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

CITY OF JOLIET, an Illinois Municipal Corporation, Plaintiff,	)	05 C 6746
v.	)	
MID-CITY NATIONAL BANK OF CHICAGO, et al.,	)	Hon. Charles R. Norgle
Defendants.	)	

OPINION AND ORDER

Before the court is Plaintiff City of Joliet's ("Joliet") Motion to Limit the Fair Housing Act Defenses and for a Stay of Discovery on the Fair Housing Act Claims. For the following reasons, the motion is denied.

I. BACKGROUND

The court presumes familiarity with the facts and procedural history of this case, as it is well documented in previous opinions by this court and the Seventh Circuit. See City of Joliet v. Mid-City Nat. Bank of Chi., No. 05 C 6746, 2012 WL 638735, n.1 (N.D. Ill. Feb. 22, 2012) (citing cases). The litigation involves three civil rights suits filed by plaintiffs who are defendants in the instant condemnation suit. In the condemnation suit, Joliet seeks to condemn the federally subsidized apartment complex known as Evergreen Terrace. Evergreen Terrace is a 356-unit complex that houses approximately 764 residents, 95 percent of whom are African-American. See United States Compl. ¶ 1. The defendants in the condemnation action are the United States Department of Housing and Urban Development ("HUD"), the tenants of Evergreen Terrace (the "Tenants"), and the

New West v. City of Joliet, No. 05 C 1743, 07 C 7214, 11 C 5305, 2012 WL 384574 (N.D. Ill. Jan. 31, 2012).

Joliet now moves for judgment on the pleadings on the FHA affirmative defenses pursuant to Federal Rule of Civil Procedure 12(c). Joliet also moves to stay discovery of the FHA claims that Defendants allege as both affirmative defenses in the condemnation case and as affirmative claims in the three civil rights cases.[2]

II. DISCUSSION

A. Standard of Decision

1. Rule 12(c)

Rule 12(c) permits judgment based on the pleadings alone, which include the complaint, the answer, and any written instruments attached as exhibits. Moss v. Martin, 473 F.3d 694, 698 (7th Cir. 2007). The court reviews Rule 12(c) motions "by employing the same standard that applies when reviewing a motion to dismiss for failure to state a claim under Rule 12(b)(6)." Buchanan-Moore v. City of Milwaukee, 570 F.3d 824, 827 (7th Cir. 2009) (citation omitted); see also Emergency Servs. Billing Corp. v. Allstate Ins. Co., 668 F.3d 459, 464 (7th Cir. 2012). The court construes "the complaint in the light most favorable to the nonmoving party and will grant the motion only if it appears

[2] The court notes numerous technical problems with Joliet's motion. The first sentence of the motion states that Joliet "moves for summary judgment on or to limit the Fair Housing Act defenses asserted against it by all Defendants." Mot. to Limit FHA Defenses & for Stay of Discovery on FHA Claims 1. The second sentence states that, in addition, Joliet moves, pursuant to Federal Rule of Civil Procedure 26, to stay discovery on the FHA claims. Id. The memorandum in support of the motion does not cite to any Federal Rules and Joliet does not submit a Local Rule 56.1 statement. These deficiencies required Defendants to devote numerous pages of their response briefs to analysis of multiple federal rules under which the motion could potentially be construed. In its reply brief, Joliet clarifies that its motion to stay discovery is brought pursuant to Rule 16(b)(4) and its motion to limit FHA defenses was "inadvertently" designated as a summary judgment motion, and should instead be construed under Rule 12(c). These deficiencies have not prejudiced Defendants because Joliet's motion is without merit no matter how it is construed.

Tahoe–Sierra Preservation Council, Inc. v. Tahoe Reg'l Planning Agency, 535 U.S. 302, 336 (2002) ("The concepts of 'fairness and justice' . . . underlie the Takings Clause"). Clearly, then, a municipality is not "allowed to take property under the mere pretext of a public purpose. . . ." Kelo, 545 U.S. at 478.

Congress's purpose in passing the FHA was "to provide, within constitutional limitations, for fair housing throughout the United States," 42 U.S.C. § 3601, as well as to "promote open, integrated residential housing patterns and to prevent the increase of segregation, in ghettos, of racial groups whose lack of opportunities the Act was designed to combat," Metro. Hous. Dev. Corp. v. Vill. of Arlington Heights, 558 F.2d 1283, 1289 (7th Cir. 1977) (internal quotation marks and citations omitted) [hereinafter "Arlington Heights II"]. To that end, the FHA makes it unlawful to "refuse to sell or rent . . . or otherwise make unavailable or deny, a dwelling to any person because of race, color, religion, sex, familial status, or national origin," 42 U.S.C. § 3604(a), as well as to "coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of . . . any right granted or protected by section . . . 3604 . . . of this title," 42 U.S.C. § 3617. The FHA also provides that "any law of a State, a political subdivision, or other such jurisdiction that purports to require or permit any action that would be a discriminatory housing practice under this subchapter shall to that extent be invalid." 42 U.S.C. § 3615. "The language of the Fair Housing Act is 'broad and inclusive,' [and is] subject to 'generous construction.'" Metro. Hous. Dev. Corp. v. Vill. of Arlington Heights, 616 F.2d 1006, 1011 (7th Cir. 1980) (quoting Trafficante v. Metro. Life Ins. Co., 409 U.S. 205, 209, 212 (1972)); see also Hispanics United of DuPage Cnty. v. Vill. of Addison,

