

UNITED STATES DISTRICT COURT FOR THE  
SOUTHERN DISTRICT OF FLORIDA  
Miami Division

Case Number: 06-20129-CIV-MARTINEZ-BANDSTRA

HOUSING OPPORTUNITIES PROJECT )  
FOR EXCELLENCE, INC., et al., )

Plaintiffs )

vs. )

KEY COLONY NO. 4 CONDOMINIUM )  
ASSOC., INC. a/k/a BOTANICA, et al., )

Defendants )

**CONSENT DECREE AND SETTLEMENT AGREEMENT**

This Consent Decree and Settlement Agreement (“Decree”) is entered into between the Plaintiffs-Housing Opportunities Project for Excellence, Inc. (“HOPE”), Antonio Bosque and Teresita Gyori individually and on behalf of their minor children Carolyn Bosque, Athena Bosque and Anthony Bosque (“the Gyori family”), Pedro (Peter) Ignacio and Blanca Isern, individually and on behalf of their minor children, Pedro (Peter) Ignacio Isern, Jr., Lauren Isern and Nicholas Isern (“the Isern family”), and Hector and Blanca Ceballos, individually and on behalf of their minor children, Andres Marrero, Brandon Ceballos, and Hector Antonio Ceballos (“the Ceballos family”)-and the Defendants-Key Colony No. 4 Condominium Association, Inc., also known as Botanica, Maria Bueno, Morton Pollack, Charles Nash, Arthur Hanlon, Michael McCoy, and Carol Pasch. The Plaintiffs and Defendants are collectively referred to as the “Parties” throughout this Decree.

The Plaintiffs filed this action alleging violations of the Federal Fair Housing Act and the

Florida Fair Housing Act. The Defendants counterclaimed, seeking a declaratory judgment declaring whether or not certain condominium documents are in violation of the Federal Fair Housing Act and the Florida Fair Housing Act. In the interest of resolving this matter and as a result of having engaged in comprehensive settlement negotiations (with Judge Adalberto Jordan acting as a mediator with the Parties' consent), the Parties have agreed that this action should be finally resolved by entry of this Decree, without any admission of liability by the Defendants. This Decree fully and finally resolves any and all issues and claims arising out of the Complaint and the Counterclaims. The Complaint and Counterclaims shall be dismissed with prejudice once this Decree is executed.

**A. Occupancy Restrictions and Related Matters**

1. The Declaration of Condominium for Botanica shall be amended as follows:

(a) Two persons shall be permitted per "legal bedroom." The legality of a bedroom shall not, however, be defined by reference to applicable zoning or building codes. Instead, if there is disagreement between a unit owner/occupant and Botanica, a structural engineer chosen jointly by the Parties, or if the Parties cannot agree, by Judge Adalberto Jordan, will determine whether or not a structure constitutes a bedroom. Fees for the structural engineer shall be divided equally between the unit owner/occupant and Botanica.

(b) New bedrooms may be added to all units as long as such additions comply with applicable zoning and building codes.

(c) Notwithstanding paragraph (a) above, all current occupants of the Botanica Condominium are grandfathered in so that all individuals living in units at Botanica on the date this Decree is entered will not have to comply with the occupancy restrictions set forth in

paragraph (a) above. Furthermore, all current occupants are also grandfathered in to the extent that any new minor children are added to a family unit by way of birth or adoption. In other words, new minor children of current occupants will not be subject to the restrictions set forth in paragraph (a) above.

(d) Notwithstanding paragraphs (b) or (c) above, as to the named Plaintiffs only, the Defendants agree that their units constitute three-bedroom units, and this stipulation will run with the land. This means that any future purchasers of the named Plaintiffs' units shall also be considered to own three-bedroom units.

(e) There shall be no grandfathering in for subsequent sales or transfers of units except to the extent the provisions in paragraph (d) apply.

2. None of the Parties shall criticize, disparage, or harass each other with respect to the issues involved (and resolved) in this lawsuit. A violation of this provision shall be punishable by contempt of court.

