

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

NORTHCHASE APARTMENT)
PARTNERS, LLC; LACOTA)
APARTMENT PARTNERS, LP; AND)
CORTLAND PARTNERS, LLC)

Plaintiffs,)

v.)

THE CITY OF DUNWOODY,)
GEORGIA, and STEVE DUSH in his)
official capacity as Director of)
Community Development for the City of)
Dunwoody)

Defendants.)

CIVIL ACTION
FILE NO:

**COMPLAINT FOR DECLARATORY RELIEF,
INJUNCTIVE RELIEF, DAMAGES AND ATTORNEY'S FEES**

COME NOW NORTHCHASE APARTMENT PARTNERS, LLC;
LACOTA APARTMENT PARTNERS, LP; AND CORTLAND PARTNERS,
LLC, Plaintiffs in the matter as above-styled, and in support of their Complaint for
Declaratory Relief, Injunctive Relief, and Attorney's Fees show this Honorable
Court as follows:

INTRODUCTION

1.

Plaintiffs challenge actions by Defendant the City of Dunwoody, Georgia to interfere with the operation of and force the ouster of residents from two apartment complexes which serve low income residents in the City of Dunwoody: Dunwoody Glen, at 6750 Peachtree Industrial Boulevard and LaCota Apartments, at 6664 Peachtree Industrial Boulevard. The residents of these apartments are predominantly members of minority groups and include over five hundred (500) school age children. Defendant Dunwoody's conduct has thereby violated Plaintiffs' rights and the rights of their tenants in violation of the Fair Housing Act, as amended, 42 U.S.C. §3601 et seq.

JURISDICTION AND VENUE

2.

This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 and 42 U.S.C. § 3613.

3.

Declaratory and injunctive relief is sought pursuant to 42 U.S.C. § 3613(c)(1), in conjunction with Rules 57 and 65 of the Federal Rules of Civil Procedure.

4.

Venue is proper in this Court as all parties herein are residents of the Northern District of Georgia and all events set forth in this Complaint occurred within this District.

PARTIES

5.

Plaintiff NORTHCHASE APARTMENT PARTNERS, LLC (hereinafter “Northchase”) owns a forty-two (42) acre site on which is located a five hundred twenty (520) unit apartment complex known as Dunwoody Glen (and formerly known as “Northchase Apartments”) which it purchased in July of 2010.

6.

Plaintiff LACOTA APARTMENT PARTNERS, LP (hereinafter “LaCota”) owns a twenty-nine (29) acre site on which is located a two hundred sixty-six (266) unit apartment complex known as LaCota. This Plaintiff is the successor-in-interest to Peachtree Industrial Boulevard Partners, LLC, which purchased the property in June of 2011.

7.

Plaintiff CORTLAND PARTNERS, LLC (hereinafter “Cortland”) is the Managing Member of Plaintiff LaCota Apartment Partners, LP and manages the day-to-day operations of the LaCota complex. Plaintiff Cortland also was the

Managing Partner of the LaCota predecessor in title, Peachtree Industrial Boulevard Partners.

8.

Plaintiff Cortland is the Managing Member of Plaintiff Northchase and manages the day-to-day operations of Dunwoody Glen.

9.

Defendant CITY OF DUNWOODY is a local government entity entitled to sue and be sued, and is subject to the jurisdiction and venue of this court. Defendant Dunwoody may be served with process through its Mayor, Mike Davis, at Dunwoody City Hall, 41 Perimeter Center East, Atlanta, GA 30346.

10.

Defendant STEVE DUSH in his official capacity as Dunwoody Community Development Director is ultimately responsible for Defendant Dunwoody's building code enforcement and is subject to the jurisdiction and venue of this court and may be served with process at Dunwoody City Hall, 41 Perimeter Center East, Atlanta, GA 30346.

FACTS

11.

Plaintiff Cortland specializes in the development of new apartment communities and rehabilitation of older apartment complexes to provide housing geared toward low-income tenants.

12.

Steven DeFrancis (hereinafter “DeFrancis”) is the Chief Executive Officer of Plaintiff Cortland and is responsible for its overall operations, which includes supervision of properties in which Plaintiff Cortland holds an ownership interest. At all times relevant to this action, DeFrancis has acted as an agent of Cortland Partners.

13.

Glenn Imes (hereinafter “Imes”) is a Construction Manager of Plaintiff Cortland and has been primarily responsible for construction, renovation, and repair functions for properties in which Cortland holds an ownership interest. At all times relevant to this action Imes has acted as an agent of Cortland Partners.

