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

MARSHA WETZEL, Plaintiff, *v.* GLEN ST. ANDREW LIVING COMMUNITY, LLC; GLEN ST. ANDREW LIVING COMMUNITY REAL ESTATE, LLC; GLEN HEALTH & HOME MANAGEMENT, INC.; ALYSSA FLAVIN; CAROLYN DRISCOLL; and SANDRA CUBAS, Defendants.	)	Case No. 1:16-cv-07598 Hon. Samuel Der-Yeghiayan

PLAINTIFF'S OPPOSITION TO DEFENDANTS' MOTION TO DISMISS

Plaintiff Marsha Wetzel filed this action seeking redress for the hostile housing environment to which she has been subjected because of her sex and sexual orientation over the course of more than fifteen months while living at Glen St. Andrew Living Community. Defendants seemingly have no quarrel with the straightforward proposition that the Complaint alleges severe and pervasive harassment because of her sex and sexual orientation in violation of the Fair Housing Act ("FHA"), 42 U.S.C., § 3601 et seq., and the Illinois Human Rights Act ("IHRA"), 775 Ill. Comp. Stat. 5/3-101 et seq. Defendants also do not challenge the fact that Marsha has alleged their knowledge of and failure to address the severe and pervasive harassment she has experienced and their retaliation against her for seeking to enforce her right to be free from harassment. Instead, Defendants argue only that a complaint is per se not viable if it (a) is based on "incidents of tenant-on-tenant harassment;" (b) does not allege "discriminatory intent on the part of the Defendants;" or (c) invokes Section 3604(b) and is based on "post-acquisition harassment." Defendants' Motion to Dismiss (ECF 15) at 3. These arguments wholly

disregard the prevailing jurisprudence regarding hostile housing environment claims, under which Defendants may clearly be held liable for post-acquisition conduct, including tenant-on-tenant harassment, without specific allegations of Defendants' discriminatory animus. Defendant Glen St. Andrew Living Community Real Estate, LLC also raises the meritless argument that it is "an improper defendant." *Id*. Defendants' Motion to Dismiss should be denied.

ALLEGATIONS IN THE COMPLAINT

Marsha Wetzel is a 69-year-old woman who lives at Glen St. Andrew Living Community ("GSALC") in Niles, Illinois. Compl. ¶¶ 2, 11, 20. Marsha is a lesbian, and she moved to GSALC in November 2014 after the death of her partner of thirty years, Judy, with whom she raised a child. *Id.* ¶¶ 3, 11, 21-25. Over the course of more than fifteen months, Marsha was subjected to a severe and pervasive pattern of discrimination, harassment, threats, and intimidation because of her sex and sexual orientation by other residents of GSALC. *Id.* ¶¶ 4-6, 28-36, 43-44, 47-52, 57-59, 61-64. She has been called countless profanities, subjected to sexist and homophobic slurs, told that she looks like a man and that she would never want a woman again if she ever had a sexual relationship with a man, taunted about her relationship with Judy and their son, spit on, threatened with bodily harm, intimidated, and repeatedly assaulted. *Id.* ¶¶ 4, 28, 30, 32-36, 43-45, 47, 50, 52, 57-59, 61. These incidents have created a hostile housing environment that has caused Marsha tremendous fear, anxiety, and emotional distress and have unreasonably interfered with her use and enjoyment of her home, all because Marsha is a woman who had a committed relationship and created a family with another woman and because she is a lesbian. *Id.* ¶¶ 4, 6, 11, 47, 51, 55, 57, 59, 62-67.

Marsha repeatedly complained about the sex- and sexual orientation-based harassment she experienced to the staff and administration of GSALC, including to Defendants Flavin,

Driscoll, and Cubas. *Id.* ¶¶ 5, 29, 31-32, 37, 39, 41-43, 45, 52, 56, 60. Witnesses to some of the incidents, including GSALC staff and other residents, also reported the incidents to the administration. *Id.* ¶¶ 30-31, 52-53, 56, 61. Yet Defendants have failed to take any meaningful action to put a stop to the harassment and discrimination Marsha has experienced despite having the authority and obligation to do so. On the contrary, Defendants have ratified and condoned the abuse, actively discouraged Marsha from taking steps to address it, marginalized and penalized her, and retaliated against her for complaining to them about the discriminatory harassment she has faced by limiting her access to GSALC facilities and resources and by threatening and attempting to kick her out of GSALC. *Id.* ¶¶ 5-6, 11, 29, 31-32, 37-43, 45-46, 48, 51-56, 60-72. In so doing, they have deprived her of equal housing opportunity.

