

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

MARSHA WETZEL,)	
)	
Plaintiff,)	
v.)	
)	Case No. 1:16-cv-07598
GLEN ST. ANDREW LIVING)	
COMMUNITY, LLC; GLEN ST. ANDREW)	Hon. Samuel Der-Yeghiayan
LIVING COMMUNITY REAL ESTATE,)	
LLC; GLEN HEALTH & HOME)	
MANAGEMENT, INC.; ALYSSA FLAVIN;)	
CAROLYN DRISCOLL; and SANDRA)	
CUBAS,)	
)	
Defendants.)	

INITIAL STATUS REPORT

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1) Nature of claims and counterclaims

Plaintiff Marsha Wetzel brought this housing discrimination action pursuant to both the Fair Housing Act, 42 U.S.C. §§ 3604, 3617, and the Illinois Human Rights Act, 775 Ill. Comp. Stat. Ann. 5/3-102, 5/3-105.1, to address Defendants' discriminatory denial of her equal housing opportunity because of her sex and sexual orientation. Ms. Wetzel has alleged that for most of the time she has lived at Glen St. Andrew Living Community ("GSALC"), the senior housing community owned, leased, managed, supervised, operated, and administered by the Defendants, she has been subjected to a severe and pervasive pattern of discrimination and harassment, including persistent verbal harassment, threats, intimidation, and three separate assaults, at the hands of other residents all because she had a committed relationship and created a family with another woman and because she is a lesbian. Ms. Wetzel has further alleged that she and other residents and staff repeatedly notified GSALC administrators, including Defendants Flavin, Driscoll, and Cubas, of the sex- and sexual orientation-based harassment she experienced and continues to experience, but rather than taking meaningful action to stop the harassment, Defendants instead have marginalized and alienated Ms. Wetzel and retaliated against her for complaining about the discriminatory hostile housing environment to which she has been subjected based on her sex and sexual orientation. Ms. Wetzel claims that Defendants' failure to correct and end such harassment and discrimination denies her equal housing opportunity in violation of both the Fair Housing Act and the Illinois Human Rights Act.

Defendants deny that they ever discriminated against or harassed the Plaintiff in any manner. Defendants further deny that they are in any way liable for any discrimination, harassment or retaliation alleged by Plaintiff. Defendants further deny all material allegations of wrongdoing.

Counterclaims: None at this time. The time for filing counterclaims has not run as there is currently a pending motion to dismiss that would be dispositive of the entire case.

2) Relief sought by Plaintiff

Plaintiff seeks: (i) declaratory and injunctive relief to end the discriminatory hostile housing environment Defendants have allowed to persist; (ii) compensatory and punitive damages; (iii) attorneys' fees and costs; and (iv) any other further relief the Court deems just and proper.

3) Names of parties not served

All parties have been served.

4, 5) Principal legal and factual issues

Plaintiff's proposed legal and factual issues:

- (a) Whether Ms. Wetzel was denied equal housing opportunity by being subjected to a discriminatory hostile housing environment caused by severe and pervasive harassment on the bases of her sex and sexual orientation;
- (b) Whether Defendants knew or should have known about the discriminatory hostile housing environment to which Ms. Wetzel was subjected;
- (c) Whether Defendants failed to take sufficient action to correct or end the discriminatory harassment to which Ms. Wetzel was subjected; and
- (d) Whether Defendants retaliated against Ms. Wetzel for complaining about illegal discriminatory harassment.

Defendants' Proposed legal and factual issues:

Defendants object to the legal and factual issues proposed by the Plaintiff as they address the very issue at the heart of the dispositive motion, which is whether the Plaintiff must establish that the Defendants had an intent to discriminate.

Defendants propose the following legal and factual issues:

- (a) Whether the alleged acts by the tenants of Glen St. Andrew Living Community constituted severe and pervasive harassment on the basis of Ms. Wetzel's sex and sexual orientation;
- (b) Whether Defendants acted with an intent to discriminate in their addressing and/or failing to address any alleged complaints by Ms. Wetzel as to the actions of the tenants of Glen St. Andrew Living Community; and
- (c) Whether Defendants had a duty to act in response to Ms. Wetzel's complaints of harassment based on her sex and sexual orientation.

6) List of pending motions and brief summary of bases for motions

Defendants have filed a motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(6), arguing that the complaint must be dismissed because it does not allege specific discriminatory intent on the part of the Defendants, because the Defendants cannot be held liable for tenant-on-tenant harassment, and because the harassment occurred post-acquisition. They also assert that Defendant Glen St. Andrew Living Community Real Estate, LLC, is an improper party. Plaintiff has opposed Defendants' motion, countering that allegations that Defendants knew or should have known of the hostile housing environment caused by other tenants' discriminatory harassment and failed to correct or end that harassment state a claim upon which relief can be granted. The motion is fully briefed before the Court and the parties are awaiting a ruling.