LOCAL STATUTORY FRAMEWORK

14.

Pursuant to OCGA § 8-2-25(a), local governments must adopt eight (8) minimum Standard Building Codes, to wit: the Standard Building Code, the

National Electric Code, as published by the National Fire Protection Association; the Standard Gas Code; the Standard Mechanical Code; the Georgia State Plumbing Code; the CABO one-and-two-family dwelling code; the Georgia State Energy Code; and the Standard Fire Prevention Code. Local jurisdictions are authorized but not required to adopt other Standard Codes, which include the International Property Maintenance Code. Dunwoody adopted the required minimum Standard Building Codes in 2008 or early 2009. See Exhibit “1”.

15.

In 2009, Defendant City of Dunwoody also adopted the International Property Maintenance Code (the 2006 edition). See Ordinance 2009-03-21, and Part II, Chapter 8, Article I, § 8-1, Dunwoody Code of Ordinance. See Exhibit “2”.

16.

In 2010, Defendant City of Dunwoody also adopted a “SWEEPS” policy to enforce its building codes as they relate to apartment complexes. Under it, Dunwoody inspectors require proof of code compliance within twenty (20%) percent of all units, on a rolling basis, in any given complex every year via private inspectors approved by the City. Exterior compliance is enforced by City personnel and must be certified every four (4) years. See Exhibit “3”.

COMMON FACTS

17.

Per DeKalb County tax records, Dunwoody Glen was constructed in 1970 and LaCota Apartments was constructed in 1971. Under the Defendant City's Zoning Ordinance, both properties are zoned either RM-100 or RM-85, multifamily residential zoning districts which allow development of up to twelve (12) or fourteen (14) units per acre, respectively.

18.

Dunwoody Glen and LaCota are populated primarily by African American and Latino persons.

19.

At least five hundred sixty (560) school age children reside in Dunwoody Glen and LaCota and attend public schools known as "the Dunwoody Cluster," i.e. Chestnut Charter, Vanderlyn, Kingsley, Austin and Dunwoody Elementary Schools; Peachtree Carter Middle School; and Dunwoody High School.

FACTS RELEVANT TO DUNWOODY GLEN

20.

Shortly after purchasing Dunwoody Glen in July of 2010, Plaintiff Cortland invested over \$2,838,000.00 to repair, improve and upgrade that property.

21.

In early 2011, Plaintiff Cortland made application with Defendant City for a business license to operate both Dunwoody Glen and LaCota.

22.

In January of 2011, Dunwoody inspectors visited Dunwoody Glen for external inspections pursuant to the City's SWEEPS program. Tom LaPenna and Chris Lee performed this inspection in the company of Dave Wagner, who was the Cortland Investment Manager for this property. They expressed their appreciation for Cortland's rehabilitation work to date.

23.

On March 18, 2011, Plaintiff Cortland was advised by the then-Director of Community Development for Defendant Dunwoody, Mike Tuller, that the exterior inspection had revealed areas of IPMC code noncompliance ranging from "simplistic property maintenance issues" to more extensive concerns. See Exhibit "4".

24.

Accompanying the Tuller letter was a book of pictures with a blanket recitation of codes which allegedly had been violated. The pictures were broken down by building. No effort was made to advise what each picture reflected in terms of noncompliance. See Exhibit "5".

25.

After receiving this March 18, 2011 letter, Plaintiff Cortland immediately hired a City-approved inspector, Clearview Inspections, to identify all needed internal repairs, and that inspection took place during the week of March 14, 2011. See Exhibit “6”. Cortland then hired Davis Dougherty Construction to begin working on these internal repairs. See Exhibit “7”.

26.

On April 21, 2011, Defendant City issued to Glen Imes’ predecessor, Dave Wagner, two (2) citations for (a) failure to submit a SWEEPS-required certified inspection report to the City; and (b) failure to obtain a business license.

27.

On May 23, 2011, Davis Dougherty Construction issued its progress report for all internal repairs in Buildings 100 through 2300. It represented that remaining repairs would be finished by May 27, 2011. Dave Wagner forwarded that report to the City. See Exhibit “8”.

28.

On June 15, 2011 Clearview Inspections advised Defendant Dunwoody that it would reinspect Dunwoody Glen for internal code compliance on June 20-22, 2011. See Exhibit “9”.