ARGUMENT

Defendants' Motion to Dismiss is a futile attempt to avoid judicial review of the unlawful hostile housing environment they have allowed to permeate the senior living community they own and run and of their retaliation against Marsha for complaining about this unlawful discrimination. A well-established body of law applies both the FHA and IHRA's prohibitions of housing discrimination to situations in which harassment on a discriminatory basis is so severe and pervasive as to create a hostile housing environment that interferes with a resident's equal housing opportunity. *See, e.g.*, *DiCenso v. Cisneros*, 96 F.3d 1004, 1008 (7th Cir. 1996) (creating a hostile housing environment can violate the FHA, whether under 42 U.S.C. § 3604(b) or § 3617); *Szkoda v. Ill. Human Rights Comm'n*, 706 N.E.2d 962, 968-69 (Ill. App. Ct. 1998) (addressing hostile housing environment claims under both FHA (§ 3604) and the IHRA (§ 3-102(B))).[1] Hostile housing environment claims have proceeded under both § 3604(b) and § 3617

[1] Illinois courts look to the FHA in interpreting the IHRA, so courts generally consider claims under the IHRA to be subject to the same analysis as FHA claims. *See Stevens v. Hollywood Towers & Condo.*

in recognition that a severe and pervasive pattern of harassment may constitute both 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," § 3604(b), and "coerc[ion], intimidat[ion], threat[s], or interference with" a person's exercise or enjoyment of her equal housing rights, § 3617. *See, e.g.*, *Bloch v. Frischholz*, 587 F.3d 771, 779, 783 (7th Cir. 2009) (citing *DiCenso*; *Honce v. Vigil*, 1 F.3d 1085, 1090 (10th Cir. 1993)); *Nguyen v. Patek*, No. 14-C-1503, 2014 WL 5293425 (N.D. Ill. Oct. 16, 2014) (allegations of persistent course of racially-motivated harassment by neighbors sufficient to plead FHA claims under §§ 3604(b) and 3617).

Marsha's Complaint plainly sets forth a hostile housing environment claim, alleging that (1) Marsha is a member of a protected class (woman, lesbian), ¶¶ 3, 11, 21, 64-65; (2) she has been subjected to unwelcome harassment, ¶¶ 4, 64; (3) the harassment was based on her sex and sexual orientation, ¶¶ 4, 11, 65-67; (4) the harassment was sufficiently severe or pervasive to deprive her of her right to enjoy her home, ¶¶ 6, 64-67; and (5) Defendants knew or should have known of the harassment in question and failed to take prompt remedial action, ¶¶ 68-72. *See Krieman v. Crystal Lake Apartments Ltd. P'ship*, No. 05-C-0348, 2006 WL 1519320, at *11 (N.D. Ill. May 31, 2006); *Chesler v. Conroy*, No. 08-C-2679, 2008 WL 4543031, at *3 (N.D. Ill. Oct. 8, 2008). As well, in alleging that Defendants marginalized, alienated, penalized, and took adverse actions against Marsha in response to her complaints about the harassment she was experiencing because of her sex and sexual orientation, Compl. at ¶¶ 5, 11, 32, 37-43, 53-55, 60, 68-69, Marsha has stated claims of unlawful retaliation under the FHA and IHRA. *See, e.g.*, *Mehta v. Beaconridge Improvement Ass'n*, 432 Fed. App'x 614, 617 (7th Cir. 2011); *Gorski*