7) Description of discovery requested and exchanged

The Defendants have not yet answered the complaint. Although the parties' initial disclosures were due on January 3, 2017 pursuant to Fed. R. Civ. P. 26(a)(1), the parties have stipulated to exchanging them within fourteen days of this court's disposition of the Defendants' pending Motion to Dismiss. No other discovery has been requested or exchanged by the parties as of the date the parties file this disclosure.

8) Type of discovery needed

The parties anticipate the need for both written discovery and depositions in this matter. Generally, the topics to be explored via written and oral discovery include the following: the underlying factual bases for the claims at issue; actual damages allegedly suffered by Plaintiff; and the bases for Defendants' defenses. The parties anticipate exchanging written discovery and taking depositions. To that end, the parties respectfully submit the following proposed scheduling order.

9) Proposed Scheduling Order:

a. Rule 26(a)(1) disclosures will be made within fourteen days of the Court's disposition of Defendants' Motion to Dismiss.

b. Fact discovery to be completed by:

Plaintiff's position: Plaintiff proposes that discovery be completed by May 2017. Plaintiff indicated during the Rule 26(f) conference the desire to move through the discovery process as swiftly as possible in light of the Plaintiff's continued residence at Defendants' facility and the ongoing ramifications of the issues presented in this case. Plaintiff made clear during the conference that she plans to depose the individual Defendants, corporate representatives, and the witnesses to various events set forth in the complaint. The list of

potential deponents may change after Defendants submit their responsive pleading and responses to written discovery. Plaintiff does not agree with Defendants' assessment of the time needed to depose residents of Defendants' facility, especially given that they are all in one location. When Plaintiff asked whether it was possible to agree to an earlier date for the close of discovery than the September deadline they proposed during the conference, Defendants refused.

Defendants' position: Given the pending Motion to Dismiss and Plaintiff's refusal, during the Rule 26 Conference conducted on December 20, 2016, to identify the any potential witnesses it intends to call, Defendants object to Plaintiff's proposal of a fact discovery completion date of May 2017. Plaintiff has identified vague categories of witnesses it intends to depose, but has not provided the names of any witnesses nor has Plaintiff provided an estimate as to the number of witnesses it may depose. In light of the pending Motion to Dismiss, Defendants will be filing a Motion for Protective Order, if required by the Court, to stay further discovery until a ruling is issued on the Motion to Dismiss.

Should the Court wish to consider a discovery completion date, the Defendants state that they have requested that Plaintiff provide an estimate as to the number witnesses and the identity of those witnesses to enable to parties to accurately calculate a discovery closure date. To date, Plaintiff has not provided this information. Further, it is known that a majority of the witnesses in this case are elderly individuals (residents of Glen St. Andrew) who may be prevented from sitting for a seven (7) hour deposition in one day, and that each of these depositions will likely take multiple days to complete. Defendants further anticipate that these witnesses will need to be subpoenaed for their depositions as they are not a party to this lawsuit. Defendants also anticipate out-of-state depositions, including the Plaintiff's son who is believed to currently reside in Oregon. Based on the above, and with the anticipation that a ruling on the Motion to Dismiss is

entered on January 19, 2017, the Defendants propose a fact discovery completion date of October 1, 2017.

- c. The parties do not anticipate the need for expert discovery at this time.
- d. Dispositive motions to be filed 45 days after the close of fact discovery.
- e. Pretrial order to be filed within five months after the deadline for dispositive motions.

10-12) Timing, length, and type of trial

The case should be ready for trial six months after the deadline for dispositive motions, and the parties anticipate it will last approximately five (5) to ten (10) days depending on the availability and condition of the witnesses, which is discussed above. Plaintiff has not requested a jury trial, but Defendants have indicated that they will request a jury trial.

13) Whether there have been settlement discussions and the outcome of such discussions

The parties have agreed to proceed before the Magistrate Judge for purposes of exploring settlement. On January 10, 2017, Plaintiff responded to Defendants' request for a settlement demand.

14) Whether the parties consent to proceed before a Magistrate Judge

Plaintiff consents to proceed before a Magistrate Judge. The Defendants agree to proceed before the Magistrate Judge for settlement purposes only. Defendants, respectfully, do not agree to proceed before the Magistrate Judge for all other matters.

Date: January 13, 2017

Respectfully submitted,

/s/ Karen L. Loewy
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