

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

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:
PAUL MORASKI, :
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Plaintiff, :
:
-against- : MEMORANDUM DECISION
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CITY OF NEW HAVEN HOUSING :
AUTHORITY :
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Defendant. :
:
:
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This civil rights action was originally brought by plaintiff, Paul Moraski, against the City of New Haven Housing Authority and the City of New Haven. In April 2002, plaintiff and defendant City of New Haven stipulated that plaintiff's claims against the City would be dismissed with prejudice.

Plaintiff claims that the City of New Haven Housing Authority (hereinafter "defendant") violated the Civil Rights Act, 42 U.S.C. § 1983 et seq. ("Section 1983"). In particular, plaintiff alleges that defendant violated his civil rights by denying his continued participation as a landlord under various provisions of the Section 8 tenant-based assistance program set forth in Title 24 of the Code of Federal Regulations. See 24 C.F.R. §§ 100.50, 982.1, 982.53. Plaintiff seeks money damages

and a permanent injunction against defendant enjoining it from denying plaintiff participation as a landlord in defendant's Section 8 program.

Defendant has moved for summary judgment [**Doc. #18**] on the ground that plaintiff cannot offer any admissible evidence in support of his claim. For the reasons set forth below, defendant's motion is DENIED.

Summary Judgment Standard

A motion for summary judgment may not be granted unless the Court determines that there is no genuine issue of material fact to be tried and that the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c). An issue is "genuine" if there is sufficient evidence such that a reasonable jury could return a verdict for either party. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). A fact is "material" if it may affect the outcome of the suit under governing law. Id.

The burden of demonstrating the absence of a genuine dispute as to a material fact rests with the party seeking summary judgment, in this case defendant. Adickes v. S.H. Kress & Co., 398 U.S. 144, 157 (1970). Defendant must identify those portions of the pleadings, depositions, answers to interrogatories, admissions, and/or affidavits which they believe demonstrate the absence of a genuine issue of material fact. Celotex Corp. v.

Catrett, 477 U.S. 317, 323 (1986). Since defendant will not have the burden of proof at trial on plaintiff's claim, it can meet its summary judgment obligation by pointing the court to the absence of evidence to support the claim. Celotex, 477 U.S. at 325.

In order to avoid the entry of summary judgment, a party faced with a properly supported summary judgment motion must come forward with extrinsic evidence, i.e., affidavits, depositions, answers to interrogatories, and/or admissions, which are sufficient to establish the existence of the essential elements to that party's case, and the elements on which that party will bear the burden of proof at trial. Celotex, 477 U.S. at 322. The nonmovant, plaintiff, "must do more than present evidence that is merely colorable, conclusory, or speculative and must present 'concrete evidence from which a reasonable juror could return a verdict in his favor...'" Alteri v. General Motors Corp., 919 F. Supp. 92, 94-95 (N.D.N.Y. 1996) (quoting Anderson, 477 U.S. at 256).

In assessing the record to determine whether there are any genuine issues of material fact, the Court is required to resolve all ambiguities and draw all permissible factual inferences in favor of the party against whom summary judgment is sought. McLee v. Chrysler Corp., 109 F.3d 130, 134 (2d Cir. 1997).

Accordingly, we set forth the facts in the light most favorable to plaintiff.

Facts

The Court accepts the following facts as true for the purposes of defendant's motion for summary judgment.

Plaintiff was the record owner of four multiple-family dwellings located on Blake Street, New Haven, Connecticut from 1974 to 2001. (Affidavit of Paul Moraski in Opposition to defendant's Motion for Summary Judgment (hereinafter "Moraski Aff.") ¶ 3.) Plaintiff was qualified and approved to be a landlord participant in a federal government tenant-based housing assistance program known as "Section Eight." (Moraski Aff. ¶ 7.) Plaintiff rented apartments on Blake Street to qualified low-income families, most of whom were African American and Hispanic. (Moraski Aff. ¶ 7.)

During 1997 and thereafter, plaintiff claims he suffered a pattern of harassment by Monica Blazic (hereinafter "Blazic"), New Haven's Housing Assistance Program Director. (Moraski Aff. ¶¶ 4, 8.) Plaintiff further claims that his properties were subject to repeated inspections for alleged minor building violations; plaintiff took all reasonable efforts to correct these alleged violations. (Moraski Aff. ¶ 8.)

