UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

UNITED STATES OF AMERICA,	§	
Plaintiff,	§	
v.	§	CIVIL ACTION NO. 3:09-cv-0412-B
JPI CONSTRUCTION L.P., et al.,	§	
Defendants.	§	

DEFENDANTS' TRIAL BRIEF

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Defendants set forth in this trial brief a discussion of the evidence relevant to the claims asserted against them by the Plaintiff along with certain legal issues with respect to those claims that they anticipate will arise at trial.

INTRODUCTION

This trial is the culmination of a governmental investigation eclipsing a decade that has borne no fruit. Plaintiff's Complaint alleged a pattern and practice of willful discrimination concerning the design and construction of 52 properties under two laws.[1] However, there is no evidence concerning a pattern or practice of discrimination, nor is there evidence of intentional or willful discriminatory conduct. In fact, following discovery, Plaintiff determined not to pursue claims as to 20 properties. The remaining 32 properties are equally accessible, usable and adaptable.

This suit is not predicated on evidence of any disabled person actually being affected by the conditions of the properties. Rather, Plaintiff seeks to demonstrate discrimination based upon measuring the current conditions of the properties and comparing the dimensions to those set forth in certain optional guidance approved by the Department of Housing and Urban Development ("HUD"). Such guidance documents were held out to the public as not mandatory and HUD has stated that their suggested dimensions go beyond what is required by the FHA. Nonetheless, Plaintiff's entire case is built on use of such optional guidance.

There is substantial evidence showing that the properties were designed and constructed in accordance with the accessibility laws. The communities were designed and constructed over

[1]The suit was bought pursuant to the Fair Housing Act, as amended, 42 U.S.C. §§ 3601–3619 ("FHA"), and the Americans with Disabilities Act, 42 U.S.C. §§ 12181–12189 ("ADA"). Because this action involves the design and construction of multi-family housing complexes (*i.e.*, apartment buildings), almost all issues contested by Plaintiff relate to questions of compliance with the FHA. The claims under the ADA relate exclusively to the few issues in public areas (*e.g.,* the leasing center and its parking).

a 20 year period, across 19 states, with over 600 individuals working at more than 50 different professional design firms. Defendants hired reputable architects and engineers and required them to design the properties in accordance with the accessibility laws and all local codes and requirements. The corporate records show diligence on the part of both the design professionals and the Defendants to ensure that the properties were designed and constructed to be accessible, usable and adaptable, including use of the safe harbors.

Plaintiff posits an extreme interpretation of the accessibility laws. The FHA does not include a standard of total accessibility -- nor does it prohibit steps on walkways, sidewalks that slope along with the terrain and units or common space amenities that are not accessible to wheelchairs. The expert inspections of Defendants confirm that the properties meet, if not exceed, the minimal requirements of the FHA and ADA. In responding to Plaintiff's allegations, Defendants are not limited to using HUD-approved "standards" to demonstrate compliance.

The FHA requires that common areas and apartment units be designed to reasonably accommodate the needs of most persons with disabilities. The law does not require the designer to anticipate and provide for every varying need of the wide spectrum of disabilities. Such needs are taken care of on an as-requested basis through adaptation of the unit. Defendants have shown a commitment to meet the needs of disabled residents by adapting the properties to meet their specific needs, whether it is removing cabinetry or adding accessible parking.

The properties are of varying age, with many designed and constructed almost two decades ago. Yet, Plaintiff chooses to disregard the effects of environmental and other maintenance issues occurring over the life of the properties since construction. Many sidewalks and parking areas have shifted due to soil and environmental conditions (*e.g.*, soil with high clay content swells and shrinks); features of the properties have outlived their natural life or have

fallen into disrepair; and new owners have undertaken routine renovations -- such as replacing door knobs, moving accessible parking, replacing flooring, or adding new amenities.

Plaintiff has no evidence to support damages or civil penalties and such claims are time barred for most properties. Further, Defendants do not own any of the 32 properties. Despite this substantial deficiency, Plaintiff continues to seek substantial changes to properties without naming the current owners of those properties as parties to this action.

ARGUMENT

I. PLAINTIFF CANNOT MEET ITS BURDEN OF PROOF BY DEMONSTRATING THAT THE PROPERTIES WERE DESIGNED AND CONSTRUCTED IN VIOLATION OF THE FHA.

Plaintiff cannot meet its burden of demonstrating that the properties were not designed and constructed in accordance with the FHA.

