

United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Amy J. St. Eve	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	05 C 5258	DATE	3/6/2006
CASE TITLE	USA vs. Village of South Elgin		

DOCKET ENTRY TEXT

Defendant's motion to dismiss is denied. (R. 16-1). Defendant must answer the compliant on or before March 28, 2006.

■ [For further details see text below.]

Docketing to mail notices.

STATEMENT

Plaintiff United States (the "Government") brought this action against Defendant Village of South Elgin (the "Village") to enforce provisions of the Fair Housing Act, as amended, 42 U.S.C. §§ 3601 *et seq.* Before the Court is the Village's Amended Rule 12(b)(1) and 12(b)(6) Motion to Dismiss. As discussed below, the Court denies the Village's motion.

Defendant Village is located in Kane County, Illinois and exercises zoning and land use authority over land within its boundaries. (R. 1-1; Complaint ¶¶ 3, 4.) Unity House is "a group home for persons recovering from alcohol or drug dependency." (*Id.* ¶ 6.) The Government alleges that on or about August 29, 2003, Unity House applied for a special use permit to operate a "group home for nine persons recovering from alcohol or drug dependency" within the Village. (*Id.* ¶ 8.) On or about October 15, 2003, the South Elgin Planning and Zoning Commission held a public hearing on the permit application. (*Id.* ¶ 9.) At the hearing, neighbors of Unity House allegedly "made numerous statements indicating strong opposition to the group home based on the disability of its residents." (*Id.*) The Government alleges that a member of the South Elgin Board of Trustees who "lived in the area of Unity House" was among those who expressed their opposition to the home based on the disability of its residents. (*Id.*) At the conclusion of the hearing, the Village Planning and Zoning Commission voted to recommend that the Unity House application be denied. (*Id.*)

Approximately two weeks later, on or about November 3, 2003, the Village Board met to consider the Unity House application. (*Id.* ¶ 10.) Once again, members of the public allegedly expressed vocal opposition to Unity House's application "based on the disability of the residents." (*Id.*) The Village Board met again on November 17, 2003, at which time it denied the application. (*Id.*) The Village based its denial

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on parking concerns. (*Id.* ¶ 11.) According to the Government, Unity House made a variety of proposals to address the Village's parking concerns but the Village "declined to consider any of these proposals." (*Id.*)

The Complaint alleges that the Village intentionally discriminated against the Unity House residents when it denied the special use application because of the residents' handicaps in violation of 42 U.S.C. § 3604(f)(1).¹ (R. 1-1; Compl. ¶ 14.) Further, the Complaint alleges that the Village "failed and refused to make a reasonable accommodation in the application of its Zoning Code in violation of 42 U.S.C. § 3604(f)(3)(B)." ² (*Id.* ¶ 15.)

The Government filed suit against the Village on September 15, 2005, and on November 18, 2005 the Village filed an Amended Motion to Dismiss pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6).

A Rule 12(b)(1) motion challenges the Court's subject matter jurisdiction over the claim. Fed.R.Civ.P. 12(b)(1). When reviewing a Rule 12(b)(1) motion, the Court must accept as true all well-pleaded factual allegations and draw all reasonable inferences in favor of the plaintiff. *Long v. Shorebank Dev. Corp.*, 182 F.3d 548, 554 (7th Cir. 1999). In deciding the motion, the Court may look beyond the complaint to other evidence submitted by the parties. *United Phosphorus, Ltd. v. Angus Chem. Co.*, 322 F.3d 942, 946 (7th Cir. 2003).

The purpose of a motion to dismiss pursuant to Rule 12(b)(6) is to test the legal sufficiency of a complaint, not the factual sufficiency. *Szabo v. Bridgeport Mach., Inc.*, 249 F.3d 672, 675-76 (7th Cir. 2001). The Court will only grant a Rule 12(b)(6) motion to dismiss if "it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *Centers v. Mortgage, Inc.*, 398 F.3d 930, 933 (7th Cir. 2005) (quoting *Conley v. Gibson*, 355 U.S. 41, 45-46, 78 S.Ct. 99, 102, 2 L.Ed.2d 80 (1957)). In making its determination, the Court must assume the truth of the facts alleged in the pleadings, construe the allegations liberally, and view them in the light most favorable to the plaintiff. *Centers*, 398 F.3d at 333.

