SUPERIOR COURT OF CALIFORNIA, COUNTY OF VENTURA

JUDGE Comm. Mark S. Borrell DATE: Feb. 14, 2007

CLERK S. Jacoby BAILIFF _____ CASE NO. CIV 245572

ESSEX MANAGEMENT CORPORATION.,

Plaintiff,

vs.

DAVID McALISTER,

Defendant.

NATURE OF PROCEEDINGS: RULING ON SUBMITTED MATTER

This is an unlawful detainer action brought by Essex Management Corporation (Essex), against a tenant, David McAlister (McAlister), seeking possession and related damages. Essex contends that it may terminate the tenancy because McAlister and/or his family members have engaged in conduct disturbing and/or threatening to the other tenants in the complex. McAlister contends that he and his children are disabled, and therefore he is entitled to a reasonable accommodation which would allow him to continue in possession. This matter came on for trial on February 1 and 8, 2007.

Facts

McAlister and his minor son reside at 741 Paseo Camarillo, Unit No. 89, Camarillo, Ventura County, California. This is an apartment in a complex commonly known as "Camarillo Oaks." The complex has 564 units and is managed by Essex.

McAlister is in possession pursuant to a written lease agreement created in September 2002, and renewed in July 2006. Essex is paid $1,759 monthly for the rental to McAlister. McAlister and his children are beneficiaries of a federal Section 8 program administered by the Housing Authority of the County of Ventura. A contribution of $263 is paid monthly pursuant to this program. In addition, McAlister and his children are beneficiaries of the City of Camarillo' s Below Market Rate housing program. Essex is paid approximately $900 monthly under this program on behalf of McAlister. McAlister pays the remaining sum, which is approximately $631 per month.

Among other things, the parties' lease provides, "Resident agrees not to harass, annoy, vex or endanger any other person within the Property, or to create any nuisance, or disturb the

peace and quiet of any other person . . .. Residents are responsible for the acts of their guests, visitors, or invitees." (Ex. 1.)

McAlister is disabled. He developed complications from back surgery in 2001. As a result, a *vena cava* filter was implanted in his body to minimize the risk of stroke. His condition prevents him from working. The Social Security Administration has determined that he is permanently physically disabled. He could not afford to make the rent payments due under the lease without public housing assistance.

McAlister has two minor children who have lived in the unit with him. His son is presently 15 years of age. The son has a mental disability. He receives treatment under a diagnosis of "mood disorder, autism, and possibly mental retardation." On at least one occasion, the son threatened to throw himself off of a second story balcony in the complex. He and McAlister receive a number of services in furtherance of the treatment of the son's disability. Some of these services are provided at the son's current school.

McAlister has a 17 year old daughter. She resided with McAlister and his son from 2001 to 2004, and again from 2005 through October 5, 2006. She has a mental disability described as bipolar disorder. Symptoms of her condition include suicidal ideation, disruptive outbursts, and combativeness toward family members. She has made repeated suicide attempts. She has been held for evaluation and/or hospitalized pursuant to Welfare & Institutions Code section 5150 in excess of a dozen times. The daughter has demonstrated a propensity to cut herself and to display her self-inflicted wounds to other children. She presently resides in a "high-level" residential treatment facility in Colorado.

At least by the summer of 2006, life in the McAlister apartment was, at times, tumultuous. Yelling, screaming and banging were frequently heard by neighbors coming from within McAlister's unit, sometimes after 10:30 p.m. McAlister was witnessed angrily pursuing his son in common areas of the complex. Each of the children exhibited conduct to the neighbors and their children demonstrating an intention to hurt themselves. Some of the neighbors were fearful of McAlister and his children. The residents of two units expressed an intention to leave the complex, unless the McAlisters were removed.

These disturbances, and the corresponding complaints from other residents in the complex, prompted an exchange of correspondence between Jennifer Arriola, the complex manager, and McAlister in July, 2006. McAlister apologized and offered assurance that "the situation is being dealt with in a proactive way." He stated that his children were in therapy and that the family was receiving anger management counseling.

