UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

RHONDA HENDERSON et al., Plaintiffs, v. VISION PROPERTY MANAGEMENT, LLC et al., Defendants.	Case No. 20-12649 Honorable Shalina D. Kumar Magistrate Judge David R. Grand

OPINION AND ORDER GRANTING IN PART AND DENYING IN PART PLAINTIFFS' MOTION FOR RECONSIDERATION (ECF NO. 235)

I. Introduction

Plaintiffs move for reconsideration of this Court's opinion and order granting defendants summary judgment and dismissing plaintiffs' claims under the Fair Housing Act ("FHA"), 42 U.S.C. § 3601 *et seq*., and Equal Credit Opportunity Act ("ECOA"), 15 U.S.C. § 1691 *et seq*. ECF No. 235. The Court ordered defendants to file a response to that motion, ECF No. 237, and each defendant did so. *See* ECF Nos. 240-44. For the reasons set forth below, plaintiffs' motion is granted in part and denied in part.

II. Background

Plaintiffs sued Vision Property Management, LLC ("VPM") and its affiliated entities[1] (collectively "Vision"); FTE Networks, Inc. and US Home Rentals, LLC, as successor organizations to Vision (collectively "USHR"); Atalaya Capital Management LP ("ACM"), ACM Vision V, LLC; Inmost Partners, LLC, DS Agent, LLC, Statebridge Company, LLC (collectively "Noteholder Agent"); and Kookmin Bank and Samsung Securities Co., Ltd. (collectively "Issuer Noteholder").[2] Plaintiffs, who entered lease with option to purchase ("LOP") contracts with Vision as a means to purchase homes in Michigan, assert that Vision's practice of acquiring distressed residential properties and marketing low-income homeownership through LOP contracts in predominantly Black, metropolitan Detroit neighborhoods targeted and had a disparate impact on Black homebuyers, thus violating both the FHA and ECOA.[3]

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[1] The affiliated entities are Kaja Holdings, LLC, Kaja Holdings 2, LLC, MI Seven, LLC, IN Seven, LLC, RV4M 4, LLC, DSV SPV1, LLC, DSV SPV2, LLC, DSV SPV3, LLC, Boom SC, Alan Investments III, LLC, Arnosa Group LLC, Mom Haven 13, LP, and HOMI Holdings, LLC. ECF No. 205.

[2] The Issuer Noteholder defendants contest the Court's personal jurisdiction over them. *See* ECF No. 243.

[3] Plaintiffs also allege that defendants' sales practices violated the Truth in Lending Act ("TILA"), 15 U.S.C. § 1601 *et seq.* and the Real Estate Settlement Procedures Act ("RESPA"), 12 U.S.C. § 2601 *et seq*. ECF No. 205, PageID.5666-74.

Defendants moved for summary judgment,[4] arguing that plaintiffs lacked evidence of intentional discrimination and could not show that Vision's business practices had a disparate impact on Black residents in Michigan, which plaintiffs argued was the appropriate benchmark group by which to measure disparate impact. ECF Nos. 185, 189, 221-25. The Court agreed, finding that Vision's selling practices were not unique to Michigan, as compared to the Midwest, and thus Michigan homebuyers were not the appropriate yardstick by which to measure disparate impact. ECF No. 229, PageID. 5967-70, 5972-73. The Court also found that plaintiffs offered no evidence of racial disparate impact on Vision's Midwest homebuyers and thus granted defendants' motion for summary judgment. *Id*. at PageID.5970, 5972-74. Finally, the Court denied plaintiffs' request to reopen discovery to allow them to address the evidentiary deficiency regarding Vision's Midwest homebuyers and dismissed plaintiffs' FHA and ECOA claims. *Id*. at PageID.5970-74.

In the motion now before the Court, plaintiffs ask the Court to reconsider its ruling, arguing that the Court erred in dismissing their FHA

[4] ACM filed the motion for summary judgment but Vision, USHR, and Noteholder Agent defendants all concurred in the motion arguing that they were entitled to summary judgment against plaintiffs based on the same arguments advanced by ACM. See ECF Nos. 189, 223, 224, 225.

and ECOA claims in their entirety without addressing plaintiffs' disparate treatment claims. ECF No. 235, PageID.6027-36. Plaintiffs also aver that the Court erred in denying their request to reopen discovery. *Id*. at PageID.6036-41.