A. Congress Did Not Mandate Any Particular "Standard" Or Code Of Measurements That Must Be Met In Order To Comply With The FHA.

On its face, the FHA has only six broad requirements of accessibility, usability, and adaptability -- requiring "covered units"[2] and the public and common areas to have the following:

> (i) the public use and common use portions of such dwellings are readily accessible to and usable by handicapped persons;
>
> (ii) 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
>
> (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 in a wheelchair can maneuver about the space.

[2]Not every apartment unit is subject to the FHA. Congress defined "covered multifamily dwellings" as "(A) buildings consisting of 4 or more units if such buildings have one or more elevators; and (B) ground floor units in other (non-elevatored) buildings consisting of 4 or more units." 42 U.S.C. § 3604(f)(7).

42 U.S.C. § 3604(f)(3)(C)(i)-(iii).[3] With these provisions, Congress specifically rejected "a standard of total accessibility [that] would require that every entrance, doorway, bathroom, parking space, and portion of buildings and grounds be accessible" choosing instead "to use a standard of 'adaptable' design" that would "provide usable housing for handicapped persons without necessarily being significantly different from conventional housing." (H.R. Rep. No. 100-711, at 18, reprinted in 1988 U.S.C.C.A.N. 2173, 2179, 2187. The requirements of the FHA are "modest". (Id. at 2179). Given the lack of mandatory criteria or necessary "standards", the sole dispositive question at issue in an FHA design and construction case is whether the dwelling units and common areas as designed and constructed are reasonably accessible to most persons with disabilities. See Fair Hous. Council, Inc. v. Vill. of Olde St. Andrews, Inc., 210 Fed. Appx. 469, 482 (6th Cir. 2006). In other words, accessibility itself is the ultimate touchstone by which conformity with the FHA is determined. Taigen & Sons, Inc., 303 F. Supp. at 1151.

For those seeking clear measures of compliance (*i.e.* safe harbor from liability), the FHA provides that compliance with the requirements of the American National Standards Institute Inc. ("ANSI") accessibility standards (commonly known as ANSI A117.1) "suffices to satisfy" the FHA. 42 U.S.C. § 3604(f)(4). Yet, Congress made clear that this section of the Act "is not intended to require that designers follow this standard exclusively, for there may be *other local or state standards with which compliance is required* or there may be *other creative methods* of meeting these standards." (H.R. Rep. No. 100-711, at 27 n.71 (emphasis added)). Second, Congress established that if a municipality has incorporated "into its laws the requirements set forth in paragraph (3)(C)," then compliance with the municipal law satisfies the requirements of

[3]In addition to those six features, the entrance to the building itself must be accessible, 24 C.F.R. § 100.205(a). However, there is an exception to this requirement where it is impractical to do so because of the terrain or unusual characteristics of the site. Id. Although the regulations give examples, there is no set test for site impracticality.

the FHA. 42 U.S.C. § 3604(f)(5)(A).[4]

B. The Properties Were Designed and Constructed to be Accessible, Usable, and Adaptable.

The evidence makes clear that Defendants designed and constructed the properties in compliance with the federal accessibility laws. This is proven by the thousands of documents produced from the development and construction files, the expert reports, and the fact witness testimony including:

- During the 30(b)(6) deposition for the named Defendants, David Motsenbocker explained the many efforts undertaken to meet the requirements of the accessibility laws including (1) requiring design professionals to meet certain standards, (2) mandating responsibility for overseeing compliance; and (3) multiple layers of accessibility review from the inception of the project to final construction including third party reviews and checklists for use during the design and construction phase. (Dkt. #237-7, App. 99-101).

- Mr. Skarzenski, an architect at an architectural firm that designed a large number of the properties at issue, confirmed that in his role reviewing the plans for accessibility compliance, he would review the plans "to the building code in its entirety, and then also to the ANSI '86 and the Fair Housing Guidelines in its entirety." (Dkt. #237-14, App. 278). Another architecture firm, Niles Bolton, described a similar process, explaining that "every project that we have designed has been designed to an accessibility standard…." (Dkt. 237-3, App. 22-26), (Dkt. #237-11, App. 228-47), (Dkt. #237-15, App. 288).

- Mr. Knight, a civil engineer, described the role of the civil engineer and the efforts to ensure that accessibility was addressed in relation to issues such as slope and grade, soil, sidewalk placement, and parking. (Dkt. #237-12, App. 252-58)

- Throughout construction, either the architecture firm, an expert, or Defendants themselves would conduct inspections for quality control and conformance with the plans and the accessibility laws. (Dkt. #237-11, App. 232); (Dkt. #237-14, App. 283)

Hence, the overwhelming evidence is of efforts at compliance with architects often certifying that the properties meet the FHA.