29.

Clearview performed an inspection on June 20th after which it concluded that Dougherty Construction had not performed the repairs that it represented had been completed. See Exhibit “10”.

30.

Cortland then terminated Davis Dougherty Construction Services and hired Southern Property Improvers (“SPI”) to complete the work. See Exhibit “11”.

31.

On July 15, 2011, Clearview Inspections again advised the Defendant City of Dunwoody that Dunwoody Glen was ready for reinspection, but that Clearview’s schedule could not accommodate same until August. See Exhibit “12”.

32.

Also during July of 2011, Plaintiff Cortland developed a plan to complete necessary exterior repairs, which plan is attached as Exhibit “13”. It hired SPI to complete these repairs. See Exhibit “14”.

33.

On August 6, 2011, Clearview reinspected Dunwoody Glen for interior code compliance.

34.

On August 19, 2011, Clearview Inspections certified to Defendant Dunwoody that all internal repairs had been made per code requirements. See Exhibit “15”.

35.

SPI performed external repair work at Dunwoody Glenn through September of 2011.

36.

Plaintiff Cortland also hired Palmer Construction Consultants to handle and resolve certain exterior structural issues raised by the City’s inspection. See Exhibit “16”.

37.

On or about August 22, 2011, Cortland produced to the City the progress report attached as Exhibit “17”.

38.

The exterior repairs required by LaPenna and Lee included replacement of all windows and window screens.

39.

In August or early September of 2011, Plaintiff Cortland heard that Defendant Dunwoody was trying to get a bond referendum passed to enable it,

among other things, to purchase and raze Dunwoody Glen and LaCota and replace them with a Sports Complex.

40.

Defendant City of Dunwoody promoted the bond referendum, among other bases, upon how the proceeds would be used to raze Dunwoody Glen and LaCota.

41.

Representatives of the City stated publicly and to Plaintiffs that the commitment to raze Dunwoody Glen and LaCota would help the bond issue pass.

42.

On October 6, 2011, Palmer Construction Consultants issued its final inspection update. Exhibit "18".

43.

By October 10, 2011, all of the external items identified by LaPenna and Lee in Exhibit "2" had been fixed by Plaintiff Cortland, except for replacement of the windows. In total, those external repairs required by Defendant Dunwoody cost Plaintiff LaCota in excess of \$140,000.00.

44.

In light of its knowledge about the City's desire to purchase the properties, Plaintiff Cortland contacted Defendant's City Manager and pointed out it was

counterproductive to spend \$750,000 on new windows for buildings that might be razed should the referendum pass.

45.

Defendant Dunwoody agreed that Plaintiff Cortland should not install windows unless the bond referendum failed.

46.

On October 24, 2011, Defendant City voted to enter into a Letter of Intent with Plaintiff Northchase and Plaintiff LaCota's predecessor-in-title, contingent upon passage of the then-pending City Parks Bond referendum, to purchase both the Dunwoody Glen and LaCota properties. See Exhibit "20".

47.

The Agreement to sell these properties to Defendant Dunwoody contemplated a private/public partnership wherein Defendant Dunwoody would develop a Sports Complex and Plaintiff Cortland would redevelop the rest of the property. See Exhibit "19".

48.

Plaintiff Cortland discussed with Defendant City's officials its desire to rebuild multifamily units on the property it would end up with after the purchase of LaCota and Dunwoody Glen.

49.

The then-Mayor of Dunwoody and City Manager stated that Defendant Dunwoody would not allow Plaintiff Cortland to rebuild anything except owner-occupied homes after the purchase and demolition of LaCota and Dunwoody Glen.

50.

The Defendant City's desire to purchase and raze Dunwoody Glen and LaCota was motivated in part by the desire to eliminate apartments in Dunwoody.

51.

The Defendant City's desire to purchase and raze Dunwoody Glen and LaCota was motivated in part by the desire to eliminate low income rental housing in the City.

52.

The Defendant City's desire to purchase and raze Dunwoody Glen and LaCota was motivated in part by the desire to move the children who live there out of the Dunwoody public schools.

53.

The Defendant City's desire to purchase and raze Dunwoody Glen and LaCota was motivated in part by the desire to move minorities out of Dunwoody.

54.

Until the bond referendum failed on November 8, 2011, Defendant Dunwoody took no further steps to enforce any building codes relative to Dunwoody Glen or LaCota, and also again continued the code violation hearing(s).

55.