III. Analysis

Eastern District of Michigan Local Rule 7.1(h)(2) articulates that motions for reconsideration of non-final orders are disfavored and may be brought only upon the following grounds:

> (A) The court made a mistake, correcting the mistake changes the outcome of the prior decision, and the mistake was based on the record and law before the court at the time of its prior decision;
>
> (B) An intervening change in controlling law warrants a different outcome; or
>
> (C) New facts warrant a different outcome and the new facts could not have been discovered with reasonable diligence before the prior decision.

E.D. Mich. LR 7.1(h)(2). A motion for reconsideration is not a proper means "to re-hash old arguments." *Smith ex rel. Smith v. Mt. Pleasant Public Schools*, 298 F. Supp. 2d 636, 637 (E.D. Mich. 2003). "Fundamentally, 'a motion for reconsideration is not a second bite at the apple[.]'" *Masjid Malcolm Shabazz House of Worship, Inc. v. City of Inkster,* 2022 WL

866402, at *7 (E.D. Mich. March 23, 2022) (quoting *Collins v. Nat'l Gen. Ins. Co.*, 834 F. Supp. 2d 632, 641 (E.D. Mich. 2011)).

A.

1.

Plaintiffs seek reconsideration of the Court's dismissal of their FHA and ECOA claims, arguing that the Court made a mistake by failing to address their disparate treatment theory of liability. Defendants respond that plaintiffs did not assert a disparate treatment claim. They note that the 511-paragraph second amended complaint ("SAC"),[5] filed seven months after the motion for summary judgment, mentions disparate impact throughout but contains not a single reference to disparate treatment. *See* ECF Nos. 1, 77, 205.

Semantics aside, plaintiffs argue in their response to the motion for summary judgment and again in their motion for reconsideration that reverse redlining—the practice of intentionally targeting borrowers in predominately minority areas for predatory loans—supports a claim for disparate treatment. *City of Memphis v. Wells Fargo Bank, N.A.*, 2011 WL 1706756, at *14 n.56 (W.D. Tenn. May 4, 2011) (collecting cases); *see also*

[5] Plaintiffs' original complaint and first amended complaint likewise contained no mention of disparate treatment.

Prince George's Cnty. v. Wells Fargo & Co., 397 F. Supp. 3d 752, 766 (D. Md. 2019); *Cook Cnty. v. HSBC N. Am. Holdings Inc.*, 136 F. Supp. 3d 952, 966 (N.D. Ill. 2015). Both the first and second amended complaints allege reverse redlining, explicitly asserting that defendants intentionally targeted borrowers and buyers in predominately Black neighborhoods, like plaintiffs, with their predatory financing program. ECF No. 77, PageID.346-48; ECF No. 205, PageID.5582-84, 5654-55. Defendants' motion for summary judgment did not address claims of intentional targeting. Accordingly, plaintiffs' reverse-redlining disparate treatment claims, under the FHA and ECOA remain viable, and the Court's dismissal of those claims in their entirety was error. Because the correction of that error changes the outcome, the Court grants plaintffs' motion for reconsideration as it relates to the dismissal of their FHA and ECOA claims and sets aside its previous ruling dismissing those claims in their entirety.

2.

Because the Court revives plaintiffs' FHA and ECOA disparate treatment claims against defendants, the Court must now address ACM's alternate arguments for summary judgment and dismissal of those claims against only it. *See* ECF No. 185, PageID.3469-79.

ACM argues that plaintiffs' FHA claims against it fail because it did not engage in any conduct controlled or restricted by the FHA. Specifically, ACM argues that it is entitled to summary judgment because it merely facilitated a loan to Vision and was not involved in any LOP transaction with plaintiffs or in the terms of the LOP contract which would subject ACM to liability under § 3604(a) of the FHA.

Section 3604(a) of the FHA makes unlawful the refusal to sell or rent, or to negotiate for the sale or rental, 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) (emphasis added). The scope of § 3604(a) extends beyond owners and agents to other actors who are in a direct position to deny housing rights to a member of a protected group. *See Michigan Prot. and Adv. Serv., Inc. v. Babin*, 18 F.3d 337, 344 (6th Cir. 1994). In other words, § 3604 applies to actors who directly affect the availability of housing. *Id*. The FHA "was designed to target . . . those who, in practical effect, assisted in . . . transactions of ownership and disposition." *Id*. at 345.