[4]See also 24 C.F.R. § 100.205(f). Numerous states, including Texas, Massachusetts and California have accessibility laws and codes that mirror and/or exceed the federal requirements.

C. As A Matter of Law, Divergence From The "Safe Harbors" Is Not *Prima Facie* Evidence Of Discrimination.

Plaintiff seeks to demonstrate "violations" of the FHA solely by showing that certain features were found to have dimensions that vary from measurements set forth in a combination of three "safe harbors" -- no effort was made to determine whether the dwelling units or common areas at the properties are accessible, usable or adaptable.

Congress empowered HUD with the limited authority to "provide technical assistance to States and units of local government and other persons to implement the requirements of" the Act. See 42 U.S.C. § 3604(f)(5)(C). In HUD's own words, "[t]here is no statutory authority to establish one nationally uniform set of accessibility standards." 56 Fed. Reg. at 9478. Since 1991, HUD has recognized ten different "safe harbors", 72 Fed. Reg. 39540, 39541-42 (July 18, 2007), including the Guidelines.[5] By their very nature, "safe harbors" are not an inflexible directive forming the basis for liability. Rodriguez v. Investco, L.L.C., 305 F.Supp.2d. 1278, 1282, fn. 15 (M.D. Fla. 2004); Ass'n for Disabled Americans, Inc. v. Concorde Gaming Corp., 158 F.Supp.2d 1353, 1362 (S.D. Fla. 2001). In HUD's words, the Guidelines do not "prescribe specific requirements which must be met, and which, if not met, would constitute unlawful discrimination under the Fair Housing Act." 56 Fed. Reg. at 9473.

Moreover, HUD made clear that the agency "has not categorized the final Guidelines as either performance standards or minimum requirements. The minimum accessibility requirements are contained in the Act." 56 Fed. Reg. at 9478.[6] Thus, the fact a property does not strictly conform to the Guidelines "does not constitute unlawful discrimination." Memphis Ctr. for Independent Living v. Grant, No. 01-2069, at 7 (W.D. Tenn. Oct. 2, 2003) (slip op.);

[5]HUD, Notice of Final Fair Housing Accessibility Guidelines, 56 Fed. Reg. 9472-9515 (Mar. 6, 1991).
[6] Similarly, "a dwelling unit that complies fully with the ANSI Standard goes beyond what is required by the [FHA]," and is "more stringent." 56 Fed. Reg. at 9476 (emphasis added).

Pacific Northwest Electric Inc., 2003 WL 24573548 at *12. Defendants may "seek alternate ways to demonstrate that they have met the requirements of the Fair Housing Act." Id. at 9473; 59 Fed. Reg. 33362 (1994); United States v. Pacific Northwest Electric Inc., No. 01-019, 2003 WL 24573548, *12 (N.D. Idaho Mar. 21, 2003). Such alternate ways are not limited to the safe harbors, regardless of whether Plaintiff considers them "objective" standards (which they are not). [7]

D. The FHA Allows For The Properties To Incorporate Four Features Of Adaptive Design.

Premises within covered dwellings must contain four "features of adaptive design": (1) an accessible route into and through the dwelling; (2) light switches, electrical outlets, thermostats, and other environmental controls in accessible locations; (3) reinforcements in bathroom walls to allow later installation of grab bars; and (4) usable kitchens and bathrooms such that an individual in a wheelchair can maneuver about the space. 42 U.S.C. § 3604(f)(3)(C)(iii). Plaintiff has made the words "adaptive design" meaningless by asserting that the properties cannot be changed to meet the needs of tenants.

Adaptive design is central to meeting the goals of the FHA as it allows units to be changed to meet the specific, but unanticipated needs of the disabled resident. "Adaptive design" or "adaptability" refers to dwelling units that "can be adjusted or adapted without renovation or structural change." Baltimore Neighborhoods, Inc. v. Rommel Builders, Inc., 40 F. Supp.2d 700, 708 (D. Md. 1999)(quoting HUD); Phillips v. Downtown Affordables, LLC, No. 06-00402, 2007 WL 2668637, at *7-8 (D. Haw. Sept. 5, 2007). The evidence will show that there are a wide range of adaptable features that can be built into properties to allow for later alteration by maintenance staff such as changing base cabinets, thermostats, thresholds, door swing, floor

[7] Defendants' experts explain that the safe harbors are actually the result of a consensus voting process. (Wales Dep., 76:12-78:9 (Dkt. #237-28, App. 458-59); Vredenburgh Dep., 25:9-27:23 (Dkt. #237-36, App. 626)).

coverings or appliances. (Dkt. #237-11, App. 219-21), (Dkt. #237-28, App. 461), (Dkt. #237-29, App. 466-70), (Dkt. #237-36, App. 627).