On November 15, 2011, and after the bond referendum failed, Plaintiff Cortland pled nolo contendere to the business license charge and paid a \$330.00 fine. The building code compliance citation was “nolle prossed.”

56.

Plaintiff Cortland also then paid in excess of \$774,647.63 to put new windows in all units at Dunwoody Glen.

57.

At the November 15, 2011 arraignment and while discussing the plea, LaPenna advised that additional external work was still required but pledged to give Plaintiff Cortland sufficient time to do the work.

58.

On December 27, 2011, LaPenna issued fourteen (14) new citations to Imes for alleged exterior code violations. Each citation cited the offense of “maintenance 102.2 IPMC” without specifying the manner in which Imes supposedly failed to comply with § 102.2.

59.

On January 6, 2012, LaPenna issued fifteen (15) new citations to Imes for alleged exterior code violations. Each citation cited the offense of “maintenance 102.2 IPMC” without specifying the manner in which Imes supposedly failed to comply with § 102.2.

60.

On February 1, 2012, LaPenna issued another ten (10) citations to Imes for alleged exterior code violations. Each citation cited the offense of “maintenance 102.2 IPMC” without specifying the manner in which Imes supposedly failed to comply with § 102.2

61.

On February 13, 2012, LaPenna issued another seven (7) citations to Imes for alleged exterior code violations. Each citation cited the offense of “maintenance 102.2 IPMC” without specifying the manner in which Imes supposedly failed to comply with § 102.2.

62.

On or about February 24, 2012, LaPenna and Lee delivered another “book” of pictures to Cortland which allegedly reflected in excess of six hundred fifty-eight (658) “new” incidents of exterior code noncompliance at Dunwoody Glen. See Exhibit “21”.

63.

Once again, the book of alleged code violations delivered February 24, 2012 by Defendant City did not reference what code sections were violated.

64.

Ultimately, Plaintiff Cortland paid \$6,000.00 in fines to resolve all outstanding exterior code issues, and \$161,264.00 on correcting the “second round” of alleged violations.

FACTS RELEVANT TO LACOTA

65.

Shortly after it purchased LaCota in June of 2011, Plaintiff Cortland invested over \$1,242,000 to repair, improve and upgrade that property.

66.

Prior to purchasing LaCota, Plaintiff Cortland employed Tom LaPenna to inspect LaCota for any life safety issues, and addressed each of them which he identified immediately after closing.

67.

On August 27, 2012, Plaintiff Cortland received a letter from Defendant Steve Dush, Defendant Dunwoody’s current Director of Community Development, advising that the City would be initiating a Code Compliance inspection site visit at LaCota. Exhibit “22”.

68.

The August 27, 2012 Notice of Initiation of a Code Compliance Inspection advised that within a week a team of inspectors would arrive and inspect the property, and that approximately a week later staff would return to present a report regarding the inspection and discuss any needed repairs. Id.

69.

The August 27, 2012 Notice also represented that Plaintiffs would be given a reasonable period of time for correcting any noted deficiencies.

70.

On or about August 28, 2012, a team of Dunwoody inspectors, including Tom LaPenna and Chris Lee, visited LaCota for approximately ninety (90) minutes and inspected the exterior of four (4) of its seventeen (17) buildings.

71.

On August 30, 2012, Defendant City of Dunwoody sent to Glenn Imes thirty-five (35) pictures taken at LaCota which purportedly identified life safety issues at LaCota and simultaneously advised by email that all repairs must be made by September 14, 2012. See Exhibit "23".

72.

A number of the pictures sent by Defendant City did not reflect life safety issues and also did not identify the specific location of purported code violations.

Imes therefore responded to Lee's email requesting clarification as to what was to be repaired. He was told that all buildings must be brought up to Code by September 14, 2012, not just the ones purportedly identified by the pictures. See Exhibit "24".

73.

Plaintiff Cortland immediately hired Joe Canterbury, who had made many of the repairs at Dunwoody Glen to the City's satisfaction, to begin work on all life safety issues made known to Imes by LaPenna and Lee. Canterbury began work on a building by building basis and corrected what Dunwoody had identified on each, but also included work he had been required by Defendant City to perform in Dunwoody Glen.

74.

Plaintiff Cortland immediately undertook repairs of any life safety issues identified in the August 28, 2012 inspection.

75.