Indeed, § 3604(a) reaches beyond the direct sale and rental of properties to activity that is "removed from the central event of purchasing or leasing a dwelling but nonetheless ha[s] some impact on a person's

ability to acquire [and retain] housing." *Id.* at 344-45. This Court previously held that plaintiffs' allegations—that ACM was the primary funder of Vision's property acquisitions, participated in the design of the LOP contracts, had detailed knowledge of Vision's business model, reviewed Vision's marketing and advertising strategies, and participated in decisions on individual LOPs in default—were legally sufficient to establish ACM as "an actor who directly affect[ed] the availability of housing" and thus subject it to liability under § 3604(a). ECF No. 103, PageID.586.

Plaintiffs now cite to evidence to support their allegations. First, ACM was extensively involved with Vision's property acquisitions, receiving detailed information about the individual properties to be purchased, including location and photographs. ECF No. 192-13, PageID.4620-21. It was also an active participant in the design of the allegedly predatory LOP contracts. It reviewed the language of the final LOP form contract and sent it for further review by its regulatory counsel. ECF No. 192-2, PageID.3854. Moreover, ACM requested that Vision employ LOP contracts instead of contracts for deed, which Vision used before ACM's involvement. ECF No. 192-9, PageID.4259.

Although, as ACM argues, the mere facilitation of a loan that allegedly allowed discrimination by another may not be enough to

constitute discrimination under § 3604(a), the evidence adduced here—that ACM was an active participant in the acquisition and disposition of residential property—amply supports plaintiffs' claim that ACM directly affected the availability of housing within the meaning of § 3604(a) and warrants the denial of ACM's motion for summary judgment.

ACM also argues that it is entitled to summary judgment of plaintiffs' claims under §§ 3604(b) and 3605(a) of the FHA because there is no evidence that ACM was involved in providing or approving LOP contract terms. Section 3604(b) prohibits discrimination in the "terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith." 42 U.S.C. § 3604(b). Likewise, § 3605 applies to discrimination during residential real estate-related transactions, defined as "the making or purchasing of loans or providing other financial assistance for purchasing, constructing, improving, repairing, or maintaining a dwelling, or secured by residential real estate." *Id.* § 3605(a). As discussed above, plaintiffs have supplied sufficient evidence of ACM's involvement with the LOP contracts, including the replacement of Vision's previously used contracts for deed with the LOP form contract at ACM's urging, to defeat ACM's argument. ECF No. 192-2, PageID.3854; ECF No. 192-9, PageID.4259.

ACM alternatively argues that it is entitled to summary judgment on the §§ 3604(b) and 3605(a) claims because plaintiffs cannot show that they were offered housing on worse terms than similarly situated white individuals. But plaintiffs need not supply evidence of white applicants being offered housing on different terms. Instead, plaintiffs can establish disparate treatment based on reverse redlining by showing that (1) they are a member of a protected class; (2) they applied for and were qualified for loans; (3) they received grossly unfavorable terms; and (4) they were intentionally targeted or intentionally discriminated against. *M&T Mortg. Corp. v. White*, 736 F. Supp. 2d 538, 575 (E.D.N.Y. 2010) (citing *Matthews v. New Century Mortg. Corp.*, 185 F. Supp. 2d 874, 886-87 (S.D. Ohio 2002)).

As noted above, plaintiffs explicitly allege that defendants intentionally targeted them with Vision's predatory financing program. ECF No. 205, PageID.5582-84, 5654-55. Defendants do not address plaintiffs' claims of intentional targeting in their motion for summary judgment. Accordingly, plaintiffs' §§ 3604(b) and 3605(a) claims against ACM withstand ACM's motion for summary judgment.

In addition, ACM argues that plaintiffs' ECOA claim fails because it was not involved in any credit transaction with plaintiffs. Like its FHA

arguments, ACM's argument for summary judgment of plaintiffs' ECOA claim is unavailing.

The ECOA prohibits any creditor from discriminating against any applicant with respect to any aspect of a credit transaction on the basis of race. 15 U.S.C. § 1691(a). The LOP contracts constitute "credit" under ECOA because they provide for the consumer's right to purchase the home and defer payment of the purchase price. *See* 15 U.S.C. § 1691a(d); 12 C.F.R. § 1002.2(j). ACM is a "creditor" under ECOA because it participated in the credit transactions. ECF No. 103, at PageID.588. The definition of a "creditor" subject to claims under ECOA is intentionally broad. It includes any person who "regularly extends, renews, or continues credit," any arranger of credit, and "any assignee of an original creditor" who participates in the credit decision. 15 U.S.C. § 1691a(e). An entity "regularly extends" credit if it "regularly participates in a credit decision, including setting the terms of the credit." 12 C.F.R. § 1002.2(l).