II. EVEN IF PLAINTIFF HAS MET ITS AFFIRMATIVE PROOF BURDEN, DEFENDANTS HAVE PRESENTED SUBSTANTIAL EVIDENCE REFUTING PLAINTIFF'S ALLEGATIONS.

Defendants' experts contest every allegation in this case and demonstrate that the properties are accessible to most persons with disabilities.

A. Defendants' Experts Found That The Properties Are Accessible And Usable.

Defendants will offer four different experts who analyzed the properties with different (although complimentary) methodologies.

Defendants offer two experts, Mark Wales and Peter Skarezenski, to render opinions based on a conventional interpretation of the safe harbors and other building codes and standards. These experts will explain numerous problems with Plaintiff's conclusions (both interpretation of safe harbors[8] and factual issues such as overlooking obvious maintenance problems)[9] and will affirmatively demonstrate that the properties are indeed accessible and usable. Their analysis is based on a wide spectrum of technical assistance materials (including the safe harbors) and empirical research.

Consistent with Congress's intent that there may be "other creative methods" of meeting the Act, H.R. Rep. No. 100-711, at 27 n.71 (Dkt. #237-5, App. 90), Defendants offer two other

[8] For example, Plaintiff did not take into account construction tolerances when evaluating the accessibility of a facility in the safe harbor context and under the ADA. See, e.g. Access Now, Inc. v. Ambulatory Surgery Center Group, Ltd., No. 99-109, 2001 WL 617529, at *11 (S.D. Fla. May 2, 2001) (finding that "conventional building industry tolerances for field conditions," or "construction tolerances," may exist in varying amounts for different construction elements); Parr v. Kapahulu Investments, Inc., No. 98-00329, 2000 WL 687646, *20 (D. Haw. May 16, 2000). It is in fact Plaintiff's burden to demonstrate that any variance exceeds the tolerance. See Cherry v. City College of San Francisco, No. 04-04981, 2006 WL 6602454 at *6 (N.D. Cal. Jan. 12, 2006).

[9] The FHA is triggered by the discrete acts of design and construction of the covered unit or common area. Fair Housing Council, Inc., 250 F. Supp. at 718-19; Garcia v. Brockway, 526 F .3d 456, 461-62 (9th Cir. 2008). Therefore, Defendants may not be held liable for instances where the alleged violation was due to changes unrelated to actions of design and construction.

experts to address accessibility and usability based on empirical research and on a practical methodology that demonstrates the concepts visually as applied to the properties.

Dr. Alison Vredenburgh is a principal with Vredenburgh & Associates, Inc. and the author of studies that evaluate the accessibility and usability of walkways and ramps and of apartment bathrooms, kitchens, turning space and control placement. She will discuss her empirical research, studies and experience and her determination that the properties are accessible, usable and adaptable to the needs of persons with disabilities, and how compliance with the safe harbors does not necessarily mean that an element is accessible. (See Vredenburgh Main Rpt. at 1-17 (Dkt. #237-32, App. 557-73)).

Paul Sheriff is the founder and President of Paul Sheriff Inc., which provides consulting services to large corporations, small companies, architects, attorneys, individual business owners, insurance companies, and the federal government on accessibility issues. Mr. Sheriff conducted "roll-thru" surveys by which he assesses the accessibility, usability and adaptability of properties as well as any barriers to accessibility.

A fifth expert -- Dr. Jay Kadane -- will explain that Plaintiff's experts used a flawed method for selecting units, rendering their opinions limited in scope.

B. Plaintiff Fails To Show A Pattern Or Practice Of Discrimination.

Plaintiff has no evidence to support its claim of "willful" discriminatory conduct or a "pattern and practice of discrimination." Unable to prove liability related to the conditions at 20 of the 52 properties, Plaintiff decided not to pursue them. (Dkt. #236 at 7, n.9.) This fact alone devastates Plaintiff's claim of pattern and practice.

