SUPERIOR COURT
OF THE
STATE OF DELAWARE

RICHARD F. STOKES
JUDGE

1 THE CIRCLE, SUITE 2
SUSSEX COUNTY COURTHOUSE
GEORGETOWN, DE 19947

October 14, 2009

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Re: ***State Human Relations Board ex rel Paul Aburrrow v. Sea Colony Recreational Assoc., et al.***
C.A. No. S08C-08-005 RFS

Submitted: September 9, 2009

Upon Defendants' Motion to Dismiss. Denied.

Dear Counsel:

Pending before me is Defendants' motion to dismiss for failure to state a claim upon which relief may be based, pursuant to Super. Ct. Civ. R. 12(b)(6). The action is brought by Plaintiff State Human Relations Commission, a state agency charged with administering the

Delaware Fair Housing Act ("the Act").[1] The Complaint is filed on behalf of Plaintiffs Paul Aburrow and Robyn Rosenfeld-Aburrow, and the parties do not dispute that Mr. Aburrow is a disabled person within the meaning of the Act. For the reasons stated below, the motion to dismiss is ***Denied.***

Facts. Plaintiffs own a condominium in the Sea Colony housing complex in Bethany Beach, Delaware. They have a designated parking spot near their condominium for day-to-day purposes, which was assigned to them because of Mr. Aburrow's disability. Since 2006, Plaintiffs have sought from Defendants a second designated parking space on the opposite side of the complex because Mr. Aburrow allegedly cannot safely enjoy the recreational facilities on that side of the road, specifically the pool and the ocean. It is uncontested that Plaintiffs' requests have been ignored or denied.

Issues. Defendants argue first that the Act pertains to housing practices but not to parking places and second that Sea Colony Recreational Association ("the Association") is not a proper party to this action.

Standard of review. In evaluating a motion to dismiss under Rule 12(b)(6), the Court must assume all well-pleaded allegations in the Complaint to be true.[2] The Court will not dismiss a claim unless the plaintiff would not be entitled to recover under any reasonably

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[1]Title 6 *Del. C.* § 4600--§4619.

[2]*Nix v. Sawyer*, 466 A.2d 407, 410 (Del. Super. Ct. 1983)(citing *Laventhol, Krekstein, Horwath & Horwath v. Tuckman*, 372 A.2d 168 (Del. 1976)).

conceivable set of circumstances susceptible of proof.[3] The complaint must be without merit as a matter of fact or law to be dismissed.[4] The Court will draw every reasonable factual inference in the non-moving party's favor.[5]

Plaintiffs have stated a cause of action. Defendants argue that the Act pertains to issues related to the sale or rental of housing and that the designation of a parking place does not fall within the ambit of the Act.[6] On the most literal level, this may be plausible. It is also true that the Act is to be liberally construed[7] and that parking can cause problems for people with disabilities.[8] Furthermore, while § 4601(a) refers generally to sales and leases, § 4603(b)(2) makes it unlawful to discriminate against a person in the "sale or rental of a dwelling." The Act gives a broad definition to "dwelling," including, *inter alia*, "the public and common use areas, "[9] which could conceivably include parking spaces. Case law exists supporting Plaintiffs' assertion that issues relating to a parking space can be recognized

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[3] *Id.*

[4] *Diamond State Tel. Co. v. University of Delaware*, 269 A.2d 52 (Del. 1970).

[5] *Ramunno v. Cawley*, 705 A.2d 1029, 1036 (Del. 1998).

[6] § 4603.

[7] § 4601(b).

[8] *See, e.g., Shapiro v. Cadman Towers,* 51 F.3d 328 (2d Cir. 1995).

[9] § 4602(11).

under the Federal Fair Housing Act,[10] which is the equivalent of our own.[11] The Court finds that the Complaint states a claim that is susceptible of proof under the Act, and that Paragraphs 19 through 21 suffice for purposes of general notice-giving.[12] Defendants' motion is therefore ***Denied.***

The Association is a proper party. The Association argues that it has always been a separate entity that has nothing to do with sale or rental of homes at Sea Colony, and is therefore not a proper defendant in this action. Plaintiffs argue that the Association has the authority to manage all common areas including parking spaces and also elects the board of directors. Plaintiffs also argue that the former and current Board presidents denied Plaintiffs' request for an additional parking space, actions which involve them in the alleged discrimination. Under § 4603, unlawful practices include "a refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such [disabled] person equal opportunity to use and enjoy a dwelling." While Delaware case law on the DFHA is thin, federal case law involving condominium associations does exist.[13] Based on the record in its current form, the Court cannot conclude

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[10]*See, e.g., Jankowski Lee & Assoc. v. Cisneros*, 91 F.3d 891 (7th Cir. 1996); *Shapiro v. Cadman Towers, Inc.*, 51 F.3d 328 (2d Cir. 1995).

[11]*Newark Landlord Assoc. v. City of Newark*, 2003 WL 21448560, at *6, n. 33 (Del. Ch.).

[12]*Spanish Tiles, Ltd. v. Hensey*, 2005 WL 3981740 (Del. Super.) (observing that the task of general notice-giving is assigned to pleadings, while narrowing and clarifying issues and facts is role of deposition discovery process).

[13]*Simovits v. Chanticleer Condominium Assoc.,* 933 F.Supp. 1394 N.D. Ill. 1996).

that the Association is not a proper party to this action.

Conclusion. For all these reasons, Defendants' motion to dismiss is ***Denied.***

IT IS SO ORDERED.

Very truly yours,

Richard F. Stokes

RFS/cv

cc: Prothonotary