UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

VERDELL and JULIE FRANKLIN,

Plaintiffs,

v.

RICHARD M. "RICK" BEAUDIN, MARY KAY IKENS, THE MICHIGAN GROUP, INC. – LIVINGSTON d/b/a RE/MAX PLATINUM, and DOMINICK COMER & ASSOCIATES d/b/a KW REALTY LIVINGSTON,

Defendants.
_____/

Case No. 21-10117

Hon. George Caram Steeh

ORDER DENYING DEFENDANTS' MOTIONS TO DISMISS (ECF NOS. 11, 12)

Defendants seek dismissal of Plaintiffs' complaint or, in the alternative, summary judgment. Under Federal Rule of Civil Procedure 12(b)(6), Defendants must accept the well-pleaded allegations in the complaint as true, which they have largely failed to do. Further, at this early stage of the proceedings, without the benefit of discovery, a motion for summary judgment is premature. Therefore, Defendants' motions are denied.

BACKGROUND FACTS

Verdell and Julie Franklin are an interracial couple who were interested in purchasing a cottage on Zukey Lake, in Hamburg Township, Michigan. The area is mostly white and there are no African-American homeowners on the lake. The Franklins have visited friends who own a cottage on the lake for about ten years. ECF No. 1 at ¶¶ 14-16. Their friends spotted a for-sale listing for a cottage near them on September 3, 2020, and shared it with the Franklins. *Id.* at ¶¶ 22-23. The property was listed by agent Rick Beaudin and the listing agency was KW Realty Livingston.

On the morning of September 4, 2020, Julie Franklin, who is white, called the number on the listing to request a showing. *Id.* at ¶ 25. Agent Mary Kay Ikens returned her call and scheduled a showing for 2 p.m. that same day. *Id.* at ¶¶ 26, 29. Julie Franklin and Verdell Franklin, who is African American, toured the house with Ikens. The Franklins allege that Ikens "demonstrated no interest in the Franklins as potential buyers" and did not ask about their occupations or their qualifications to purchase a second home. *Id.* at ¶ 34.

At the end of the showing, the Franklins informed Ikens that they wished to put an offer on the house immediately. ECF No. 1 at ¶ 35. They

allege that she "reacted in an awkward way" and told them that she had to show her friend a home nearby. *Id.* at ¶ 36. The Franklins waited for about an hour and a half, then texted Ikens to ask what happened, as they wanted to put in an offer and head home. *Id.* at ¶¶ 37-38. When Ikens did not reply, the Franklins called her. She told them, "I am on my way back and I have talked to my boss and have more information about the property." *Id.* at ¶ 39. Ikens told them that her "boss" was Rick Beaudin, the listing agent. *Id.* at ¶¶ 40-41.

When Ikens returned, the Franklins filled out and signed a standard purchase agreement, with an offer of $300,000 for the property, which was listed at $350,000. ECF No. 1 at ¶¶ 42-43. The Franklins stated that it was a "starting" offer and that they were prepared to pay more. *Id.* Ikens told them that unless they were willing to offer $350,000 in cash, the sellers would ignore their offer and they would continue to show the house to prospective buyers. *Id.* Ikens also allegedly said that the sellers were insisting on an "as is" sale, with no inspection. *Id.*at ¶¶ 47-48. According to Ikens, only higher, cash offers would be considered and the Franklins' offer "would go in a pile to be ignored." *Id.* at ¶ 50. The Franklins allege that these statements were false and were made to dissuade them from making

an offer on the property. *Id.* at ¶¶ 45-53. The Franklins did not put in an offer, believing the effort to be futile.

On September 10, 2020, the Zukey Lake cottage was listed as "pending" a sale. *Id.* at ¶ 55. On October 28, 2020, the home was listed as "sold" for $300,000. *Id.* at ¶ 56. The home was purchased by a white man who did not pay cash, but obtained a mortgage loan. *Id.* at ¶¶ 57-58. The buyer was also able to have the home inspected before the closing. *Id.* at ¶ 59.

The Franklins allege that Ikens and Beaudin worked together to dissuade them from purchasing the property because of their race. They allege the following causes of action: discrimination in violation of the Fair Housing Act, 42 U.S.C. § 3604; violation of property rights because of race, in violation of 42 U.S.C. § 1982; conspiracy to violate civil rights, in violation of 42 U.S.C. § 1985 and § 1986; and discrimination in real estate transactions, in violation of the Michigan Elliott-Larsen Civil Rights Act.

LAW AND ANALYSIS

I. Standard of Review

Under Fed. R. Civ. P. 8(a)(2), a complaint must contain "a short and plain statement of the claim showing that the pleader is entitled to relief." Although this standard does not require "detailed factual allegations," it

does require more than "labels and conclusions" or "a formulaic recitation of the elements of a cause of action." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). An "unadorned, the defendant-unlawfully-harmed-me accusation" is insufficient. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). Rather, to survive a motion to dismiss, the plaintiff must allege facts that, if accepted as true, are sufficient "to raise a right to relief above the speculative level" and to "state a claim to relief that is plausible on its face." *Twombly*, 550 U.S. at 570. "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Iqbal*, 556 U.S. at 678.