On September 5, 2012, Cortland hired the undersigned who wrote to the City and requested necessary additional time within which to complete repairs. That letter also requested a copy of the formal report referenced in the Notice of Inspection of August 27, 2012. See Exhibit "25".

76.

On September 5, 2012, Lee and LaPenna returned to the property and told Imes he would be given six (6) months to complete the work, but no further extensions.

77.

On September 24, 2012, the undersigned received a letter dated September 18, 2012 from one of the City's attorneys, Leonid Felgin. He advised that Plaintiff Cortland needed to select a contractor by September 21st, to apply for building permits by September 24th, and to have all work finished by October 14, 2012. See Exhibit "26".

78.

Plaintiff LaCota applied for and received its building permits for all twenty-seven (27) buildings on September 21, 2012.

79.

On September 25, 2012, the undersigned responded to Mr. Felgin's letter by way of the correspondence attached as Exhibit "27". That letter again requested an extension since it would have been impossible to complete the work by October 14, 2012. She also reiterated her request for the report promised in the August 27, 2012 Notice of Inspection. Id.

80.

On October 18, 2012, LaPenna on behalf of Defendant City sent a letter to Imes stating that the “Lacata [sic] complex report is completed. We would like to meet on October 24, 2012 at Dunwoody City Hall to review it.” See Exhibit “28”. However, that meeting did not occur until November 2, 2012.

81.

On October 24, 2012, Defendant City delivered to Imes the book of pictures regarding LaCota attached as Exhibit “29”.

82.

The book referenced in Paragraph 81 above included some of the August 29th and August 30th photos (Exhibit 23) as well as other photos taken on those dates not previously produced and ones taken subsequently in September.

83.

The book referenced in Paragraph 81 above did not indicate the location of the purported violation.

84.

In advance of the November 2, 2012 meeting, Imes sent LaPenna and Lee an email outlining work completed to date on the life safety issues, as well as the progress of other repairs. See Exhibit “29”.

85.

During the meeting on November 2, Imes discussed with LaPenna and Lee his proposed timeline for completion of the work, as well as his intention to use both Joe Canterbury and SPI.

86.

On November 26, 2012, Imes provided Lee and LaPenna another progress report for the electrical repair work. See Exhibit “30”.

87.

On December 6, 2012, Imes emailed LaPenna and Lee asking for a meeting to discuss the hiring of a licensed electrical contractor, SPI, to make sure all remaining electrical work was done. See Exhibit “31”.

88.

On December 6, 2012, Plaintiff Cortland also hired SPI to do all remaining electrical work at LaCota. See Exhibit “32”.

89.

SPI commenced the remaining electrical work referenced in Paragraph 88 as soon as it was hired.

90.

On January 17, 2013, Plaintiff Cortland hired SPI to perform all remaining exterior maintenance demanded by Defendant Dunwoody. See Exhibit “33”.

91.

SPI commenced the remaining exterior maintenance at LaCota within two (2) weeks, as materials were ordered first.

92.

On February 15, 2013, the Defendant City served Imes with ninety-four (94) counts of electrical code violations at LaCota.

93.

Plaintiffs have continued trying to work through their issues with Defendant City, to no avail.

94.

The conduct of Defendant's agents who have inspected the property has been disrespectful, mocking, abusive and harassing and is all calculated to force Plaintiff Cortland to redevelop or sell both properties.

95.

Plaintiffs have filed a demurrer to the violation notice on grounds, inter alia, that Defendants prosecution is premised upon the number of school age children and race or natural origin of its residents in violation of the Fair Housing Act, 42 USC, § 36011, as amended. See Exhibit "34".

96.

Defendant Dunwoody has responded to this demurrer that municipal court is an inappropriate forum in which to consider FHA claims

FACTS RELEVANT TO THE CITY OF DUNWOODY

97.

Plaintiffs' experience is not the only conduct by which Defendant Dunwoody has attempted to halt apartment development due to the likely existence of school-age children or potential race of renters.

98.

In 2011, Defendant City of Dunwoody entered into a contract to purchase sixteen (16) acres of partially developed land known as the "PVC farm" expressly based on its desire to eliminate the development of 300-500 apartments for which this acreage was zoned.

99.

Defendant City has officially adopted, via its Community Agenda component of Comprehensive Plan required by OCGA § 36-70-1 et seq., a policy to eliminate aging, existing apartments within the City and replacing them with owner-occupied detached housing.

100.

