IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
NEWNAN DIVISION

GEORGIA STATE CONFERENCE OF THE NAACP, et al., Plaintiffs, v. CITY OF LAGRANGE, GEORGIA, Defendant.	CIVIL ACTION FILE NO. 3:17-cv-067-TCB

O R D E R

This case comes before the Court on Defendant City of LaGrange, Georgia's motion to dismiss [16].

I. Background

In this action, Plaintiffs Georgia State Conference of the National Association for the Advancement of Colored People, Troup County Chapter of the National Association for the Advancement of Colored People, Project South, Charles Brewer, Calvin Moreland, April Walton, Pamela Williams, and John Does 1 through 3 challenge two policies regarding the provision of municipal utilities by Defendant City of

LaGrange, Georgia. Plaintiffs assert three claims: (1) violation of the Fair Housing Act, 42 U.S.C. § 3604(b); (2) tortious interference with utility services; and (3) unconscionability.

The City is the sole provider of various utilities (electricity, water, and gas) to its residents. Two of the City's policies are at issue: (1) the policy requiring a new utility customer to supply his or her Social Security number along with a state- or federal-issued photo identification (the "Immigrant Utilities Policy"), and (2) the policy requiring an individual to pay all debts he or she owes to the City to receive City utilities (the "Court Debt Policy").

Plaintiffs contend that the Immigrant Utilities Policy disproportionately harms Latinos because many immigrants (including some who are lawfully present) are ineligible to obtain the required documents and that this policy is not justified by any legitimate purpose (because the City could allow, e.g., Individual Taxpayer Identification Numbers to suffice as identification).

Plaintiffs further contend that the Court Debt Policy has a disproportionate and discriminatory effect on African Americans, is the

only policy of its kind by any municipality in the nation (so the City could pursue any interest in obtaining satisfaction of its debts in other, less discriminatory ways), and is not legitimately justified by the City.

Plaintiffs allege the following harm to the individuals: (1) Walton's utilities were disconnected due to court debt, forcing her to abandon her home until they were restored; (2) Brewer has faced threats of disconnection due to court debt; (3) Moreland fears disconnection and being forced to leave LaGrange; (4) Williams has lost thousands of dollars in rental income based on her tenants' utilities being disconnected due to court debt; (5) John Doe 1 relies on his landlord to maintain a utilities account because he does not have a Social Security number; (6) John Doe 2 has a utilities account in his landlord's name because he does not have a Social Security number and has not purchased a home because he would be unable to get utility services in his name; and (7) John Doe 3 owns a home but has his utility account in a friend's name because he does not have a Social Security number. The organizations contend that they suffer injury because their members are subject to these allegedly discriminatory and unlawful policies.

Plaintiffs' complaint contains one federal cause of action: violation of the Fair Housing Act, 42 U.S.C. § 3604(b). The complaint also contains two state claims: tortious interference with utility services and unconscionability. Plaintiffs seek (1) injunctive relief against the City, prohibiting it from enforcing the relevant policies; (2) a declaratory judgment that the City's conduct in enforcing the policies violates the Fair Housing Act and breaches the duty the City owes to Plaintiffs, and that any contract provision arising from or seeking to enforce the Court Debt Policy is substantively and procedurally unconscionable; (3) compensatory damages for Moreland, Brewer, Walton, Williams, and the Georgia NAACP; (4) attorneys' fees and costs pursuant to 42 U.S.C. §§ 1920 (sic) and 3613; and (5) prejudgment interest.

The City has moved to dismiss Plaintiffs' complaint, arguing the following: (1) courts in this circuit do not construe similar sections of the Fair Housing Act to reach post-acquisition conduct (i.e., conduct that occurs after a party has acquired a home), such as that alleged to be relevant here; (2) the Supreme Court, in endorsing recovery under the disparate-impact theory for claims under 42 U.S.C. § 3604(a), did not

extend such recovery to claims (such as Plaintiffs') under § 3604(b); and (3) even if Plaintiffs' theory of recovery is available, *Texas Department of Housing & Community Affairs v. Inclusive Communities Project, Inc.*, 135 S. Ct. 2507 (2015), demonstrates that the complaint fails to state a claim because the City's policies are reasonable, not artificial, arbitrary, or unnecessary, and Plaintiffs fail to plead the required "robust causality."

Because no Plaintiff with standing pleads discriminatory conduct that precedes or is contemporaneous with acquisition of housing, Plaintiffs fail to state a claim under the Fair Housing Act, and the Court need not address the City's remaining arguments.

II. Discussion

Under Federal Rule of Civil Procedure 12(b)(6), a complaint will be dismissed for failure to state a claim upon which relief can be granted if it does not plead "enough facts to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007); *see also Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). In considering a defendant's motion to dismiss under Rule 12(b)(6), the

allegations in the complaint must be accepted as true and construed in the light most favorable to the plaintiff. *Powell v. Thomas*, 643 F.3d 1300, 1302 (11th Cir. 2011). But the court need not accept the plaintiff's legal conclusions, nor must it accept as true legal conclusions couched as factual allegations. *Iqbal*, 556 U.S. at 678. Thus, evaluation of a motion to dismiss requires two steps: (1) eliminate any allegations in the complaint that are merely legal conclusions, and (2) where there are well-pleaded factual allegations, "assume their veracity and . . . determine whether they plausibly give rise to an entitlement to relief." *Id.* at 679.

