

**UNITED STATES DISTRICT COURT
DISTRICT OF MAINE**

UNDERCLIFF COTTAGE, LLC,)	
THE PHELAN 2006 FAMILT TRUST,)	
CHARLES & JULIE CAWLEY,)	
PARKER S. LAITE, SR., and)	
FRIENDS OF CAMDEN, MAINE, LLC,)	
)	
Plaintiffs)	
)	
v.)	Civil No. :14-cv-
)	
F.H.R.E., LLC and THE MCLEAN)	
HOSPITAL CORPORATION,)	
)	
Defendants)	

COMPLAINT

Plaintiffs Undercliff Cottage, LLC, The Phelan 2006 Family Trust, Charles & Julie Cawley, Parker S. Laite, Sr. and Friends of Camden, Maine, LLC, by their attorneys, Dana F. Strout, P.A. and Robinson Brog Leinwand Greene Genovese & Gluck P.C., for their complaint against defendants F.H.R.E., LLC and The McLean Hospital Corporation, allege as follows:

INTRODUCTION

1. Defendant F.H.R.E., LLC, commonly referred to as Fox Hill Real Estate (“Fox Hill”), purchased the real property located at 235 Bay View Street in Camden. Maine (“Bay View Property”) and, together with defendant The McLean Hospital Corporation (“McLean”), proposed to utilize the Bay View Property for a fourteen bed facility that would provide what was reported to be thirty (30) day periods of in-patient treatment at a cost of \$60,000 per month in an alcohol and drug treatment clinic. That proposal was rejected by the Camden Select Board as being inconsistent with Camden’s zoning code and state-mandated

Comprehensive Plan. When Fox Hill and McLean concluded that the proposed facility would fail to receive enough support in Camden to obtain the required zoning change, Fox Hill and McLean announced that the facility would be reduced from fourteen beds to eight beds. That change was made for the stated objective of avoiding the need to obtain a zoning change purportedly because the change would allow the proposed facility to service people suffering from a “handicap” under the terms of the Federal Fair Housing Act.

2. Plaintiffs include several individual owners of properties adjacent to the Bay View Property, and a limited liability company, Friends of Camden, Maine, LLC, which acts as agent for other individuals, all of whom own residential real property in Camden, Maine and/or vote in Camden, Maine. Plaintiffs bring the instant action to obtain a declaratory judgment as to whether the terms of the Federal Fair Housing Act, as referenced in 30-A *M.R.S.A.* 4357-A, support creation of the proposed facility without any zoning change. Upon the entry of a judgment declaring that the Federal Fair Housing Act does not permit the proposed Bay View property development, plaintiffs seek injunctive relief barring such development.

PARTIES

3. Plaintiff Undercliff Cottage, LLC is a limited liability company that is the fee simple owner of the real property located at 221 Bay View Street in Camden, Maine, the same street as the Bay View Property that is the subject of the instant action.

4. Plaintiff The Phelan 2006 Family Trust is a trust that is the fee simple owner of the real property located at 174 Bay View Street in Camden, Maine, the same street as the Bay View Property that is the subject of the instant action.

5. Plaintiffs Charles & Julie Cawley are the fee simple owners of the real property located at 270, 274 & 315 Bay View Street in Camden, Maine, the same street as the Bay View Property that is the subject of the instant action.

6. Plaintiff Parker S. Laite, Sr. is the fee simple owner of the real property located at 10 Highland Avenue in Camden Maine, and is an officer of Plaintiff Friends of Camden, Maine, LLC.

7. Plaintiff Friends of Camden, Maine, LLC is a limited liability company organized and existing pursuant to the laws of the State of Maine, with its principal place of business c/o Dana Strout, Esq., 270 West Street, Rockport, Maine, and is composed of members who own residential real property in Camden, Maine and/or vote in Camden, Maine.

8. Defendant Fox Hill is, upon information and belief, a limited liability corporation organized and existing pursuant to the laws of the State of Maine, with its principal place of business c/o Paul Gibbons, Esq., 9 Washington Street, Camden, Maine.