The Dunwoody Comprehensive Plan also affirmatively expresses a desire to have predominantly owner-occupied housing within its boundaries to the maximum extent possible, and actively has committed to promote ways to reach that level.

101.

Both LaCota and Dunwoody Glen accept Section 8 housing vouchers.

102.

A disproportionate number of African Americans and Latinos are on the waiting list for public housing and Section 8 housing.

103.

DeKalb County closed the waiting list for public and Section 8 housing in 2008.

104.

Based upon 2010 census data, eighty-five (85%) percent of all housing available in the City of Dunwoody constitutes single family detached housing.

105.

Per the 2010 census data, there are a total of six thousand one hundred sixty-five (6,165) renter occupied units within the City of Dunwoody. The average gross rent (including utilities) is One Thousand Twenty-One (\$1,021) Dollars per month.

106.

A resident whose monthly household costs are greater than thirty (30%) percent of the household income is considered “cost burdened” within the meaning of the Department of Housing and Urban Development (“HUD”) definition.

107.

A resident whose monthly household costs are greater than fifty (50%) percent of the household income is considered “severely cost burdened” within the meaning of HUD definitions.

108.

Forty-six (46%) percent of renters within Dunwoody are cost-burdened or severely cost burdened.

109.

Per 2010 census data, median household income within the City of Dunwoody is \$87,392.00. Median Family income for the Atlanta MSA is Sixty-Seven Thousand Eight Hundred Twenty-Nine (\$67,829) Dollars. Median Family income within the census tract where LaCota and Dunwoody Glen are located is Forty-Seven Thousand Six Hundred Thirty (\$47,630) Dollars.

110.

Per the 2010 census data, 75.11% of the residents within the census tract in which LaCota and Dunwoody Glen are located are members of a minority population.

111.

The average annual median household income of the residents of LaCota is Twenty-Eight Thousand Nine Hundred Four (\$28,904) Dollars.

112.

The average annual median household income of the residents of Dunwoody Glen is Forty-Four Thousand Eighty-One (\$44,081) Dollars.

113.

Rents in LaCota range from Five Hundred Seventy Dollars (\$570) to Eight Hundred Twenty-Nine Dollars (\$829) per unit, depending upon number of bedrooms. Average rent in LaCota is Six Hundred Fifty-Six and 35/100 (\$656.35) Dollars.

114.

Rents in Dunwoody Glen range from Five Hundred Seventy-Eight (\$578.00) Dollars to One Thousand Eighty-Nine (\$1,089.00) Dollars per unit, depending upon number of bedrooms. Average rent in Dunwoody Glen is Seven Hundred Five (\$705.00) Dollars per month.

115.

Based on 2010 census data, the average median housing value for homes in the City of Dunwoody is Three Hundred Fifty-Six Thousand (\$356,000) Dollars. By contrast, the average home value for the Atlanta Metropolitan Statistical Area is One Hundred Seventy Thousand (\$170,000) Dollars.

116.

According to DeKalb County's 2013 Comprehensive Housing Affordability Study, 41.3% to 48.6% of residents within the census tract where LaCota and Dunwoody Glen are located have a housing cost burden greater than thirty (30%) percent of the Average Median Income.

117.

35.4% to 46.2% of renter occupied housing within the census tract where LaCota and Dunwoody Glen are located have a housing cost burden greater than fifty (50%) percent of the Average Median Income.

118.

Within those households in DeKalb County who have housing cost burdens greater than thirty (30%) percent of the Average Median Income, 80.5% are African American, Asian, Hispanic, American Indian or Pacific Islander.

119.

Within those households in DeKalb County which suffer from housing cost burdens, 63.3% percent are African American, Asian, Hispanic, American Indian or Pacific Islander.

120.

Per DeKalb County's 2013 Comprehensive Housing Affordability Study, the City of Dunwoody does not have any affordable rental housing units.

121.

There is a significant need for low-income housing in Dunwoody.

122.

Enforcement of Defendant's "SWEEPS" program as applied to LaCota and Dunwoody Glen will result in less affordable housing in Dunwoody.

123.

Any rent increase at LaCota or Dunwoody Glen has a disproportionate impact upon families with children.

124.

Any rent increase at LaCota or Dunwoody Glen has a disproportionate impact upon racial minorities.

125.

Enforcement of Defendant's "SWEEPS" program in the manner applied to LaCota and Dunwoody Glen has driven and will drive up their operational costs with a concomitant upwards impact upon rent.

126.

Plaintiffs have been forced to hire the undersigned to represent their interests herein.

