

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
CAROL DEMECH, LAURIE SOLIS, and
ANA FRANCO,

12 CIV 6179

Plaintiff,

-against-

COMPLAINT

JOHN B. RHEA, as Chairman of the
New York City Housing Authority, and the
NEW YORK CITY HOUSING AUTHORITY,

Defendants.

-----X

Plaintiffs Carol Demech (“Ms. Demech”), Laurie Solis (“Ms. Solis”) and Ana Franco (“Ms. Franco”) by and through their attorneys, allege as follows:

PRELIMINARY STATEMENT

1. This is an action for declaratory and injunctive relief as well as compensatory and punitive damages under Title II of the Americans with Disabilities Act, 42 U.S.C. § 12101, et seq. (“ADA”), Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, et seq. (“Rehabilitation Act”), and the New York City Human Rights Law, N.Y.C. Admin. Code § 8-101 et. seq. (“NYCHRL”).

2. This action is being filed to stop discrimination on the basis of disability by the New York City Housing Authority (“NYCHA”). Two of the Plaintiffs are elderly and all suffer from physical disabilities that impair their ability to walk. Ms. Solis and Ms. Franco use wheelchairs or motorized scooters when traveling outside of their homes. Ms. Demech uses a rolling walker or, at times, a wheelchair, to leave her home.

3. Plaintiffs reside in The Fulton Houses, a development managed and operated by NYCHA. The entrance to Plaintiffs' building in The Fulton Houses is not accessible. Although there is a ramp at the entrance, the ramp is too steep, and it is not accessible to or safely usable by Plaintiffs. The ramp's steep incline and other design flaws prevent Plaintiffs and other tenants of the building who need an accessible entrance from safely utilizing it. Each Plaintiff has had repeated problems negotiating the ramp and, at times, either remained trapped inside their homes or required the assistance of other individuals in order to enter or exit the building. On more than one occasion, Ms. Demech was forced to request the assistance of strangers to help her safely navigate the ramp. Ms. Franco is generally forced to rely on her home attendant to leave her home. Similarly, Ms. Solis cannot enter or exit the building and utilize the ramp without the help of a third party.

4. Defendants are aware that this building lacks an accessible entrance. Since at least 2006, Ms. Demech has complained to both on-site NYCHA staff members as well as senior NYCHA administrators regarding the unsafe and illegal barriers to accessibility. Even though Defendants have acknowledged that the entrance is not accessible, they have taken no action to create or maintain an accessible entrance to the building. Defendants' failure to create or maintain an accessible entrance constitutes intentional and willful discrimination against Ms. Demech, Ms. Solis, and Ms. Franco.

5. Plaintiffs seek damages and injunctive relief in the form of an order directing NYCHA to make the front entrance to Plaintiffs' building accessible so that they may safely enter and exit their homes.

JURISDICTION AND VENUE

6. This Court has jurisdiction over this action under 28 U.S.C. §§ 1331 and 1343. The action arises under the ADA, 42 U.S.C. § 12101, et seq., and the Rehabilitation Act, 29 U.S.C. § 794, et seq.

7. Plaintiffs seek declaratory relief pursuant to 28 U.S.C. §§ 2201 and 2202 and Rule 57 of the Federal Rules of Civil Procedure.

8. The Court has supplemental jurisdiction under 28 U.S.C. § 1367 over Plaintiffs' claims under the NYCHRL.

9. Venue properly lies in this district pursuant to 28 U.S.C. § 1391(b)(1) and (2).

PARTIES

10. Plaintiff CAROL DEMECH has a physical impairment that substantially limits her ability to, inter alia, walk and work. She has resided at 418 West 17th Street, Apartment 21E, New York, New York 10011 for the past seven years.

11. Plaintiff LAURIE SOLIS has a physical impairment that substantially limits her ability to, inter alia, walk and work. She has resided at 418 West 17th Street, Apartment 7D, New York, New York 10011 for over thirty years.

12. Plaintiff ANA FRANCO has a physical impairment that substantially limits her ability to, inter alia, walk and work. She has resided at 418 West 17th Street, Apartment 19J, New York, New York 10011 for over fifteen years.

13. Defendant JOHN B. RHEA is the Chairman and a Member of NYCHA, and in that capacity is responsible for implementation, administration and compliance by NYCHA with

all laws and mandates pertaining to NYCHA's public housing program. Defendant Rhea is being sued in his official capacity.