9. Defendant McLean is, upon information and belief, a corporation organized and existing pursuant to the laws of the State of Massachusetts with its principal place of business located at 115 Mill Street, Belmont, Massachusetts. Upon information and belief, the officers and/or directors of McLean are David S. Barlow, Phillip Levendusky (“Levendusky”), Scott L. Ruach, Jeanne E. Blake, John F. Brennan, Jr., Thomas P. Glynn, Richard Kelleher, Stacey Lucchino, Peter Markell, Robert W. Pierce, Jr., Jennifer G. Porter, Auguste E. Rimpel, Jr., W. Lloyd Snyder, III, Carol A. Vallone and Gary L. Gottlieb (these officers and directors are collectively referred to as the “McLean Defendants”).

JURISDICTION AND VENUE

10. Subject matter jurisdiction is proper in this Court pursuant to 28 U.S.C. § 1331, as it arises under the laws of the United States, 42 U.S.C. §3601, et seq., and seeks a declaratory judgment pursuant to 28 U.S.C. § 2201.

11. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) & (c), because defendant Fox Hill resides in this District, a substantial part of the events or omissions giving rise to this action occurred in this District, and a substantial part of property that is the subject of this action is situated in this District.

FACTUAL ALLEGATIONS

12. Defendant Fox Hill was formed by a group of approximately twenty-two (22) investors and in May 2013 Fox Hill purchased the Bay View Property, a thirteen (13) acre residential property in a residential zone in Camden, Maine.

13. Upon information and belief, McLean and/or one or more than one of the McLean Defendants are investors in Fox Hill.

14. In July 2013, Fox Hill and McLean applied to the Camden Planning Board for an amendment to the applicable Zoning Ordinance which would add language necessary to permit a special exception to the Coastal Residential Zone for a “Private Residential Treatment Facility” to be operated on the Bay View Property for up to fourteen (14) alcohol and drug abuse patients.

15. Levendusky, upon information and belief an officer and/or director of McLean, stated in the application to the Camden Planning Board that the McLean Defendants have approved of a contract between Fox Hill and McLean whereby Mclean would lease the Bay

View Property from Fox Hill and operate the facility, although no such contract has ever been publicly disseminated.

16. Fox Hill publicly reported that the proposed facility would be “very exclusive” and only cater to people that could afford to personally pay \$60,000 per month for services, and that insurance – public or private – would not be accepted.

17. On November 20, 2013, Hendry Thompson Rodman, Jr., upon information and belief acting on behalf of Fox Hill, stated publicly at a Planning Board meeting that Fox Hill was targeting individuals from limited “socioeconomic background” to be its patients and described them as being “very influential people.”

18. On July 25, 2013, Levendusky stated publicly at a Planning Board meeting that the cost of care would dictate the socioeconomic status of the patients at Fox Hill.

19. On August 29, 2013, Levendusky stated publicly at a Planning Board meeting that Fox Hill would not accept patients who were court-ordered to attend rehabilitation, and that only persons who were members of “intact families”, were “well-educated” and would “have means” would be patients.

20. Fox Hill and Mclean have repeatedly stated that very few, if any of the patients to be served at Fox Hill would be citizens of Maine.

21. Fox Hill and McLean have claimed that the Bay View Property facility would have approximately twenty-five (25) to thirty (30) employees, operating throughout several shifts on a daily basis.

22. Fox Hill and McLean have stated that the medical staff for Fox Hill shall include one or more psychiatrists, clinicians, therapists, nurses and counselors.

23. Fox Hill and Mclean have repeatedly stated that meals would not be prepared or cooked at the Bay View property, but would instead be catered off-site, delivered to the Bay View Property and served by staff.

24. Levendusky has stated publicly that the patients are not intended to interact with the Town of Camden at all during their stay at the Bay View Property, as such interaction would interfere with the goal of maintaining the privacy of the patients.

25. Levendusky has stated publicly that psychotropic medications would be prescribed and distributed to the patients by the staff at the Bay View Property.

26. Hospitals in Camden, Maine are permitted to be located within the Highway Business District and the Traditional Business District, but are not permitted in the Coastal Residential District in which the Bay View Property is located.

27. Community Living Uses in Camden, Maine are allowed to be located in the Village Extension District, the Traditional Village District, the Highway Business District, the Traditional Business District and the Neighborhood Service District, but not the Coastal Residential District in which the Bay View Property is located.

28. After several months of Camden Planning Board meetings and discussions, the Camden Planning Board elected to pass the application without endorsement to the Select Board to determine whether the issue should be placed on Camden's June warrant.

29. On February 4, 2014, after holding a hearing on the issue, the Select Board voted against placing the proposal on Camden's June warrant.