However, the disturbances continued. On or about September 25, 2006, the daughter was suspended from school. A disturbance then ensued at McAlister's apartment, which prompted complaints from other residents. Essex then served notices to terminate McAlister's tenancy. (Exs. 2, 3.) The notice to perform or quit (Ex. 3) stated,

> On 9-25-06, we received complaints from two residents that there was once again screaming, yelling and what sounded like people being thrown against walls. In addition, neighbors continue to state that your minor daughter is showing cuts that she claims she gives herself to neighbors. This behavior has caused the other residents to feel unsafe as well as disturbed.

In response to the notices, McAlister wrote Essex on September 27, 2006. (Ex. 6.) He noted that he had several agencies helping him and that *his health* had taken a turn for the worse. He asked management to reconsider its intention to terminate the lease. He expressed optimism that a "compromise" could be reached.

On October 5, 2006, McAlister's daughter was voluntarily relocated to a residential treatment facility. (She has not lived in the apartment complex since.)

On October 15, 2006, McAlister asked in writing that Essex "withdraw all actions against [his] family." (Ex. 7.) In support of this request he attached an admissions agreement reflecting the placement of the daughter into a group home. (Ex. 8.) The letter directed the reader to the attachment "to explain what has been done."

Jennifer Arriola responded on behalf of Essex to McAlister's letter. (Ex. 9.) She indicated that management intended to "stand[] firm" on its intention to end the tenancy. She said management would pursue eviction proceedings in the absence of McAlister's cooperation.

On November 14, 2006, Shamika Harris, a case analyst with the Housing Rights Center, wrote Ms. Arriola. (Ex. 10.) She described McAlister as a person with a disability. She asked that Essex withdraw the notices to terminate as a reasonable accommodation of *McAlister's disability*. Stephen Duringer, counsel for Essex, responded to Ms. Harris' letter November 21, 2006. (Ex. 12.) He noted the history of disturbances attributed to the McAlisters. He declined the requested accommodation.

Further correspondence was exchanged in December, 2006, by the parties' respective attorneys. On December 12, 2006, McAlister 's attorney, Liam Garland, wrote Mr. Duringer. Mr. Garland. (Ex. 13.) Counsel noted that, "Mr. McAlister has cured any alleged threat posed by his continued tenancy by moving his daughter to a group home." Mr. Garland stated that if it became necessary for McAlister to retain him, "there will be no resolution of the case absent [litigation]."

Mr. Garland sent another letter on December 15, 2006. (Ex. 14.) This letter specifically requested accommodation for "the disability of Mr. McAlister and those of his children." But the letter more specifically referenced "the denial of [McAlister] and [the son' s] reasonable accommodation request." (There was no direct request for an accommodation of the daughter's disability.) The letter discussed the assistance McAlister's son was receiving. Accompanying Mr. Garland's letter was a handwritten note from Deborah Thurber, Ph.D. (Ex. 19.) This letter

described the son's emotional disability, the special services he received through his school, and how he would be adversely affected by a move.

On December 28, 2006, Essex filed and served the instant action for unlawful detainer.

On January 22, 2007, Mr. Duringer indicated that Essex would not rescind the notices to terminate, but offered to allow McAlister additional time to find alternative housing. (Ex. 17.)

Discussion

The parties agree that Essex has established its *prima facie* case. The evidence established that the McAlister family had a lengthy history of disruptions and disturbing conduct. In the absence of a meritorious affirmative defense, this pattern of conduct would be an adequate ground for Essex to terminate the tenancy.[1] Indeed, it may give rise to an obligation to do so to preserve the right of quiet enjoyment of the other tenants. (See *Andrews v. Mobile Aire Estates* (2005) 125 Cal. App. 4th 578.)

