STATE OF VERMONT

SUPERIOR COURT Washington Unit	CIVIL DIVISION No. 21-CV-2095
VERMONT HUMAN RIGHTS COMMISSION, Plaintiff, v. STEPHAN POLAK and KRISTINA POLAK, Defendants.	

RULING ON THE POLAKS' MOTION TO DISMISS

In this case, the Vermont Human Rights Commission (HRC), acting under 9 V.S.A. §§ 4551–4556, claims that Defendants Stephan Polak and Kristina Polak have engaged in housing discrimination regarding their residential neighbors, Ms. Yesica Sanchez de Ramirez, Felipe Ramirez-Diaz, and their children, in violation of the Vermont Fair Housing and Public Accommodations Act (VHPA), 9 V.S.A. §§ 4500–4507. Specifically, the HRC alleges that the Polaks have engaged in a years-long campaign of harassment against the Ramirezes because of their race, color, and national origin, all protected categories under 9 V.S.A. § 4503. The Ramirezes identify as Latinx; Yesica and Felipe are from Mexico. The Ramirezes are not parties to this case, but the HRC brought this action for their benefit and in the public interest. 9 V.S.A. § 4506(c).[1] It seeks compensatory and punitive damages, civil penalties, costs and attorney fees, and declaratory relief. The Polaks have filed a Rule 12(b)(6) motion to dismiss. In general, they argue that the VHPA should not be construed to govern claims of neighbor-on-neighbor harassment, at least not without substantially more serious conduct than is alleged here.

The purpose of a Rule 12(b)(6) motion is to determine "whether the bare allegations of the complaint are sufficient to state a claim." *Kaplan v. Morgan Stanley & Co., Inc.*, 2009 VT 78, ¶ 7, 186 Vt. 605. Such motions are "'not favored and rarely granted.' This is especially true 'when the asserted theory of liability is novel or extreme,' as such cases 'should be explored in the light of facts as developed by the evidence, and, generally, not dismissed before trial because of mere novelty of the allegations.'" *Alger v. Dep't of Labor & Indus.*, 2006 VT 115, ¶ 12, 181 Vt. 309 (citations omitted); see also *Colby v. Umbrella, Inc.*,

[1] To the extent that the Polaks argue that the HRC somehow lacks jurisdiction to bring this case, that argument is squarely contradicted by 9 V.S.A. § 4506(c), which provides: "The Human Rights Commission may bring an action in the name of the Commission to enforce the provisions of this chapter in accordance with its powers established in chapter 141 of this title." Section 4552(b)(1) (part of chapter 141) further provides, "The Commission shall have jurisdiction to investigate and enforce complaints of unlawful discrimination in violation of chapter 139 of this title discrimination in public accommodations and rental and sale of real estate." Chapter 139 is the VHPA. Section 4552(b)(1) is not properly read to limit the breadth of § 4506(c) or the type of claims the HRC may bring to enforce violations of the VHPA. The HRC does not lack jurisdiction to bring this case.

2008 VT 20, ¶ 13, 184 Vt. 1 ("The complaint is a bare bones statement that merely provides the defendant with notice of the claims against it."); *Bock v. Gold*, 2008 VT 81, ¶ 4, 184 Vt. 575 ("the threshold a plaintiff must cross in order to meet our notice-pleading standard is 'exceedingly low'").

The Ramirezes bought their home in St. Albans in 2015 and, after making improvements, moved in in early 2016. The property shares a boundary with that of the Polaks, who already resided there. The HRC alleges that, since the Ramirezes moved in, the Polaks have subjected them to a barrage of discriminatory remarks and threats (including at least one interaction involving physical violence), and otherwise have harassed them in myriad ways, both at their residences and in the community or to members of the community, often expressly referring derogatorily to their race, color, and national origin.

The VHPA describes several varieties of proscribed "unfair housing practices" at 9 V.S.A. § 4503. It also includes a broad anti-retaliation provision at 9 V.S.A. § 4506(e). The HRC claims that the Polaks have violated both. Section 4503 provides in relevant part as follows:

> (a) It shall be unlawful for any person:
>
> > (1) To refuse to sell or rent, or refuse to negotiate for the sale or rental of, *or otherwise make unavailable or deny*, a dwelling or other real estate to any person because of the race, sex, sexual orientation, gender identity, age, marital status, religious creed, color, national origin, or disability of a person, or because a person intends to occupy a dwelling with one or more minor children, or because a person is a recipient of public assistance, or because a person is a victim of abuse, sexual assault, or stalking.
> >
> > (2) To discriminate against, or to harass any person in the terms, conditions, *privileges, and protections* of the sale or rental of a dwelling or other real estate, or in the provision of services or facilities in connection therewith, because of the race, sex, sexual orientation, gender identity, age, marital status, religious creed, color, national origin, or disability of a person, or because a person intends to occupy a dwelling with one or more minor children, or because a person is a recipient of public assistance, or because a person is a victim of abuse, sexual assault, or stalking.

