UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO.: 08-22679-CIV-GOLD/MCALILEY

UNITED STATES OF AMERICA,

Plaintiff,

v.

HIALEAH HOUSING AUTHORITY,

Defendant.
_____/

ORDER DENYING IN PART AND GRANTING IN PART MOTION TO DISMISS

This CAUSE is before the Court on Defendant Hialeah Housing Authority's ("HHA") Motion to Dismiss [DE 7]. A Response [DE 11] and Reply [DE 14] have been filed, and oral argument on the Motion was held on February 27, 2009. On March 5, 2009, I entered an Order denying in part the Motion to Dismiss, Requiring Supplemental Submissions, and Referring Parties to Mediation [DE 22]. In the Order, I noted that should mediation before Senior United States Magistrate Judge Peter R. Palermo fail, I will proceed to resolve the outstanding issues remaining in the Motion to Dismiss. Having been advised that mediation as failed, I now proceed to do so. For the following reasons, the Motion to Dismiss is denied.

I. Background

For purposes of this Order, there is no need to recite in detail the facts as alleged in the Complaint, which were set forth in detail in my prior Order denying in part Defendant's Motion to Dismiss. In essence, this case arises from the eviction of Miguel Rodriguez and his family from their apartment complex by HHA. The Rodriguez family contested the lease termination, and advised HHA that because Mr. Rodriguez was

disabled, the family needed to be placed in a unit with bathroom facilities accessible without climbing stairs. On May 4, 2005, HHA filed a complaint for eviction against the Rodriguez family in the County Court for Miami-Dade County, Florida (the "State Action"). At the court-ordered mediation with HHA, HHA offered to place the Rodriguez family on a waiting list for an accessible unit but insisted that the Rodriguez family would have to vacate their present unit. According to Plaintiff, because of HHA's refusal to provide Rodriguez with an accessible unit, Rodriguez signed a Stipulation and Order of Dismissal dated June 30, 2005 that gave his family until August 31, 2005 to vacate the subject property.[1]

On or about June 2006, Rodriguez filed a complaint with HUD alleging that HHA discriminated against him by denying his request for reasonable accommodation. On August 6, 2008, pursuant to 42 U.S.C. § 36109(g)(2)(A), HUD issued a Determination of Reasonable Cause and Charge of Discrimination (the "HUD Charge"), which concluded that reasonable cause existed to believe that HHA had engaged in illegal discriminatory housing practices because of Rodriguez's disability. Thereafter, HUD authorized the Attorney General to commence the present civil action. Based on the HUD Charge, Plaintiff alleges HHA has violated 42 U.S.C. § 3604(f)(3)(B) of the Fair Housing Act by failing to provide Rodriguez with a reasonable accommodation.

II. Standard of Review

In determining whether to grant a motion to dismiss, the court must accept all the

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[1] At oral argument, counsel for Plaintiff clarified that during the mediation session, the Rodriguez family became very frustrated with HHA's refusal to provide them with an accessible unit, and decided to voluntarily vacate so that they would not be terminated for cause.

factual allegations in the complaint as true and evaluate all inferences derived from those facts in the light most favorable to the plaintiff. *Hoffend v. Villa*, 261 F.3d 1148, 1150 (11th Cir. 2001). Where a motion to dismiss is not an adjudication on the merits, a judge may make factual findings. *Bryant v. Rich*, 530 F.3d 1368, 1376 (11th Cir. 2008). For instance, it is well-established that a judge may make factual findings necessary to motions to dismiss for lack of personal jurisdiction, lack of subject matter jurisdiction, ineffective service of process, and improper venue. *Id.* It is proper for a judge to consider facts outside of the pleadings and to resolve factual disputes so long as the factual disputes do not decide the merits and the parties have sufficient opportunity to develop the record. *See id.*