McAlister, however, contends that under the facts of this case termination of the tenancy amounts to discrimination under state and federal law. A tenant may raise discrimination as an affirmative defense to an unlawful detainer action. (*Abstract Investment Co. v. Hutchinson* (1962) 204 Cal.App.2d 242.) In particularly, a landlord's failure to provide a qualified tenant with a reasonable accommodation in violation of federal fair housing laws may preclude eviction. (See *Douglas v. Kriegsfeld Corp.* (2005) 884 A.2d 1109; *Roe v. Housing Authority of City of Boulder* (1995) 909 F.Supp. 814.) The resolution of this unlawful detainer case turns on whether Essex lawfully refused to provide the accommodation requested by McAlister. For the reasons set forth below, the court determines that it did not.

Fair Housing Amendments Act

In 1988, Congress amended the Fair Housing Act. (42 U.S.C. sec. 3601, *et seq.*).[2] Among other changes, the amendment, known as the Fair Housing Amendments Act of 1988 (FHAA), proscribes housing discrimination based on a "handicap." (Pub.L. No. 100-430, § 6,

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[1] Because McAlister's tenancy is the subject of a Section 8 program, it cannot be terminated without "good cause." (See 24 CFR § 982.310; also see *California Practice Guide, Landlord Tenant*, Rutter Group, § 12:270, and authorities cited therein.) "Good cause" may include a "[s]erious violation . . . or repeated violation of the terms and conditions of the lease" and "criminal activity that threatens the health, safety, or right to peaceful enjoyment of their residences by persons residing in the immediate vicinity of the premises." (24 CFR § 982.310, subd. (a), (c).)

[2] In addition to relying upon the FHAA, McAlister alleges a violation of California's Fair Employment and Housing Act (Govt. Code sec. 12000, *et seq.*). The court's analysis discusses only the federal law because the two laws are sufficiently similar for purposes of this case such that there is no reason to discuss them separately. Even though only the federal law is discussed, the court's determination is based on both state and federal law.

102 Stat. 1619 (1988).) Specifically, the FHAA declares that it is unlawful "to discriminate in the . . . rental, or to otherwise make unavailable or deny, a dwelling to any . . . renter because of a handicap of . . . that . . . renter . . . [or] . . . any person associated with that . . . renter." (42 U.S.C. sec 3604(f)(1).) The FHAA defines "discrimination" to include "a refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling. (42 U.S.C. sec 3604(f)(3).) "Thus, the FHAA 'imposes an affirmative duty upon landlords reasonably to accommodate the needs of handicapped persons,' not only with regard to the physical accommodations, but also with regard to the administrative policies governing rentals." (*Giebeler v. M & B Associates* (C.A.9, 2003) 343 F.3d 1143, 1146-1147; citations omitted.) An accommodation which would not be reasonable in most cases, may nevertheless be reasonable under the unique circumstances of a given case. (*Giebeler v. M & B Associates, supra,* 343 F.3d, at p. 1156.) "Whether a requested accommodation is reasonable is highly fact-specific, and determined on a case-by-case basis by balancing the cost to the defendant and the benefit to the plaintiff." (*Dadian v. Village of Wilmette* (C.A. 7, 2001) 269 F.3d 831, 838.)

The FHAA defines "handicap" as "a physical or mental impairment which substantially limits one or more of such person's major life activities." (42 U.S.C. § 3602(h)(1).) The phrase "physical or mental impairment" includes, such diseases and conditions as autism, mental retardation, and emotional illness. (See Joint Statement of the Department of Housing and Urban Development and the Department of Justice, *Reasonable Accommodations Under the Fair Housing Act* (May 17, 2004) (Joint Statement).)[3]

A landlord, however, is not required to make an accommodation which is unreasonable. (*Groner v. Golden Gate Gardens Apartments* (C.A.6, 2001) 250 F.3d 1039.) An accommodation is unreasonable where it would require a fundamental alteration in the nature of the landlord's business or impose on the landlord undue financial or administrative burdens. (*Giebeler v. M & B Associates, supra,* 343 F.3d, at p. 1157.) In addition, the FHAA does not require that "a dwelling be made available to an individual whose tenancy would constitute a direct threat to the health or safety of other individuals or whose tenancy would result in substantial physical damage to the property of others." (42 U.S.C. sec 3604(f)(9).)

