IN THE UNITED STATES FEDERAL COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 9:20-cv-81163-MIDDLEBROOKS/BRANNON

JEFFREY LAGRASSO
and DEBORAH LAGRASSO,

Plaintiffs,
vs.

SEVEN BRIDGES HOMEOWNERS
ASSOCIATION, INC. and
RACHEL ABOUD TANNENHOLZ,

Defendants.
_____/

DEFENDANT, SEVEN BRIDGES HOMEOWNERS ASSOCIATION, INC's, MOTION TO DISMISS THE COMPLAINT AND TO STRIKE PLAINTIFFS' CLAIM FOR PUNITIVE DAMAGES

Come now, Defendant, SEVEN BRIDGES HOMEOWNERS ASSOCIATION, INC. (hereinafter "ASSOCIATION"), by and through its undersigned Counsel, and pursuant to Fed. R. Civ. Pro. 12(b)(6) moves to dismiss Plaintiffs', JEFFREY LAGRASSO and DEBORAH LAGRASSO (hereinafter collectively referred to as "LAGRASSOS"), Complaint and to strike Plaintiffs' claim for punitive damages, and as grounds therefore states as follows:

ALLEGATIONS IN THE COMPLAINT AGAINST THE ASSOCIATION

1. Plaintiffs, JEFFREY LAGRASSO and DEBORAH LABRASSO are homeowners within the ASSOCIATION and filed a three Count Complaint against the ASSOCIATION and Co-Defendant RACHEL ABOUD TANNENHOLZ (hereinafter "TANNENHOLZ") alleging violations of the Fair House Act and claiming that they were

discriminated against by the ASSOCIATION on the basis of their religion and for intentional infliction of emotional distress against TANNENHOLZ. (D.E. No. 7, ¶¶ 7, 11).

2. From October 2018 through November 2019, the LAGRASSOS' children received professional tennis coaching services through the ASSOCIATION and were allegedly harassed by a tennis league consisting of eight women. This harassment was allegedly reported by the LAGRASSOS to the ASSOCIATION and its Tennis Director prior to November 22, 2019. (D.E. No. 7, ¶¶ 12-13, 17-19).

3. On November 22, 2019, DEBORAH LAGRASSO (hereinafter "MRS. LAGRASSO"), went to the tennis court and confronted one of the women's tennis league members who allegedly made a demeaning remark that morning to her children. MRS. LAGRASSO demanded that the woman and her friends cease any and all interactions with her children, stop interfering with her children's lessons, and handling their personal belongings. (D.E. No. 7, ¶¶ 20-21). The LAGRASSOS claim that the other women from the tennis league engaged in a shouting match with MRS. LAGRASSO while waiving their racquets in a threatening manner. The ASSOCIATION's security guards were called, and the women were separated. (D.E. No. 7, ¶¶ 22).

4. On or about December 5, 2019, the ASSOCIATION sent correspondence to MRS. LAGRASSO advising her of numerous serious complaints received regarding her conduct on November 22, 2019 at the tennis courts. The ASSOCIATION informed her that pursuant to Article X of the Declaration of Covenants of the ASSOCIATION, the Board of Directors voted unanimously to propose a suspension of her rights to the ASSOCIATION property and facilities for three (3) months. (See Exhibit "A" to D.E. No. 7).

5. On or about February 20, 2020, after a hearing, the ASSOCIATION's Compliance Committee unanimously voted to affirm the three-month suspension. (See Exhibit "B" to D.E. No. 7).

6. The LAGRASSOS allege that MRS. LAGRASSO created an anonymous Facebook Blog which "provided editorial comments and opinions about Seven Bridges and attempted to rally homeowner participation at HOA meeting." (D.E. No. 7, ¶¶ 31 and 33). Allegedly, TANNENHOLZ identified MRS. LAGRASSO as the editor of the Facebook blog and began posting hateful comments personally attacking MRS. LAGRASSO and her Christian Faith. (D.E. No. 7, ¶¶ 35).

