UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
LAFAYETTE DIVISION

FAIR HOUSING CENTER OF CENTRAL INDIANA, INC., and JENNIFER AND BENJAMIN HENDRICKSON,	)	
Plaintiffs,	)	
v.	)	4:14 CV 00058-PPS-JEM
BROOKFIELD FARMS HOMEOWNERS' ASSOCIATION,	)	
Defendant.	)	

OPINION AND ORDER

Plaintiffs Fair Housing Center of Central Indiana, Inc., ("FHCCI") and Jennifer and Benjamin Hendrickson accuse Brookfield Farms Homeowners' Association of disability discrimination in violation of the Fair Housing Act. The Association moves to dismiss the complaint claiming that FHCCI does not have a personal stake in the outcome of the controversy and that Plaintiffs failed to allege facts sufficient to demonstrate a discriminatory animus. For the reasons below, I now **DENY** the Association's Motion to Dismiss Plaintiffs' Complaint [DE 10].

Background

As usual, I'll start with the facts as alleged in the complaint, which I accept as true at this point in the case. Plaintiff FHCCI is a non-profit advocacy organization that seeks to ensure equal housing opportunities in Indiana by eliminating housing discrimination through advocacy, enforcement, education, and outreach. [DE 1 at ¶ 18.] Plaintiffs Jennifer

and Benjamin Hendrickson are the current owners and prospective sellers of a house located at 5115 Flatlake Court within the Brookfield Farms subdivision—the property at issue in this case. [*Id.* at ¶ 10.] The Defendant Association is the governing body in control of the Brookfield Farms subdivision and its ninety-two residential addresses located in Lafayette, Indiana. [*Id.* at ¶ 9.]

In May 2014, the Hendricksons agreed to sell the 5115 Flatlake Court property to the Wabash Center—a non-profit organization that offers services to children and adults with developmental disabilities. The Wabash Center planned to use the property as a home and residence for three unrelated people with developmental disabilities and to provide caretakers who would assist with their daily lives – in essence, a group home. [*Id.* at ¶ 12, 13.] The response from the Association wasn't exactly neighborly. In fact, relying on the covenants of the subdivision, the Association openly opposed the sale. To that end, the Association sent a letter to the Wabash Center stating "[t]his is to confirm that [the Association] has resolved that the purchase of the house [] by Wabash Center is in violation of existing covenants." [*Id.* at ¶ 16.]

The covenant at issue—Article II(A)—states that "[e]ach numbered Lot in the Development shall be a residential lot and shall be used exclusively for single family purposes. No Structure shall be erected, placed or permitted to remain upon any Lot except a single-family Dwelling Unit." [*Id.* at ¶ 15.] After multiple failed attempts by the Wabash Center and FHCCI to receive assurances from the Association that the covenant would not be applied to the specific purchase and use of the property, the sale was

terminated. [*Id.* at ¶ 21.]

The Hendricksons and the FHCCI responded with this lawsuit which the Association now seeks to dismiss. [DE 10] More specifically, the Association claims that FHCCI lacks standing because it doesn't have a personal stake in the outcome of the controversy within the meaning of *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 378-79 (1982). The Association therefore requests that I dismiss FHCCI from this action. The Association further claims, more broadly, that the complaint should be dismissed in its entirety because none of the plaintiffs, including the Hendricksons, have alleged discriminatory animus sufficient to maintain these claims.

Discussion

The Fair Housing Act makes it unlawful "to discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling . . . because of a handicap . . . ." 42 U.S.C. § 3604(2). The Act further states that such discrimination includes "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. § 3604(3).

