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# NYC Can't Avoid Disability Discrimination Claim, Tenant Says

By **David Holtzman**

Law360 (November 29, 2023, 6:18 PM EST) -- A hearing-impaired renter who sued the owners of his Lower Manhattan apartment building for failing to provide services to meet his and other tenants' needs disputed the city of New York's claim that it no longer owns the property.

Elewood Torres, who **filed a class action** against the city and other entities in 2022, asked a New York federal court in a **memorandum** Tuesday to deny the city's motion to dismiss the case. While it's true the city sold the property to a pair of nonprofit entities more than 20 years ago, he said ownership reverted to the city due to several breaches of the sale agreements.

Torres claimed in the 2022 complaint that while the building at 174-184 Forsyth St. was funded to provide accessible housing to individuals with hearing disabilities, the owners and management company have not installed critical safety improvements.

The building needs video cameras in the elevators to enable tenants to communicate if they are stuck, smoke alarms equipped with strobe lights or "bed shakers" to wake up tenants in case of a fire, and security staff fluent in American Sign Language, according to the complaint. The property is also lacking in other areas relevant to people with disabilities, Torres said; for example, there are no automated doors or buttons to push to open them.

The city turned 174 Forsyth over to a limited-equity housing cooperative, NYSD Housing Development Fund Co. Inc., in 1996 for \$1, according to Tuesday's memorandum. Four years later, the city sold 184 Forsyth to another nonprofit entity, NYSD Forsyth Housing Development Fund Co. Inc., for the same dollar amount.

The city said in its August motion to dismiss that the Americans With Disabilities Act, which Torres claims was violated in his case, "does not apply to private residential complexes, even if the premises are used for publicly subsidized housing." If the ADA doesn't apply, Torres should address remaining discrimination claims under New York state and city law in a state court, according to the motion.

But the property is actually publicly owned, Torres said in the memorandum. Both of the nonprofit entities that acquired the building were owned at the time by the New York Society for the Deaf. A provision in the sale agreements called for the building to revert to the city if the nonprofits' ownership changed, or if it changed before certain renovations were completed.

When the society for the deaf merged in 2006 with Federation Employment & Guidance Services, that should have caused the building to revert back to the city's ownership, the memorandum said. The federation filed for bankruptcy in 2015 and ceased operations, according to its website.

As for the renovations, the nonprofits never completed the work at 174 Forsyth and only finished improvements at 184 Forsyth in 2019, according to the memorandum. The sale agreements required the work to be done within three years of the date of closing in 2000, Torres said.

In answering Torres' complaint in March, the nonprofit owners said the physical improvements the plaintiff called for — the adapted smoke alarms, elevator cameras and specialized security officials — "are not reasonable modifications ... because [they] would injure the financial operations and/or viability of the housing defendants."

The nonprofits also claimed Torres did not give them any opportunity to address the problems he cited before filing his lawsuit.

Torres asked the court on Nov. 10 to issue a preliminary injunction ordering the defendants, including the city, the nonprofits and the management company, to install the improvements needed for hearing-impaired tenants. Judge Dale E. Ho ordered the defendants on Nov. 14 to provide documentation of the improvements.

"To this day, defendants have not provided bed rockers to wake tenants in case of a fire," said Richard Hermer-Fried, co-counsel for Torres. "It's utterly egregious that nothing's been done to protect these individuals." He added that tenants also still lack the ability to communicate if elevators malfunction.

Counsel for the defendants could not be immediately reached for comment, except for the city, which declined to comment.

Elewood Torres and the putative class are represented by Richard Hermer-Fried, Cheryl Leah Shammass and Mordy Yankovich of Lieb at Law PC.

TUC Management Co. Inc. is represented by Adam E. Collyer and Stephen Rickershauser of Lewis Brisbois Bisgaard & Smith LLP.

The Housing Development Fund Corp. and NYSD Forsyth Housing Development Fund Co. Inc. are represented by Gillian Barkins, Nicholas M. Summo and Kevin G. Donoghue of Garfunkel Wild PC.

New York City Housing Preservation and Development is represented by Andrea Brustein of the New York City Law Department.

The case is Elewood Torres et al. v MMS Group LLC et al., case number 1:22-cv-06142, in the U.S. District Court for the Southern District of New York.

--Editing by John C. Davenport.