

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

Michael Lowrey,)	Case No.: 06-13408-NGE-MKM
)	
Plaintiff)	Judge NANCY G. EDMUNDS
)	
)	Magistrate MONA MAZOUB
Beztak Properties, Inc.,)	
Beztak Companies, Inc.,)	
Biltmore Properties Companies, Inc.)	
Uptown Investors L.L.C.,)	
Uptown Investors L.L.C. II,)	
Monogram Homes,)	
Warner, Cantrell, & Padmos, Inc.,)	
Looney, Ricks, Kiss)	
)	JURY DEMANDED
Defendants)	

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**FIRST AMENDED COMPLAINT
Preliminary Statement**

Plaintiff Michael Lowrey 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 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 so that they are accessible 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 ("FHAA"), 42 U.S.C. §§ 3601-3619; Title III of the Americans with Disabilities Act ("ADA"), 42 U.S.C. §§ 12181- 12189; and the Michigan Persons With Disabilities Civil Rights Act ("PWDCRA"), MCL Section 37.1301a and b relating to the business office and MCL Section 37.1506a(1)(c) relating to multifamily housing.

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). The Court has supplemental jurisdiction over the Michigan law claim because the claim arises out of the same factual situation as the Federal claims. Venue is proper pursuant to 28 U.S.C. § 1391(b) because each Defendant resides in or does business in the Eastern District of Michigan.

PARTIES

4. Plaintiff Michael Lowrey 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 FHAA, the ADA and the PWDCRA.

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, building, and/or operation of a number of apartment complexes, including the Uptown Apartments, located in Canton Michigan, where Plaintiff Mike Lowrey lives.

6. Defendant Beztak Companies, Inc. engaged in a joint venture with Defendant Biltmore Properties Corporation and some or all of the other Defendants to design, construct, build and/or to operate the Uptown Apartments and/or nearby adjacent sidewalks and facilities that are not reasonably accessible to and usable by Plaintiff Lowrey.

7. Defendant Biltmore Properties Companies, Inc. engaged in a joint venture with Defendant Beztak Companies and some or all of the other Defendants to design, construct, build and/or to operate the Uptown Apartments and nearby adjacent sidewalks and facilities that are not reasonably accessible to and usable by Plaintiff Lowrey.

8. Defendant Uptown Investors L.L.C. and Defendant Uptown Investors L.L.C. II are both corporations organized under the laws of Michigan that conduct business in the Eastern District of Michigan. Defendant Uptown Investors L.L.C. and Defendant Uptown Investors L.L.C. II. are or have been owners of Uptown Apartments or are or have been responsible for the design, construction,

building, and/or operation of the Uptown Apartments, located in Canton Michigan, where Plaintiff Mike Lowrey lives.

9. Defendant Monogram Homes is a Michigan Corporation. Defendant Monogram Homes is responsible for the design, construction, building, and/or operation of the Uptown Apartments, located in Canton Michigan, where Plaintiff Mike Lowrey lives.

10. Defendant Warner, Cantrell, & Padmos, Inc., is a civil engineering firm. Upon information and belief, it is responsible for the design, construction, building, and/or operation of the Uptown Apartments and adjacent facilities, located in Canton Michigan, where Plaintiff Mike Lowrey lives.

11. Defendant Looney Ricks Kiss is the architect for the Uptown Apartments and adjacent facilities. It is responsible for the design, construction, building, and/or operation of the Uptown Apartments and adjacent facilities, located in Canton Michigan, where Plaintiff Mike Lowrey lives.

12. Defendants Beztak Properties, Inc., Beztak Companies, Inc., and Uptown Investors I and II have the same address, and upon information and belief, many of the same employees and principals.

FACTS

13. Each Defendant either designed, built, constructed, and/or operates the Uptown Apartments and/or the sidewalks and other facilities adjacent thereto in Canton, Michigan. These apartments and facilities suffer from numerous defects in design or construction that make the facilities not accessible to nor readily usable to Plaintiff Lowrey. The Uptown Apartment complex consists of

approximately 30 apartment buildings, containing a total of approximately 300 apartments. The complex also contains a pool, clubhouse, exercise gym, meeting areas and a business office. The Uptown Apartments complex has several streets and intersections, and sidewalks throughout.