9 V.S.A. § 4503(a)(1), (2) (emphasis added).[2] The thrust of this claim is that by harassing the Ramirezes, the Polaks have made the Ramirezes' housing "unavailable" or deprived them of the "privileges" of home ownership. The Polaks argue that these provisions: (1) generally apply only to "pre-acquisition" conduct aimed at deterring or preventing one from acquiring housing; (2) when they apply to post-acquisition conduct, the parties must be in a formal legal relationship, such as landlord–tenant; and (3) even then, that objectionable conduct generally must be so severe as to have caused the party subject to it to abandon the

[2] The HRC expressly pleaded a violation of 9 V.S.A. § 4503(a)(1). The allegations under that claim, however, refer also to the "privileges" language of subdivision (a)(2), which the court therefore infers was intended to fall within the scope of this claim.

housing.

The relevant anti-retaliation provision is as follows:

> (e) A person shall not coerce, threaten, interfere, or otherwise discriminate against any individual who:
>
> . . .
>
> (4) is exercising or enjoying a right granted or protected by this chapter.

9 V.S.A. § 4506(e)(4). The Polaks argue that this provision should be interpreted narrowly to not give rise to an independent cause of action based on conduct outside the scope of § 4503, the other subdivisions of § 4506(e), and where the parties do not stand in a legal relationship.[3]

The VHPA "is a remedial statute; thus, we construe it generously and read exemptions narrowly." *Human Rights Com'n v. LaBrie, Inc.*, 164 Vt. 237, 245 (1995). Relevant provisions of the VHPA are "patterned on Title VIII of the Civil Rights Act of 1968 (Fair Housing Act (FHA)), 42 U.S.C. §§ 3601–3631, and therefore, in construing [the VHPA], we consider cases construing the federal statute." *Id.* at 243 (citations omitted).[4] The purpose of the FHA, and hence the relevant provisions of the VHPA, is to "root out discrimination in housing and to 'replace the ghettos [with] truly integrated and balanced living patterns.'" *Francis v. Kings Park Manor, Inc.*, 944 F.3d 370, 378 (2d Cir. 2019) (quoting *Trafficante v. Metropolitan Life Ins. Co.*, 409 U.S. 205, 211 (1972)).

The plain language of the VHPA does not support the Polaks' argument that a "neighbor," someone in the community who does not stand in some sort of legal relationship to the aggrieved party, cannot be a defendant under the VHPA. Sections 4503 and 4506 of the Act describe prohibited conduct. They do not define particular classes of permissible defendants. Generally, then, a proper defendant is one alleged to have engaged in the prohibited conduct. While a legal relationship may well be part of the material facts in many cases, and may inform the nature of the discrimination that is alleged to have occurred, there is no basis for any conclusion that without a legal relationship there can be

---

[3] The court notes that 9 V.S.A. § 4506(a), (c) broadly empower an aggrieved person or the HRC to bring an enforcement action for *any* violation of the VHPA. The Polaks' argument that somehow a violation of § 4506(e)(4) in particular cannot be sued upon as an independent claim has no statutory basis and is not supported by any sound reasoning.

[4] To the extent that the Polaks argue that 9 V.S.A. § 4506(e)(4) is *not* analogous to 42 U.S.C. § 3617 and, in fact, is substantially narrower and less protective, the court disagrees. Section 3617 provides: "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." Subsection 4506(e)(4) provides: "A person shall not coerce, threaten, interfere, or otherwise discriminate against any individual who . . . (4) is exercising or enjoying a right granted or protected by this chapter." If anything, the Vermont provision is broader than its federal counterpart and more clearly applies to the disputed conduct at issue in this case. It is certainly analogous enough, however, that federal case law under § 3617 is a useful barometer for interpreting § 4506(e)(4).

no claim as a general matter.

The most clearly applicable provision enabling the HRC's claim in this case is § 4506(e)(4). It prohibits one from threatening or interfering with another who "is exercising or enjoying a right granted or protected by this chapter." Exercising and enjoying are ongoing states. The relevant statutes protect one's right to housing without suffering the discrimination barred by the VHPA, including post-acquisition conduct. A neighbor-on-neighbor harassment claim, as is asserted in this case, falls well within the scope of § 4506(e)(4).