7. The LAGRASSOS claim that TANNENHOLZ began a series of harassing and discriminatory actions against the LAGRASSOS, including making offensive statements, sending text messages, turning the community against the LAGRASSOS, and appearing at the LAGRASSOS' home to confront MRS. LAGRASSO. (D.E. No. 7, ¶¶ 37-44).

8. On or about May 27, 2020, Plaintiff, JEFFREY LAGRASSO (hereinafter "MR. LAGRASSO") sent a letter to the ASSOCIATION requesting that the ASSOCIATION open a case and initiate sanctions against TANNENHOLZ for her alleged conduct toward MRS. LAGRASSO. (D.E. No. 7, ¶¶ 45). The LAGRASSOS claim that the ASSOCIATION took no action to investigate the matter or to control the conduct of TANNENHOLZ. (D.E. No. 7, ¶¶ 47).

9. On or about June 12, 2020, the ASSOCIATION through its General Counsel sent correspondence to the LAGRASSOS' attorney advising that it had become aware of MRS. LAGRASSO's Facebook blog and that MRS. LAGRASSO's postings were factually

incorrect, and contained derogatory, anti-Semitic, and morally repugnant comments about the ASSOCIATION, its officers, directors, committee members, management, and vendors with the sole purpose of damaging the reputation of the ASSOCIATION, its officers, directors, committee members, management and vendors. Additionally, it was reported that MRS. LAGRASSO threatened to shoot a member of the community. (See Exhibit "G" to D.E. No. 7).

10. The June 12, 2019 correspondence advised that MRS. LAGRASSO's behavior was intolerable and unlawful but also violated numerous provisions of the ASSOCIATION's Governing Documents. Therefore, pursuant to the Declaration and Fla. Stat. § 720.305(2), fines and suspension were being imposed on MRS. LAGRASSO for violating the ASSOCIATION's Governing Documents. MRS. LAGRASSO was directed to retract and remove the aforementioned Facebook postings. (See Exhibit "G" to D.E. No. 7).

11. On July 8, 2019, correspondence was sent to the LAGRASSOS' attorney advising that after a Compliance Committee hearing, the Committee voted to uphold the $5,000 in fines and 330-day suspension imposed by the ASSOCIATION's Board of Directors against MRS. LAGRASSO **only**. (See Exhibit "F" to D.E. No. 8).

12. Count I of the Complaint alleges that the ASSOCIATION violated 42 U.S.C.A. § 3604(b) by discriminating against the LAGRASSOS' religious belief through a systematic strategy by imposing sanctions against them that limited their ability to the services and facilities of the community and by the ASSOCIATION's inaction to control the conduct of their neighbors, which also limited their ability to use the services or facilities of the community. (D.E. No. 7, ¶¶ 57).

13. Count II of the Complaint alleges that the ASSOCIATION violated 42 U.S.C.A. § 3617 by intimidating the LAGRASSOS by sending a certified letter threatening and imposing sanctions and fines because of MRS. LAGRASSO's posting on her own Facebook blog page and by interfering with the LAGRASSOS' use and enjoyment of the property right by refusing to take action to control the behavior of third parties. (D.E. No. 7, ¶¶ 69, 72-73).

14. In their Prayer for Relief, the LAGRASSOS request punitive damages against the ASSOCIATION in the amount of Seven Million Dollars which is equivalent to an assessment amount of $10,000.00 per ASSOCIATION homeowner. (D.E. No. 7).

STANDARD OF REVIEW

When considering a Motion to Dismiss a Complaint for failure to state a claim upon which relief can be granted pursuant to Federal Rule of Civil Procedure 12(b)(6), a Court must accept well pled allegations in the Complaint as true and view them in the light most favorable to the Plaintiff. *See Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 55-56 (2007); *Hoffman-Pugh v. Ramsey,* 312 F.3d 1222, 1225 (11th Cir. 2002) Factual allegations must be enough to raise a right to relief above the speculative level. *See Bell Atl. Corp. v. Twombly,* 550 U.S. at 555. However, a pleading that offers mere "labels and conclusions" is insufficient. *Id.* Moreover, the "mere possibility the defendant acted unlawfully is insufficient to survive a motion to dismiss." *Sinaltrainal v. Coca-Cola Co.*, 578 F.3d 1252, 1261 (11th Cir. 2009); (*citing Ashcroft v. Iqbal*, 556 U.S. 662, 677-78 (2009). A plausible claim for relief must include "factual content [that]allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal,* 556 U.S. at 663 (*quoting Twombly,* 550 U.S. at 570). Mere conclusory allegations provide no