14. The Uptown Apartments became available for lease approximately one year ago. Plaintiff Mike Lowrey has been a tenant there for the last several months. Mr. Lowrey 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. Lowrey needed a ground floor unit.

15. When he first inquired about renting an apartment at Uptown, the rental agent told Mr. Lowrey 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.

16. The rental agent showed Mr. Lowrey one of the units identified as “handicap accessible.” The agent assured Mr. Lowrey that this apartment was specifically designed for tenants who use a wheelchair. Mr. Lowrey agreed to rent the unit. A few days later, Uptown informed Mr. Lowrey that another of the three “handicap accessible” apartments was available, and Mr. Lowrey agreed to rent that unit instead.

17. After moving in, Mr. Lowrey discovered numerous accessibility problems in his unit. For example, the bedroom and bathroom doors are too narrow,

causing Mr. Lowrey to scrape his fingers, toes, knees and chair wheels against the door frames when he tries to maneuver through them. Mr. Lowrey 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. Lowrey. Upon information and belief, all of the ground floor apartments at Uptown suffer from some or all of these defects.

18. Outside the front of Mr. Lowrey'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% without required level landings and handrails, or exceed 5% where not necessary, and have cross-slopes exceeding 2%, 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. Lowrey 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, community theater, and convenience store, or to public transportation.

19. Mr. Lowrey is unable to visit his neighbors. There are steps blocking the front access to his and to each of the neighboring ground floor apartments. Virtually every ground floor apartment at Uptown suffers from these defects. If he enters those apartments through the garage, he risks damaging the door posts and he scrapes his fingers and toes. Because he cannot 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.

20. Mr. Lowrey has repeatedly complained to Uptown about these and other accessibility defects. Mr. Lowrey 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. Lowrey's requests, Defendants have consistently refused to correct any of the accessibility defects.

21. The sidewalks and other facilities adjacent to Uptown Apartments lack an accessible route and are not accessible to and readily usable by Mr. Lowrey.

FAIR HOUSING ACT CLAIMS

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

23. 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).

24. 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. Lowrey were built for first occupancy approximately one year ago.

25. Defendants 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.

26. Defendants, 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).

27. The conduct of Defendants described above constitutes a violation of the Fair Housing Act.

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

29. Defendants' conduct described above was intentional, willful, and taken in disregard for the rights of others, including Plaintiff Lowrey.

AMERICANS WITH DISABILITIES ACT CLAIMS

30. 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).

31. 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).

32. The Defendants 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.

33. The actions of the Defendants, 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).

34. The conduct described in paragraphs above constitutes a violation of the Americans With Disabilities Act, entitling Plaintiff to declaratory and injunctive relief, and a reasonable attorneys fee and costs.

MICHIGAN PERSONS WITH DISABILITIES CIVIL RIGHTS ACT

35. Plaintiff brings this action pursuant to MCL Sections 37.1301a and b relating to the Uptown Apartment business office and MCL Section 37.1506a(1)(c) relating to multifamily housing.

36. Defendants discriminated against Plaintiff by designing or constructing Uptown's business office and ground floor apartments, and/or the facilities and sidewalks adjacent to the Uptown Apartments not to be accessible to and readily usable by Plaintiff.

37. Defendants' conduct described above was intentional, willful, and taken in disregard for the rights of others, including Plaintiff Lowrey. Plaintiff is entitled to declaratory and injunctive relief, compensatory and exemplary damages, as well as a reasonable attorneys fee and costs.

PRAYER FOR RELIEF

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

1. Declares that Defendants' policies and practices, as alleged herein, violate the Fair Housing Act, the Americans With Disabilities Act and the Michigan Persons With Disabilities Civil Rights Act;

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

(a) Failing or refusing to bring the business office, 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 Defendants' discriminatory conduct, pursuant to 42 U.S.C. § 3614(d)(1)(B);

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

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

6. Enjoins the Defendants 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.
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/s/ J. Mark Finnegan
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