

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION**

BERNITA L. VANCE and)
WINSTON F. VANCE)
321 West Harrison Street)
Maumee, Ohio 43537)

Plaintiffs,)

v.)

Case No.: _____

CITY OF MAUMEE, OHIO)
110 East Dudley Street)
Maumee, Ohio 43537)

Defendant.)

_____)

COMPLAINT AND JURY DEMAND

PRELIMINARY STATEMENT

1. Plaintiffs Bernita L. Vance and Winston F. Vance bring this action for declaratory, injunctive, and monetary relief against Defendant City of Maumee, Ohio (“Maumee” or “the City”) for illegally discriminating against them in violation of Titles II and V of the Americans with Disabilities Act (“ADA”), 42 U.S.C. §§ 12131 *et seq.*, and the Fair Housing Act (“FHA”), 42 U.S.C. §§ 3601 *et seq.* Maumee, along with its employees and agents, have prevented the Vances from accessing their home from a public right-of-way, access they need in order for Mrs. Vance to access her home without experiencing considerable physical pain, discomfort, severe emotional distress, humiliation, and embarrassment. Maumee has also retaliated against the Vances for exercising their civil rights under the ADA and FHA.

2. Mrs. Vance suffers from serious heart conditions, including Coronary Artery Disease and Acute Thrombosis. She has also been diagnosed with Osteopenia, and she suffers from severe and chronic back pain. These conditions significantly affect her breathing and mobility. She experiences pronounced shortness of breath and severe chest pains, particularly when walking or climbing stairs or hills. Mrs. Vance also has had two heart attacks and a pulmonary embolism. Moreover, Mrs. Vance has had two knee replacement surgeries, one for each knee. Because of these surgeries, her left knee does not bend properly, and she often experiences pain when climbing steps. These conditions substantially limit her major life activities of standing, walking, and breathing, and she is therefore a qualified individual with a disability as that term is defined by the ADA, 42 U.S.C. § 12102, and the FHA, 42 U.S.C. § 3602(h).¹

3. The Vances' home sits atop a hill. The only way to reach the front entry from the street in front of their house is by climbing a flight of eighteen steep, concrete stairs. There is also a driveway that runs along the side of the Vances' home, but entering the home via the driveway requires navigating a different flight of eighteen steps that lead to the back entrance of the house. As a result of her disabilities, Mrs. Vance experiences substantial difficulties using either method of entering the home. Because of the long distances and steep inclines, Mrs. Vance experiences considerable physical pain, including chest and back pain and extreme shortness of breath, when she attempts to climb the steps. She has also developed tears in the cartilage of her shoulders from carrying things up and down the steps.

¹ The FHA uses the term "handicap" instead of the term "disability." Both terms have the same legal meaning. *See Bradgon v. Abbott*, 524 U.S. 624, 631 (1998). This Complaint uses the term "disability" and its variations, which are more generally accepted.

4. In contrast, the rear entry to the Vances' home is on the same grade and level as the public alley that runs behind their home. Using the public alley to access the back entrance makes her home accessible to her, and makes it considerably easier for Mrs. Vance to enter her home with far less pain and discomfort. By accessing her home via the public alley abutting the rear of her property, Mrs. Vance is spared the pain, inconvenience, and embarrassment of navigating the hill and steep stairs leading up to the back door from the driveway, or the equally steep stairs to her front door; Mr. Vance is spared the emotional distress and anxiety arising from his concern for his wife's safety and health, as well as the inconvenience of helping her enter their home.

5. Despite repeated requests, the Defendant City of Maumee has denied the Vances access to the rear of their property from the public alley. In fact, after the City was aware of Mrs. Vance's disability and after the Vances requested access to their property via the alley as an accommodation to Mrs. Vance's disabilities, the City not only effectively refused to make any accommodation, it erected a physical barrier to intentionally block the section of the alley abutting their property. In addition, an official from the City of Maumee threatened the Vances with arrest and prosecution if they made any further attempt to use the public right of way as a means of obtaining access to their property. The City also has prevented the Vances from using the public alley to make improvements to their property that would allow them to drive from the alley directly up to their home.

6. Moreover, the City has, for considerable lengths of time, entirely ignored the Vances' requests to open or improve the alley to accommodate Mrs. Vance's

disability. When the City has communicated with the Vances, it has treated their requests in a cursory fashion.

7. In addition to its intentional discrimination against the Vances because of Mrs. Vance's disability, the City also has refused to make reasonable accommodations for the Vances by waiving any rules, policies, or practices limiting or preventing them from accessing their home via the rear alley. Finally, the City, through its agents and employees, has retaliated against the Vances for attempting to exercise their civil rights under both the ADA and the FHA.

8. As a consequence of its discriminatory and intentional actions, the Vances have suffered and continue to suffer physical harm, severe emotional distress, humiliation, and embarrassment.