support for the sufficiency of a complaint. *See Aldana v. Del Monte Fresh Produce, N.A., Inc.*, 416 F.3d 1242, 1253 (11th Cir. 2005) (*citing Oxford Asset Mgmt., Ltd. v. Jaharis*, 297 F.3d 1182, 1188 (11th Cir. 2002)("conclusory allegations, unwarranted deductions of facts or legal conclusions masquerading as facts will not prevent dismissal"). A Court may dismiss a complaint when, on the basis of a dispositive issue of law, no construction of the factual allegations will support the cause of action. *See D.L. Day v. Taylor*, 400 F.3d 1272, 1275 (11th Cir. 2005).

COUNT I OF THE COMPLAINT SHOULD BE DISMISSED BECAUSE THE LAGRASSOS FAILED TO STATE A CLAIM AGAINST THE ASSOCIATION FOR VIOLATION OF THE FAIR HOUSING ACT UNDER 42 U.S.C.A. § 3604(b)

A. Count I should be dismissed because there are no allegations in the Complaint related to the ASSOCIATION's actions based on the LAGRASSOS' religion

Count I of the Complaint should be dismissed because the LAGRASSOS fail to allege any ultimate facts that the ASSOCIATION committed a single discriminatory action against them on account of their religion, whatever it may be. (See D.E. No. 7). On the contrary, the Complaint contains numerous conclusory statements that "The conduct of the Defendant HOA had a discriminatory effect on the Plaintiffs due to their religion." (D.E. No. 7, ¶¶ 64). However, the Complaint does not contain any facts that demonstrate or allows the Court to draw a reasonable inference that the ASSOCIATION's actions to fine and suspend the use of the ASSOCIATION's facilities of MRS. LAGRASSO **only** for her actions on the tennis court on November 22, 2019, her postings on her self-described Facebook blog, and threat to shoot her neighbor had any relation to the LAGRASSOS' religious beliefs. (See D.E. No. 7). The LAGRASSOS' mere conclusory allegations do not establish a violation of 42 U.S.C.A. Sec. 3604(b) in Count I of the Complaint and therefore

Count I must be dismissed. *See Aldana v. Del Monte Fresh Produce, N.A., Inc.*, 416 F.3d at 1253.

When no fact tending to support a finding of discriminatory conduct is alleged in a complaint, a motion to dismiss under the Fair Housing Act is proper. *See Simoes v. Wintermere Pointe Homeowners Assoc., Inc.*, No. 6:08-CV-01384-LSC, 2008 WL 4790720, at *4 (M.D. Fla. Oct. 28, 2008)(dismissing a Fair Housing Act claim brought against members of a Homeowners Association because all the background facts provided in the complaint did not support and/or provide clarity if and how the members participated in the purported discriminatory violation at issue); *See also Sofarelli v. Pinellas Cty.*, 931 F.2d 718, 723 (11th Cir. 1991) (holding that in order to recover under the Fair Housing Act, the plaintiff had to establish that the discriminatory conduct played some role; however, no such evidence existed that the County's actions were religiously motivated).

In the instant case, the Complaint attempts to impose liability for religious discrimination on the ASSOCIATION because it imposed sanctions and fines only on MRS. LAGRASSO and its alleged failure to take any action against the LAGRASSOS' neighbors. The ASSOCIATION's actions of enforcing its Governing Documents against MRS. LAGRASSO as alleged in the Complaint for (1) her November 22, 2019 actions against other owners, (2) her derogatory and anti-Semitic Facebook postings, and (3) threats to shoot another owner as raised in Count I do not lead to any inference that the ASSOCIATION took the steps to enforce the Governing Documents against MRS. LAGRASSO due to the LAGRASSOS' religious beliefs in violation of 42 U.S.C.A. § 3604(b).