II. Housing Discrimination

The Fair Housing Act prohibits the refusal "to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race" and prohibits discrimination "against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race. . . ." 42 U.S.C. § 3604(a), (b). Pursuant to 42 U.S.C. § 1982, "[a]ll citizens of the United States shall have the same right, in every State and

Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property." *Id.* Similarly, M.C.L. § 37.2502 prohibits discrimination in real estate transactions.

The familiar *McDonnell Douglas* burden-shifting framework applies to federal housing discrimination claims that rely upon circumstantial evidence, "whether they are brought under the FHA or 42 U.S.C. §§ 1981 or 1982." *Lindsay v. Yates*, 498 F.3d 434, 439 (6th Cir. 2007) (citing *Mencer v. Princeton Square Apts.*, 228 F.3d 631 (6th Cir. 2000)). This framework similarly applies to housing discrimination claims under Michigan law. *Mencer*, 228 F.3d at 634 ("In interpreting Michigan's fair housing law, we refer to its federal counterpart for guidance."). A plaintiff may establish a prima facie case of discrimination by showing "(1) that he or she is a member of a racial minority, (2) that he or she applied for and was qualified to rent or purchase certain property or housing, (3) that he or she was rejected, and (4) that the housing or rental property remained available thereafter." *Mencer*, 228 F.3d at 634-35. However, "the precise requirements of a prima facie case can vary depending on the context and were 'never intended to be rigid, mechanized, or ritualistic.'" *Swierkiewicz v. Sorema N.A.*, 534 U.S. 506, 512 (2002). Further, a plaintiff is not required to plead the elements of a prima facie case to state a claim of housing

discrimination. *Lindsay*, 498 F.3d at 439. This is because the *McDonnell Douglas* prima facie case "is an evidentiary standard, not a pleading requirement." *Swierkiewicz*, 534 U.S. at 510; *see also Lindsay*, 498 F.3d at 439. Rather, consistent with the standard set forth in *Twombly* and *Iqbal*, Plaintiffs must allege sufficient factual content from which the court may reasonably infer that Defendants discriminated against them. *See Keys v. Humana, Inc.*, 684 F.3d 605, 610 (6th Cir. 2012).

Defendants argue that Plaintiffs cannot state a claim for housing discrimination because they never made an offer to purchase the property and, therefore, cannot establish a prima facie case. As discussed above, however, Plaintiffs need not plead the elements of a prima facie case in order to state a claim for housing discrimination. Moreover, the FHA broadly prohibits discrimination and does not require the making of an offer to state a claim. *See* 42 U.S.C. § 3604. The FHA "prohibit[s] all forms of discrimination, sophisticated as well as simple-minded, and thus disparity of treatment between whites and blacks, burdensome application procedures, and tactics of delay, hindrance, and special treatment" all are forbidden. *McDonald v. Verble*, 622 F.2d 1227, 1234 (6th Cir.1980) (citation omitted); *see also Dickinson v. Zanesville Metro. Hous. Auth.*, 975 F. Supp.2d 863, 873 (S.D. Ohio 2013) ("[T]he FHA recognizes that

decisionmakers can discriminate against applicants long before they reach the point of deciding whether to accept an application."); *Darby v. Heather Ridge*, 806 F. Supp. 170, 175 (E.D. Mich. 1992).

The Franklins allege that Defendants discouraged them from putting in an offer by misrepresenting that the seller would only accept a higher cash offer with no inspection. The seller ultimately accepted $300,000 from a white buyer who obtained a mortgage loan and an inspection. Accepting these allegations as true, as the court must at this stage, Plaintiffs have sufficiently alleged that they were treated less favorably and dissuaded from making an offer because of their race, which is prohibited by the FHA. Indeed, the accompanying regulations state that the FHA prohibits a person from "*[d]iscouraging* any person from inspecting, purchasing or renting a dwelling because of race. . . ." 24 C.F.R. § 100.70(c)(1) (emphasis added).

Defendants' remaining arguments rely on affidavits and other evidence they have submitted. For example, they argue that Plaintiffs did not make an offer because the house needed too much work, their proposed offer would not have been accepted because it was insufficient, and Beaudin did not have any knowledge of their race. Under a Rule 12(b)(6) standard, the court reviews the sufficiency of the complaint and

does not consider external evidence. *See, e.g., Rondigo, L.L.C. v. Township of Richmond*, 641 F.3d 673, 680-81 (6th Cir. 2011). Although Defendants also seek summary judgment under Rule 56, Plaintiffs have not had the opportunity to conduct discovery and a summary judgment analysis is thus premature. *See White's Landing Fisheries, Inc. v. Buchholzer*, 29 F.3d 229, 231-32 (6th Cir. 1994). Defendants may renew their summary judgment motions after the parties have had adequate time for discovery.

CONCLUSION

Therefore, IT IS HEREBY ORDERED that Defendants' motions to dismiss or for summary judgment (ECF Nos. 11, 12) are DENIED.

Dated: June 16, 2021

s/George Caram Steeh
GEORGE CARAM STEEH
UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE

Copies of this Order were served upon attorneys of record on June 16, 2021, by electronic and/or ordinary mail

s/Leanne Hosking
Deputy Clerk