The FHAA does not allow for exclusion of individuals based upon fear, speculation, or stereotype about a particular disability or persons with disabilities in general. (Joint Statement; also see *Dadian v. Village of Wilmette, supra,* 269 F.3d 831, 840.) "A determination that an individual poses a direct threat must rely on an individualized assessment that is based on reliable objective evidence (e.g., current conduct, or a recent history of overt acts)." (*Ibid.*) "The assessment must consider: (1) the nature, duration, and severity of the risk of injury; (2) the probability that injury will actually occur; and (3) whether there are any reasonable accommodations that will eliminate the direct threat." (Joint Statement.)

Burdens of Proof

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[3] The Joint Statement is entitled to substantial deference. (*Douglas v. Kriegsfeld Corp., supra,* 884 A.2d, at p. 1121, fn. 19.)

To make out a claim of discrimination based on a landlord's failure to reasonably accommodate, a tenant must demonstrate that (1) he suffers from a handicap as defined by the FHAA (or is associated with a person who suffers from a handicap); (2) the landlord knew or reasonably should have known of the tenant's handicap; (3) accommodation of the handicap "may be necessary" to afford tenant an equal opportunity to use and enjoy the dwelling; and (4) the landlord refused to make such accommodation. (See *Douglas v. Kriegsfeld Corp., supra,* 884 A.2d, at p. 1129; *Giebeler v. M & B Associates, supra,* 343 F.3d, at p. 1147.) "To prove that an accommodation is necessary, '[p]laintiffs must show that, but for the accommodation, they likely will be denied an equal opportunity to enjoy the housing of their choice.' [Citation omitted.]" (*Giebeler v. M & B Associates, supra,* p. 1155.)

Once the tenant produces evidence showing the requested accommodation is "reasonable" and may be necessary for enjoyment of the premises equal to that experienced by tenants who are not disabled, the burden of production shifts to the landlord to introduce evidence in rebuttal. (See *Douglas v. Kriegsfeld Corp., supra,* 884 A.2d, at p. 1129; *Giebeler v. M & B Associates, supra,* 343 F.3d, at p. 1156.) The ultimate burden of persuasion is on the tenant who seeks accommodation to show that it is reasonable and may be necessary. (*Douglas v. Kriegsfeld Corp., supra,* 884 A.2d, at p. 1129.) The landlord has the burden to prove that an accommodation is not required because the tenant is a direct threat to others. (*Dadian v. Village of Wilmette* (C.A.7, 2001) 269 F.3d 831, 840-841.) To prevail on a "direct threat" theory, the landlord must demonstrate that no reasonable accommodation will eliminate or acceptably minimize any risk the tenant may pose to other residents. (*Roe v. Sugar River Mills Associates* (D.N.H.,1993) 820 F.Supp. 636; *Roe v. Housing Authority of City of Boulder, supra,* 909 F.Supp., at p. 822-823.)

McAlister is a Qualified Tenant.

The evidence establishes that McAlister is a person qualifying for protection under the FHAA, either as a person with a disability or as someone associated with a person with a disability. McAlister is disabled within the meaning of the FHAA.[4] In addition, McAlister's two children are each "disabled" within the meaning of the FHAA. Each has substantial emotional disabilities.

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[4] It is not necessary to dwell on McAlister's contention that the eviction may be abated as a result of his own disability. The accommodation which he seeks – rescission of the termination notice – is not a "reasonable" accommodation of *his* disability. First, the reason for the termination of the tenancy is the disruptive conduct flowing from the children's emotional disabilities, which is wholly unrelated to McAlister's physical disability. Second, the accommodation offered by Essex – additional time to move – was a reasonable accommodation to account for difficulties McAlister would experience with the process of moving to the extent those difficulties would be attributable to his disability. Therefore, the defense to the unlawful detainer action based on McAlister's disability is without merit.