The only comments and/or statements concerning religion referenced in the Complaint were made by Co-Defendant TANNENHOLZ, not the ASSOCIATION. (D.E. No. 7, ¶¶ 35, 44). The ASSOCIATION's basis for imposing the aforementioned sanctions and fines against MRS. LAGRASSO were not based on any discriminatory religious motives as found in a complete review of the allegations in the Complaint and the exhibits thereto. (See Exhibits "A", "B", "G", and "F" to D.E. No. 7). Therefore, the LAGRASSOS' allegations that the ASSOCIATION's conduct had a discriminatory effect on the Plaintiffs due to their religion are conclusory. Simply put, the Complaint does not state a claim for a violation of the Fair Housing Act, and therefore, Count I of the Complaint must be dismissed.

B. Count I of the Complaint should be dismissed because the ASSOCIATION did not change or suspend any of JEFFERY LAGRASSO'S use of the ASSOCIATION's facilities and only temporarily suspended DEBORAH LAGRASSO's use

Count I of the Complaint alleges that the ASSOCIATION violated of 42 U.S.C.A. § 3604(b) by discriminating against the LAGRASSOS' religious belief through a systematic strategy of imposing sanctions against them that limited their ability to the services and facilities of the community (D.E. No. 7, Par. 7). 42 U.S.C.A. § 3604(b) - Discrimination in the sale or rental of housing and other prohibited practices - provides that it is unlawful:

> To discriminate against any person **in the terms, conditions, or privilege of sales or rental of a dwelling**, **or** in the provision of services or facilities **in connection therewithin**, because of race, color, religion, sex, familiar status, or national origin.

42 U.S.C.A. § 3604(b)(emphasis added).

In *Savanna Club Worship Serv., Inc. v. Savanna Club Homeowners' Ass'n*, Inc., 456 F. Supp. 2d 1223, 1230 (S.D. Fla. 2005), this Honorable Court held that "in the context of planned communities, where association members have right to use designated common areas as an incident of their ownership, discriminatory conduct which deprives them of exercising those right would be actionable under the FHA." Specifically, this Court found that the Fair Housing Act "only applies to those deprivation in the provision of service which cause a **complete denial** of access to such services." *Id.* at 1232. In *Savannah Club*, this Court found that an Association's Rule barring all religious services from a community's common areas without impeding a homeowner's right to practice his or her religion, and without denying access to the common areas for all other purposes was not sufficient to establish a violation of the Fair Housing Act.

On or about December 2019, the ASSOCIATION's Board of Directors voted unanimously to suspend MRS. LAGRASSO's rights to the Association property for three months after the ASSOCIATION received numerous serious complaints regarding MRS. LAGRASSO's conduct on November 22, 2019, wherein she allegedly physically assaulted another resident of the ASSOCIATION. (See Exhibit "A" to D.E. No. 7). After careful review of the evidence and testimony provided to the ASSOCIATION's Compliance Committee, the Committee unanimously voted to affirm the Board of Director's decision on or about February 20, 2020. (See Exhibit "B" to D.E. No. 7). On or about June 12, 2020, the ASSOCIATION's Board of Directors voted to impose a second set of fines and a temporary suspension against MRS. LAGRASSO after becoming aware of numerous Facebook posting made by MRS. LAGRASSO under the username "Bridges Seven" which contained factually incorrect, derogatory, anti-Semitic, and morally

repugnant comments about the ASSOCIATION, its officers, directors, committee members, management, and vendors. (See Exhibit "G" to D.E. No. 7).

The LAGRASSOS' argument is flawed claiming that the aforementioned sanctions imposed by the ASSOCIATION were done with the intent to discriminate against them because of their religious belief. Specifically, only MRS. LAGRASSO's right were temporarily suspended after several instances of violations of the Association's Governing Documents following her outrageous conduct on November 22, 2019 and posting of factually incorrect, derogatory, anti-Semitic, and morally repugnant comments on her Facebook blog. As is clear in the Complaint, MR. LAGRASSO continued to have access and right to utilize the common areas and services. (See D.E. No. 7 and Exhibits "A", "B", "G", and "F" to D.E. No. 7).