As for pleading requirements, "Federal Rule of Civil Procedure 8(a)(2) requires only 'a short and plain statement of the claim showing that the pleader is entitled to relief,' in order to 'give the defendant fair notice of what the ... claim is and the grounds upon which it rests.'" *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 127 S. Ct. 1955, 1959, 167 L.Ed.2d 929 (2007) (quoting *Conley v. Gibson*, 355 U.S. 41, 47, 78 S.Ct. 99, 2 L.Ed.2d 80 (1957). However, while a plaintiff need not state in detail the facts upon which he bases his claim, Fed. R. Civ. P. 8(a)(2) "still requires a 'showing,' rather than a blanket assertion, of entitlement to relief." *Bell Atl. Corp. v. Twombly*, 127 S. Ct. 1955, 1965 n.3 (2007). In other words, a plaintiff's pleading obligation requires "more than labels and conclusions." *Id.* at 1964-65; *see also Pafumi v. Davidson*, No. 05-61679-CIV, 2007 WL 1729969, at *2 (S.D. Fla. June 14, 2007). The previous standard that there be "no set of facts" before a motion to dismiss is granted has thus been abrogated in favor of the requirement that a

pleading must be "plausible on its face." *Bell Atl.*, 127 S. Ct. at 1968, 1974 (in order to survive a motion to dismiss, the Plaintiff must have "nudged [its] claims across the line from conceivable to plausible.").

While Rule 12(b)(6) does not permit dismissal of a well-pleaded complaint simply because it strikes a savvy judge that actual proof of those facts is improbable, the factual allegations must be enough to raise a right to relief above the speculative level." *Watts v. Fla. Int'l Univ.*, 495 F.3d 1289, 1295 (11th Cir. 2007) (citing *Bell Atl.*, 127 S. Ct. at 1965) (internal quotations omitted)).

III. Discussion

In my prior Order denying in part Defendant's Motion to Dismiss, I determined that dismissal on the basis of jurisdiction, res judicata, or collateral estoppel is not warranted. I now consider the remaining issues raised in the Motion to Dismiss: whether Plaintiff has stated a claim for discriminatory conduct under section 3604(f)(3)(B) of the FHA and whether Plaintiff has stated a claim for injunctive and declaratory relief.[2] I note that in my prior Order, I concluded that certain documents attached as exhibits to the parties' pleadings would be taken into consideration, including the State Action documents[3] and

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[2] In 1988, Congress amended the FHA to prohibit discrimination based on handicap and familial status. See Fair Housing Amendments Act of 1988 ("FHAA"), Pub. L. No. 100-430, 102 Stat. 1619 (1988). The FHAA amended 42 U.S.C. § 3604, the primary substantive provision of the FHA, by adding a new subsection (f) that applies only to discrimination against the handicapped.

[3] In the Motion to Dismiss, Defendant attaches three documents relating to a state action commenced by HHA against Rodriguez in Miami-Dade County Court on May 6, 2005: the Complaint for Eviction and Summary Removal of Tenant [DE 7-2], Rodriguez's Answer, Affirmative Defenses and Motion to Dismiss (the "Answer") [DE 7-3], and the Stipulation and Order of Dismissal dated June 30, 2005 (the "Stipulation") [DE 7-4] (together, the "State Action documents").

the HUD Charge [DE 11-2].

A. Violation of 42 U.S.C. § 3604(f)(3)(B)

A municipality commits discrimination under section 3604(f)(3)(B) of the FHA if it "fails to make reasonable accommodations in rules, policies, practices, or services, that may be necessary to afford a disabled person equal opportunity to use and enjoy a dwelling."[4] 42 U.S.C. § 3604(f)(3)(B). To prevail, plaintiff must show that: (1) he suffers from a handicap as defined by 42 U.S.C. § 3602(h); (2) defendants knew, or should have reasonably been expected to know, of plaintiff's handicap; (3) accommodation of the handicap may be necessary to afford plaintiff an equal opportunity to use and enjoy a dwelling; (4) defendants refused to make such accommodation. *Stassis v. Ocean Summit Ass'n, Inc.*, 2008 WL 1776988, *2 (S.D. Fla., Apr. 17, 2008) (citing *United States v. Cal. Mobile Home Park Mgmt. Co.*, 107 F.3d 1374, 1380 (9th Cir.1997); *Gamble v. City of Escondido*, 104 F.3d 300, 307 (9th Cir. 1997). Defendant alleges that Plaintiff has failed to satisfy the first and fourth elements, namely, that Rodriguez has a handicap as defined by 42 U.S.C. § 3602(h) or that HHA refused to make a reasonable accommodation. I discuss each in turn.