The City contends that the Court should dismiss Plaintiffs' complaint because it pleads only discrimination occurring after acquisition of housing, and § 3604(b) requires that discrimination occur at the time of acquisition. Only one Plaintiff has pleaded discriminatory conduct before acquisition. [1] ¶ 192 ("Mr. Doe #2 would like to maintain a utilities account in his own name, as the inability to do so limits Mr. Doe #2's housing options. For example, Mr. Doe #2 would like to purchase a home in LaGrange, but has not done so because he would

not be able to get utility services at any home he purchases in LaGrange."). However, this allegation is not sufficiently concrete for Mr. Doe #2 to have standing. Standing must be concrete, and not merely speculative. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560–61 (1992). This means that the injury must be actual or imminent, not merely hypothetical or a conjecture. *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1548 (2016). Mr. Doe #2 has not pleaded that he, for instance, applied for utility services and was turned down. Instead, his allegation that he "would like" to purchase a home but has been unable to do so is hypothetical and speculative.

All remaining Plaintiffs' claims involve post-acquisition conduct: disconnection of utilities, fear of disconnection, loss of rental income, or maintaining a utilities account in another person's name. These allegations, as serious as they may be, fail to state a claim under the Fair Housing Act. Courts within the Eleventh Circuit have endorsed a narrow reading of the Act, such that it applies only to conduct occurring at the time of acquisition:

> There is a split of authority as to whether Section 3604 (b) applies to the provision of services only in connection with

> the sale or rental of housing, or whether it extends to services beyond the point of sale. However, it appears that courts in the Eleventh Circuit that have considered this issue have applied the narrower construction, on the grounds that it is "more consistent with the plain language of the statute." As this appears to be the better reasoned interpretation, the Court follows this approach here and finds that the statute does not encompass Defendants' alleged discrimination against those who have already acquired and are now in possession of their homes.

Paulk v. Ga. Dep't of Transp., No. CV 516-19, 2016 WL 3023318, at *9 (S.D. Ga. May 24, 2016) (citations omitted). The Court agrees that this is the proper reading of the Fair Housing Act.

Plaintiffs contend that Eleventh Circuit law supports a broader reading of the Fair Housing Act. However, the two Eleventh Circuit cases upon which Plaintiffs rely involve § 3604(f), which, unlike § 3604(b), explicitly covers post-acquisition behavior. *See, e.g.*, *Hunt v. Aimco Props., L.P.*, 814 F.3d 1213 (11th Cir. 2016); *Wells v. Willow Lake Estates, Inc.*, 390 F. App'x 956 (11th Cir. 2010); *see also* 42 U.S.C. § 3604(f)(1)(B) (applying the statute to discrimination against "a person residing in or intending to reside in that dwelling *after it is so sold, rented, or made available*") (emphasis added).

Further, the district court cases upon which Plaintiffs rely to support their argument regarding § 3604(b) are distinguishable. *See Smith v. Zacco*, No. 5:10-cv-360-TJC-JRK, 2011 WL 12450317, at *6–7 (M.D. Fla. Mar. 8, 2011) (holding that post-acquisition conduct may be actionable under § 3604(b) against a homeowners' association); *Savanna Club Worship Serv., Inc. v. Savanna Club Homeowners' Ass'n, Inc.*, 456 F. Supp. 2d 1223, 1228–30 (S.D. Fla. 2005) (holding that post-acquisition conduct may be actionable under § 3604(b) against a homeowners' association due to the unique positions of the owners and relying on Florida state law regarding homeowners' associations); *Richards v. Bono*, No. 5:04-cv-484-OC-10GRJ, 2005 WL 1065141, at *3 (M.D. Fla. May 2, 2005) (holding that the unique circumstances of the landlord-tenant relationship render post-acquisition conduct actionable under § 3604(b) against a landlord: "Because the plain meaning of 'rental' contemplates an ongoing relationship, the use of that term in § 3604(b) means that the statute prohibits discrimination at any time during the landlord/tenant relationship, including after the tenant takes possession of the property."). This action involves neither

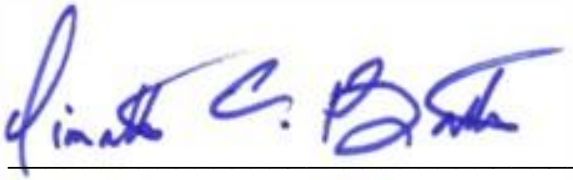
allegations against a landlord nor those against a homeowners' association. As unfortunate as Plaintiffs' situations are, because they do not involve the inability to acquire housing, they do not present cognizable claims under the Fair Housing Act.

Having dismissed Plaintiffs' only federal claim, the Court declines to exercise supplemental jurisdiction over the remaining state law claims. *United Mine Workers of Am. v. Gibbs*, 383 U.S. 715, 726 (1966) (holding that a federal court's exercise of supplemental jurisdiction over state law claims is discretionary); *Gross v. White*, 340 F. App'x 527, 531 (11th Cir. 2009) (holding that the district court did not err by declining to exercise jurisdiction over plaintiff's state law claims where plaintiff's federal law claim was subject to dismissal).

III. Conclusion

For the foregoing reasons, Defendant's motion to dismiss for failure to state a claim [16] is granted. Plaintiffs' Fair Housing Act claim is dismissed with prejudice, and its state law claims are dismissed without prejudice. The Clerk is directed to close this case.

IT IS SO ORDERED this 7th day of December, 2017.



Timothy C. Batten, Sr.
United States District Judge