COUNT I. Fair Housing Act Claim

127.

Paragraphs 1 through 126 are incorporated by reference herein.

128.

The FHA, as amended effective March 12, 1989, makes it unlawful "[t]o refuse to sell or rent . . . or *otherwise make unavailable* or deny a dwelling to any person because of race, color, religion, sex, family status, or national origin." 42 U.S.C. § 3604(a) (emphasis added).

129.

Section 3617 of the FHA further provides that: "[i]t shall be unlawful to coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of his having aided or encouraged any other person in

the exercise or enjoyment of, any right granted or protected by Sections 3603, 3604, 3605 or 3606 of this Title.”

130.

Local Code Enforcement decisions and other governmental actions are subject to the FHA’s prohibitions.

131.

Plaintiffs are entitled to the protection of the FHA since they own the complexes which are providing housing to persons protected by the FHA.

132.

Defendants’ decisions or actions as outlined herein have made or will make dwellings unavailable to persons entitled to the protection of the FHA in violation of 42 U.S.C. 3604.

133.

Defendants have departed from the procedural provisions of its own Codes in enforcing them against Plaintiffs.

134.

Defendants’ established course of conduct in trying to eliminate rental housing in Dunwoody has the necessary and foreseeable effect of perpetuating segregation in violation of the FHA.

135.

In the face of opposition premised upon stereotypical characterizations of renters related to their race or familial status, Defendants' conduct vis-à-vis Plaintiffs intentionally discriminated against certain classes of persons.

136.

Defendants' actions also had and continue to have a disproportionate impact on persons within the classes of persons protected by 42 U.S.C. 3601 et seq.

137.

In light of Defendants' acts in unreasonably prosecuting Plaintiff's agent, and its attempts to eliminate rental housing in the City limits, persons within the class protected by the FHA have been or will be denied the opportunity to have an appropriate residence within which to live.

138.

Defendants' conduct lacks any adequate, countervailing, legitimate justification.

139.

For the reasons set forth above, Defendants' actions at issue are unlawful, null, void and of no legal force or effect.

COUNT II. Exclusionary Zoning

140.

Paragraphs 1 through 139 are incorporated by reference herein.

141.

Plaintiffs' complexes serve a need for low- to moderate-income multi-family development in Dunwoody and DeKalb County.

142.

Plaintiffs' complexes are appropriate for their locations from a land use and planning perspective.

143.

Apartment development is a lawful use under Defendants' zoning Resolution.

144.

A need for low- to moderate-income and multi-family housing is anticipated in the future growth of the City of Dunwoody and in DeKalb County projections.

145.

There are insufficient low- to moderate-income housing opportunities in the City of Dunwoody.

146.

Defendants' patterns and practices have sought to force out low- to moderate-income housing developments in the City of Dunwoody.

147.

Defendants' patterns and practices have consistently sought to exclude certain groups of people from the City of Dunwoody.

148.

Defendants' conduct towards Plaintiffs was based, at least in part, upon an intent to eliminate or minimize low- to moderate-income housing in the City of Dunwoody.

149.

Defendants' conduct towards Plaintiffs has or will have a disproportionate impact upon minority groups and families with children who need affordable housing.

150.

Defendants' conduct perpetuates segregation in the City of Dunwoody.

151.

In light of the above, Defendants' acts violated the Constitution of the United States and the Constitution of the State of Georgia.

152.

In light of the above, Defendants' acts were unlawful, null, void and of no legal force and effect.

153.

Defendant has an obligation to uphold and provide its fair share of entry-level and multi-family housing to residents in Dunwoody City and its environs.

COUNT III. § 1983 Claim

154.

Paragraphs 1 through 153 are incorporated by reference herein.

155.

42 U.S.C. § 1983 provides, in pertinent part: "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or territory or the District of Columbia, subjects, or causes to be subjected any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress."

156.

At all times relevant hereto, Defendants were acting "under color of law" within the meaning of 42 U.S.C. § 1983.

157.

Among the “rights, privileges or immunities secured by the Constitution” is the Fourteenth Amendment’s “equal protection of the laws.”

158.

Under the Fourteenth Amendment’s equal protection clause, interference with the operation of low-to moderate-income apartment homes is unlawful unless the development poses a special threat to Defendants’ legitimate interests.

159.

Plaintiffs’ complexes do not pose a special threat to any of Defendants’ legitimate interests.

160.