Furthermore, MRS. LAGRASSO's suspension and fines were never a **complete denial** of access to the common areas and services of the ASSOCIATION but a temporary suspension following her violation of the ASSOCIATION'S Governing Documents. The suspension for the tennis incident was temporary for three months and was imposed on February 20, 2020 and expired on May 20, 2020, months before the filing of the instant Complaint. During the aforementioned time frame, MR. LAGRASSO had full and complete use of all ASSOCIATION facilities as did their children which is supported by the allegations in the Complaint and attached exhibits. (See D.E. No. 7 and Exhibits "A", "B", "G", and "F" to D.E. No. 7). MRS. LAGRASSO had full use of the ASSOCIATION's facilities from May 20, 2020 – July 8, 2020.

The suspension of MRS. LAGRASSO's use of the ASSOCIATION's facilities for the Facebook blog postings she made and her threat to shoot another owner began on

July 8, 2020 and ends on or about May 5, 2021. (See Exhibits "A", "B", "G", and "F" to D.E. No. 7). The ASSOCIATION's rationale for imposing the limited sanctions and fines to MRS. LAGRASSO was not motivated by discriminatory religious motives but in response to her series of violations of the ASSOCIATION's Governing Documents. Therefore, the ASSOCIATION's actions by imposing sanctions that temporarily limited MRS. LAGRASSO's access to the common areas and services did not and could not violate 42 U.S.C.A. § 3604(b) because it was not a complete denial of services to the LAGRASSOS and was not motivated by discriminatory religious motives. Moreover, MR. LAGRASSO has no claim at all in Count I as he never had any loss of use of the common facilities. In sum, neither of the LAGRASSOS can state a claim that the ASSOCIATION has violated 42 U.S.C.A. § 3604(b) because neither MR. LAGRASSO nor MRS. LAGRASSO has suffered a complete denial of the ASSOCIATION's services or facilities.

C. Count I must be dismissed because the ASSOCIATION'S alleged failure to control the actions of TANNENHOLZ or any other neighbor cannot state a claim for a violation of 42 U.S.C.A. § 3604(b)

The LAGRASSOS' claim that the ASSOCIATION'S inaction to control the conduct of its neighbors, including TANNEHNOLZ, has also limited their ability to use the ASSOCIATION's facilities or services. (See D.E. No. 7, ¶¶ 57). However, the ASSOCIATION's alleged inaction to control the conduct of TANNEHOLZ or any other neighbor is not grounds for a violation under Section 3604(b). See *Lawrence v. Courtyards at Deerwood Ass'n, Inc.*, 318 F. Supp. 2d 1133, 1142 (S.D. Fla. 2004). In *Lawrence*, this Court held that though it disapproved of the action of the plaintiff's neighbor, who allegedly started a race-based campaign to drive the plaintiff out of the community, the Association's failure to stop the neighbor did not have any impact on the

plaintiff's ability to purchase their home because the action was done after they purchased their home. *Id.* at 1136-37, 1143. In reaching this decision, the Court relied on the Middle District of Florida's opinion in G*ourlay*, where the court noted that "FHA was not intended as 'an all-purpose cause of action for neighbors of different races, origins, faiths… to bring neighborhood feuds into federal court when the dispute has little or no action relation to housing discrimination.'" Id. at 1142 (*quoting Gourlay v. Forest Lake Estates Civic Ass'n of Port Richey, Inc.*, 276 F. Supp. 2d 1222, 1236 (M.D. Fla. 2003)). Analogous to *Lawrence*, this Court should again find that the ASSOCIATION's failure to stop TANNENHOLZ and any other neighbor, even if accurate, is not a sufficient basis for a violation of the Fair Housing Act and Count I must be dismissed

Based on the foregoing, Count I of the Complaint should be dismissed.