Although the Village cites Rules 12(b)(1) and 12(b)(6) in the title of its motion and mentions them in passing in the motion's prefatory paragraph, it fails to provide any argument concerning application of the cited rules in this case. Nevertheless, the gravamen of the Village's argument is that the case is not ripe for adjudication, therefore the Court addresses the motion in the context of a challenge to subject matter jurisdiction based on ripeness.

First, the Village argues that the action is not ripe because "the Village [did not have] a proper opportunity to make a reasonable accommodation in its rules, policies and practices" before the Government filed suit. (R. 16-1; Village's Am. Mot. to Dismiss ¶ 1.) Specifically, the Village asserts that it did not have an opportunity to accommodate because Unity House failed to make any proposals to address the Village's concerns during the public hearings. (*Id.* ¶ 4.) Instead, according to the Village, Unity House only made proposals for modification after the hearings on an informal basis. (*Id.*) The Village argues that Illinois Supreme Court precedent required the Village to "refuse to consider [these] informal proposals." (*Id.* ¶ 5.)

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According to the Government, the Village has mistakenly read the Complaint to allege only a violation based on the failure to make reasonable accommodation, when in reality the Complaint asserts liability under “two independent legal theories.” (R. 18-1; Mem. in Opp. to Mot. to Dismiss p. 1.) Those theories are that the Village: (1) intentionally discriminated against the residents of Unity House when it denied the permit application; and (2) failed to make a reasonable accommodation in the application of its zoning code. Moreover, the Government disputes the Village’s factual assertion concerning the circumstances surrounding Unity House’s offers of modification and contends that Unity House did, in fact, make proposals for modification during the hearings.

On reply, the Village ignores the Government’s intentional discrimination theory, and instead reiterates that the case is not ripe “in light of the Illinois Supreme Court’s decision in *People ex. rel. Klaeren v. Village of Lisle*, 781 N.E.2d 223 (Ill. 2002).” (R. 20-1; Reply in Further Supp. of Mot. to Dismiss p. 1-2.) The Court need not address the Village’s legal interpretation of *Klaeren* because it is premised on a factual dispute that the Court cannot resolve on a motion to dismiss. Whether Unity House made proposals for modification during the course of the public hearings is a question of fact. Viewing the Complaint in the light most favorable to the Government – as the Court must – the Government has sufficiently alleged that Unity House made such proposals during the hearings.

The Village also argues that the Court must dismiss the Complaint for failure to properly plead a claim under the Fair Housing Act, citing *United States v. Village of Palatine*, 37 F.3d 1230 (7th Cir. 1994). According to the Village, *Palatine* “requires that the Plaintiff allege that Unity House afforded the Village a proper opportunity to grant the special use.” (R. 20-1; Reply in Further Supp. of Mot. to Dismiss p. 1.)

In *Palatine*, the plaintiffs asserted their Fair Housing Act claim based solely on an alleged failure to accommodate pursuant to 42 U.S.C. § 3604(f)(3)(B). See *Palatine*, 37 F.3d at 1232. The Seventh Circuit clearly limited the effect of its holding in *Palatine* when it declared “[t]o the extent that the plaintiff’s federal suit alleges that the Village did not make a reasonable accommodation in its application of its zoning laws to [defendant], the issue is not ripe.” *Id.* at 1233.

Although the Complaint in this case alleges that the Village failed to make reasonable accommodation in applying its zoning code in violation of 42 U.S.C. § 3604(f)(3)(B), it also alleges that the Village discriminated against the residents of Unity House based on their handicaps in violation of 42 U.S.C. § 3604(f)(1). Under the Fair Housing Act, reasonable accommodation is merely one theory of liability and may be pleaded separately from the alternate theory of intentional discrimination. *Good Shepherd Manor Found., Inc. v. City of Mokenca*, 323 F.3d 557, 562 (7th Cir. 2003). In *Palatine*, the Seventh Circuit pointedly observed that “if plaintiff’s claim were of discriminatory intent, rather than failure to make a reasonable accommodation, this claim might well be presently ripe.” *Palatine*, 37 F.3d at 1233 n.3.

The Government has alleged that the Village violated the Fair Housing Act under two separate and alternative theories, and it may attempt to prove facts entitling it to the relief sought. The Court thus denies the Village’s Motion to Dismiss.

1. 42 U.S.C.A. § 3604 (f)(1) provides that it is unlawful “To discriminate in the sale or rental, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a handicap of (A) that buyer or renter, (B) a person residing in or intending to reside in that dwelling after it is sold, rented, or made available; or (C) any person associated with that buyer or renter.”
2. 42 U.S.C.A. § 3604 (f)(3)(B) provides that unlawful 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.”