Ass'n, 836 F. Supp. 2d 800, 808 (N.D. Ill. 2011) (citing *Norville v. Dep't of Human Rights*, 792 N.E.2d 825 (Ill. App. Ct. 2003)); *see also generally Rozsavolgyi v. City of Aurora*, --- N.E.3d ---, 2016 Ill. App. 2d 150493, *reh'g denied* (July 6, 2016) (prohibition of discrimination in "terms, conditions, or privileges" encompasses hostile environment harassment based on any enumerated characteristic); *but see Martinez v. Nw. Univ.*, No. 14-C-2180, 2016 WL 1213913 (N.D. Ill. Mar. 29, 2016).

v. Troy, 929 F.2d 1183, 1189-90 (7th Cir. 1991). These allegations more than meet the requirement of "stat[ing] a claim for relief that is plausible on its face." *Huri v. Office of the Chief Judge of the Circuit Court of Cook Cty.*, 804 F.3d 826, 832-33 (7th Cir. 2015).

Defendants seek to import requirements for stating hostile housing environment and retaliation claims—including those related to intent, post-acquisition claims, and vicarious liability—that do not exist, have been squarely rejected, or ignore longstanding principles of civil rights law. This Court should reject Defendants' attempt to shirk their liability, whether direct or vicarious, for failing to address the harassment and discrimination they tolerated and ratified at GSALC and for retaliating against Marsha when she sought to put an end to the abuse. Specifically, the Court should reject Defendants' arguments that any housing discrimination complaint must be dismissed if it (1) turns on tenant-on-tenant harassment; (2) does not allege discriminatory intent on the part of Defendants; or (3) invokes Section 3604(b) and is based on post-acquisition harassment or discrimination. The Motion should be denied.

I. THE FHA IMPOSES LIABILITY ON HOUSING PROVIDERS FOR THE HOSTILE HOUSING ENVIRONMENT CREATED BY HARASSMENT BY OTHER TENANTS.

Contrary to Defendants' gross misstatement of the jurisprudence across the country, the vast majority of courts have held that landlords and property owners may be held directly and vicariously liable for hostile housing environment discrimination as a result of harassment by other tenants. *See, e.g.*, *Krieman*, 2006 WL 1519320, at *11-12; *Scialabba v. Sierra Blanca Condo. No. One Ass'n*, No. 00-C-5344, 2001 WL 803676, at *6 (N.D. Ill. July 16, 2001); *Wilstein v. San Tropai Master Ass'n*, No. 98-C-6211, 1999 WL 262145, at *11 (N.D. Ill. Apr. 22, 1999). Applying longstanding civil rights and tort principles, courts have regularly allowed complaints regarding tenant-on-tenant harassment to proceed against housing providers like Defendants when those defendants knew or should have known about the discriminatory conduct

and failed to stop it. *See, e.g.*, *Scialabba*, 2001 WL 803676, at *6 (housing provider must have knowledge of harassment for hostile housing environment claim to proceed against it); *Wilstein*, 1999 WL 262145, at *11 (allowing hostile housing environment claim against condo association that was aware that "other residents of the complex, repeatedly and systematically harassed, insulted and otherwise tormented him at his place of residence."); *Neudecker v. Boisclair*, 351 F.3d 361, 365 (8th Cir. 2003) (FHA violated where tenants harassed and threatened plaintiff because of disability and management ignored complaints); *Hicks v. Makaha Valley Plantation Homeowners Ass'n*, Civ. No. 14-00254, 2015 WL 4041531 (D. Haw. Jun. 30, 2015) (hostile environment claim stated by allegations that residents engaged in racial harassment and management company knew and failed to remedy); *Fahnbulleh v. GFZ Realty, LLC*, 795 F. Supp. 2d 360 (D. Md. 2011) (landlord liable for hostile environment created by tenant's sexual harassment where "landlord knew or should have known of the harassment and took no effectual action to correct the situation" (quotation omitted)); *Martinez v. Cal. Investors XII*, No. CV 05-7608-JTL, 2007 WL 8435675 (C.D. Cal. Dec. 12, 2007) (allowing claim against management company that ratified racial harassment by other tenants); *U.S. v. Applewood of Cross Plains, LLC*, No. 3:16-cv-00037-jdp, Consent Decree (W.D. Wis. Jan. 20, 2016) (settling claim that apartment complex, its owner, and its manager discriminated against tenants "by failing to fulfill their duty to take prompt action to correct and end the disability-related harassment of [tenants] by other tenants").