COUNT II OF THE COMPLAINT SHOULD BE DISMISSED BECAUSE THE LAGRASSOS FAILED TO ALLEGE A CAUSE OF ACTION UNDER 42 U.S.C.A. §3617

Count II of the Complaint alleges that the ASSOCIATION violated 42 U.S.C.A. § 3617 by intimidating the LAGRASSOS when it imposed sanctions and fines because of MRS. LAGRASSO's posting on her own Facebook blog page and by interfering with the LAGRASSOS' use and enjoyment of the property right by refusing to take action to control the behavior of third parties. (D.E. No. 7, ¶¶ 69, 72 –73). 42 U.S.C.A. § 3617 provides that "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." Sections 3603 – 3606 relate to the discrimination in the sale rental of housing, residential real

estate-related transaction, and provision of brokerage services. *See 42 U.S.C.A § 3603 – 3606*. In order to allege a retaliation, claim under Section 3617, the LAGRASSOS must allege that:

> (1) They are members of a protected class under the FHA,
> (2) They exercised or enjoyed a right protected by § 3603 – 3606, or aided or encouraged others in exercising or enjoying such rights;
> (3) The ASSOCIATION's conduct was at least in part intentional discrimination; and
> (4) The ASSOCIATION's conduct constituted coercion, intimidating, threaten, or interference on account of having exercised or aided or encourage others in exercising, a right protected under § § 3603 -3606.

See United States v. Sea Winds of Marco, *Inc.*, 893 F. Supp. 1051, 1056 (M.D. Fla. 1995); *Marton v. Lazy Day Property Owners Ass'n, Inc.*, No. 2:10-CV-117-FTM-29DNF, 2011 WL 1232375, at *5 (M.D. Fla. Mar. 30, 2011).

In the instant case, the LAGRASSOS claim that MRS. LAGRASSO's Facebook blog posts are protected activity and a causal link exists between blog posts and the sanctions and fines imposed by the ASSOCIATION. (D.E. No. 7, ¶¶ 72). However, per the LAGRASSOS' admission, the Facebook blog posts were simply "editorial comments and opinions about Seven Bridges and an attempt to rally homeowner participation at HOA meetings." (D.E. No. 7, ¶¶ 33). MRS. LAGRASSO's editorial comments and opinions about the ASSOCIATION and an attempt to rally homeowners to participate at HOA meetings are not rights protected by Sections 3603 – 3606 of the Fair Housing Act. *See 42 U.S.C.A.* §§ 3603 – 3606. Moreover, editorial comments and opinions are not activities intended for the purpose of the Fair Housing Act, i.e, to protect people from discrimination when they are renting or buying a home, getting a mortgage, seeking

housing assistance, or engaging in other housing related activities. Therefore, Count II should be dismissed. *See 42 U.S.C.A. § 3601, et. al.*

It is well established that the "First Amendment and its constitutional free speech guarantees restrict government actions, not private actions." *Greiser v. Whittier Towers Apts. Assoc., Inc.*, No. 12-62009-CIV-ZLOCH, 2013 WL 12089978, *5 (S.D. Fla. May 24, 2013) (*quoting Life Education Counsel, Inc. v. CBS Outdoor, Inc.*, No. 11-01835(JLL), 2011 WL 3915631, at *2 (D.N.J., Sept. 2, 2011)). The ASSOCIATION is a not-for-profit homeowners association for the benefit of its owners. It is not a governmental entity. Its owners such as the LAGRASSOS choose to own a home within the ASSOCIATION subject to the Governing Documents and subject to same.

Furthermore, "the right to free speech and the freedom of the press are not without their limits… '[t]here is not in existence any right, constitutional or otherwise which does not carry with [it] an equal and balancing amount of responsibility.'" *Fox v. Hamptons at Metrowest Condo. Ass'n, Inc.*, 223 So. 3d 453, 457 (Fla. 5th DCA 2017) (*quoting Firstamerica Dev. Corp. v. Daytona Beach News-Journal Corp.*, 196 So. 2d 97, 101 (Fla. 1966)). Specifically, the freedom of speech does not extend to obscenity, defamation, fraud, threats, incitement, and speech integral to criminal conduct. *See Fox,* 223 So. 3d at 457 (*citing United States v. Cassidy*, 814 F. Supp. 2d 574, 581-82 (D. Mid. 2011)).