"Courts have found entities to be creditors for purposes of ECOA even when they did not directly review credit applications, when they regularly participated in determining binding policies for extending credit to customers." *Coleman v. Gen. Motors Acceptance Corp.*, 220 F.R.D. 64, 76 n.9 (M.D. Tenn. 2004) (collecting cases involving financers). The adduced

evidence of ACM's active role in "setting the terms of the credit" precludes summary judgment on plaintiffs' ECOA claim. 12 C.F.R. § 1002.2(l); see ECF No. 192-2, PageID.3854; ECF No. 192-9, PageID.4259.

In sum, genuine issues of material fact remain as to plaintiffs' FHA and ECOA claims against ACM, thus precluding summary judgment in ACM's favor.

B.

Plaintiffs also seek reconsideration of the Court's denial of its request for additional discovery on the impact of defendants' businsess practices in the Midwest. Plaintiffs argue that the Court erred in refusing its request to reopen discovery on this issue because they diligently pursued discovery on the issue once they were placed on notice that the Midwest, not Michigan, was likely the relevant geographic scope for ascertaining disparate impact. Plaintiffs argue that they did not have notice of this issue until the Court raised it at oral argument in May 2023. The Court disagrees that plaintiffs had no notice about the controversy over the relevant geographic scope of Vision's business practices before May 2023, and further disagrees that plaintiffs have acted diligently with respect to their request for further discovery after the May 2023 hearing.

As the Court noted in its original opinion, plaintiffs had notice that there was an issue over defining the contours of the group by which disparate impact may be measured through ACM's response to their motion for leave to file the SAC, filed in April 2022. *See* ECF No. 158. The issue was placed starkly before plaintiffs again with ACM's motion for summary judgment, filed on August 30, 2022. Plaintiffs therefore had several months' notice of the issue before the Court raised it in May 2023.

Plaintiffs assert that because defendants argued that a national geographic scope was appropriate and no party had proposed a regional geographic scope, they could not have recognized the need to demonstrate that the LOP program disparately impacted Black homebuyers in the Midwest. Although perhaps superficially compelling, this argument is ultimately unavailing because it ignores the fact that plaintiffs carry the burden of proof to identify the total group impacted by Vision's practices. *See Waldon v. Cincinnati Pub. Schs.*, 89 F. Supp. 3d 944, 948-49 (S.D. Ohio 2015); *see also Greater New Orleans Fair Housing Action Cntr. v. U.S. Dep't of Housing and Urban Development*, 639 F.3d 1078, 1086 (D.D.C. 2011); *Betsey v. Turtle Creek Assocs.*, 736 F.2d 983, 987 (4th Cir. 1984). Accordingly, because the onus to identify the total group impacted by the LOP program was always on plaintiffs, they should have recognized

the necessity for discovery on the appropriately considered geographic scope or scopes long before the Court raised the issue in May 2023. *See Waldon*, 89 F. Supp. 3d at 948-49.

Furthermore, even if plaintiffs had no obligation to recognize the issue of proper geographic scope of LOP impact before, they were definitively placed on notice when that issue was explicitly discussed at the May 10, 2023 hearing, during which the Court emphasized that discovery was closed. ECF Nos. 185, 214, PageID.5774-75. Nevertheless, plaintiffs did not seek to reopen discovery until June 30, 2023. ECF No. 221. Because this case had been pending for three full years and because discovery, which the parties had already extended, closed on August 15, 2022, the Court finds no error in assessing plaintiffs' seven week delay as a lack of diligence that prohibits reopening discovery. ECF No. 138; *see Bentkowski v. Scene Mag.*, 637 F.3d 689, 696 (6th Cir. 2011) (holding that the overarching inquiry in allowing additional discovery is whether the moving party was diligent in pursuing it).

IV. CONCLUSION

For these reasons, plaintiffs' motion for reconsideration (ECF No. 235) is **GRANTED IN PART** and **DENIED IN PART**. Defendants, including ACM, are not entitled to summary judgment on plaintiffs' FHA and ECOA

claims under their reverse redlining disparate treatment theory of liability. Defendants however remain entitled to summary judgment on plaintiffs' disparate impact claims. In this, and all other respects including the reopening of discovery, the Court reaffirms its rulings in its Opinion and Order dated October 18, 2023. ECF No. 229.

IT IS SO ORDERED.

s/Shalina D. Kumar
SHALINA D. KUMAR
United States District Judge

Dated: April 26, 2024