On the contrary, Defendants’ conduct is irrational and, upon information and belief, is based upon unwarranted fear and prejudice toward persons in the class of persons protected by 42 U.S.C. § 1983. Defendants have thus violated, under color of law, Plaintiffs’ right to equal protection of the laws under the Fourteenth Amendment of the United States Constitution in violation of 42 U.S.C. § 1983.

161.

Defendant acted knowingly and intentionally, willfully, wantonly, and with reckless disregard for Plaintiff’s rights under the law.

162.

For the reasons set forth above, Defendants' acts in denying the Application at issue were unlawful, unconstitutional, null, void and of no legal force or effect.

163.

As a result of Defendants' conduct, certain protected classes of individuals in Dunwoody City and surrounding areas were and are being denied housing opportunities.

164.

The pattern of events leading up to the City's enforcement activities against Plaintiffs demonstrates Defendants' intent to discriminate against individuals based upon their protected class or status.

COUNT IV. Declaratory Judgment

165.

Plaintiffs reallege and incorporate Paragraphs 1 through 164 above as though fully set out verbatim herein.

166.

The Defendants' conduct towards Plaintiffs is unconstitutional under the Constitution of the United States and the Constitution of Georgia.

167.

Based upon the foregoing, there exists an actual controversy between Plaintiffs and Defendants.

168.

Plaintiffs, therefore, are entitled to a declaration from this Court that the City's conduct in prosecuting Plaintiffs' agent is unlawful, unconstitutional, null, void and of no further force and effect.

WHEREFORE, Plaintiffs pray for the following relief:

- (a) That summons and process issue and that the Defendants be served as required by law;
- (b) That the Court find and declare that Defendants' enforcement actions vis-à-vis Plaintiffs amounts to intentional harassment and discrimination in violation of 42 U.S.C. §3604.
- (c) That the Court find and declare that the Defendants enforcement actions vis-à-vis Plaintiffs have a disparate, disproportionate impact on the class of persons protected by 42 U.S.C. § 3601 *et seq.* and 42 U.S U.S.C. § 1983;
- (d) That the Court temporarily and permanently restrain and enjoin Defendants' unfair and harassing prosecution of Plaintiffs.

- (e) That the Court enjoin Defendant from promoting or perpetuating its discriminatory policy of thwarting the development of rental, affordable multifamily housing within the City;
- (f) That the Court order Defendant to adopt zoning and subdivision ordinances, policies and practices to remedy exclusionary practices through affirmative action to encourage the development of multi-family and other affordable housing within the jurisdiction;
- (g) That the Court enjoin Defendant from promoting or perpetuating its policy of prohibiting affordable housing;
- (h) That the Court order the City of Dunwoody to utilize independent inspectors, who are qualified but not employed by or in any way beholden to the City, to inspect Plaintiffs' properties in the future.
- (i) That the Court order the City of Dunwoody to provide detailed notice of alleged code violations to Plaintiffs, and to give Plaintiffs a reasonable period of time within which to correct any code violations.
- (j) That the Court award Plaintiff its attorney's fees and expenses of litigation; and
- (k) That the Court order such other relief as is appropriate and just.

Respectfully submitted this 15th day of July, 2013.

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Apartment Partners, LP; and Cortland
Partners, LLC*

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

NORTHCHASE APARTMENT PARTNERS,)
LLC; LACOTA APARTMENT PARTNERS,)
LP; AND CORTLAND PARTNERS, LLC)

Plaintiffs,)

v.)

THE CITY OF DUNWOODY, GEORGIA,)
and STEVE DUSH in his official capacity as)
Director of Community Development for the)
City of Dunwoody)

Defendants.)

CIVIL ACTION
FILE NO:

VERIFICATION

Personally appeared before me, the undersigned officer duly authorized by law to administer oaths, Plaintiffs, who after being sworn, depose and state that to the best of their information and belief, the facts as set forth in the foregoing

**COMPLAINT FOR DECLARATORY RELIEF, INJUNCTIVE RELIEF,
DAMAGES AND ATTORNEY'S FEES** are true and correct.

Dated this 15 day of July, 2013.

**NORTHCHASE APARTMENT PARTNERS, LLC;
LACOTA APARTMENT PARTNERS, LP; AND
CORTLAND PARTNERS, LLC**


By: STEVEN DEFRANUS

Its: CEO


Notary Public

My Commission Expires: 06/20/2016 (SEAL)