This understanding of landlord liability is reflected in the regulations on hostile environment harassment recently issued by the Department of Housing and Urban Development ("HUD"). *See* HUD, *Quid Pro Quo and Hostile Environment Harassment and Liability for Discriminatory Housing Practices under the Fair Housing Act*, 81 FR 63054 (Aug. 18, 2016)

("HUD Final Rule").[2] This rule adds § 100.7 to 24 CFR part 100, stating that a person is directly liable for "[f]ailing to take prompt action to correct and end a discriminatory housing practice by a third-party, where the person knew or should have known of the discriminatory conduct and had the power to correct it." *Id*. HUD explains that this provision reflects well-established standards in civil rights and tort laws:

> A housing provider's obligation to take prompt action to correct and end a discriminatory housing practice by a third party derives from the Fair Housing Act itself, and its liability for not correcting the discriminatory conduct of which it knew or should have known depends upon the extent of the housing provider's control or any other legal responsibility the provider may have with respect to the conduct of such third-party.

81 FR at 63067.

The cases cited by Defendants do not undermine the viability of FHA claims against housing providers for tenant-on-tenant harassment. First, Defendants' reliance on *Smith v. Hous. Auth. of South Bend*, 867 F. Supp. 2d 1004 (N.D. 2012), is misplaced. The court in *Smith* did *not* explicitly state that the FHA does not apply to tenant-on-tenant harassment. Rather, the court rejected a poorly pleaded bullying claim that the plaintiffs did not specifically link to any of the listed causes of action. *Id*. at 1013. Second, *Ohio Civil Rights Comm'n v. Akron Metro. Hous. Auth*, 892 N.E.2d 415 (Ohio 2008), did not involve claims under the FHA, but under Ohio's discriminatory practices law, Ohio Rev. Code Ann. § 4112.02 (H)(4). Further, that case rejects applying Title VII hostile environment principles that this Circuit has already stated apply to FHA claims. *Compare Ohio Civil Rights Comm'n*, 892 N.E.2d at 419-20 *with DiCenso*, 96 F.3d at 1008. Defendants sole support for their position then rests on *Francis v. King Park Manor, Inc.*, 91 F. Supp. 3d 420 (E.D.N.Y. 2015), a decision that is a complete outlier from the core

[2] As the agency charged with administering the FHA, 42 U.S.C. § 3608(a), HUD's interpretation of landlord liability for tenant-on-tenant harassment under the FHA is entitled to deference under *Chevron U.S.A., Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837, 844-45 (1984).

body of case law on this issue and is now on appeal to the Second Circuit, Docket No. 15-1823 (2d Cir., filed Jun. 4, 2015). *See* HUD Final Rule, 81 FR 63068-69.

Holding landlords liable for tenant-on-tenant harassment is consistent with the underlying purpose of the FHA. *See Havens Realty Corp. v. Coleman*, 455 U.S. 363, 380 (1982) (Congress intended FHA to be broadly remedial); *United States v. Sabbia*, No. 10-C-5967, 2011 WL 1900055, at *6 (N.D. Ill. May 19, 2011) ("The Seventh Circuit has indicated that the courts 'must hold those who benefit from the sale and rental of property to the public to the specific mandates of anti-discrimination law if the goal of equal housing opportunity is to be reached.'") (quoting *City of Chicago v. Matchmaker Real Estate Sales Ctr., Inc.*, 982 F.2d 1086, 1097 (7th Cir. 1992)).

II. PLAINTIFF IS NOT REQUIRED TO SPECIFICALLY ALLEGE DEFENDANTS' DISCRIMINATORY INTENT.

To state claims for hostile housing environment discrimination and retaliation, Marsha does not need to allege specific ill intent on the part of Defendants. *See Texas Dep't of Hous. & Cmty. Affairs v. Inclusive Communities Project, Inc.*, 135 S. Ct. 2507, 2518-19 (2015) (intent not a pre-requisite for FHA claim). She needs only to contend that (1) Defendants knew of the harassment and they ratified and endorsed it rather than exercising their authority to address it, and (2) they took adverse actions in response to her complaints about the unlawful discriminatory harassment. *See* Part I, *supra; Mehta*, 432 Fed. Appx. at 617 (retaliation alleged where defendants took adverse action in response to plaintiff's complaint of unlawful discriminatory actions). In *Inclusive Communities*, the Supreme Court rejected the notion that a violation of the FHA requires a showing of discriminatory intent. 135 S. Ct. at 2518-19. The Court addressed the argument that the FHA's use of the phrase "because of" requires a showing that the protected characteristic was the reason for an action, and concluded that, in light of its