To survive a motion to dismiss under Rule 12(b), "a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (*quoting Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). At this stage I must accept all allegations as true and draw all reasonable inferences in the complainant's favor, but I don't need to accept threadbare legal

conclusions supported by mere conclusory statements. *See id*. at 678. So under *Iqbal*, I must first identify allegations in the complaint that are not entitled to the assumption of truth by, for example, disregarding legal conclusions. *Id*. Then I must look at the remaining allegations to determine whether they plausibly suggest an entitlement to relief. *Id*. Determining whether a complaint states a plausible claim for relief requires me to draw on my judicial experience and common sense. *Id*. at 679.

Local Rule 7-1(b)(1)

As a preliminary matter, Plaintiffs argue that I should strike the Association's motion for failure to comply with our local rules. According to the Local Rules of the United States District Court for the Northern District of Indiana, parties must file a supporting brief with any motion under Rule 12. N.D. Ind. L.R. 7-1(b)(1). The Association didn't do that. Instead, the Association filed a six-sentence motion with virtually no citation to authority. I could, for that reason, strike the filing. But while trial courts have the discretion to enforce rules strictly, they also can allow some leeway. And although district judges are entitled to enforce strict compliance, "[w]e have not endorsed the very different proposition that litigants are entitled to expect strict enforcement by district judges. Rather, 'it is clear that the decision whether to apply the rule strictly or to overlook any transgression is one left to the district court's discretion.'" *Stevo v. Frasor*, 662 F.3d 880, 887 (7th Cir. 2011) (quoting *Little v. Cox's Supermarkets*, 71 F.3d 637, 641 (7th Cir. 1995)); *Eubanks v. Norfolk S. Ry. Co.*, 875 F. Supp. 2d 893, 898 (N.D. Ind. 2012).

I am generally of the mind that motions should be tackled on the merits rather than

on procedural technicalities. That is not to say, however, that I condone the Association's puny filing. Taking such an approach limits the amount of information available to me. But it does so to the detriment of the party that filed the motion and failed to follow the rules. I will deny Plaintiffs' request that I strike the motion and will instead proceed with evaluating its merits.

FHCCI's Standing

The concept of standing refers to whether a party may properly pursue its case in court; namely, whether the court has jurisdiction over the matter. Article III, Section 2 of the Constitution limits my jurisdiction to "Cases" or "Controversies" where "the plaintiff must have suffered or be imminently threatened with a concrete and particularized 'injury in fact' that is fairly traceable to the challenged action of the defendant and likely to be redressed by a favorable judicial decision." *Lexmark Intern., Inc. v. Static Control Components, Inc.*, 134 S.Ct. 1377, 1386 (2014). In other words, the plaintiff must present me with a problem likely caused by the defendant that I have the authority to fix.

The Association first claims that FHCCI lacks standing to pursue its claims under the Fair Housing Act because FHCCI is neither the buyer nor seller in the (attempted) transaction underlying this dispute, and therefore it doesn't have a personal stake in the outcome. Instead, FHCCI is a non-profit organization that has stepped in to assist the Hendricksons (the would be sellers) and the Wabash Center (the prospective buyer), with their dispute with the Association. Although the Association's position has some initial intuitive appeal, *Havens Realty Corp. v. Coleman* – the primary case governing standing

under the Fair Housing Act – grants organizations standing in circumstances like these. 455 U.S. 363 (1982).

In *Havens*, the Supreme Court held that the plaintiff non-profit organization had standing in its own right to pursue a discrimination action under the FHA where it worked to uncover the defendants' discriminatory practices. *Id*. at 368. Its investigation involved sending both African-American and white "testers" to an apartment complex to see if the complex was providing differing information to African Americans and whites regarding the availability of apartments for rent. *Id*. Perhaps not surprisingly, given the resulting lawsuit, the non-profit found that the African-American tester was falsely told there were no vacancies, while the while the white tester was told there were vacancies. *Id*. The Court found "there can be no question that the organization has suffered an injury in fact" because the non-profit had alleged that it had to divert resources away from its counseling and referral services in favor of investigating this discrimination. *Id*. at 379.