Plaintiff must establish that the Defendants engaged in a "policy of discrimination," United States v. W. Peachtree Tenth Corp., 437 F.2d 221, 227 (5th Cir. 1971), or that discrimination is "the company's *standard operating procedure*, the regular rather than the

unusual practice." Int'l Bd. of Teamsters v. United States, 431 U.S. 324, 336 (1977) (emphasis added); Hallmark Homes, Inc., 2003 WL 23219807, at *5 (D. Idaho Sept. 29, 2003). The overwhelming evidence shows a careful, deliberate and concerted effort at compliance throughout design and construction by hiring qualified professionals, mandating that certain standards are met, and overseeing the process to ensure that such goals were achieved.[10] Despite the passage of time and number of residents accessibility complaints have been miniscule. (See Defs.' Response to Plaintiff's Second Set of Interrogatories No. 9. (Dkt. #237-65, App. 1138), (Dkt. #237-66, App. 1182)). The evidence will show that the specific needs of the residents were met via accommodations and modifications just as the statute intended.

III. EVEN IF LIABILITY COULD BE PROVEN, PLAINTIFF IS NOT ENTITLED TO THE RELIEF IT SEEKS.

Plaintiff faces significant problems securing relief in this matter.

A. Plaintiff's Claims For Penalties And Damages Are Time Barred And Without Evidentiary Support.

Under 28 U.S.C. § 2462, "any action suit or proceeding for the enforcement of any civil fine, penalty or forfeiture, pecuniary or otherwise, shall not be entertained unless commenced within five years from the date when the claim first accrued…" A cause of action seeking imposition of civil penalties under 42 U.S.C. § 3604(f)(3)(C) accrues from the date on which the design and/or construction is completed. Pacific Northwest Electric, Inc., 2003 WL 24573548, at *10; See also Garcia, 526 F.3d at 460-462 (9th Cir. 2008); Taigen, 303 F.Supp.2d at1133 (five year limit for civil penalties claim). In this case, the five year statute of limitations bars

[10]Furthermore, scattered divergences from non-mandatory standards hardly meet the high hurdle of demonstrating a pattern and practice. See Pacific Northwest Electric, Inc., 2003 WL 24573548 at *10 ("a showing of violation of the FHA is, in and of itself, insufficient, to succeed on a claim of "pattern and practice of discrimination").

Plaintiff's claim for civil penalties on the 21 properties[11] for which design and construction was completed before May 5, 2000. [12]

There is also a statute of limitations for Plaintiff to seek compensatory damages. The applicable statute of limitations provides, "Every action for money damages brought by Plaintiff or an officer or agency thereof which is founded upon a tort shall be barred unless the complaint is filed within three years after the right of action first accrues…" 28 U.S.C. § 2415. Plaintiff's allegations here are "in the nature of a tort claim," bringing the suit within the three year limitation period of 28 U.S.C. § 2415. Taigen, 303 F.Supp. 2d at 1144. In cases not involving fraud or concealment, such as this, courts have found that the government could have reasonably known facts when those facts were available to the general public. United States v. Kass, 740 F.2d 1493, 1497 (11th Cir.1984); United States v. Hess, 194 F.3d 1164 (10th Cir. 1999). In FHA cases any alleged violation occurred when the properties were completed. See Garcia, 526 F.3d at 460-462. Thus, the three year statute of limitations bars Plaintiff's claim for compensatory damages on the 29 properties for which design and construction was completed before May 5, 2002.[13]

[11]Design and construction of the following properties was completed before May 5, 2000: Jefferson at Rock Creek, Jefferson at Fox Hollow, Jefferson at Coral Square, Jefferson Summit(Maitland), Morgan Falls, Jefferson River, Jefferson at Pin Oak, Jefferson at King Farm, Jefferson on the Plaza, Jefferson Farms, Jefferson at Preston, Villas at Beaver Creek, Jefferson at Melrose, Jefferson on the Parkway, Jefferson at Riverchase, Jefferson at Prestonwood Hills, Jefferson at Frankford, Jefferson Hill, Jefferson at Mission Gate, Jefferson Pines, and Jefferson at Fair Oaks; Jefferson Commons-Lawrence (KU); Jefferson Commons-TTU. (See Dkt. #237-17, App. 322-330).

[12]The parties entered into a tolling agreement on May 5, 2005. (Dkt. #237-66, App.1183-1185). Plaintiff did not file its Complaint against Defendants until March 4, 2009. (Dkt. #1.)