results-oriented language, the FHA allows consideration of the "consequences of actions and not just to the mindset of actors" where such an interpretation is consistent with statutory purpose. *Id.* at 2518.

A. A Hostile Housing Environment Claim Does Not Require Specific Allegations Of Defendants' Discriminatory Intent.

Under tort principles applicable to FHA claims, *Meyer v. Holley*, 537 U.S. 280, 282 (2003), a housing provider's negligence in failing to address a discriminatory housing environment within its control is a sufficient basis for liability. *See*, *e.g.*, *Hicks*, 2015 WL 4041531, at *11. No additional showing of animus is required. *See Martinez*, 2007 WL 8435675, at *5-*7 (defendants' ratification of a pattern of racially-based harassment and intimidation caused by a co-tenant stated claims under §§ 3604(b) and 3617); *cf. Sabbia*, 2011 WL 1900055, at *4 (allowing claim against real estate agent to proceed, despite lack of alleged personal animus, because liability could attach for knowingly assisting others in unlawful discriminatory conduct; citing *Moore v. Townsend,* 525 F.2d 482, 485 (7th Cir. 1975)). As HUD stated plainly in its Final Rule, a housing provider's liability arises under a negligence standard, "which does not require proof of discriminatory intent or animus on the part of the provider." 81 FR at 63068-69.

Applying analogous case law under Title VII, courts in this Circuit and across the country have held that an employer may similarly be held liable for failing to address harassment caused by non-employees, customers, or other third parties. *See, e.g.*, *Fulmore v. Home Depot, U.S.A., Inc.*, No. 1:03-CV-0797-DFH-VSS, 2006 WL 839459, at *15 (S.D. Ind. Mar. 30, 2006) ("[U]nder circumstances in which an employer ratifies or otherwise condones a customer's racist conduct, such as by requiring an employee to continue serving such a customer despite continued harassment, there can be a basis for employer liability."); *Galdamez v. Potter*, 415 F.3d 1015,

1022 (9th Cir. 2005); *Turnbull v. Topeka State Hospital,* 255 F.3d 1238, 1244 (10th Cir. 2001); *Crist v. Focus Homes, Inc.*, 122 F.3d 1107, 1111 (8th Cir. 1997); *Mutua v. Texas Roadhouse Mgmt. Corp.*, 753 F. Supp. 2d 954, 962 (D.S.D. 2010); *Rosenbloom v. Senior Res., Inc.*, 974 F. Supp. 738, 743-44 (D. Minn.1997). As the Seventh Circuit has noted, "The employer's responsibility is to provide its employees with nondiscriminatory working conditions. The genesis of inequality matters not; what *does* matter is how the employer handles the problem." *Dunn v. Washington Cty. Hosp.*, 429 F.3d 689, 691 (7th Cir. 2005) (emphasis in original).

So, too, in the housing context. A housing provider's obligation is to provide its residents with non-discriminatory living conditions. This includes fulfilling their obligation to act to address complaints from tenants about other tenants. *See Tyrrell v. Manly*, No. 11-C-8207, 2012 WL 3765188, at *4 (N.D. Ill. Aug. 29, 2012). A complaint alleging that a housing provider has failed to address a discriminatory hostile housing environment of which it has been made aware and over which it exercises control therefore states a claim under the FHA.

B. A Retaliation Claim Does Not Require Specific Allegations of Defendants' Discriminatory Intent.

Defendants' arguments concerning Marsha's retaliation claim are similarly meritless. Retaliation for a tenant's complaints about discriminatory harassment is prohibited by the FHA, 42 U.S.C. § 3617, and the IHRA, 775 Ill. Comp. Stat. 5/3-105.[3] Regulations adopted by HUD confirm that § 3617 prohibits retaliating against any person because that person has made a

[3] This section of the FHA states:

> It shall be unlawful to coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of his having exercised or enjoyed, or on account of his having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by section 3603, 3604, 3605, or 3606 of this title.