On two occasions during December 1997, plaintiff used a concealed microcassette tape recorder to record his conversations with Blazic. (Moraski Aff. ¶¶ 10, 14.) Blazic made several comments that plaintiff alleges evidenced defendant's attempts to

eliminate the concentration of minority families on Blake Street by making participation in the Section Eight program so onerous as to discourage or discontinue rentals to such minority participants. (Moraski Aff. ¶¶ 2, 16.)

In February 1998, plaintiff received a handwritten notice from defendant to the effect that the Housing Authority would not honor any request for lease approval on one of his properties until further notice. (Moraski Aff. ¶ 18, Ex. D.)

In December 2000, plaintiff commenced an action in the Connecticut Superior Court. (Def.'s Rule 9(c)1 Statement of Facts (hereinafter "Def.'s ¶ __") ¶ 1.) In January 2001, defendants removed the action to this Court, alleging as a basis for federal jurisdiction 28 U.S.C. § 1331. (Def.'s ¶ 3; Notice of Removal of Action ¶ 6.) The parties filed a Rule 26(f) report which set deadlines for completing all discovery by November 15, 2001 and for filing dispositive motions by January 15, 2002. (Def.'s ¶ 4.) In June 2001, this Court adopted the deadlines set by the parties in their 26(f) report. (Def.'s ¶ 5.) The parties have not conducted any discovery in this case. (Def.'s ¶¶ 6-8; Pl.'s Mem. Law. Opp'n Def.'s Mot. Summ. J. at 2.)

Discussion

To establish a prima facie case of discrimination under the Fair Housing Act ("FHA"), plaintiff must present evidence that

"animus against the protected group was a significant factor in the position taken by the municipal decision-makers themselves or by those to whom the decision-makers were knowingly responsive." Regional Economic Community Action Program, Inc. v. City of Middletown, __ F.3d __, 2002 WL 449493, *7 (2d Cir. Feb 19, 2002). In this case, plaintiff claims that animus towards racial minorities was the reason that defendant refused to renew plaintiff's lease approval on one of his properties.

In its Memorandum of Law in Support of its Motion for Summary Judgment, defendant points out that plaintiff has not conducted any discovery in this case. See Def.'s Mem. Law. Supp. Mot. Summ. J. at 2. Consequently, defendant argues, it is entitled to summary judgment because plaintiff is unable to offer any evidence in support of the allegations in his Complaint. Id.

In response to defendant's motion, however, plaintiff has come forward with evidence in the form of his own affidavit and transcripts of two secretly recorded conversations with Blazic. Contrary to defendant's assertions, there are several disputed facts in this case. The transcripts contain statements by Blazic that plaintiff claims are evidence of defendant's animus towards low income, minority families living on Blake Street. See Moraski Aff. ¶¶ 11, 12, 15, 16.

In its reply, defendant claims that plaintiff has misconstrued Blazic's statements as evidence of racial

discrimination when they are, in fact, evidence of defendant's efforts to comply with a settlement agreement reached in Christian Community Action, Inc. v. Cisneros, No. 3:91CV296(AVC) (1995). Under the settlement agreement, defendant was required to "scatter" Section 8 tenants from racially and economically impacted neighborhoods to surrounding communities. See Def.'s Reply to Pl.'s Mem. Law at 3. However, which of the two interpretations to believe is a determination for a jury to make. Blazic's comments, under the circumstances, could lead a reasonable jury to conclude that animus against racial minorities was a significant factor in defendant's termination of plaintiff's lease privileges under the Section 8 program.¹

In sum, drawing all inferences in his favor, we hold that plaintiff has set forth sufficient evidence to raise a triable issue of fact as to whether defendant's termination of plaintiff's lease privileges under the Section 8 program was motivated by animus towards racial minorities. Accordingly, defendant's motion for summary judgment is denied.

Conclusion

For the reasons set forth above, defendant's motion for

¹ Other than a general allegation that Blazic's comments reflected defendant's efforts to comply with the settlement agreement, defendant has offered no explanation for its decision not to renew plaintiff's lease approval on one of the properties.

summary judgment [**Doc. #18**] is DENIED.

SO ORDERED.

Dated: July 29, 2002
Waterbury, CT

_____/s/_____
Gerard L. Goettel
United States District Judge