

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No.

Hannah Lofland, for herself and as next friend of her minor son William Lofland, and
Christopher Lofland,

Plaintiffs,

v.

Perry Park Filing #3 Architectural Control Committee and
James Cassidy,

Defendants.

COMPLAINT

Plaintiffs, Hannah Lofland, for herself and as next friend of her minor son William Lofland, and Christopher Lofland, by and through undersigned counsel, file this Complaint for violation of the Fair Housing Act, and respectfully allege as follows:

INTRODUCTION

1. Plaintiffs Hannah and Christopher Lofland bring this claim to ensure that they and their son, William Lofland, can use and enjoy their home in Larkspur, Colorado, with the accommodations William needs for his disability. They seek to ensure that their neighborhood “Architectural Control Committee” will cease its threats to use covenants to block or force the removal of those accommodations, in violation of the Fair Housing Act.

JURISDICTION AND VENUE

2. Plaintiffs' claims arise under the Fair Housing Act, as amended, 42 U.S.C. § 3601 *et seq.*

3. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1343. This Court has jurisdiction over Plaintiffs' claims for declaratory and other necessary or proper relief pursuant to 28 U.S.C. §§ 2201 and 2202.

4. Venue is proper within this District pursuant to 28 U.S.C. § 1391(b).

PARTIES

5. Plaintiff Hannah Lofland is a resident of state of Colorado and the owner of a house in Perry Park Filing #3 in Larkspur, Colorado. Ms. Lofland is the mother of Plaintiff William Lofland and wife of Plaintiff Christopher Lofland.

6. Plaintiff Christopher Lofland is a resident of state of Colorado and the owner of a house in Perry Park Filing #3 in Larkspur, Colorado. Mr. Lofland is the father of William Lofland and husband of Hannah Lofland.

7. Plaintiff William Lofland is the minor son of Hannah and Christopher Lofland and is also a resident of the state of Colorado. William Lofland is an individual with a "handicap"¹ as that term is defined in 42 U.S.C. § 3602(h). Among other things, he is non-verbal, falls on the severe end of the autism spectrum, and has anxiety disorder. As such, he is

¹ The Fair Housing Amendments Act was passed in 1988, extending coverage of the Fair Housing Act to prohibit discrimination on the basis of "handicap." P.L. 100-430, 102 Stat. 1619 (Sep. 13, 1988). The more modern terminology is "disability," which this Complaint will use. Where "disability" is used herein, it means "handicap" as that term is used in the Fair Housing Amendments Act.

substantially limited in a number of major life activities, including but not limited to speaking, cognition, and caring for himself.

8. Defendant Perry Park Filing #3 Architectural Control Committee (“ACC”) is a committee formed by the Revised Protective Covenants of Perry Park Filing No. 3 (“PP3 Covenants”), dated March 22, 2006. The PP3 Covenants state that the ACC “shall be composed of three (3) property owners residing full-time in Perry Park Filing 3.”

9. Defendant James Cassidy is a resident of state of Colorado and the owner of a house in Perry Park Filing #3 in Larkspur, Colorado. Mr. Cassidy represents himself to be a member of the ACC.

FACTS

10. Because of William’s disability, the Loflands need quick access to a special needs recreational vehicle (“RV”), and need to construct a fence to ensure that William does not leave the property.

11. According to his doctor, William Lofland

is non-verbal, falls on the severe end of the autism spectrum and has anxiety disorder. He has a special needs RV that . . . houses all of his medical equipment, including restraints and a bed/bathroom utilities. The restraints are used to prevent William from inflicting self-harm. His parents use this RV sometimes up to 2 times per day -- any time of day or night. . . . His “meltdowns” can be quite extensive, including self-injury and injuries to others (parents and/or providers).

An emergency room visit is avoided by using the RV to drive William over rolling hills or bumpy roads, thereby satisfying his need for sensory input. It is required to be onsite as these “meltdowns” occur without provocation. Keeping the Special Need Recreational Vehicle is medical necessity for William’s health [and] safety due to his disability in order to decrease the self-injurious behavior.