42 U.S.C. § 3617. Section 3-105.1 of the IHRA is nearly identical.

complaint under the FHA, 24 C.F.R. § 100.400(c)(5), or against any person who has reported a discriminatory housing practice to a housing provider. *See* 81 FR 63075 (adding 24 C.F.R. § 100.400(c)(6)). This retaliation prohibition applies to adverse actions taken by housing providers in response to complaints about harassment by other tenants. *See Neudecker*, 351 F.3d at 363–64 (tenant alleged a retaliation claim under § 3617 by asserting that landlord threatened to evict him in response to his complaints about other tenants' disability-related harassment).

In order to state a claim for retaliation under this section, a complaint merely needs to state that defendants took adverse action in response to a plaintiffs' complaint of unlawful discriminatory actions. *See, e.g.*, *Mehta*, 432 Fed. App'x at 617 (allegation that defendants restricted access to facilities, designated account as delinquent, and sought to hold plaintiffs financially responsible for unnecessary work in response to plaintiffs' complaints about unlawful discrimination stated viable retaliation claim); *Gorski*, 929 F.2d at 1189-90 (allegations that couple was evicted after challenging landlord's discriminatory policy stated retaliation claim under § 3617); *Wilstein*, 1999 WL 262145, at *9 (allegations that condo association and officers took adverse actions in response to plaintiff's assertion of rights under the FHA sufficient to state a claim under § 3617). No further demonstration of animus is required.

Defendants' arguments about Marsha's alleged failure to address discriminatory intent miss the mark. Even assuming specific intent allegations may be required under § 3617, *see Inclusive Communities*, *supra*, the cases Defendants cite regarding intent are inapplicable because those cases considered § 3617 claims separate and apart from claims arising under other provisions of the FHA. *See* Motion at 5-6 (citing *Echemendia v. Gene B. Glick Mgmt. Corp.*, 199 Fed. App'x 544 (7th Cir. 2006); *East-Miller v. Lake Cty. Hwy. Dep't*, 421 F.3d 558 (7th Cir. 2005); *Davis v. Fenton*, No. 13-C-3224, 2013 WL 1529899 (N.D. Ill. 2016)). Here, the

retaliation claims are inextricably linked to the underlying hostile housing environment claims, as Defendants' retaliatory adverse actions were part and parcel of their failure to respond to Marsha's complaints of harassment and their ratification of the other tenants' discrimination. Therefore, just as Marsha stated a claim that Defendants' conduct constituted illegal discrimination under a hostile environment theory, so too did she state a claim for unlawful retaliation. *See Grubbs v. Hous. Auth. of Joliet*, No. 91-C-6454, 1997 WL 281297, at *26 (N.D. Ill. May 20, 1997) (when same conduct by the same party allegedly violated both § 3617 and § 3604, validity of the § 3617 claim turns on whether the conduct violated § 3604) (citing *South Suburban Housing Center v. Greater South Suburban Bd. of Realtors,* 935 F.2d 868, 886 (7th Cir.1991)). Defendants' endorsement and condonation of the residents' animus fulfills any intent requirement. Furthermore, in *Krieman*, 2006 WL 1519320, at *11, the court noted that the requirements for a retaliation claim under § 3617—that a plaintiff show that she engaged in activity protected by the FHA, that Defendants took adverse action against her, and that a causal connection exists between the housing complaint and the adverse action—parallel the elements of the *East-Miller* test for interference with enjoyment of FHA rights. Under this test, Marsha has met the requirements for a retaliation claim.