Landlord Knew or Should Have Known of the Disability.

The evidence fails to clearly establish how much Essex knew about the respective disabilities of McAlister's son and daughter prior to the service of the termination notices. But it is clear that Essex was aware of the son's disability by the time it filed its complaint in this action. That information was conveyed in the letter of McAlister's attorney dated December 15, 2006, and its enclosure. (Exs. 14, 19.)

McAlister need only establish that Essex knew of the disabilities at the time the accommodation was refused, not at the time the eviction proceeding was commenced. (See *Douglas v. Kriegsfeld Corp.,supra,* 884 A.2d 1109.)[5] Here, Essex implicitly rejected the requested accommodation of the son's disability on December 28, 2006, when it instituted this proceeding, and it expressly refused the requested accommodation of the son's disability on January 22, 2007 (see Ex. 17). McAlister has successfully proven the "knowledge" element of the defense.

An Accommodation May Be Necessary

The evidence establishes that the requested accommodation "may be necessary" for McAlister and his son to have an equal opportunity to use and enjoy the dwelling. "Whether the requested accommodation is necessary requires a 'showing that the desired accommodation will affirmatively enhance a disabled plaintiff's quality of life by ameliorating the effects of the disability.' [Citation omitted.]" (*Dadian v. Village of Wilmette, supra,* 269 F.3d, at p. 838.) As the court noted in *Giebeler*, "the causation requirement poses little hurdle in a case such as this one, where a landlord's policy entirely prevents a tenant from living in a dwelling." (343 F.3d, at p. 1155.)

The Requested Accommodation is Reasonable

McAlister expressly requested an accommodation which he has characterized as rescission of the notice to terminate the tenancy. While this may be an accurate description of the effect of the requested accommodation, what McAlister actually seeks is a waiver of the past breaches of the lease agreement to the extent those breaches were causally related to his children's disabilities. The effect of such a waiver would be, of course, to negate the notice of termination predicated on those breaches and allow him to continue in possession.

The request for accommodation -- at least to the extent that it was predicated on the children's respective disabilities – was initially made in mid-December 2006, well after the

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[5] In *Douglas* the landlord served the tenant with a three-day notice to cure or quit on August 23, 2001. The tenant failed to leave the premises and the landlord filed an unlawful detainer action on November 30, 2001. The tenant's attorney in February, 2002, wrote the landlord's attorney and advised on the tenant's disability. The matter proceeded to trial in June, 2002. The court relied upon the attorney's letters, sent while the unlawful detainer action was pending, to show notice to the landlord.

notice of termination was served. The timing of the request, however, does not foreclose consideration of McAlister's defense. The FHAA does not require that a request be made at a particular time. (See Joint Statement.) Also see *Douglas v. Kriegsfeld Corp.,supra,* 884 A.2d 1109 [request for accommodation made during unlawful detainer proceeding timely]. Essex has not presented any authority to the contrary. This interpretation of the FHAA is also consistent with California lawful detainer law, which recognizes that a tenant may assert a defense of waiver based on conduct occurring after the expiration of a notice to terminate. (See *Highland Plastics, Inc. v. Enders* (1980) 109 Cal.App.3d Supp. 1, 11 [landlord waives breach based on non-payment of rent by accepting rent for period beyond termination date provided in a thirty day notice to quit].)

McAlister has met his burden to produce evidence. The evidence established that it was both "possible" for Essex to waive the past breaches and that, on the face of things, that it would be reasonable to do so. (See *Giebeler v. M & B Associates, supra,* 343 F.3d, at pp. 1156-1157.) The evidence established that McAlister's response to the termination notice – moving his daughter out of the complex – effectively abated the disturbing conduct.