[13] Design and construction of the following properties was completed before May 5, 2002: Jefferson Commons-Lawrence (KU), Clarke-Atlanta (Heritage Commons), Jefferson Commons-TTU, Jefferson Commons at Star Ranch (Tucson II), Jefferson at Aviara, Jefferson at Emerald Park; Jefferson at Rock Creek, Jefferson at Fox Hollow, Jefferson at Coral Square, Jefferson Summit (Maitland), Morgan Falls, Jefferson River, Jefferson Park (Den Rock), Jefferson at Pin Oak, Jefferson at King Farm, Jefferson on the Plaza, Jefferson Farms, Jefferson at Preston, Villas at Beaver Creek, Jefferson at Melrose, Jefferson on the Parkway, Jefferson at Riverchase, Jefferson at Prestonwood Hills, Jefferson at Frankford, Jefferson Hill, Jefferson at Mission Gate, Jefferson Pines, Jefferson Lakes, Jefferson at Fair Oaks. (See Dkt. #237-17, App. 322-330).

Further, Plaintiff intends to offer no evidence at trial regarding its claim for damages. Plaintiff has identified no fact or expert witnesses on the issue and lists no damages calculation. There has been no damage proximately caused by any act of the Defendants. Plaintiff will not be able to meet its proof obligations on its claim for monetary relief, and judgment should be directed in Defendants' favor pursuant to Rules 50 and 41(b) of the Federal Rules of Civil Procedure.

B. Plaintiff's Claims For Injunctive Relief Are Inequitable.

Plaintiff's claim for injunctive relief is inappropriate, unfair, and unnecessary.

The propriety of imposing equitable relief depends on the particular facts of each case. Sanford v. Coleman Realty, 573 F.2d 173, 178-79 (4th Cir. 1978). "When seeking an equitable remedy, Plaintiff is no more immune to the general principles of equity than any other litigant." United States v. Second Nat'l Bank of N. Miami, 502 F.2d 535, 548 (5th Cir. 1974).

The design decisions and construction were undertaken decades ago and Plaintiff investigated Defendants for 8 years before filing a Complaint. This length of delay can be considered unreasonable. See Equal Emp. Opportunity Comm'n v. Liberty Loan Corp., 584 F.2d 853, 857-58 (8th Cir. 1978). Moreover, Plaintiff seeks broad equitable relief despite having presented no evidence to show that such retrofits are needed to meet the needs of disabled residents.

C. Retrofits Are Not An Appropriate Remedy For Sold Properties.

Plaintiff's request for retrofits cannot be granted without the joinder of the current owners of the properties as co-defendants. Defendants do not own any of the 32 properties at issue and advised Plaintiff of this problem in the Answer. (Dkt. #18 at 11-12.)

Current property owners are required parties under Rule 19 to effectuate any remedial relief sought by Plaintiff, including "retrofitting of the noncompliant properties." National Fair

Housing Alliance v. A.G. Spanos Construction, Inc., 542 F. Supp. 2d 1054, 1066-67 (N.D. Cal. 2008); Roberts v. Royal Atlantic Corp., No. 03-2494, 2010 WL 749944, at *8 (E.D.N.Y. Mar. 3, 2010); Thompson v. Sand Cliffs Owners Ass'n, No. 96-270, 1998 WL 35177067, at *2-3 (N.D. Fla. Mar. 30, 1998). See also F.R.C.P. 19(a)(1) (parties are required if, "in [their] absence, the court cannot accord complete relief among existing parties."). There also can be no question that any decision mandating modifications to the properties will impair the proprietary interests of the owners. See F.R.C.P. 19(a)(1); Frotton v. Barkan, 219 F.R.D. 31, 32 (D. Mass. 2003); Roberts, 2010 WL 749944 at *8 .

CONCLUSION

For the reasons stated above, Defendants will prevail on all issues at trial.

Respectfully submitted,

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June 8, 2012

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NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

UNITED STATES OF AMERICA, Plaintiff, v. JPI CONSTRUCTION L.P., et al., Defendants.	)	CIVIL ACTION NO. 3:09-cv-0412-B

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed on this 8th day of June, 2012, the foregoing with the clerk of court for the U.S. District Court, Northern District of Texas, using the electronic case filing system of the court. The electronic case filing system sent a "Notice of Electronic Filing" to the following attorneys of record who have consented in writing to accept this notice as service of this document by electronic means:

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