Joliet also argues that judgment on the pleadings is appropriate because, given its stated public purpose of eliminating blight, discrimination could not have been the "sole motive" for the condemnation. See id. at 3. But to survive a Rule 12(c) motion, Defendants need not plead that discrimination was the "sole motive" for the condemnation. In Village of Arlington Heights, the Supreme Court recognized that "[d]etermining whether invidious discriminatory purpose was a motivating factor demands a sensitive inquiry into such circumstantial and direct evidence of intent as may be available." Vill. of Arlington Heights, 429 U.S. at 266. The Court made clear that the injured party need not prove that the challenged action was motivated solely by a purpose to discriminate:

> Rarely can it be said that a legislature or administrative body operating under a broad mandate made a decision motivated solely by a single concern, or even that a particular purpose was the "dominant" or "primary" one. In fact, it is because legislators and administrators are properly concerned with balancing numerous competing considerations that courts refrain from reviewing the merits of their decisions, absent a showing of arbitrariness or irrationality. But racial discrimination is not just another competing consideration. When there is a proof that a discriminatory purpose has been a motivating factor in the decision, this judicial deference is no longer justified.

Id. at 265-66 (emphasis added) (footnotes omitted). Joliet's contention that Defendants must allege discrimination to be the "sole motive" of the condemnation is without merit.

Joliet next argues that Defendants' disparate impact defenses, "to the extent they are separate from their discriminatory intent claims," Joliet's Reply in Supp. of Mot. to Limit FHA Defenses 4, are "not valid defenses to an eminent domain action as a matter of law," id. at 1. For the reasons discussed below, Joliet's argument is not persuasive.

The Seventh Circuit, in Arlington Heights II, was one of the first circuits to hold that claims of disparate impact are cognizable under the FHA. The Arlington Heights

restrain the defendant from interfering with individual property owners who wish to provide housing. Id. This "modified disparate impact theory" remains the law in this Circuit. Bloch v. Frischholz, 587 F.3d 771, 784 (7th Cir. 2009) (en banc); see also Davis v. Wells Fargo Bank, 685 F. Supp. 2d 838, 845-46 (N.D. Ill. 2010); Hispanics United of DuPage Cnty., 988 F. Supp. at 1151; Flores v. Vill. of Bensenville, No. 00 C 4905, 2003 WL 1607795, at *6 (N.D. Ill. Mar. 26, 2003).[3]

Joliet argues, however, that disparate impact theory should not apply in the context of eminent domain actions because this would "demand a detailed and burdensome review of the effects of the plaintiff locality's redevelopment plan" and would have a "huge effect . . . on eminent domain law." Joliet's Reply in Supp. of Mot. to Limit FHA Defenses 5. Joliet argues, therefore, that the presumed burden on municipal governments of subjecting their redevelopment plans to disparate impact analysis should by itself bar the application of such analysis. Joliet's argument is without merit.

"The FHA is a broadly remedial statute . . . that facilitates its antidiscrimination agenda by encouraging a searching inquiry into the motives behind a contested policy to ensure that it is not improper." Mt. Holly Gardens Citizens in Action, Inc. v. Township of Mt. Holly, 658 F.3d 375, 385 (3d Cir. 2011) (internal citations omitted). While Joliet is correct that disparate impact analysis will demand a more detailed and searching

[3] While the Supreme Court has never considered whether disparate impact claims are cognizable under the FHA, "[a]ll of the courts of appeals that have considered the matter . . . have concluded that plaintiffs can show the FHA has been violated through policies that have a disparate impact on a minority group." Mt. Holly Gardens Citizens in Action, Inc. v. Township of Mt. Holly, 658 F.3d 375, 384 (3d Cir. 2011). On February 29, 2012, the Supreme Court was set to hear argument on this issue. Before argument, however, the case was dismissed by agreement of the parties. See Gallagher v. Magner, 619 F.3d 823, 833-39 (8th Cir. 2010), cert. granted, 132 S. Ct. 548 (2011), cert. dismissed, 132 S. Ct. 1306 (2012). The court remains bound by Arlington Heights II, the Seventh Circuit's leading case on FHA disparate impact claims against municipal defendants.

impact analysis under the FHA, this court is unwilling to rule as a matter of law that disparate impact analysis cannot apply to eminent domain actions.

Having determined that Joliet's eminent domain power is constrained the FHA, and given that the "federal civil rights challenges to condemnation actions should be resolved in the condemnation action itself," New West, 2012 WL 384574, at *7, disparate impact, as defined in Arlington Heights II, is a proper theory for establishing an FHA violation and, therefore, a prima facie affirmative defense to Joliet's condemnation action.