It is self-evident that the daughter would no longer be a disturbance to other residents while living outside the complex (indeed, outside the state).[6] In addition, the evidence established that with the daughter outside of the family home, the son's conduct could be expected to, and did, improve significantly. Dr. Thurber noted that the son has done much better since the daughter left. In addition, there have been no serious episodes of excessive noise attributable to the McAlisters since the daughter's departure.

In rebuttal, Essex attempted to show that its financial interests would be unduly harmed if McAlister and his son were allowed to remain. The testimony established that the residents from two neighboring units might end their leases if McAlister were permitted to stay. The court finds this evidence does not show the requested accommodation is unreasonable and is insufficient to establish the accommodation would create an undue hardship on Essex.

First, the court's determination cannot be based on actions which are predicated on subjective impressions or stereotypical notions about a disability or the propensities of persons with disabilities. As noted above, removing the daughter from the complex is a reasonable approach to the situation. Whether it effectively remediates all of the existing concerns or not remains to be seen, but at this stage, the evidence fails to substantiate the fears of the other residents. While these residents are free to leave the complex if they wish, the court cannot be swayed in its determination by the contention that they will, because to do so would be to condone the very type of subjective notions that the FHAA strives to overcome.

Second, it is not enough that Essex shows *some* adverse financial impact from the requested accommodation. "Accommodations need not be free of all possible cost to the landlord." (*Giebeler v. M & B Associates, supra,* 343 F.3d, at p. 1152.) Congress anticipated

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[6] McAlister does not anticipate that she will live in the complex again, although he hopes that someday she may be able to live close by.

that landlords would have to shoulder certain costs involved, so long as they are not unduly burdensome. (*Ibid.*) Here, the evidence showed that out of 564 units, two may become available if McAlister stays. There was no evidence that if these two units should become vacant that they could not be re-let to new tenants in the ordinary course of business. Were Essex to prevail in this action, at least one unit – McAlister's – would become vacant. Therefore, at most, the financial impact of the requested accommodation would be the costs associated with re-letting one unit. No evidence was presented from which the amount of this expense could be determined, but it is reasonable to assume that it is nominal when compared to Essex's overall cost of operation. For these reasons, the evidence does not support an inference that the financial burden to Essex of the requested accommodation would be "undue."

Further, in balancing the benefit of the requested accommodation to the McAlisters with the burden to Essex, the court finds that the former greatly outweighs the later. The obvious advantage to the McAlisters is that they get to keep their apartment and to continue to take advantage of the public assistance which the present tenancy offers. Beyond that, however, is the substantial advantage to the son which flows from continuation of his existing treatment regiment and home/school environments. The evidence established that it would be a set back in the son's treatment to move residences, change schools, and possibly switch care givers.

Essex Failed to Show the McAlisters Would Be a Direct Threat to Other Tenants.

Nothing in the FHAA requires a landlord to make a dwelling available "to an individual whose tenancy would constitute a direct threat to the health or safety of other individuals or whose tenancy would result in substantial physical damage to the property of others." (42 U.S.C. sec. 3604(f)(9).) Essex contends that McAlister and his son pose a "direct threat" to the other tenants in the complex.

To prevail on such a contention, a landlord must provide "reliable, objective evidence that a person with a disability poses a direct threat." (Joint Statement.) The determination whether a tenant poses a "direct threat" is made only after a reasonable accommodation is attempted (*Roe v. Sugar River Mills Associates, supra,* 820 F.Supp., at p. 639-40; *Roe v. Housing Authority of City of Boulder, supra,* 909 F.Supp., at p. 822), unless the landlord presents evidence demonstrating "that no 'reasonable accommodation' will eliminate or acceptably minimize any risk [the tenant] poses to other residents" (*Roe v. Housing Authority of City of Boulder, supra,* 909 F.Supp., at p. 822-823). Further, "in evaluating a recent history of overt acts, [it is appropriate to] take into account whether the individual has received intervening treatment or medication that has eliminated the direct threat (i.e., a significant risk of substantial harm)." (Joint Statement.)