JURISDICTION AND VENUE

9. 28 U.S.C. §§ 1331 and 1343 confer jurisdiction on this court. This action is authorized pursuant to Titles II and V of the ADA, 42 U.S.C. §§ 12131 *et seq.*, and the FHA, 42 U.S.C. §§ 3601 *et seq.*

10. Venue is proper in the Northern District of Ohio under 28 U.S.C. § 1391(b), as all claims arise in the District, the plaintiffs reside in the District, and the City of Maumee is located in the District.

PARTIES

11. Bernita L. Vance lives at 321 West Harrison Street, Maumee, Ohio 43537, and is a resident of Maumee, Ohio. Mrs. Vance is a qualified individual with a disability as that term is defined by the ADA, 42 U.S.C. § 12102, and the FHA, 42 U.S.C. §

3602(h), as she has a severe and painful physical impairment that substantially limits her major life activities, including her ability to stand, walk, and breath.

12. Winston F. Vance is the husband of Mrs. Vance. He also lives at 321 West Harrison Street, Maumee, Ohio 43537, and is a resident of Maumee, Ohio. Mr. Vance is a person “associated with” a person with a disability within the meaning of 42 U.S.C. § 3604(f).

13. Defendant City of Maumee is a home rule municipal corporation pursuant to Article XVIII of the Ohio State Constitution. The City has a population of about 15,000 and is located in Lucas County, Ohio. The City is a “public entity” as that term is used in the ADA, 42 U.S.C. § 12131.

STATEMENT OF FACTS

14. Bernita Vance has been diagnosed with Coronary Artery Disease and Acute Thrombosis. Acute Thrombosis occurs when a blood clot forms inside a blood vessel, obstructing blood flow throughout the circulatory system. Coronary Artery Disease occurs when the arteries that supply blood to the heart muscle become hardened and narrowed due to the buildup of cholesterol and plaque on their inner walls, obstructing blood flow through the arteries. Mrs. Vance has suffered two heart attacks and a pulmonary embolism, in large part because of her coronary diseases. Finally, Mrs. Vance has been diagnosed with Osteopenia, and she suffers from severe and chronic back pain.

15. These conditions cause Mrs. Vance to experience weakness, excessive shortness of breath, and severe chest and back pain, especially when ambulating and/or

climbing stairs. Because of her conditions, Mrs. Vance suffers considerable difficulties when undertaking even minimal physical exertion.

16. In addition, Mrs. Vance has undergone two knee replacement surgeries, one on each knee. These knee surgeries contribute to Mrs. Vance's difficulty walking and climbing stairs. Her left knee does not bend properly, and it causes her pain.

17. Mrs. Vance lives with her husband, Winston Vance, in a single family house located at 321 West Harrison Street in the City of Maumee, Ohio.

18. The home sits atop hill. In order to enter her home through the front entrance, Mrs. Vance needs to climb eighteen steep, concrete steps. There is also a driveway that runs along the side of the Vances' home, but the driveway ends at a lower elevation than the front or rear entrances to the house. Entering the home via the driveway requires navigating a different flight of eighteen steps, which lead to the back entrance of the house. Due to Mrs. Vance's coronary diseases, back problems, and knee replacements, climbing these steps is extremely difficult. It takes Mrs. Vance a long time to enter and exit her home via these entrances, and she has developed tears in the cartilage of her shoulders from carrying things up and down these steps. Because Mr. Vance is concerned for his wife's safety and health, he experiences considerable emotional suffering and anxiety when she is forced to climb the steep stairs. Moreover, assisting her with the steps is time-consuming and inconvenient.

19. In contrast, the rear entrance of the Vances' home leads out onto their backyard. The backyard is on the same grade and elevation level as the rear entry door, which can be accessed by three or four steps or a relatively short ramp.

20. A public alley controlled by the City of Maumee runs behind the Vances' property, abutting their backyard. The alley stretches from Cass Street to Kingsbury Street. Landowners whose properties lie along the eastern section of the alley are able to drive down the alley and access their properties. The western section of the alley—including the portion of the alley behind the Vances' property—is unpaved, but is nevertheless capable of handling light vehicular traffic, such as passenger vehicles. Despite it being a public right-of-way, Maumee does not maintain the western section of the alley, has closed access to the western portion of the alley altogether, and recently has erected a physical barrier with the intention of blocking the section behind the Vances' home so that they cannot access their property from the alley. A visual representation depicting the alley and neighboring properties is attached as Exhibit #1 to this Complaint.

21. To avoid subjecting Mrs. Vance to the unnecessary pain and inconvenience that she experiences every time she enters her home through the front entrance or the driveway, the Vances desire to access the western portion of the public alley and to install a rear-entry driveway that would allow Mrs. Vance direct access to her back door from the alley. The installation of a rear driveway would allow the Vances to drive directly up to the rear of the house, and Mrs. Vance could easily enter their home.