14. Defendant NYCHA is a public housing agency in the City of New York, organized and existing under Section 401 of the Public Housing Law of the State of New York and having its principle offices at 250 Broadway in the City, County and State of New York. NYCHA is a federally-funded program that provides subsidized housing through its public housing developments to low-income tenants. NYCHA manages and operates 418 West 17th Street, New York, New York 10011, which is one of the buildings comprising The Fulton Houses.

STATEMENT OF FACTS

Plaintiff Carol Demech

15. Plaintiff Carol Demech is sixty-five years old and uses a rolling walker or wheelchair.

16. Ms. Demech has had nine orthopedic surgeries in the past seven years. She has several physical impairments that have resulted in permanent disability.

17. Because she is unable to work, the Social Security Administration provides Ms. Demech with Social Security Disability Insurance benefits ("SSD").

18. Ms. Demech moved into 418 West 17th Street seven years ago and almost immediately noticed the dangerously steep incline of the ramp leading to the building entrance.

19. As early as 2006, Ms. Demech expressed her concerns to the on-site staff in the NYCHA management office about the inaccessible entrance.

20. NYCHA failed, however, to take any corrective action.

21. As time progressed and the on-site management office experienced staff turnover, Ms. Demech again raised her concerns.

22. NYCHA still failed to take any corrective action.

23. Ms. Demech then contacted elected officials and other NYCHA representatives. In the Fall of 2011, Ms. Demech had several conversations and electronic mail exchanges with Hector Ramos, the Borough Deputy Director of Manhattan, and Louis Nieves, the Manhattan Borough Administrator.

24. Each individual who Ms. Demech contacted acknowledged the lack of an accessible entrance, the dangers inherent in the ramp's design, and promised to act quickly or direct others to take action.

25. However, to date, there is still not an accessible entrance to Ms. Demech's home.

26. Because the entrance is not accessible, Ms. Demech is not able to enter and exit her home at will. Each day, Ms. Demech must weigh risking the dangerously steep ramp alone, asking a stranger to assist her, or staying home.

27. Ms. Demech has been forced to cancel doctor appointments or social engagements because she is stranded at home with no safe way to leave her building. This happens even more frequently during inclement weather when rain, snow or ice coats the dangerously steep ramp.

28. NYCHA's failure to create a safe accessible entrance inhibits Ms. Demech from leaving her home, interacting with her community, visiting her friends and engaging in other social or necessary activities in the neighborhood and beyond.

Plaintiff Laurie Solis

29. Plaintiff Laurie Solis is sixty-seven years old and has a number of severe physical conditions that have resulted in permanent disability. She uses a wheelchair to travel from one place to another.

30. Ms. Solis has had three heart attacks and three strokes, and she has macular degeneration, severe arthritis, diabetes, asthma, and spinal deterioration.

31. Because she is unable to work, the Social Security Administration provides Ms. Solis with Supplemental Security Income (“SSI”) disability-based benefits.

32. Like Ms. Demech, Ms. Solis resides in 418 West 17th Street.

33. For the past twenty years, Ms. Solis has been the recipient of home attendant services through the New York State Medicaid program. Presently, she receives personal care seven days per week. Ms. Solis’ home attendant assists her with walking, attending appointments, shopping, and other personal care needs.

34. Because it is too steep, Ms. Solis cannot use the ramp by herself.

35. Ms. Solis has had several accidents while trying to enter or exit her building. One such incident occurred when Ms. Solis, sitting in her motorized wheelchair and accompanied by her home attendant, traveled down the steep ramp. Having almost reached the bottom of the ramp, the wheelchair suddenly tilted sideways with one set of wheels becoming airborne and the other set sliding out of control toward the metal railing and concrete wall. Ms. Solis was very shaken by this incident, but physical harm was narrowly averted because her home attendant and two other individuals caught the wheelchair before impact.

36. For Ms. Solis, the lack of an accessible and safe entrance means that she remains trapped in her home until her home attendant arrives. When her home attendant leaves, Ms.

Solis is again unable to leave her home, interact with her community, visit with her friends and engage in other social or necessary activities in the neighborhood and beyond.

Plaintiff Ana Franco

37. Plaintiff Ana Franco is forty-seven years old and has had cerebral palsy since birth.

38. Because she is not able to work, Ms. Franco receives SSI based on her disability.

39. Ms. Franco lives at 418 West 17th Street, Apartment 19J, New York, New York, where Plaintiffs Demech and Solis also reside.

40. For the past five or six years, Ms. Franco has used either a manual or motorized wheelchair when traveling outside of her home.

41. Ms. Franco must enter and exit her building multiple times per day. She has a dog that needs to be walked at least two times per day. Ms. Franco also has to shop, attend medical and other appointments, and social engagements outside of her building.

