

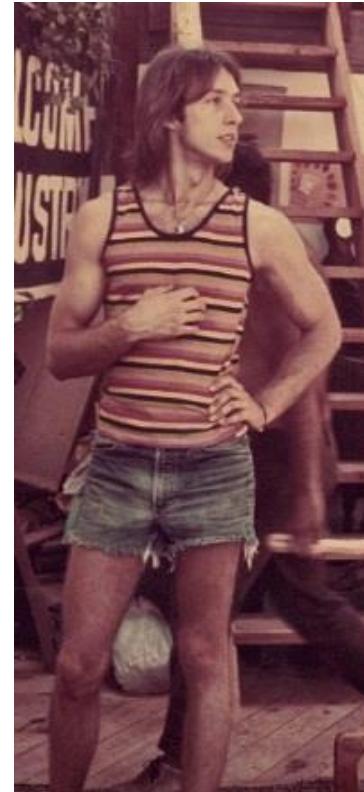
Pool Lifts and the Fair Housing Act

By: Matthew W. Dietz, Esq.

David Ferebee is a trailblazer for LGBT rights, but never did he imagine he was going to be fighting for his rights as a person with a degenerative disability within the LGBT community itself. In the 1990s, in conservative North Carolina, David was one of only three people who were comfortable having their picture in the Charlotte Observer in stories on Gay issues. When David and his partner, Bill Cooke, left Charlotte ten years later to move to gay-friendly, Wilton Manors, he was thrilled of his accomplishments to make queer folk proud and unafraid to stand up and be counted.

It was refreshing to Bill that they were moving to a neighborhood where he and David would not get the threatening phone calls and feel the fear of not being accepted. In Wilton Manors, David and Bill took advantage of everything Wilton Manors had to offer in the way of restaurants, clubs, a gay gym, and shopping. They felt right at home, welcomed, accepted, and included since there were gay couples and gay friendly people everywhere.

In 1972, David broke his neck and for years, he walked with a limp, but by 2004, David's mobility deteriorated, and by 2012, he was using a motorized wheelchair. The gym and regular exercise were all important in his life to maintain the strength and mobility that he needed for his everyday life activities. When David and Bill wanted to find an accessible condo in Wilton Manors, they were excited with the concept of purchasing a newer condominium, that was accessible with open floor plans, a mix of townhomes and flats, luxurious amenities which included a two-story club building with a full blown gym, movie theater and outside there was a huge heated swimming pool which would be perfect for David's workout routine and to swim on a regular basis. All of this was perfect for David's workout and swimming routines. Swimming had been an essential component of David's routine at all the homes he had lived in as he knew that it is one of the best therapies for people who deal with paralysis. He had



no concerns with accessibility because David knew that since 1991, all new construction for condominiums were required to be ready for persons with disabilities to move in with only the most basic of alterations, such as installing grab bars in bathrooms. Wilton Station was no exception.



It wasn't all paradise. When Bill and David later saw the property on a family tour, they were advised that the developers had

provided a pool lift for their palatial pool, and that it was in a storage locker. The Assistant manager advised them that they were going to place the lift by the pool, so David could get in and out of the pool with ease.

The day they closed on their townhouse, and went to the Meet and Greet orientation, they were told the association was glad that David was going to be able to use the lift, but there would be conditions.

First, he would need to purchase a new battery for the lift, and then whenever he wanted to use it, he would need to borrow it from the storage locker and return it after he used it. That was impossible for David because the pool lift weighed over 900 pounds. To make matters worse, he was presented a release that made David responsible for the operation and care of the pool lift and released the association from all liability.

A pool lift is like any other equipment a homeowner's association would typically have in their common areas. Usually a pool lift is permanently affixed to the pool deck and can be used by any person who would want to use it. David was not the only person with a disability at Wilton Station, and others also wanted the ability to use the lift. When David continued to complain, the condominium association told them that the association did not own the lift, and considered it abandoned property, and David could have the lift if he would release them from all claims.



All communications from him to the association were required to be through their attorney, he was not permitted to go into the association's office without approval from the association's attorney, and it was widely circulated in the condominium.

After a life of activism, David could not understand why he could not feel welcome, not as a gay man, but as a gay man with a disability. He wanted to feel comfortable in his home and his community, and began to assist others in his community to ensure that the amenities of the community were accessible to all. However, because he asserted his rights, David Ferebee was treated like a pariah at the community.

On September 15, 2016, David Ferebee filed a complaint of housing discrimination with the Broward County Human Rights Section and cross-filed with the U.S. Department of Housing and Urban Development. On June 29, 2018, the Broward County Human Rights Section made a determination of reasonable cause that Wilton Station, Castle Group, LLC, the association's management company, and Edward Sotolongo, the board president, discriminated against David Ferebee because they failed to maintain and permit him to use the pool lift without restriction, and by retaliating against him for the assertion of his protected rights under the Fair Housing Act and Broward County Code. Disability Independence Group is representing David Ferebee in Federal Court in a complaint filed in the Southern District of Florida.

It is more than unfortunate, in fact it is appalling, that in 2019 a gay disabled person is faced with the choice between either filing a totally avoidable lawsuit against an alleged "gay-friendly" association for damages or walking away and allow himself, his partner, and others to be forever victimized by his community.