Here, the evidence fails to establish that even at their worst the McAlister children were a danger to anyone other than themselves. No evidence was presented that the children attacked, or threatened to attack, any other resident. Although Dr. Thurber conceded that it was "possible" that the son might harm another person, she could not say it was probable. Further, she noted that the son had benefited from the specialized counseling he was receiving and from no longer being exposed to the adverse influence which his sister presented. Both Dr. Thurber and

McAlister credibly described the son's condition as having improved since October, 2006. As a result, the McAlister family has demonstrated an improved ability to adhere to the requirements of the lease. There was no evidence of a recent, serious breach of the peace. To the extent the McAlisters have engaged in excessive noise since October, 2006, the evidence is insufficient to sustain the conclusion that these incidents, standing alone, could constitute a material breach of the lease agreement.

For these reasons, the court finds that Essex has not met its burden to show that McAlister and/or his son are, at this time, a "direct threat" to the other residents or their right to peaceably enjoy their homes.

Concluding Comments

Nothing in this decision should be construed to minimize the right of each resident of Camarillo Oaks to co-exist in relative harmony. A neighbor's reasonable expectation that he or she will be safe and tranquil at home does "not have to be sacrificed on the altar of reasonable accommodation." (*Groner v. Golden Gate Gardens Apartments, supra,* 250 F.3d 1039, 1046.) Undeniably, until October 2006, the McAlisters were unable to function as "good neighbors" due chiefly to the disabilities of the children.

Essex and those witnesses from the complex called to testify have plainly reached the point where, in their eyes, they have "had enough." While their frustration is understandable, their resolve to address the situation by simply getting rid of the McAlisters is inconsistent with the goals of the FHAA. The concept of "reasonable accommodation" is centered on the assumption that the affected parties will work jointly, in good faith, to achieve workable solutions to the challenges presented by a given disability. That said, the effect of the court's ruling is not to grant the McAlisters *carte blanche* for future violations. The extent of this court's ruling is simply to forgive the McAlisters for breaches which have *occurred through the date of the notice to terminate.* It is now up to the McAlisters to demonstrate that they can co-exist peacefully with their neighbors, with reasonable accommodation if appropriate. The court expresses no opinion as to what accommodations, if any, may be warranted in the future.

Judgment is for the defendant, McAlister. Defendant is entitled to possession and attorneys' fees and cost pursuant to a memorandum of costs.

Counsel for defendant is directed to prepare the form of a judgment. The clerk is directed to give notice.

Dated FEB 15, 2007

Honorable Mark S. Borrell
Commissioner of the Superior Court

SUPERIOR COURT OF CALIFORNIA, COUNTY OF VENTURA

Case No. CIV 245572 Essex Management Corporation *v. David McAlister*

I am employed in the County of Ventura, State of California. I am over the age of 18 years and not a party to the above-entitled action. My business address is 800 S. Victoria Avenue, Ventura, CA 93009. On FEB 15 2007 I served the following document described as:

RULING ON SUBMITTED MATTER

by placing a true copy thereof for collection and mailing so as to cause it to be mailed on the above date, following standard court practices, in sealed envelopes addressed as follows:

R. Scott Andrews, Esq.
Duringer Law Group
160 So. Old Springs Rd. #135
Anaheim, CA 92808

Nisha N. Vyas, Eq.
520 S. Virgil Ave. #400
Los Angeles, CA 90020

I am "readily familiar" with the County's practice of collection and processing correspondence for mailing Under that practice it would be deposited with the U.S. postal service and/or interoffice mail on that same day with postage thereon fully prepaid at Ventura, California in the ordinary course of business.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Dated and executed at Ventura, California on FEB. 15 2007.

MICHAEL D. PLANET, Superior Court Executive Officer and Clerk

By: _____ Judicial Secretary

DECLARATION OF MAILING