42. Because of its hazardous and inaccessible construction, Ms. Franco is always afraid when she approaches and traverses the ramp.

43. Ms. Franco has a home attendant during the week. On those days, during the hours Ms. Franco receives home attendant care, the home attendant helps her negotiate the ramp. During the weekend, Ms. Franco does not have that assistance.

44. Ms. Franco has had several accidents while trying to enter or exit her building by herself.

NYCHA has Failed to Create or Maintain an Accessible Entrance

45. The entrance to Plaintiffs' building is inaccessible to people with physical disabilities.
46. Upon information and belief, the subject building was constructed during the 1960s.
47. Upon information and belief, Defendants subsequently made significant alterations to the building.
48. Upon information and belief, Defendants made alterations to the entrance of the building and to numerous apartments within the building.
49. Upon information and belief, Defendants altered the entrance to the building after July 26, 1992.
50. Pursuant to the ADA, the alterations to the entrance of the building must comply with either the Uniform Federal Accessibility Standards (UFAS) or the ADA Standards for Accessible Design (1991 Standards), which were based upon the 1991 version of the Americans with Disabilities Act Accessibility Guidelines (1991 ADAAG). 28 C.F.R. § 35.151(c)(1).
51. The entrance to the building does not comply with UFAS, the 1991 Standards, or any other potentially-applicable safe harbor.
52. The entrance to the building is not accessible to people with disabilities for the following, among other, reasons:
- A. Excessive Ramp Rise and Slope
- The slope of a ramp cannot exceed a ratio of 1:12 and the total rise of the ramp may not be above 30 inches. See 1991 ADAAG, § 4.8.2; see also 36 C.F.R. Pt. 1191, App. D §§ 405.2, 405.6.
- Upon information and belief, the ramp located at 418 West 17th Street has a slope of approximately 1:9 and a rise of approximately 40 inches.

B. Inaccessible Landing Area

A landing area must be level where there is a change in direction. See 1991 ADAAG, § 4.8.4; see also 36 C.F.R. Pt. 1191, App. D § 405.7. Changes in landing level are not permitted. See 1991 ADAAG, § 4.8.4; see also 36 C.F.R. Pt. 1191, App. D § 405.7.1.

Upon information and belief, the landing area of the ramp located at 418 West 17th Street is not level and is not large enough. See 1991 ADAAG, § 4.8.4; see also 36 C.F.R. Pt. 1191, App. D § 405.7.3.

C. Inappropriate Handrail Height

The height from the top gripping surface of the handrail to the ramp surface must range between 34 inches and 38 inches. See 1991 ADAAG, § 4.8.5; see also 36 C.F.R. Pt. 1191, App. D § 505.4.

Upon information and belief, the handrails on the ramp located at 418 West 17th Street fail to meet the minimum requirements.

D. Protruding Objects

Objects projecting from walls that vary in height between 27 inches and 80 inches above the ground's surface may not protrude more than 4 inches from the wall. See 1991 ADAAG, § 4.4.1; see also 36 C.F.R. Pt. 1191, App. D § 307.2.

An air conditioning unit's protective cage extends into the walkway of the ramp located at 418 West 17th Street, and its protrusion is well beyond the mandated requirement of four inches. Moreover the placement of the air conditioning just above the inside handrail limits the accessibility of that handrail and prevents a person from being able to use it.

E. Excessive Cross-slope of the Adjacent Sidewalk

The cross-slope of areas and spaces that comprise an accessible route cannot exceed a ratio of 1:50. See 1991 ADAAG, § § 4.3.7 and 4.5; see also 36 C.F.R. Pt. 1191, App. D § 403.

Upon information and belief, the walkway leading to the ramp located at 418 West 17th Street has a cross-slope that is greater than 1:50.

F. Vertical Surface Discontinuities

Accessible routes with level changes greater than one-half inch must comply with Sections 4.7 (“Curb Ramps”) or 4.8 (“Ramps”) of the 1991 ADAAG. See 1991 ADAAG, §§ 4.3.8 and 4.5.2; see also 36 C.F.R. Pt. 1191, App. D § 303.4.

Upon information and belief, the ground surface spanning the bottom of the ramp located at 418 West 17th Street where the wall ends has a change in level greater than one-half inch at all points along its length.

NYCHA has Failed to Make a Reasonable Modification

53. In a letter dated February 7, 2012, Ms. Demech, through counsel, wrote to Defendants to apprise them of the lack of an accessible entrance to her building and to request that Defendants create an accessible entrance to the building as a reasonable modification under applicable federal, state and local laws. The letter notes that Ms. Demech is not the only resident harmed by the lack of an accessible entrance.