1. Rodriguez's Handicap

As discussed above, I accept the factual assertions contained in the Complaint and the exhibits attached to Plaintiff's Response to Defendant's Motion to Dismiss that are central to its claims and undisputed, including the HUD Charge. In the Complaint, Plaintiff

[4] A dwelling is defined as "any building, structure, or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one or more families, and any vacant land which is offered for sale or lease for the construction or location thereon of any such building, structure, or portion thereof." 42 U.S.C. § 3602(b).

alleges that Rodriguez is a person with a disability as defined by 42 U.S.C. § 3602(h); his physical impairments substantially limit his ability to climb stairs; and he receives SSDI benefits. In the Charge, HUD finds that:

> Mr. Rodriguez is a person with a physical and/or mental disability. He has physical limitations that *limit his ability to walk and climb stairs*. Because climbing stairs aggravates his medical condition, Mr. Rodriguez is forced to limit his stair climbing. He has been diagnosed with osteoarthritis, chronic back pain, chronic shoulder pain, and depression. Mr. Rodriguez is *not able to work*; he receives social security disability benefits.

[DE 11-2, p. 2] (emphasis added).

Section 3602(h) of the FHA defines "handicap" as (1) a physical or mental impairment which substantially limits one or more of such person's major life activities; (2) a record of having such an impairment; or (3) being regarded as having such an impairment.... The allegation that Rodriguez's physical impairment limits his ability to walk and climb stairs and that Rodriguez was unable to work is sufficient to meet the FHA's definition of "handicap." 24 C.F.R. § 100.201(b) ("Major life activities means functions such as caring for one's self, performing manual tasks, *walking*, seeing, hearing, speaking, breathing, learning and *working*.") (emphasis added). Further, persons who receive Social Security disability benefits because their impairment eliminates their ability to work generally meet the definition of "handicap" under the FHA. *See Cleveland v. Policy Mgmt Sys. Corp.*, 526 U.S. 795, 797 (1999) (in noting that a recipient of SSDI benefits is not estopped from pursuing an ADA claim, acknowledging that the disability threshold for a SSDI beneficiary who is unable to do her previous work or engage in any other kind of substantial gainful work is higher than the threshold for someone pursuing an action for

disability discrimination under the Americans with Disabilities Act).[5] Therefore, Plaintiff's allegation that Rodriguez is unable to work and receives SSDI benefits is sufficient to allege a "handicap" within the definition employed by the FHA. Accordingly, Plaintiff has alleged that Rodriguez suffers from a handicap as defined by 42 U.S.C. § 3602(h).[6]

2. Refusal to provide reasonable accommodations

Defendant argues that, as set forth in the Complaint, Defendant offered to place the Rodriguez family on a waiting list for an accessible unit and argues that such an offer, although rejected by th e Rodriguez family, constitutes reasonable accommodation. However, Plaintiff alleges that Rodriguez contested his lease termination and advised Defendant that he needed a unit with a bathroom that was accessible without climbing stairs. Compl. ¶¶ 12, 13. Evaluating all inferences derived from factual allegations in the Complaint in the light most favorable to the Plaintiff, as I am required to do, it can reasonably be inferred that Defendant refused to provide reasonable accommodation by

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[5] The definition of "disability" under the Americans with Disabilities Act is the same as the definition of "handicap" found in the FHA. 42 U.S.C. § 12102(2). Further, at oral argument, counsel for Plaintiff brought to the attention of the Court the ADA Amendments Act of 2008, which became effective as of January 1, 2009. Although they are not retroactive, *Loperena v. Scott*, 2009 WL 1066253, *8 (M.D. Fla. Apr. 21, 2009), I note that the effect of these amendments is to lower the threshold for an individual to fall within the definition of "disability." 42 U.S.C. § 12101 note (2008) (rejecting Supreme Court opinions that have narrowed the broad scope of protection intended to be afforded by the ADA and eliminated protection for many individuals whom Congress intended to protect).