III. HOSTILE HOUSING ENVIRONMENT CLAIMS ARE PERMISSIBLE POST-ACQUISITION CLAIMS UNDER THE FHA.

Defendants' suggestion that hostile housing environment claims cannot proceed because the harassment arose after the property has been leased misstates the Circuit case law on post-acquisition claims. Motion at 8-9. In *Bloch*, 587 F.3d at 772, 782, the court conclusively rejected the narrow application of the FHA solely to pre-acquisition claims set forth in *Halprin v. Prairie Single Family Homes of Dearborn Park Ass'n*, 388 F.3d 327 (7th Cir. 2004). Other courts in this Circuit have expressly recognized this. *See, e.g.*, *Luis v. Smith Partners & Assocs., LTD*, No. 12-

C-2922, 2012 WL 5077726, at *2 (N.D. Ill. Oct. 18, 2012) ("The Act governs conduct regardless of whether it occurs before or after a tenant or owner has acquired a property interest in a dwelling."); *Davis v. Wells Fargo Bank*, 685 F. Supp. 2d 838, 845 (N.D. Ill. 2010), *aff'd sub nom. Estate of Davis v. Wells Fargo Bank*, 633 F.3d 529 (7th Cir. 2011); *Edwards v. Lake Terrace Condominium Board*, No. 1:10-cv-2986, 2011 WL 1548023 (N.D. Ill. Apr. 21 2011).

The HUD Final Rule rejects Defendants' argument as well, stating, "the Act and HUD's regulations, including this final rule, make clear that the Act prohibits discrimination that occurs while a person resides in a dwelling, and courts have repeatedly interpreted the Act similarly." 81 FR at 63059. The HUD Final Rule pointed to "language covering the maintenance of housing, the continued use of privileges, services, or facilities associated with housing, and the 'exercise or enjoyment' of housing" in both prior regulations and these new regulations as "indicat[ing] circumstances in which residents—as opposed to just applicants—benefit from the Act's protections throughout their residency." *Id.*

Furthermore, alleging harassment that is sufficiently severe and pervasive to state a claim of hostile housing environment is akin to a constructive eviction claim, and falls within the post-acquisition claims the Seventh Circuit has explicitly allowed under even the most restrictive view of the FHA. *See Halprin*, 388 F.3d at 329, 330 (citing *DiCenso* as form of constructive discharge claim; recognizing viable claim for "*pattern* of harassment, invidiously motivated, and, . . . backed by the homeowners' association" making it "a matter of the neighbors' ganging up on them . . . far from a simple quarrel between two neighbors or the isolated act of harassment") (emphasis in original).

Accordingly, Defendants' arguments lack merit and their Motion should be denied.

IV. GLEN ST. ANDREW LIVING COMMUNITY REAL ESTATE, LLC IS A PROPER DEFENDANT.

The Complaint's allegations regarding Glen St. Andrew Living Community Real Estate, LLC (GSALC Real Estate, LLC) are sufficient to state a claim upon which relief can be granted. Contrary to Defendants' characterization, Motion at 9-10, the Complaint alleges that GSALC Real Estate LLC owns the land and building where Marsha lives, Compl. ¶ 12, that an agency relationship exists between all three corporate Defendants and the three individual Defendants, *Id*. ¶¶ 15-17, and that all corporate Defendants are parties to the Tenant's Agreement with Marsha. *Id*. ¶ 26. These allegations plainly assert GSALC Real Estate, LLC's vicarious liability for the hostile housing environment created and maintained by its agents and for their illegal retaliation against Marsha for complaining about the sex- and sexual orientation-based harassment she was experiencing. Applying ordinary tort principles, the FHA "imposes liability without fault upon the employer in accordance with traditional agency principles, i.e., it normally imposes vicarious liability upon the corporation." *Meyer*, 537 U.S. at 282.

Even if Defendants were correct that the only allegation against GSALC Real Estate LLC was that it owns the land and building, Motion at 9-10, that allegation would be sufficient for stating a claim of vicarious liability under the Fair Housing Act. *See Uhler v. Beach Park, LLC*, No. 1:06-cv-03473, 2006 U.S. Dist. LEXIS 94308 (N.D. Ill. Dec. 20, 2006) (complaint alleging corporation's ownership of the housing facility sufficient to survive a motion to dismiss).

CONCLUSION

For the foregoing reasons, the Court should deny the Defendants Motion to Dismiss.

Dated: October 4, 2016

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 4th day of October, 2016, I electronically filed the foregoing document with the Clerk of Court by means of the CM/ECF system, which will send notification of this filing to all counsel of record:

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