54. Defendants responded in a letter dated April 3, 2012, acknowledging that “... the ramp is in need of adjustment” and that “corrective work” is necessary. Defendants ended their letter by “apologiz[ing] for any inconvenience this may have caused [Ms. Demech].”

55. Defendants have not, however, offered a timeline or projected schedule for when the “corrective work” would commence or finish. In fact, NYCHA’s letter stated: “At this time, it is unknown when the corrective work will be done.”

56. In a letter dated July 17, 2012, Plaintiffs, through counsel, wrote to Defendants to reiterate the points made in the February 7, 2012 letter—specifically, that the entrance to Plaintiffs’ building is not accessible. The letter also included Ms. Franco and Ms. Solis’s request that Defendants create an accessible entrance to the building as a reasonable modification under applicable federal, state and local laws.

57. Plaintiffs' July 17, 2012 letter asked for a response by July 27, 2012.
58. Defendants have failed to respond to Plaintiffs' July 17, 2012 letter.
59. Plaintiffs continue to be harmed by NYCHA's discriminatory actions and violation of applicable federal, state, and local laws regarding the dangerous and inaccessible entrance that NYCHA acknowledges but refuses to correct.

CLAIMS FOR RELIEF

First Claim: Violation of the Americans with Disabilities Act

60. Plaintiffs repeat and reallege the above paragraphs.
61. Congress passed the Americans with Disabilities Act ("ADA") "to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities" and "to provide clear, strong, consistent, enforceable standards addressing discrimination against individuals with disabilities" 42 U.S.C.A. § 12101(b). This mandate was reiterated when Congress unanimously passed the ADA Amendments Act of 2008. ADA Amendments Act of 2008, Pub. L. No. 110-325, 122 Stat. 3553 (codified as amended at 42 U.S.C. § 12102 (2010)).
62. Title II of the ADA applies to all programs, services, and activities provided or made available by public entities.
63. Defendants NYCHA and John B. Rhea, in his official capacity as the chairman of NYCHA, are both public entities. 42 U.S.C. § 12131(1)(B).
64. Each Plaintiff is an individual with a disability, because (1) their physical impairments substantially limit their ability to conduct major life activities such as walking, standing, lifting, bending and working; (2) they have a record or having such physical

impairments; and (3) Defendants regard them as having such physical impairments. 42 U.S.C. § 12102(1).

65. Each Plaintiff is a “qualified individual with a disability,” because she is an individual with a disability who, “with or without reasonable modifications to rules, policies, or practices, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities” provided by Defendants. 42 U.S.C. § 12131(2).

66. The ADA prohibits Defendants from discriminating against individuals with disabilities. 42 U.S.C. § 12132. Discrimination includes the failure to make alterations “in such manner that the altered portion of the facility is readily accessible to and usable by individuals with disabilities” 28 C.F.R. § 35.151(b)(1).

67. The ADA also requires Defendants to make reasonable modifications in policies, practices, or procedures when modifications are necessary to avoid discrimination on the basis of disability. 42 U.S.C. §§ 12131(2) and 12132; 28 C.F.R. § 35.130(b)(7).

68. Defendants have discriminated against Plaintiffs by failing to make alterations to the entrance to Plaintiffs’ building that are, to the maximum extent feasible, accessible to and usable by individuals with disabilities.

69. Defendants have also discriminated against Plaintiffs by refusing Plaintiffs’ request that Defendants create an accessible entrance as a reasonable modification.

70. Defendants’ discriminatory conduct as described above was intentional, willful or taken with disregard for their rights.

71. This discriminatory conduct has injured Plaintiffs.

72. Each Plaintiff is therefore entitled to compensatory damages, injunctive relief, and reasonable attorney's fees, including litigation expenses and costs. 42 U.S.C. § 12133; 28 C.F.R. § 35.175.

Second Claim: Violation of Section 504 of the Rehabilitation Act

73. Plaintiffs repeat and reallege the above paragraphs.

74. The Rehabilitation Act (as amended) provides that:

No otherwise qualified individual with a disability in the United States . . . shall, solely by reason of his or her disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance or activity conducted by any Executive agency[.]

29 U.S.C. § 794(a) (as amended).

75. The Rehabilitation Act applies to Defendants' programs and activities, because Defendants receive federal financial assistance.

76. Each Plaintiff is an individual with a disability, because (1) their physical impairments substantially limit their ability to conduct major life activities such as walking, standing, lifting, bending and working; (2) they have a record or having such physical impairments; and (3) Defendants regard them as having such physical impairments. 29 U.S.C. § 705(20).