12. The Loflands have purchased and equipped an RV that addresses these disability-

related needs, and park it adjacent to their home so that it can be available quickly as recommended by William's doctor.

13. In addition, William tends to run from his home and providers if given the opportunity. The Loflands must erect a six-foot high fence to prevent William from eloping in this fashion.

14. In the spring of 2015, Hannah and Christopher Lofland were looking for a new home in the Larkspur area and decided to put an offer on the home at 6671 Wauconda Drive, which is in Perry Park Filing #3.

15. The PP3 Covenants prohibit RVs from being on a lot for more than 48 hours unless parked in a garage, and subject fences to ACC approval.

16. After the Loflands reviewed the PP3 Covenants, on or about April 29, 2015, Ms. Lofland placed a phone call to James Cassidy, who she understood to be on the ACC, to discuss William's disabilities and the need for the RV and fence.

17. Mr. Cassidy asked Ms. Lofland to provide photographs of the RV and the fence and provided his email address to send them.

18. As requested, Ms. Lofland followed up with two emails dated April 29, 2015, explaining the need for the RV and the fence, and attaching photographs of the types of RVs and fences for which the Loflands sought permission.

19. Because the Loflands received no response, they assumed that the ACC did not object to the fence or the RV.

20. Indeed, the PP3 Covenants state that if the ACC "fail[s] to approve or disapprove the plans and specifications submitted to it by the owner of a tract or tracts within the subdivision

within thirty (30) days after written request therefore, then such approval shall not be required, provided, however, that no building or other structure shall be erected or be allowed to remain on any tract which violates any of the covenants or restrictions herein contained.”

21. Since the RV was not a building or structure, the Loflands believed that -- pursuant to the language of the PP3 Covenants themselves -- the accommodations their son required were approved.

22. The Loflands were thus surprised to receive a letter from the ACC, dated June 22, 2015, asserting that the Loflands were violating provisions of the PP3 Covenants relating to their RV and suggesting that the Loflands store the RV off site. The letter -- which was signed by Mr. Cassidy, Bill Murdoch, and Ian Paton, representing themselves as the Perry Park Filing #3 ACC -- gave the Loflands until July 15, 2015 to remove the RV.

23. The Loflands' attorney, Christopher Wyrick, wrote to the ACC on July 8, 2015, again explaining the need for the RV, and further explaining that the Fair Housing Act required that the ACC make reasonable accommodations for William's needs.

24. In response, the Loflands received a letter dated July 15, 2015, signed by Messrs. Cassidy, Murdoch, and Paton, representing themselves as the Perry Park Filing #3 ACC.

25. The July 15 letter indicated that Mr. Cassidy had not received the April 29 emails, despite the fact that they were sent to the email address Mr. Cassidy had provided, which was the same as the one used in an attachment to the July 15 letter and in other communications with the Loflands and their attorney. Then, despite the fact that Mr. Wyrick's July 8 letter had again set forth in great detail the need for the RV, the July 15 letter asserted that the ACC had not received a “compliant submittal.”

26. In response to an inquiry from Mr. Wyrick, on July 18, Mr. Paton stated that the Loflands were required to submit “relevant drawings that clearly show any changes the owners intend to make to the property,” and to “accompany these drawings with a written explanation of the proposed changes and any variance to the covenant requested, with justification as to why these variances are necessary.”

27. At the time Mr. Paton made this request, however, the Loflands had already submitted the required information once for the fence and twice for the RV.

28. On August 4, 2015, Lynn Greene wrote an email to Mr. Wyrick from Mr. Cassidy’s email address.

29. Ms. Greene is an attorney licensed in Colorado.

30. In the email, Ms. Greene stated that she was representing herself and her husband, Mr. Cassidy.

31. Ms. Greene’s email once again demanded “a drawing of the alterations needed to put [the Loflands’] RV into a garage, or some other solution,” and asked, “If the RV is so important to your client, why didn’t they buy in a neighborhood that allows them?”