The HRC's claim could fall within the scope of § 4503(a)(1), (2) as well. The more specific provisions of § 4503(a)(1) ("[t]o refuse to sell or rent, or refuse to negotiate for the sale or rental of") certainly appear to contemplate pre-acquisition conduct. The catchall language—"or otherwise make unavailable or deny"—could be interpreted narrowly to carry forward that connection to pre-acquisition conduct. The more generous and remedial construction, however, would not be so limited. If one is driven from one's home after acquiring it, plainly that home then has become "unavailable." Section 4503(a)(2) contemplates post-acquisition conduct. "Privileges" and "protections" contemplate continuing rights. See *The Committee Concerning Community Improvement v. City of Modesto*, 583 F.3d 690, 713 (9th Cir. 2009) ("The inclusion of the word 'privileges' implicates continuing rights, such as the privilege of quiet enjoyment of the dwelling."). The privileges and protections of the "sale or rental of a dwelling" would seem to extend to residing in that dwelling and having the benefit of its quiet enjoyment. Section 4503(a)(2) explicitly prohibits "harassment" and thus may well extend to a claim such as in this case.

In the circumstances here, however, there is no utility in resolving the proper reach of § 4503(a)(1), (2). The HRC's claim in this case naturally fits within § 4506(e)(4). An additional claim under § 4503(a)(1), (2) simply adds nothing to the § 4506(e)(4) claim and would be predicated on substantially less clear statutory language. In short, the HRC's count 1 is, at best, duplicative of its count 2. Count 1 will be dismissed for that reason.

Otherwise, as a general matter, limiting the VHPA to pre-acquisition conduct would hardly make sense. It could not be the case that the legislature intended to bar housing discrimination that prevents someone from acquiring housing only to permit it to drive the new resident away immediately thereafter.

The court acknowledges that federal cases applying generally analogous provisions of the FHA (42 U.S.C. §§ 3604, 3617) are no monolith, and courts have struggled with the apparent breadth of the statutory language in relation to the need to confine the prohibited conduct to the housing context to prevent the legislation from becoming an all-purpose civil rights law unleashed from its congressional purpose.[5] "[O]therwise, the FHA would federalize any dispute involving residences and people who live in them. Nothing in the statute or its legislative history supports so startling a proposition." *U.S. v. Weisz*, 914 F.Supp. 1050, 1054 (S.D.N.Y. 1996); see also *Cox v. City of Dallas, Tex.*, 430 F.3d 734 (5th Cir. 2005) ("That the corrosive bite of racial discrimination may soak into all facets of black lives cannot be gainsaid, but this statute targets only housing."). No doubt some federal

[5] Although unnecessary to analyze here, where there are textual differences between the VHPA and the FHA, those differences generally suggest that the VHPA applies at least as broadly as the FHA and likely more so.

courts have ruled in ways that, if applied here, would foreclose the claims presented here.

Yet, the *Stackhouse* court had no problem finding that the firebombing of a black resident's car by a white member of the community, intended to drive the black resident out of the neighborhood, clearly violated § 3617 and likely also violated § 3604. See *Stackhouse v. DeSitter*, 620 F.Supp. 208, 211 (N.D.Ill. 1985); see generally also *Stirgus v. Benoit*, 720 F.Supp. 119 (N.D.Ill. 1989) (racially motivated firebombing). The *Ohana* court plainly held that the FHA applies to claims of neighbor-on-neighbor harassment. *Ohana v. 180 Prospect Place Realty Corp.*, 996 F.Supp. 238, 239 (E.D.N.Y. 1998). It elaborated:

> The peaceful enjoyment of one's home is a root concept of our society. It is obviously sufficiently pervasive to embrace the expectation that one should be able to live in racial and ethnic harmony with one's neighbors. This case is not about providing a federal judicial forum for the resolution of disputes amongst neighbors. It is simply about holding one accountable for intentionally intruding upon the quietude of another's home because of that person's race, color, religion, sex, familial status or national origin. The [FHA], with its broad range of compensatory, punitive and injunctive remedies, is an appropriate means for accomplishing this salutary end . . . . Accordingly, plaintiffs, having already exercised their rights to fair housing, have set forth a cognizable claim under § 3617 . . . against [neighbors] for allegedly intentionally interfering with the enjoyment of these rights because of plaintiffs' race, religion and national origin.

Id. at 243 (citation omitted); see also 24 C.F.R. § 100.400(c)(2) (HUD regulation expressly barring under 42 U.S.C. § 3617 "[t]hreatening, intimidating or interfering with persons in their enjoyment of a dwelling" on a prohibited basis); see also *id.* § 100.65. The court simply does not read the VFHA to altogether foreclose a neighbor-on-neighbor harassment claim. Cramped interpretations of the FHA in some federal cases generally fail to embrace the more generous and still reasonable interpretations that remedial legislation deserves and are not necessitated by the express language of the statute.