[6] Defendant argues that Rodriguez's unit was a second-floor apartment accessible only by stairs and that Rodriguez's physical impairments could not have met the definition of 42 U.S.C. § 3602(h). This may very well be true, but does not form a basis on which Plaintiff's allegations of Rodriguez's disability can be ignored at the motion to dismiss stage. I note that Rodriguez sought a unit with an accessible bathroom, not a ground floor unit. Further, the parties disagree as to the respective burdens on Rodriguez to demonstrate and HHA to investigate Rodriguez's alleged disability. These arguments are not material to the disposition of this Motion and I do not reach this question.

allowing Rodriguez and his family to remain in their unit until an accessible unit elsewhere became available and that eviction before that time was not necessary. *Giebeler v. M & B Assocs.*, 343 F.3d 1143, 1156-57 (9th Cir. 2003) (requested accommodation under FHAA is possible and reasonable where plaintiff shows it can be imposed without fundamental alteration in the nature of the housing program or undue financial or administrative burdens) (internal citations omitted). Further, their rejection of being placed on the waiting list does not necessarily foreclose Plaintiff's ability to show Defendant's refusal to provide reasonable accommodation, contrary to Defendant's contention. Rodriguez may simply have felt the wait would be too long, or that he may otherwise secure an accessible unit through other means.[7] Accordingly, Plaintiff has adequately alleged that Defendant refused to provide Rodriguez with reasonable accommodation and has therefore stated a cause of action under 42 U.S.C. § 3604(f)(3)(B).

B. Equitable Relief

Plaintiff seeks two form of equitable relief, injunctive relief and declaratory judgment. With respect to injunctive relief, Plaintiff seeks to enjoin Defendant "from discriminating because of disability in violation of the Fair Housing Act...." Compl. ¶ 32B. The Eleventh Circuit has held repeatedly that injunctions that simply require compliance with the law are impermissible. *Elend v. Basham*, 471 F.3d 1199 (11th Cir. 2006) (It is well-established in

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[7] Defendant argues that the offer to place the Rodriguez family on a waiting list for an accessible unit was adequate reasonable accommodation and that permitting the Rodriguez family to stay in their unit was not possible because it would expose Defendant to legal liability. HHA further argues in the alternative that it was under no obligation to provide reasonable accommodation to Rodriguez because Rodriguez was being evicted for cause. These are credible arguments that would undermine the merit of Plaintiff's claims, but do not warrant their dismissal at this stage.

this circuit that an injunction demanding that a party do nothing more specific than "obey the law" is impermissible); *S.E.C. v. Smyth*, 420 F.3d 1225, 1233 n. 14 (11th Cir.2005) ("This Circuit has held repeatedly that 'obey the law' injunctions are unenforceable."). The reason for this prohibition is that it would not satisfy the specificity requirements of Fed. R. Civ. P. 65(d)(1), which provides "every order granting an injunction...must (A) state the reasons why it issued; (B) state its terms specifically; and (C) describe in reasonable detail....the act or acts restrained or required." *Burton v. City of Belle Glade*, 178 F.3d 1175, 1201 (11th Cir.1999). Therefore, Plaintiff cannot obtain the injunctive relief it seeks.

As for declaratory relief, "a declaratory judgment may only be issued in the case of an actual controversy." *Emory v. Peeler*, 756 F.2d 1547, 1552 (11th Cir.1985) (quotation marks omitted). To demonstrate an actual controversy, the facts as alleged or as reasonably inferred must show a substantial and continuing controversy that is real and immediate and creates a definite, rather than speculative threat of injury. *Id.* (internal citations omitted); *see Malowney v. Fed. Collection Deposit Group*, 193 F.3d 1342, 1346-47 (11th Cir. 1999) (a plaintiff seeking declaratory relief must allege facts from which it appears there is a substantial likelihood that he will suffer injury in the future). There are no facts alleged to demonstrate that beyond the circumstances surrounding the eviction of Rodriguez and his family that there is an immediate, definite future threat of injury to Plaintiff. Consequently, declaratory relief is also not appropriate.

IV. Conclusion

Accordingly, having previously determined that Plaintiff's claims are not barred by lack of subject matter jurisdiction or the affirmative defenses of res judicata and collateral

estoppel, and having now concluded that Plaintiff has stated a cause of action, but that Plaintiff has not demonstrated it is entitled to equitable relief, it is hereby

ORDERED and ADJUDGED that

1. Defendant's Motion to Dismiss [DE 7] is DENIED in part. Defendant is instructed to file an Answer to Plaintiff's Complaint, and the parties shall comply with my Order Requiring Compliance with Local Rule 16.1 [DE 4].

2. Plaintiff's claims for equitable relief are DISMISSED.

DONE and ORDERED in Chambers in Miami, Florida, this 22 day of May, 2009.

THE HONORABLE ALAN S. GOLD
UNITED STATES DISTRICT JUDGE

cc:
All counsel of record
U.S. Magistrate Judge Chris M. McAliley