are readily accessible to and usable by handicapped persons;

(b) all the doors designed to allow passage into and within all premises within such dwellings are sufficiently wide to allow passage by handicapped persons in wheelchairs; and

(c) 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 in a wheelchair can maneuver about the space.

19. Defendant, through the actions described in paragraph 16 above, has:

(a) Discriminated in the rental of, or otherwise made unavailable or denied, dwellings to persons 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 the rental of a dwelling, because of handicap, in violation of 42 U.S.C. § 3604(f)(2); and

(c) Failed to design and construct dwellings in compliance with the requirements mandated by 42 U.S.C. § 3604(f)(3)(C).

20. The conduct of defendant described above constitutes a violation of the Fair Housing Act.

21. As a person who has been the victim of defendants' discriminatory housing practices, Plaintiff Michael Lowery is an aggrieved person as defined in 42 U.S.C. § 3602(i) and has suffered injuries as a result of defendant's conduct described above.

22. Defendant's conduct described above was intentional, willful, and taken in disregard for the rights of others.

AMERICANS WITH DISABILITIES ACT CLAIMS

23. The rental office at the Uptown Apartments is a sales or rental establishment, the operations of which affect commerce, and therefore are "public accommodations" within the meaning of 42 U.S.C. § 12181(7).

24. The rental office at the Uptown Apartments was designed and constructed for first occupancy after January 26, 1993. The rental office and the facilities, privileges, and accommodations provided for the public appurtenant to the use of the rental offices, including the parking and sidewalks are covered by the prohibition on discrimination in 42 U.S.C. § 12182(a), and are subject to the design and construction requirements of 42 U.S.C. § 12183(a)(1).

25. The Defendant failed to design and construct the rental office and its appurtenant parking and sidewalks in such a manner that the facilities are readily accessible to and useable by individuals with disabilities.

26. The actions of the defendant, as described above, constitute:

(a) Discrimination against individuals with disabilities in the full and equal enjoyment of the services, facilities, privileges, and accommodations of a place of public accommodation, in violation of 42 U.S.C. § 12182(a); and

(b) A failure to design and construct public accommodations in compliance with the requirements mandated by 42 U.S.C. § 12183(a)(1).

27. The conduct described in paragraphs above constitutes a violation of the Americans With Disabilities Act.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that the Court enter an order that:

1. Declares that defendant's policies and practices, as alleged herein, violate the Fair Housing Act;

2. Enjoins defendant, its officers, employees, agents, successors, and all other persons in active concert or participation with it, from:

(a) Failing or refusing to bring the covered dwelling units and public use and common use areas at Uptown Apartments into immediate compliance with the requirements of 42 U.S.C. § 3604(f)(3)(C);

(b) Failing or refusing to take such affirmative steps as may be necessary to restore Plaintiff to the position he would have been in but for the discriminatory conduct; and

(c) Failing or refusing to design and construct any covered multi-family dwellings in the future in compliance with the requirements set forth in 42 U.S.C. § 3604(f)(3)(C);

3. Awards such damages as would fully compensate Plaintiff for his injuries and damages resulting from defendant's discriminatory conduct, pursuant to 42 U.S.C. § 3614(d)(1)(B);

4. Awards Plaintiff punitive damages because of the intentional and willful nature of defendant's conduct, pursuant to 42 U.S.C. § 3614(d)(1)(B); and

5. Declares that practices of the defendant, as alleged herein, violate Title III of the ADA;

6. Enjoins the defendant and all other persons in active concert or participation with it, from:

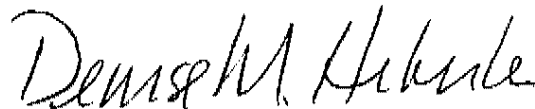
(a) Failing or refusing to bring the rental offices at the subject complexes and others, and the parking, sidewalks leading to and from the rental offices, into compliance with the requirements of 42 U.S.C. § 12183(a)(1);

(b) Failing or refusing to take such affirmative steps as may be necessary to restore Plaintiff, as nearly as practicable, to the position he would have been in but for the discriminatory conduct; and

(c) Failing or refusing to design and construct any public accommodations in the future in compliance with the requirements of 42 U.S.C. § 12183(a)(1); and Plaintiff requests a jury trial of all issues triable thereby.

Plaintiff further prays for such additional relief as the interests of justice may require.

Respectfully submitted,



J. Mark Finnegan (P68050)
Denise M. Heberle (P64145)
Heberle & Finnegan, PLLC
2580 Craig Road
Ann Arbor, MI 48103
734-302-3233
734-302-3234 fax
hffirm@comcast.net

Attorneys for Plaintiff

JS 44 (Rev. 11/04)

CIVIL COVER SHEET County in which this action arose WAYNE

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

DISTRICT COURT
 EAST DISTRICT
 ANN ARBOR, MI
 FILED
 JUL 27 2006
 06-13408
 MARGY G. FOMUNDS

I. (a) PLAINTIFFS

MICHAEL LOWERY

DEFENDANTS

BEZTAK PROPERTIES, INC.

(b) County of Residence of First Listed Plaintiff WAYNE
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant WAYNE
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, THE DISTRICT COURT HAS JURISDICTION OVER LAND INVOLVED

(c) Attorney's (Firm Name, Address, and Telephone Number)
 Heberle & Finnegan J. Mark Finnegan
 2580 Craig Road Denise M. Heberle
 Ann Arbor, MI 48103 734-362-3233

Attorneys (If Known)

II. BASIS OF JURISDICTION (Select One Box Only)

- 1 U.S. Government Plaintiff
- 3 Federal Question (U.S. Government Not a Party)
- 2 U.S. Government Defendant
- 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Select One Box for Plaintiff and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business in This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Select One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat. TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS		
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input checked="" type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		

4
4
3

V. ORIGIN (Select One Box Only)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from another district (specify)
- 6 Multidistrict Litigation
- 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
 42 U.S.C. 3601-3619; 42 U.S.C. 12181-12189

Brief description of cause:
 Plaintiff claims unlawful discrimination in housing on basis of disability.

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$ _____

CHECK YES only if demanded in complaint:
 JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE _____ DOCKET NUMBER _____

DATE: July 27, 2006

SIGNATURE OF ATTORNEY OF RECORD
Denise M. Heberle

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

PURSUANT TO LOCAL RULE 83.11

1. Is this a case that has been previously dismissed?

- Yes
- No

If yes, give the following information:

Court: _____

Case No.: _____

Judge: _____

2. Other than stated above, are there any pending or previously discontinued or dismissed companion cases in this or any other court, including state court? (Companion cases are matters in which it appears substantially similar evidence will be offered or the same or related parties are present and the cases arise out of the same transaction or occurrence.)

- Yes
- No

If yes, give the following information:

Court: _____

Case No.: _____

Judge: _____

Notes :