22. Since 2007, the Vances repeatedly have requested permission from Maumee to access the portion of the alley—a public right of way—abutting their property so that they can use the alley to access their property and so that they can install a driveway connecting their home to the alley. The City has consistently ignored these requests or treated them in a cursory fashion, thereby effectively denying their requests. The Vances have made repeated requests for an accommodation to any policies or

procedures that prevent access to their property from the public alley, but the City has refused to accommodate Mrs. Vance's disability.

23. On October 25, 2010, Mrs. Vance sent a letter to Linda Wilker, Acting Finance Director/Municipal Clerk of the City of Maumee. In that letter, Mrs. Vance indicated that she suffered from serious health problems. She noted her "legal disability rights to use the open public alley to access [her] home." She also noted her difficulty entering her home and stated that putting a cement parking pad connecting the rear entrance to the alley was essential to her ability to access her home, as it would eliminate all but one of the steps she would have to navigate.

24. Although Mrs. Vance requested a written response to the October 25, 2010 letter, the City provided no response.

25. On November 15, 2010, Shelley Papenfuse, an employee of the Ability Center of Greater Toledo, spoke with Ms. Wilker on the phone, restating the Vances' situation and reaffirming their need for an accommodation.

26. On November 16, 2010, after being assured by a City official that they did not need a permit to install a driveway in the rear of their property, the Vances' son, Winston G. Vance, began laying a driveway slab on the Vances' property leading to the alley.

27. A few hours after the Vances began laying the driveway slab, the Maumee City Police arrived at the Vances' residence and ordered the Vances to stop the installation. Joe Camp, Commissioner of Public Service of Maumee, and Robert Zink, Chief of Police of Maumee, were both present and represented the City during the events of November 16, 2010.

28. The police and city officials then erected a barrier and “Road Closed” sign to block the Vances’ access to the portion of the alley directly behind their property.

29. The barrier put up on November 16, 2010 is still in place today. Although the eastern portion of the alley remains open, and any landowner whose property abuts that portion may use the alley to access his/her property, the physical barrier prevents the Vances from accessing the portion of the alley that runs behind their property.

30. To this day, the Vances have never received any formal, written denial of their requests for access to the alley.

31. The City’s conduct, the Vances’ interactions with the City and its agents and employees, including the police, and the City’s failure to address the Vances’ requests have embarrassed and humiliated the Vances. Further, because the Vances’ predicament has become widely known, they have been stigmatized by members of their community.

32. Providing access to and maintenance of the public alley, as well as any other permitting or zoning requirements that may be necessary to accommodate the Vances’ request, constitute services, programs, or activities of a public entity, pursuant to Title II of the ADA, 42 U.S.C. § 12132, as well as services or facilities in connection with a dwelling pursuant to the FHA, 42 U.S.C. § 3604(f)(2).

33. Granting the Vances access to the back of their property by permitting them to use the public alley and allowing them to install a driveway to connect that alley to their rear door, or otherwise providing a reasonable accommodation to the Vances, would not impose any undue financial or administrative burdens on the City, nor would it require a fundamental alteration in the nature of any service, program, or activity. The

City would incur no expense at all by removing the physical barrier it has placed in the alley, and would incur no undue financial or administrative burden by permitting the public—including the Vances—to use the alley for light vehicular access. Indeed, as part of their request for an accommodation, Plaintiffs and others offered to absorb the cost of any improvements to the western portion of the alley that the City might require to be made. The City never responded to the offer.

INJURIES SUFFERED BY PLAINTIFFS

34. The City, directly and through its representatives and agents, discriminated against Mr. and Mrs. Vance on the basis of Mrs. Vance's disability. The City continues to engage in this discriminatory behavior so as to constitute a continuing violation against the Vances.

35. In doing the acts or in omitting to act as alleged in this Complaint, the representatives and agents of Maumee were acting in the course and scope of their actual or apparent authority granted by the City, or the alleged acts or omissions of each representative or agent were subsequently ratified and adopted by the City.

36. The City's conduct was willful, intentional, and taken in reckless disregard of the Vances' rights, physical and emotional health, personal safety, and dignity.

37. The Vances have suffered and continue to suffer damage as a result of the City's actions, as the City has made it nearly impossible for the Vances to construct a safe and reasonably accessible entrance to their own home. Mrs. Vance is currently forced to navigate eighteen steep steps in order to enter her home. Traversing these steps is extremely difficult for her and causes her physical pain and suffering, including chest pains, severe shortness of breath, and damage to her shoulders. Mr. Vance suffers

considerable anxiety and emotional distress arising from his concern for Mrs. Vance's health and safety, and assisting her up the stairs is inconvenient and time-consuming. The Vances would not have to endure these hardships if they were provided access to their property from the public alley controlled by the City of Maumee at the rear of their home.

