

[PUBLISH]

In the
United States Court of Appeals
For the Eleventh Circuit

No. 20-13444

SAILBOAT BEND SOBER LIVING, LLC,
a Florida limited liability company,
CARL BERGSTROM,
an individual,
IRYNA BERGSTROM,
an individual,

Plaintiffs-Appellants,

versus

THE CITY OF FORT LAUDERDALE, FLORIDA,
a political subdivision of the State of Florida,

Defendant-Appellee.

Appeal from the United States District Court
for the Southern District of Florida
D.C. Docket No. 0:19-cv-60007-RKA

Before JORDAN, JILL PRYOR, and MARCUS, Circuit Judges.

MARCUS, Circuit Judge:

Sailboat Bend Sober Living, LLC (“Sailboat Bend”), a for-profit sober living home in Fort Lauderdale, Florida, houses up to eleven people recovering from addiction who support each other in their sobriety. But it has had trouble complying with the City of Fort Lauderdale (“the City”)’s Building and Fire Codes (collectively, “Codes”) and the City’s recently enacted Zoning Ordinance.

Sailboat Bend, along with its part-owners Carl and Iryna Bergstrom, have brought several claims under the Fair Housing Act and Amendments (“FHA”) and the Americans with Disabilities Act (“ADA”) against the City in the Southern District of Florida. Essentially, they allege that the City’s code enforcement decisions were motivated by hostility to the disabled, their accommodation request was wrongfully denied, and the Zoning Ordinance was facially discriminatory against people with disabilities.

We conclude, as the district court did earlier, that the Zoning Ordinance does not discriminate against the Plaintiffs. Rather, it works to their decided benefit. Moreover, no evidence has been

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adduced to show that the City enforced its Codes in a manner that discriminates on the basis of a disability. Finally, the Plaintiffs' requested accommodation on account of disability was not necessary.

Accordingly, we affirm the entry of final summary judgment for the City on all counts.

I.

These are the essential facts taken in a light most favorable to Sailboat Bend. Plaintiff Sailboat Bend is owned, in a fifty-fifty partnership with another family, by Plaintiffs Carl Bergstrom and his wife Iryna Bergstrom. In March 2008, the Bergstroms purchased the property at 1110 SW 1st Street, Fort Lauderdale, Florida ("Property") for \$144,000. They operate Sailboat Bend as a business that offers housing to people addicted to alcohol and other drugs. Since the business's inception in 2008, the owners have charged \$150 per tenant per week. The tenants generally pay their rent in cash. The typical stay lasts no more than a few weeks or months.

At the time of the purchase, the Property was in disarray and the Bergstroms spent three months renovating it. Throughout the renovations, the Property's basic structure remained the same: a main building comprised of nine bedrooms, two bathrooms, one kitchen, and one living room; and a detached structure comprised of a single bedroom and bathroom. The Bergstroms claim "full

occupancy” of the Property is eleven tenants, although occupancy rates have fluctuated markedly over the years.

The relationship between the Plaintiffs and the City turned sour in April 2012, when the City investigated a citizen’s complaint about the conditions at the Property and, subsequently, commenced two Building Code enforcement actions. The one relevant to this appeal was for “unpermitted work” on the Property, including the installation of a central air conditioning (“AC”) unit. Because there was no after-the-fact permit that would render the AC unit compliant with the Building Code, Bergstrom ultimately decided to remove the unit because a new system would have been, in his words, “outrageously expensive.”

During this time frame, a Fire Inspector examined the Property and identified several significant code violations that required correction. Most importantly, the report pointed out that the Property’s “use” was “under research” to determine which fire code applied, and explained that “[a]fter the use has been defined there will be other fire and life safety requirements that will have to be met[.]” Doc. 54 ¶ 28. There are different “uses” that determine the applicable fire code. The uses are defined in the National Fire Protection Association’s Life Safety Code (“Fire Code”), and are incorporated into Florida law. *See* FLA. STAT. § 633.202(2). These are the uses:

- 1) One- and Two-Family Dwellings are defined as “buildings containing not more than two dwelling units in which each dwelling unit is occupied by

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members of a single family with not more than three outsiders, if any, accommodated in rented rooms.” Fire Code § 24.1.1.2 (2012).

2) Lodging or Rooming Houses are defined as “buildings that provide sleeping accommodations for 16 or fewer persons on either a transient or permanent basis, with or without meals, but without separate cooking facilities for individual occupants.” *Id.* § 26.1.1.1.

3) Residential Board and Care Occupancies are defined as “occupanc[ies] used for lodging and boarding of four or more residents, not related by blood or marriage to the owners or operators, for the purpose of providing personal care services.” *Id.* § 3.3.190.12.

In short, one- and two-family dwellings house three or fewer unrelated persons; the other uses house more than three. Notably, one- and two-family dwellings do not require an automatic sprinkler system, while the other two uses do. *See* FLA. STAT. § 633.208(8)(a).

Days after the initial inspection of the Property, the Fire Inspector conducted a follow-up inspection, concluded that the Property should be classified as a “Lodging or Rooming House,” and issued a new report observing the absence of “an approved automatic sprinkler system.” Doc. 54 ¶ 30 (quotation marks omitted). The new report said that the City would reinspect the Property within thirty days. Although the parties agree that reinspection never occurred, they disagree about the reason.

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