30. Four (4) of the five (5) Select Board members voiced strong opposition to Fox Hill's proposed use of the Bay View Property.

31. Fox Hill responded by withdrawing its' proposed zoning amendment and asserting that a reduction in the number of beds in the facility from fourteen (14) to eight (8) would negate any need for a zoning amendment.

32. Fox Hill issued a press release on February 26, 2014, which asserted that the reduction in the number of beds would enable Fox Hill to meet the definition of "Community Living Facility" and that: "With this reduced capacity the facility fulfills the requirements for a permitted, residential use for zoning purposes."

33. Fox Hill's press release expressly stated that the decision "to no longer pursue a new special exception in the Coastal Residential Zone" was "to eliminate" the "zoning change issues and threat of lawsuits".

First Cause of Action

REQUEST FOR DECLARATORY JUDGMENT

34. Plaintiffs repeat and reallege the allegations set forth in paragraphs 1 through 33 above.

35. The Federal Fair Housing Act defines "Handicap" as follows:

"(h) 'Handicap' means, with respect to a person-

- (1) a physical or mental impairment which substantially limits one or more of such person's major life activities,
- (2) a record of having such an impairment, or
- (3) being regarded as having such an impairment,

but such term does not include current, illegal use of or addiction to a controlled substance (as defined in section 802 of Title 21)."

42 U.S.C. § 3602(h).

36. Maine Revised Statutes Annotated defines "Disability" as follows:

"(B) 'Disability' has the same meaning as the term 'handicap' in the federal Fair Housing Act, 42 United States Code, Section 3602."

30-A *M.R.S.A.* § 4357-A(1)(B).

37. Maine Revised Statutes Annotated defines “Community living arrangement” as follows:

“A. ‘Community living arrangement’ means a housing facility for 8 or fewer persons with disabilities that is approved, authorized, certified or licensed by the State. A community living arrangement may include a group home, foster home or intermediate care facility.”

30-A *M.R.S.A.* § 4357-A(1)(A).

38. The provisions of the Federal Fair Housing Act and the Maine Revised Statutes Annotated were instituted to prevent discrimination against under-privileged persons utilizing small group living arrangements to rejoin society.

39. The provisions of the Federal Fair Housing Act and the Maine Revised Statutes Annotated were not instituted to provide extremely wealthy persons with a one month resort in a private residential area to recover from over-drinking.

40. The improper usage of the Bay View Property would adversely affect the properties owned by the plaintiffs by, *inter alia*, causing substantial additional traffic and noise on a residential street, posing a serious safety issue due to the narrowness of Bay View Street and its sharp turns, and negatively impact the market value of the neighboring homes by inserting a commercial facility into a residential neighborhood.

41. A ripe case and controversy presently exists as to:

(A) whether the proposed Bay View Property facility will admit persons suffering from a “handicap” as defined in 42 U.S.C. § 3602(h) and thereby be suffering a “disability” under 30-A *M.R.S.A.* 4357-A §1(B) which entitles them to a “Community living arrangement” under 30-A *M.R.S.A.* § 1(A); and

(B) whether the proposed Bay View Property facility, with projected stays of only thirty (30) days, at a personal cost to the patient of \$60,000 per month, constitutes a “Community living arrangement” under 30-A *M.R.S.A.* § 1(A) as defined in conjunction with 42 U.S.C. § 3602(h).

42. A declaratory judgment should be entered finding that the proposed Bay View Property facility does not constitute a “Community living arrangement” for persons suffering a “handicap” and “disability” under the governing laws.

Second Cause of Action

INJUNCTIVE RELIEF

43. Plaintiffs repeat and reallege the allegations set forth in paragraphs 1 through 33 and 35 through 42 above.

44. By reason of the foregoing, upon entry of a judgment declaring that the Federal Fair Housing Act does not permit the proposed Bay View Property development, an injunction should be entered prohibiting Fox Hill and McLean from proceeding with that development.

WHEREFORE, Plaintiffs demand judgment:

- a. declaring that the proposed Bay View Property facility does not constitute a “Community living arrangement” for persons suffering a “handicap” and “disability” under the governing laws;
- b. enjoining Fox Hill and McLean from proceeding with the proposed Bay View Property facility; and

c. granting such other and further relief as this Court deems just and proper.

Dated: Rockport, Maine
March 26, 2014

Robinson Brog Leinwand Greene Genovese &
Gluck P.C.

/s/ David C. Burger

By: _____

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