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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.

**AMENDED PARTIAL CONSENT ORDER RESOLVING
PLAINTIFF SAVANNAH CHATHAM COUNTY FAIR HOUSING COUNCIL'S
CLAIMS AGAINST DEFENDANT RICHARD FITZER II**

I. INTRODUCTION

A. Background

1. This Consent Order is entered into between Plaintiff Savannah-Chatham County Fair Housing Council, Inc. ("Plaintiff" or "SCFHC") and Defendant Richard Fitzer II ("FITZER") (together "the Parties").

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 FITZER 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 42 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 Engineering Co. (“Thomas & Hutton”), Malphrus Construction Co. (“Malphrus”), Richard Fitzer II (“Fitzer”) and Carrie Schmelter (“Schmelter”) as defendants.¹

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, FITZER, 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.

¹ Richard Fitzer II and Carrie Schmelter are named defendants in the private Plaintiff case, Civil Action No. CV406-096, but were not named defendants in the United States’ complaint, originally filed as Civil Action No. CV407-139. Carrie Schmelter has not been served and is not a party to this Consent Order.

§ 3604(f)(3)(C); and thereby, have engaged in a pattern or practice of resistance to the full 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). Specifically, the Court determined that “Defendants Fitzer, GDH, and FITZER are liable for FHA violations pursuant to 42 U.S.C. § 3604(f)(3)(C) because of their participation in the design or construction of the Properties.” *Id.* at 44. *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. The Parties 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 Plaintiff’s 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 is therefore subject to the design or 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 is therefore subject to the design or construction requirements of the FHA.

C. The Defendant

11. Defendant FITZER was an owner, operator and developer of the Subject Properties. As of the date of this Order, FITZER represents that he no longer has direct or indirect ownership, management, or other financial interest, in whole or in part, in any business related to the design or construction of dwellings. FITZER further represents that he currently has no plans to acquire any such interest in any design or 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 Properties² are “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 or construction requirements of 42 U.S.C. § 3604(f)(3)(C).

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

II. GENERAL INJUNCTION

14. Defendant FITZER shall notify the SCHFC within fifteen (15) days of re-entering the business of owning, operating, designing and/or constructing dwellings.³²²

² 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.

²² ³ Unless otherwise specified, all documents or other communications required by this Consent Order to be sent to counsel for SCFHC shall be sent by overnight courier and addressed as follows: Brancart & Brancart, P.O. Box 686, Pescadero, CA 94060.

15. In the event that FITZER re-enters the business of owning, operating, designing and/or constructing dwellings, FITZER, and his agents, employees, assigns, successors in interest, and all persons in active concert or participation with him 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 DESIGN OR CONSTRUCTION

16. In the event that FITZER re-enters the business of the design or construction of dwellings, then he shall ensure that all his future design or construction of any kind of dwelling 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. The terms of this provision are not limited to multi-family housing, as defined in 42 U.S.C. § 3604(f)(3)(C)(7). The terms of this provision are understood and intended to apply to dwellings of any kind, including single family residences, duplexes, triplexes, and multi-floored dwellings that are not served by an elevator.

IV. EMPLOYEE TRAINING

17. In the event that FITZER re-enters the business of designing and/or constructing dwellings, then within thirty (30) days after doing so, FITZER shall provide a copy of this Order to his employees, agents, and persons acting under their direction, whose duties, in whole or in part, involve the design or construction of 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 FITZER’s counsel, and agrees to abide by the relevant provisions of this Order. This statement shall be in the form of

Appendix A. FITZER's 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 FITZER re-enters the business of designing and/or constructing dwellings, then FITZER shall provide semi-annual fair housing training to his supervisory employees. The training shall be conducted by a qualified organization not associated with FITZER or his counsel. The organization shall be selected by FITZER, subject to approval by SCFHC. 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 FITZER. 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 FITZER re-enters the business of designing and/or constructing dwellings, then during the period in which this Order is in effect, FITZER shall notify counsel for SCFHC, in writing, within fifteen (15) days of receipt of any written or oral complaint originating from his design or construction work on "covered multifamily dwellings."⁴ If the complaint is written, FITZER 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. FITZER shall also promptly provide SCFHC all information it may reasonably request concerning any such complaint and shall inform SCFHC within fifteen (15) days of any resolution of such complaint.

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VI. SCOPE OF CONSENT ORDER

20. The provisions of this Consent Order shall apply to any entity, controlled in whole or part, by FITZER, including any entity in which he served as an operator, officer, or owner, and his agents, representatives, employees, successors and assigns.

21. The Court shall retain jurisdiction solely for purposes of the enforcement of the terms of this Consent Decree.

VII. TIME FOR PERFORMANCE

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

VIII. COSTS OF LITIGATION

23. SCFHC and FITZER shall bear their own costs and attorneys' fees associated with this litigation.

SO ORDERED this 5th day of July 2011.


WILLIAM T. MOORE, JR.
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA

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