32. Mr. Wyrick responded to Ms. Greene’s and a later ACC email by pointing out, yet again, that the Loflands had already requested the reasonable accommodation of parking their RV by their house, and that, because no garage was contemplated, there were no drawings to submit. He pointed out the PP3 Covenant language noted in Paragraph 20 above -- to the effect that the ACC’s failure to respond within 30 days constituted approval -- and concluded that the Loflands did not need the ACC’s approval to keep the special needs RV on their property.

33. In or about August, 2015, the Loflands learned that Bill Murdoch had resigned from the ACC.

34. On October 8, 2015, the undersigned wrote to Mr. Cassidy and Mr. Paton, the remaining members of the ACC, enclosing the communications and photographs referenced above, explaining the requirements of the Fair Housing Act and the implementing regulations and guidance issued by the Department of Housing and Urban Development, and requesting that the ACC confirm that it will take no legal action to oppose either the fence or the RV.

35. In response to this letter, the undersigned received an email from Mr. Paton stating that he had resigned from the ACC on August 18, 2015.

36. This apparently leaves Mr. Cassidy as the sole remaining member of the ACC.

37. Although an attorney for Mr. Cassidy and Ms. Greene contacted the undersigned in response to the October 8, 2015 letter and amicable discussions ensued, neither the ACC nor Mr. Cassidy was willing to commit to refrain from legal action challenging the Loflands' reasonable accommodations. Plaintiffs thus filed the present lawsuit.

38. As a result of Defendants' conduct detailed above, the Loflands incurred out-of-pocket expenses in the form of legal fees paid Mr. Wyrick as well as emotional distress including but not limited to the fear that their disabled son might not be able to have the accommodations he needed and the humiliation associated with Defendants' statement that they should have looked elsewhere for housing.

39. The fact (among others) that Defendants persisted in their discriminatory practices after being informed that they were violating the Fair Housing Act demonstrates reckless and callous indifference to the Loflands' federally protected rights.

CLAIM FOR RELIEF

Violation of the Fair Housing Act, as amended, 42 U.S.C. § 3401 *et seq.*

40. Plaintiffs incorporate by reference each and every allegation herein.

41. The Fair Housing Act, as amended by the Fair Housing Amendments Act, prohibits discrimination on the basis of “handicap.” 42 U.S.C. § 3604(f).

42. Specifically, the FHA makes it illegal to “refus[e] to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford [a person with a handicap] equal opportunity to use and enjoy a dwelling.” 42 U.S.C. § 3604(f)(3)(B).

43. William Lofland is an individual with a “handicap” as that term is defined in 42 U.S.C. § 3602(h).

44. In order for William Lofland to use and enjoy his dwelling, it is necessary for his parents to keep a special needs RV parked adjacent to their home and for his house to have fencing sufficient to prevent him from running off.

45. Plaintiffs requested the reasonable accommodation that the ACC permit Plaintiffs to take the reasonable and necessary measures described in this Complaint. Despite repeated requests, Defendants have refused to grant these reasonable accommodations, in violation of 42 U.S.C. § 3604(f)(3)(B).

46. Plaintiffs Hannah, Christopher, and William Lofland are all “aggrieved persons” as that term is used in 42 U.S.C. § 3613(a)(1)(A), as they have all been injured by Defendants’ discriminatory housing practices.

47. Defendants' conduct demonstrates reckless and callous indifference to the Loflands' federally protected rights.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request judgment as follows:

1. Declaring that Defendants' conduct as alleged here has violated, and continues to violate, the Fair Housing Act, as amended, as well as its implementing regulations;
2. Enjoining Defendants from further violations of the Fair Housing Act and requiring Defendants to approve the requested reasonable accommodations;
3. Awarding Plaintiffs compensatory and punitive damages;
4. Awarding Plaintiffs their reasonable attorneys' fees and costs; and
5. Awarding such other additional or alternative relief as the Court finds just and proper.

Dated: January 8, 2016

Respectfully Submitted,

/s/ Amy F. Robertson

Amy F. Robertson

Lauren L. Fontana

Civil Rights Education and Enforcement Center

104 Broadway, Suite 400

Denver, CO 80203

Phone: (303) 757-7901

Attorneys for Plaintiffs

Plaintiffs' Address:

6671 Wauconda Dr.
Larkspur, CO 80118