

FILED by  D.C.
FEB 20 2004
CLARENCE MADDOX
CLERK U.S. DIST. CT.
S.D. OF FLA. - W.P.B.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 03-80178-CIV-PAINE

Jeffrey O., et al.

Plaintiffs,

vs.

CITY OF BOCA RATON,

Defendant.

_____ /

**ORDER GRANTING IN PART DEFENDANT'S
MOTION TO DISMISS SECOND AMENDED COMPLAINT**

This matter is before the court on Defendant's Motion to Dismiss Second Amended Complaint, filed on December 19, 2003 (D.E. #62). For the reasons set forth below, the court finds the motion should be granted in part.

Standard of Review

To state a claim, Fed. R. Civ. P. 8(a) requires, *inter alia*, "a short and plain statement of the claim showing that the pleader is entitled to relief." The court must "take the material allegations of the complaint and its incorporated exhibits as true, and liberally construe the complaint in favor of the Plaintiff." Burch v. Apalachee Community Mental Health Services, Inc., 840 F.2d 797, 798 (11th Cir. 1988) (citation omitted), aff'd, 494 U.S. 113 (1990).

The law in this Circuit is well-settled that "the 'accepted rule' for appraising the sufficiency of a complaint is 'that a complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would



entitle him to relief." SEC v. ESM Group, Inc., 835 F.2d 270, 272 (11th Cir. 1988) (quoting Conley v. Gibson, 355 U.S. 41, 45-46 (1957)), cert. denied, 486 U.S. 1055 (1988). The moving party bears a heavy burden. St. Joseph's Hosp., Inc. v. Hosp. Corp. of Am., 795 F.2d 948, 953 (11th Cir. 1986).

Procedural History

Plaintiffs initiated this action in March 2003, alleging, *inter alia*, that a city ordinance violates the Fair Housing Amendments Act ("FHAA") and the Americans with Disabilities Act ("ADA"). In their Second Amended Complaint (D.E. #54), Plaintiffs Bobby Hoover, Todd Conroy, and Doug Byers¹ (collectively, "Resident Plaintiffs"), Regency Properties of Boca Raton, Inc. ("Boca House"), and Awakenings of Florida, Inc. ("Awakenings") bring three claims against defendant, the City of Boca Raton ("City"): (1) Violations of the Fair Housing Act; (2) Violations of the Americans with Disabilities Act; (3) Equal Protection.

Defendant moves to dismiss the Second Amended Complaint, alleging:

- (1) Rule 10(b) mandates that the FHAA and ADA counts each be split into separate counts;
- (2) Resident Plaintiffs do not have standing to bring a claim for discrimination under the FHAA or ADA;
- (3) No plaintiff can state a cause of action against the City under the FHAA or ADA because no plaintiff made a request for reasonable accommodation;
- (4) Boca House and Awakenings are not entitled to seek lost profits under the ADA;
- (5) Plaintiffs fail to state a cause of action for violation of their Equal Protection Rights.

¹Plaintiff Jeffrey O. Has been dropped as a party to this action.

Pertinent Background

Plaintiffs are challenging a zoning ordinance (City Ordinance No. 4649, the “Ordinance”), alleging that the Ordinance bans persons recovering from drug or alcohol addiction from residing in any residential neighborhood within the City. Plaintiffs also claim that the City refused to grant them a reasonable accommodation to the City’s purported limitation on four or more unrelated persons living together in a single dwelling unit.

Analysis

The City’s first argument for dismissal is that plaintiffs are asserting several theories under both the FHAA and ADA, each based on different factual occurrences. In response, plaintiffs suggest that the structure of the complaint is adequate under the federal rules, and that defendant should seek greater detail regarding the complaint’s theories through discovery, rather than motion practice. Upon review of the complaint, the court agrees with the City’s characterization of the complaint; that is, there are several separate events forming the basis for the FHAA and the ADA claims.

Federal Rule of Civil Procedure 10(b) provides the relevant standard for this court’s analysis.

Rule 10(b) states, in pertinent part,

Each claim founded upon a separate transaction or occurrence and each defense other than denials shall be stated in a separate count or defense *whenever a separation facilitates the clear presentation of the matters set forth.* (Emphasis supplied).

This rule essentially requires each separate claim be relegated to a separate count for the purposes of clarity. In this instance, the court finds that separate counts for each of the events would facilitate a clear presentation of the matters set forth and, as such, a more definite statement of the FHAA and

ADA claims is appropriate.

The City next contends that Resident Plaintiffs do not have standing to bring a claim for discrimination under the FHAA or ADA. In response, plaintiffs suggest that they have properly plead a case for disparate impact under the FHAA. Specifically, plaintiffs draw the court's attention to the following allegations of their Second Amended Complaint: (1) the restriction only applies to unrelated persons and illegally discriminates based on family status; (2) the limitation on unrelated persons has a disparate impact on disabled persons; and, (3) the limitation on unrelated persons has been applied in a discriminatory manner specifically to plaintiffs.