The court briefly addresses Joliet's additional arguments. In its reply, Joliet contends that the FHA defenses should be "limited" because they are "based on speculation about what will happen as a result of Joliet's redevelopment plans." Joliet's Reply in Supp. of Mot. to Limit FHA Defenses 4. On a Rule 12(c) motion, the court takes Defendants' pleadings as true unless they are implausible under Iqbal, which is not the case here. The court need not engage in "speculation" to determine that, as pled, it is plausible that the condemnation will reduce available housing to African-Americans in Joliet. Joliet's speculation argument is therefore without merit.

Joliet also contends that the FHA affirmative defenses should be "limited" (or stayed, as discussed below) because "it has no intention of simply demolishing Evergreen Terrace or evicting its tenants," Joliet's Mem. in Supp. of Mot. to Limit FHA Defenses & Stay Discovery on FHA Claims 1, and because "it believes that HUD will have no objection to its subsequent use of the property," id. at 6. Joliet asserts that the condemnation will in fact do nothing to limit minority housing in Joliet. This argument is flawed for numerous reasons.

past six years suing to take Evergreen Terrace through eminent domain." New West, 2012 WL 366733, at *3. If Joliet believes that HUD will have no objection to its subsequent use of the property, the court would, of course, encourage the parties to explore the possibilities of settlement. However, based on the current record, Defendants' allegations that the condemnation would "make unavailable or deny, a dwelling," 42 U.S.C. § 3604(a), is plausible and, therefore, sufficient as a prima facie affirmative defense under the FHA. Of course, under the first prong of the Arlington Heights II balancing test, Joliet may attack the strength of the Defendants' showing of discriminatory effect by proving, for example, that its post-condemnation plans will in fact promote integrated housing and/or not unduly burden minority residents. Joliet's request that the court assume these outcomes on a Rule 12(c) motion for judgment on the pleadings, however, has no basis in law.

C. Motion to Stay FHA Discovery

The three civil rights cases and the instant condemnation case are, by agreement of the parties, consolidated for discovery under Rule 42. See Pretrial Scheduling Order ¶ 1 ("The parties agree that [the condemnation case and civil rights cases] should be consolidated for purposes of discovery."); see also New West, 2012 WL 366733, at *1. As the court has previously recognized, the FHA claims for legal relief in the civil rights cases "overlap[] or completely mirror[]" the equitable FHA affirmative defenses in the condemnation case. New West, 2012 WL 384574, at *3.

Joliet argues that, pursuant to Rule 16(b)(4), there is good cause to modify the Scheduling Order, un-consolidate discovery, and stay discovery of FHA issues because "circumstances have changed" since it first agreed to consolidation in the Proposed

Federal Def.'s Sec. Am. Answer to Am. Compl. 19-20 (filed Oct. 28, 2009); see also Tenant's First Am. Answer & Aff. Defenses to Joliet's Am. Compl. for Condemnation 18-19 (filed Oct. 7, 2011) ("The City of Joliet's efforts to condemn Evergreen Terrace disparately impact African-American residents and female-headed families with minor children and result in segregating this population."). Defendants have maintained, well before February 17, 2012, that the condemnation cannot go forward if it were undertaken with a discriminatory intent and/or would have a discriminatory impact on African-Americans in violation of the FHA.

If that were not enough to raise Joliet's awareness as to the scope of the FHA affirmative defenses, the Seventh Circuit and this court have both recognized that Joliet's eminent domain power is constrained by constitutional and statutory rights, and that FHA issues should be resolved in the condemnation case. See City of Joliet, 562 F.3d at 838 (explaining that Joliet's exercise of eminent domain power could be challenged on the basis that it has "an intent, or an effect, forbidden by the Constitution or a federal statute"); see also New West, 2012 WL 384574, at *7 ("[The] federal civil rights challenges to condemnation actions should be resolved in the condemnation action itself."). Moreover, this court has specifically recognized one of HUD's arguments in this case to be that "Joliet is acting with discriminatory intent and for discriminatory effect," in violation of the FHA. New West, 2012 WL 366733, at *5. Joliet has been, or at least should have been, well aware of the scope of Defendants' FHA affirmative defenses for years. Accordingly, there is no reasonable basis upon which Joliet can argue that its alleged February 17, 2012 change in understanding amounts to good cause to modify the Scheduling Order.

relevant to its claims or the defenses in the eminent domain trial." Joliet's Reply in Supp. of Mot. to Stay Discovery on FHA Claims 5. However, as set forth above, broad discovery under the FHA is relevant to this case; the fact that the civil rights cases are stayed is irrelevant. With respect to the former, the fact that the trial date has been moved up approximately three months does not create good cause under Rule 16(b). This is especially true where Defendants have represented that, so long as Joliet complies with the discovery plan, they are prepared to complete discovery in accordance with the current Scheduling Order.

Joliet has not demonstrated good cause to modify the Scheduling Order. These cases shall remain consolidated for discovery. As with Defendants, Joliet has the opportunity under the Federal Rules to obtain discovery on the numerous defenses that remain in this case. Given the fast-approaching September 27 trial date, and consistent with Rule 16(b)'s aim to keep cases "moving toward trial," discovery in this matter should proceed apace.