38. As a proximate result of the City's conduct, the Vances have suffered, are continuing to suffer, and will in the future suffer irreparable loss and injury, including, but not limited to, emotional and physical distress, humiliation, and embarrassment. The Vances are therefore entitled to the relief requested herein.

39. As a result of the City's intentional actions, the Vances suffered physical pain, humiliation, embarrassment, and emotional distress. Moreover, they continue to suffer irreparable harm as a result of the City's violations of their rights under the ADA.

40. The Vances have no adequate remedies at law. They are now suffering and will continue to suffer irreparable injury from the City's acts and from its discrimination against them based on Mrs. Vance's disability unless relief is provided by this Court. Accordingly, they are entitled to injunctive relief.

FIRST CAUSE OF ACTION

Titles II and V of the Americans with Disabilities Act

41. The Vances reallege and incorporate by reference paragraphs 1-40, as if fully set forth herein.

42. The City injured the Vances in violation of Titles II and V of the ADA by committing the following discriminatory practices:

- a. Subjecting to discrimination or excluding a qualified individual with a disability, by reason of such disability, from participation in or denying that person the benefits of services, programs, or activities of a public entity in violation of 42 U.S.C. § 12132;
- b. Refusing to make reasonable accommodations or modifications in rules, policies, or practices, in violation of 42 U.S.C. §§ 12131, 12132;
- c. Retaliating or otherwise discriminating against an individual because such person has opposed any act or practice made unlawful by the ADA or because such individual assisted or participated in any manner in an investigation, proceeding, or hearing under the ADA, in violation of 42 U.S.C. § 12203(a);
- d. Coercing, intimidating, threatening, or interfering with an individual's exercise or enjoyment of, or on account of his or her having exercised or enjoyed, or on account of his or her having aided or encouraged any other individual in the exercise or enjoyment of, any right granted or protected by the ADA, in violation of 42 U.S.C. § 12203(b).

SECOND CAUSE OF ACTION

Federal Fair Housing Act

43. The Vances reallege and incorporate by reference paragraphs 1-42, as if fully set forth herein.

44. The City injured the Vances in violation of the FHA by committing the following discriminatory practices:

- a. Discriminating or otherwise making housing unavailable because of a disability, in violation of 42 U.S.C. § 3604(f)(1);
- b. Discriminating in the terms, conditions, and privileges of the sale or rental of a dwelling, or in the provision of services or facilities in connection with such dwelling, because of disability, in violation of 42 U.S.C. § 3604(f)(2);
- c. Refusing to permit reasonable modifications of existing premises when such modification may be necessary to afford a person with a disability full enjoyment of the premises, in violation of 42 U.S.C. § 3604(f)(3)(A);
- d. Refusing to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford a person with a disability an equal opportunity to use and enjoy a dwelling, in violation of 42 U.S.C. § 3604(f)(3)(B); and
- e. Coercing, intimidating, threatening, or interfering with any person in the exercise or enjoyment of, or on account of his having exercised or enjoyed, or on account of his having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by the FHA, in violation of 42 U.S.C. § 3617.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray that the Court grant them the following relief:

a. The Court should issue an order granting Plaintiffs' request for declaratory relief, finding that the Defendant's actions violate the ADA and the FHA.

b. The Court should enter a permanent injunction and all other affirmative relief necessary, enjoining Defendant and its affiliates, subsidiaries, agents, employees, and representatives from continuing the illegal conduct described above, and further directing Defendant to take all affirmative relief necessary to remedy the effects of its past illegal conduct. Such affirmative relief should include, but not necessarily be limited to, the elimination of any and all policies prohibiting Plaintiffs from accessing the alley behind their home and prohibiting Plaintiffs from constructing a driveway from their home to that alley.

c. The Court should enter a judgment for compensatory damages to the Plaintiffs, in an amount to be proved at trial before a jury, that would fully compensate them for their physical and emotional distress, humiliation and embarrassment, and other damages they have suffered as a result of Defendant's violation of the ADA and the FHA, as alleged in this Complaint.

d. The Court should award Plaintiffs their reasonable attorneys' fees and costs.

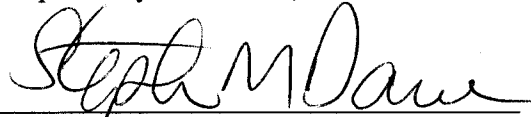
e. The Court should grant such other relief as it deems just and equitable.

JURY DEMAND

Plaintiffs demand a trial by jury on all issues so triable.

Dated this 13 day of October, 2011

Respectfully Submitted,

A handwritten signature in black ink that reads "Stephen M. Dane". The signature is written in a cursive style with a horizontal line underneath the name.

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