The City has correctly noted that injury is a requisite element for standing in both ADA and FHAA cases². Plaintiffs believe the allegations noted in the above paragraph sufficiently set forth plaintiffs' injury. In liberally viewing this complaint in the light most favorable to plaintiffs, as the court is required to do at this stage, the court finds that the requisite element of injury has been alleged. The court may suggest to plaintiffs, however, in the crafting of their more definite statement, to consider setting forth injury in a more definite manner so as to remove any question as to their standing.

The City further contends that no plaintiff can state a "reasonable accommodation" claim against the City under the FHAA or ADA because no plaintiff made a request for reasonable accommodation. In response, plaintiffs claim that the complaint *does* allege that the City denied a reasonable accommodation. While this may be true, the court is unable to find any allegation claiming that *plaintiffs* made a request for such accommodation.

²See, e.g. Shotz v. Cates, 256 F.3d 1077, 1081 (11th Cir. 2001); Oak Ridge Care Center, Inc. V. Racine County, Wisconsin, 896 F.Supp 867, 873 (E.D. Wis. 1995), *citing* Havens Realty Corp. V. Coleman, 455 U.S. 363, 372 (1982).

This circuit has held that a plaintiff must first make a request for reasonable accommodation from the defendant in order to prevail on a claim for discrimination under the ADA. See Gaston v. Bellingrath Garden & Home, Inc., 167 F.3d 1361 (11th Cir. 1999). Plaintiffs seek to distinguish Gaston by noting that Gaston dealt with a case on summary judgment. The court recognizes that we are not yet at the summary judgment stage, but notes that on the face of the complaint, a *request* for reasonable accommodation is wholly absent. As such, the court finds that plaintiffs have failed to state a claim for reasonable accommodation under Counts I and II of the complaint³.

Next, the City claims Boca House and Awakenings, as for-profit businesses, are not entitled to seek lost profits under the ADA⁴. The court agrees with the City's contention that the ADA does not provide remedies to protect the profit margins of for-profit businesses such as Boca House and Awakenings. As demonstrated in the case cited by the City, Discovery House, Inc. V. Consolidated City of Indianapolis, 319 F.3d 277 (7th Cir. 2003), for-profit operators do not have standing to seek lost profits under the ADA. The court recognizes that plaintiffs cite cases with contrary conclusions, but notes that these cases involve not-for-profit operators, a key distinction. Thus, the court finds that Boca House and Awakenings' claim for money damages under the ADA should be dismissed.

Finally, the City contends that Plaintiffs fail to state a cause of action for violation of their Equal Protection Rights under § 1983. The City claims that the § 1983 claim arises out of the purported violations of the FHAA and ADA, and is not a separate constitutional cause of action.

The court notes that this circuit prevents plaintiffs from bringing a § 1983 claim in addition

³While the court has decided that plaintiffs have not set forth a claim for reasonable accommodation, the court further agrees with the City that even if they had, there was no allegation as to *what* reasonable accommodation was sought.

⁴The City does not contest Boca House and Awakenings' ability to seek equitable relief.

to an ADA cause of action where the *only* alleged deprivation is of the employee's rights created by the ADA. See Holbrook v. City of Alpharetta, 112 F.3d 1522, 1531 (11th Cir. 1977). In the instant case, plaintiffs contend that their § 1983 claim is independent of the FHAA and ADA claims. In support of this contention, plaintiffs note their allegations of arbitrary discrimination, namely: (1) they have been treated differently from non-disabled individuals based on public animosity and prejudice; (2) the Ordinance was enacted specifically to force Boca House and Awakenings to relocate from the City's residential areas. See Plaintiff's Response to Defendant's Motion to Dismiss at p. 18-19. The court finds these allegations sufficient to maintain a separate cause of action under § 1983. Accordingly, it is

ORDERED AND ADJUDGED that Defendant's Motion to Dismiss is GRANTED IN PART as follows:

- (1) Claims for reasonable accommodation (§§ 60, 68) are DISMISSED;
- (2) Boca House and Awakenings' claims for money damages under the ADA are DISMISSED;
- (3) Plaintiffs shall provide a MORE DEFINITE STATEMENT as to Counts I and II within fifteen (15) days of the date of this order;
- (4) Count III remains as plead.

DONE AND ORDERED at West Palm Beach, Florida, this 20th day of February, 2004.


UNITED STATES DISTRICT JUDGE

cc:

William K. Hill, Esq.

Randall C. Berg, Jr., Esq.

James K. Green, Esq.

Diana Grub Frieser, Esq.

Jamie A. Cole, Esq.