77. Like the ADA, the Rehabilitation Act requires, inter alia, that Defendants administer their programs in a manner that does not discriminate against people with disabilities and make reasonable accommodations.

78. When Defendants make alterations to the common areas of an existing housing facility, the Rehabilitation Act requires that those alterations "shall, to the maximum extent

feasible, be made to be accessible to and usable by individuals with handicaps.” 24 C.F.R. § 8.23.

79. Defendants are also required to make reasonable accommodations in policies, practices, or procedures when accommodations are necessary to avoid discrimination on the basis of disability. 29 U.S.C. § 794; 24 C.F.R. §§ 8.3, 8.4 and 8.20.

80. Defendants have discriminated against Plaintiffs by failing to make alterations to the entrance to Plaintiffs’ building that are, to the maximum extent feasible, accessible to and usable by individuals with disabilities.

81. Defendants have also discriminated against Plaintiffs by refusing Plaintiffs’ request that Defendants create an accessible entrance as a reasonable accommodation.

82. Defendants’ discriminatory conduct as described above was intentional, willful or taken with disregard for their rights.

83. This discriminatory conduct has injured Plaintiffs.

84. Each Plaintiff is therefore entitled to compensatory damages, injunctive relief, and reasonable attorney's fees, including litigation expenses and costs. 29 U.S.C.A. § 794a.

Third Claim:

Violation of the New York City Human Rights Law

85. Plaintiffs repeat and reallege the above paragraphs.

86. The New York City Council passed NYCHRL “to eliminate and prevent discrimination from playing any role in actions relating to employment, public accommodations and housing and other real estate” N.Y.C. Admin. Code § 8-101.

87. Defendants are each a “person” as defined by the NYCHRL. N.Y.C. Admin. Code § 8-102(1). Defendants are covered by the provisions of the NYCHRL that prohibit housing discrimination, because, inter alia, they “hav[e] the right to sell, rent or lease or approve the sale, rental or lease of a housing accommodation” N.Y. Admin. Code § 8-107(5)(a).

88. Each Plaintiff is a person with a disability within the meaning of N.Y.C. Admin. Code § 8-102(16).

89. The NYCHRL prohibits Defendants from discriminating against individuals with disabilities. N.Y. Admin. Code § 8-107(5)(a).

90. The NYCHRL requires Defendants to make reasonable accommodations “to enable a person with a disability to . . . enjoy the right or rights in question provided that the disability is known or should have been known by the covered entity.” N.Y. Admin. Code §§ 8-102(18) and 8-107(15)(a).

91. Defendants have discriminated against Plaintiffs by refusing Plaintiffs’ request that Defendants create an accessible entrance as a reasonable accommodation. N.Y.C. Admin. Code § 8-107(5).

92. Defendants’ discriminatory conduct as described above was intentional, willful or taken with disregard for their rights.

93. Each Plaintiff is an “aggrieved person” who has suffered damages because Defendants failed to provide them with a reasonable accommodation. N.Y. Admin. Code § 8-502(a).

94. Each Plaintiff is therefore entitled to compensatory damages, punitive damages, injunctive relief, and reasonable attorney's fees, including costs. N.Y. Admin. Code § 8-502(a) and (f).

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court:

- a) Declare that Defendants' discriminatory practices violate Title II of the Americans with Disabilities Act, 42 U.S.C. § 12101, et seq., Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, et seq., and the New York City Human Rights Law, N.Y.C. Admin. Code § 8-101 et. seq.;
- b) Enjoin Defendants to create and maintain an accessible front entrance to the building located at 418 West 17th Street, New York, New York 10011, as required by federal and local laws.
- c) Award such damages to Plaintiffs as will fully compensate them for any loss of civil rights, and other damages, including humiliation, embarrassment, and emotional distress suffered due to Defendants' discriminatory conduct;
- d) Award punitive damages because of the discriminatory housing practices that have occurred or continue to occur;
- e) Award Plaintiff reasonable attorney's fees, costs and expenses incurred in prosecuting this action; and

f) Order such other further relief as this Court deems just and proper.

Dated: New York, New York
August 13, 2012

Respectfully Submitted,

Kevin M. Cremin (KC-4319)
Orier Okumakpeyi, of counsel to
Jeanette Zelhof, Esq.
MFY Legal Services, Inc.
Attorneys for Plaintiffs
299 Broadway, 4th Floor
New York, NY 10007
Telephone Number: (212) 417-3759
Email: kcremin@mfy.org