This case presents a very similar situation. Here, FHCCI specifically alleges that it has had to divert resources away from other projects "in order to investigate the Association's actions and to advocate on behalf of its mission and on behalf of the Wabash Center and its would-be residents." [DE 1 at ¶ 24.] Under *Havens*, these allegations are enough to confer standing. *Havens*, 455 U.S. at n. 21 (noting that although these allegations are enough to confer standing, the organization still must, of course, "demonstrate at trial that it has indeed suffered impairment in its role of facilitating open housing before it will be entitled to judicial relief."); *see also Village of Bellwood v. Dwivedi*, 895 F.2d 1521, 1526 (7th

Cir. 1990) ("*Havens* makes clear, however, that the only injury which need be shown to confer standing on a fair-housing agency is deflection of the agency's time and money from counseling to legal efforts directed against discrimination.").

The Association attempts to distinguish *Havens* by claiming that its holding requires that a plaintiff organization investigate multiple instances of discrimination (*i.e.* a "practice"), rather than just one instance. This is a misreading of *Havens*. *Havens* doesn't require investigating multiple instances of discrimination to confer standing. Instead, the Court found that where there are multiple instances of discrimination, the claim should be deemed timely as a continuing violation under the Act's 180-day statute of limitations. *Havens*, 455 U.S. at 381. That simply isn't at issue here. Thus, FHCCI has alleged enough to have standing in this dispute.

Discriminatory Animus

Next, the Association argues, without any citation to authority, that this case is subject to dismissal because Plaintiffs have failed to allege facts sufficient to demonstrate a discriminatory animus. However, when the alleged discrimination is based on a failure to reasonably accommodate, as here, the Seventh Circuit has held that the motivation behind the rule doesn't matter: "If the [defendant] unreasonably refused to waive the rule, the plaintiffs would be under no obligation to prove that the rule was motivated by an animus toward handicapped people." *Good Shepherd Manor Found., Inc. c. City of Momence*, 323 F.3d 557, 561-62 (7th Cir. 2003). In fact, *Good Shepherd* made clear that a "failure to

reasonably accommodate" is an alternative theory of liability *separate* from intentional discrimination. *Id*. at 562. Indeed, when evaluating a failure to accommodate, courts actually assume there is a valid reason behind the actions of the defendant, but the defendant is liable nonetheless if it failed to reasonably accommodate the handicap of the plaintiff. *Id*. That is also true where, as here, a party alleges interference with its ability to obtain an accommodation. *Smith v. Powdrill*, No. CV-12-06388, 2013 WL 5786586 at *10 (C.D.Cal. Oct. 28, 2013) (in determining whether a party has interfered with another's ability to obtain an accommodation, the proper question is whether the defendant "engaged in conduct that would give a person in Plaintiff's position cause to hesitate in seeking to enforce her right to obtain a reasonable accommodation for her disabilities.") Because accommodation claims require no allegations of discriminatory animus, the Association hasn't given me a reason to reject the Complaint.

Finally, the Association claims that because it said it would not sue the would-be buyer, Plaintiffs have no claim. But I fail to see how this is relevant and the Association provides no authority indicating that it is. The Association sent the would-be buyer a letter stating that although it had "resolved to refrain from legal action to block the sale of [the property]," that it still believed the sale would violate the Covenants at issue. [DE 1 at 5] At no point did it rescind its statement that the sale would violate the Covenants or modify its Covenants in any way. According to Plaintiffs, that's a failure to accommodate and at this early stage, I have no reason to find that it's not. Plaintiffs will, of course, have to prove this at trial, but at this early phase, they've alleged enough to proceed.

CONCLUSION

For the foregoing reasons, I will **DENY** the Brookfield Farms Homeowners' Association's Motion to Dismiss Plaintiff's Complaint [DE 10].

SO ORDERED.

ENTERED: December 1, 2014

s/Philip P. Simon

PHILIP P. SIMON, CHIEF JUDGE
UNITED STATES DISTRICT COURT