Separately, many courts have clearly struggled with the standard for conduct that may violate the FHA. See, e.g., *Bloch v. Frischholz*, 587 F.3d 771, 782 (7th Cir. 2009) (conduct amounting to an "attempted" constructive eviction sufficient under § 3617 while § 3604 requires more); *id.* at 783 (noting that "[i]nterference is more than a quarrel among neighbors or an isolated act of discrimination, but rather is a pattern of harassment, invidiously motivated" (internal quotation marks and citation omitted); *Cox v. City of Dallas, Tex.*, 430 F.3d 734 (5th Cir. 2005) (acknowledging that "a current owner or renter evicted or constructively evicted from his house" may have a claim); *Davis v. The Money Source, Inc.*, No. 3:21-CV-00047 (AWT), 2021 WL 3861908 (D.Conn. Aug. 30, 2021) (unpub.) (service providers who "intimidated and threatened [black woman] by telling her she and other Black residents in the area should move back to Bridgeport and broke her garage door, and . . . explicitly connected her race to their activity through the racist statements" sufficient to state a claim); *D.K. by L.K. v. Teams*, 260 F.Supp.3d 334 (S.D.N.Y. 2017) (conduct must be "sufficiently pervasive and severe so as to create a hostile [housing] environment"); *Lawrence v. Courtyards at Deerwood Ass'n, Inc.*, 318 F.Supp.2d 1133, 1145 (S.D.Fla. 2004) ("the discriminatory conduct must be pervasive and severe enough to be

considered as threatening or violent").

These heightened standards are not borne directly out of the statutory language of the FHA. They appear instead to reflect efforts by courts to distinguish between (1) discrimination that merely occurs to one who has housing and (2) discrimination that strikes specifically at one's housing or fair opportunity for it. Only the latter is the subject of the FHA and relevant portions of the VHPA. Thus, it is no wonder that courts readily find FHA violations in the case of single acts of immense severity and obvious, malignant intent—such as white neighbors firebombing the first black family to move into the heretofore all-white neighborhood. No "pattern" of something so egregious is necessary to show a violation of the FHA. An isolated discriminatory statement by a neighbor, on the other hand, may well cause distress, but it may not cause the sort of distress that materially affects the privileges of or opportunity for fair housing. As a whole, the reported cases exhibit that, however courts differently characterize the standard in different settings, exactly where prohibited conduct bleeds into conduct unregulated by the FHA is in many respects necessarily left to be determined on a case-by-case basis.

One scholar argues at length that the interference standard in neighbor-on-neighbor cases under § 3617 "should be interpreted to require that 'a reasonable person' in the context of the plaintiff's particular situation would find the challenged behavior so 'materially adverse' that he would be deterred from exercising or enjoying his FHA rights." Robert G. Schwemm, Neighbor-on-Neighbor Harassment: Does the Fair Housing Act Make a Federal Case Out of It?, 61 Case W. Res. L. Rev. 865, 910 (2011) (importing standard under *Burlington Northern & Santa Fe Railway Co. v. White*, 548 U.S. 53 (2006) (a Title VII sex discrimination case), into FHA context and further arguing that such a standard best meets congressional intent while respecting First Amendment concerns).[6] In a case of neighbor-on-neighbor harassment, that would include "any neighbor harassment that would reduce a reasonable person's enjoyment of his home sufficiently to raise the prospect of having to move." *Id.* at 918.

The court declines to adopt any particularly worded standard at this time under either 9 V.S.A. §§ 4503 or 4506. Both parties recognize the need for a standard elevated to distinguish an unregulated neighborly squabble from prohibited, discriminatory conduct reaching the aggrieved persons' housing rights. The HRC plainly is not attempting to use the VHPA in this case as an all-purpose civil rights law for people with housing or as a means of imposing a general civility code among neighbors.

Whatever the right way to state the standard, the court concludes that the HRC has not failed to state a claim in this case. A neighbor-on-neighbor claim is cognizable under § 4506(e)(4) and would appear to be under § 4503(a)(1), (2) as well, and the complaint alleges an enduring campaign of discriminatory conduct—not a "petty spat between neighbors"—by the Polaks that, if proven, may well be sufficient to reach the Ramirezes' housing rights and violate the VHPA. More is not required under Rule 12(b)(6).

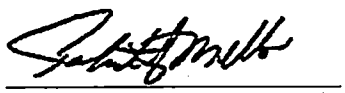
---

[6] Professor Schwemm is the author of the one of the most prominent, if not creatively titled, treatises dedicated to the law of housing discrimination, Housing Discrimination Law & Litigation.

Order

For the foregoing reasons, the Polaks' motion to dismiss is granted in part and denied in part.

SO ORDERED this 2nd day of February, 2022



Robert A. Mello
Superior Judge