3. The named Plaintiffs shall not be subject to any assessments relating to fees, costs, etc. related to this lawsuit.

### **B. Monetary Compensation and Dismissals**

1. The Defendants shall pay to the Gyori family the total sum of \$75,000.
2. The Defendants shall pay to the Isern family the total sum of \$50,000.
3. The Defendants shall pay to the Ceballos family the total sum of \$200,000.
4. The Defendants shall pay to HOPE the total sum of \$25,000.
5. Within 7 days of the execution of this Decree, the Plaintiffs shall dismiss with prejudice all claims against the individual Defendants. If notices of dismissal are not timely

filed, the individual Defendants can seek to declare this Decree null and void, or seek to enforce it.

6. All payments to the Plaintiffs shall be made within 21 days of the date the voluntary dismissals of the individual Defendants are filed, and shall be sent by check to the trust account of the Plaintiffs' counsel, The Law Offices of Matthew W. Dietz, P.L. If payments are not timely made, the Plaintiffs can seek to have this Decree declared null and void, or seek to enforce it.

#### **C. Attorney's Fees and Costs**

1. The Defendants shall pay to the Plaintiffs' attorney, Matthew Wilson Dietz, Esq. and his firm, the Law Offices of Matthew W. Dietz, P.L., the sum of \$400,000 in attorney's fees and costs.

2. This payment shall also be made within 21 days of the voluntary dismissals of the individual Defendants are filed, and shall be sent by check to the trust account of the Law Offices of Matthew W. Dietz, P.L.

#### **D. Additional Provisions**

1. Neither this Decree, nor any of its terms or provisions, nor any of the negotiations or proceedings connected with it, shall be construed as an admission or concession by the Defendants of the truth of any of the allegations in this action, and this Decree may not be used to support any finding of such liability or wrongdoing.

2. This Decree contains the entire agreement among the Parties hereto and supersedes any prior agreements or understandings between them. All terms of this Decree are contractual and not mere recitals. The terms are and shall be binding upon each of the Parties

hereto, their agents, attorneys, employees, successors, and assigns.

3. The Parties acknowledge that they were represented by and consulted with counsel in connection with this Decree.

4. This Decree may be amended or modified only by a written instrument signed by counsel for all Parties.

5. This Decree shall be construed under Florida law.

6. This Court retains jurisdiction to hear any disputes arising from this Decree.

7. The remainder of this page is blank.

Plaintiffs:

[Signature] 8/9/07  
Dated  
Representative of Housing  
Opportunities Project for  
Excellence, Inc.

[Signature] 8/9/07  
Dated  
Antonio Bosque

[Signature] 8/9/07  
Dated  
Teresita Gyori

[Signature] 8/9/07  
Dated  
Antonio Bosque on behalf of  
his minor children Carolyn  
Bosque, Athena Bosque and  
Anthony Bosque

[Signature] 8/9/07  
Dated  
Pedro (Peter) Ignacio Isern

[Signature] 8/9/07  
Dated  
Blanca Isern

[Signature] 8/9/07  
Dated  
Pedro (Peter) Ignacio Isern  
on behalf of his minor children  
Pedro (Peter) Isern, Jr., Lauren  
Isern and Nicholas Isern

[Signature] 8/9/07  
Dated  
Hector Ceballos

[Signature] 8/9/07  
Dated  
Blanca Ceballos

[Signature] 8/9/07  
Dated  
Hector Ceballos on behalf  
of his minor children Andres  
Marrero, Brandon Ceballos  
and Hector Antonio Ceballos

Defendants:

[Signature] 8/9/07  
Dated  
Representative of Key Colony  
No. 4 Condominium Association,  
also known as, Botanica

[Signature] 8/9/07  
Dated  
Maria Bueno

[Signature] 8/9/07  
Dated  
Morton Pollack

[Signature] 8/9/07  
Dated  
Charles Nash

[Signature] 8/9/07  
Dated  
Arthur Hanlon

[Signature] 8/9/2007  
Dated  
Michael McCoy

[Signature] 8/9/07  
Dated  
Carol Pasch

[Signature] 8/9/07  
Dated  
Erin M. Finn, Vice President  
Continental Casualty Company

WITNESSED: [Signature] 8-9-07  
ADALBERTO JORDAN (Mediator)  
UNITED STATES DISTRICT JUDGE

ENTERED: [Signature]  
JOSE E. MARTINEZ  
UNITED STATES DISTRICT JUDGE