MRS. LAGRASSO's Facebook postings were not activities intended for the purpose of the Fair Housing Act. Additionally, the postings contained anti-Semitic and morally repugnant comments about the ASSOCIATION, its officers, directors, committee members, management, and therefore, are not a protected speech. (See Exhibit "G" to D.E. No. 7). Specifically, MRS. LAGRASSO's Facebook posting contained baseless and

false claims that the ASSOCIATION, its officers, directors, committee members, management, and vendors were taking advantage of the homeowners, mismanaging the Association Finances, committing age discrimination, committing religious discrimination, mismanaging the community's restaurant, are sex workers, and are engaging with a sex worker. (See Exhibit "G" to D.E. No. 7). She also posted several anti-Semitic comments related to and regarding the ASSOCIATION and its owners. Additionally, MRS. LAGRASSO posted a comment threatening to shoot another member of the community. (See Exhibit "G" to D.E. No. 7). Notwithstanding the foregoing, the ASSOCIATION never attempted to infringe on MRS. LAGRASSO's right to free speech and/or request that she cease all social media interactions. (See Exhibit "G" to D.E. No. 7). Instead, the ASSOCIATION simply demanded that all factually incorrect, derogatory, anti-Semitic, and morally repugnant comments about the ASSOCIATION, its officers, directors, committee members, management, and vendors be removed from her Facebook blog. (See Exhibit "G" to D.E. No. 7).

The LAGRASSOS also fail to satisfy the element that the ASSOCIATION's conduct in imposing sanctions and fines because of the Facebook blog posts were in part intentionally discriminatory. (D.E. No. 7, ¶¶ 67 - 74). *See also Sofarelli v. Pinellas Cty.*, 931 F.2d 718, 723 (11th Cir. 1991) (standing for the proposition that when no fact tending to support a finding of discriminatory conduct as alleged, a motion to dismiss under the Fair Housing Act is proper). The Complaint does not allege any facts that support that the ASSOCIATION's actions were motivated by religious discrimination toward the LAGRASSOS. (See D.E. No. 7). Moreover, there are no factual allegations in the Complaint that the ASSOCIATION made any and/or caused to be made any acts of

religious discrimination toward the LAGRASSOS. (See D.E. No. 7). The ASSOCIATION's action to impose sanctions and fines against the LAGRASSOS because of the Facebook blog postings was not a coercion, intimidation, threat, or interference on account of the LAGRASSOS' religion but instead an attempt of the ASSOCIATION to enforce its Governing Documents in keeping with the responsibilities of a private homeowners' association. *(See Exhibit "C" to D.E. No. 7).*

Furthermore, with respect to the LAGRASSOS' allegation that the ASSOCIATION interfered with the LAGRASSOS' use and enjoyment of the property by refusing to take action to control the behavior of third parties, a "failure to act does not rise to the level of the egregious overt conduct that has been held sufficient to state a claim under section 3617." *See Lawrence v. Courtyards at Deerwood Ass'n, Inc.*, 318 F. Supp. 2d at 1144–45. In *Lawrence*, the plaintiff argued that because the Association was aware of the neighbor's harassment, they should have done something to prevent or curtail it, and the Association violated Section 3617 by refusing to do so. *Id*. at 1145. However, this Court held in that case that this argument was flawed because the Association's failure to take action is not a "direct and intentional act of interference" unless the Association had a duty to stop the neighbor's conduct. *Id.* Specifically, the plaintiff had not provided any supporting law that would suggest that the Fair House Act imposes a duty on a Homeowner Association to intervene in a neighbor-to-neighbor dispute. *Id.* "[T]o constitute actionable interference, in the absence of a violation of sections 3603-3606, the discriminatory conduct must be pervasive and severe enough to be considered a threatening or violent." *Id.* Analogous to the La*wrence* case, this Court should find that the LAGRASSOS' argument flaw that the ASSOCIATION violated Section 3617 of the

Fair Housing Act by not taking actions against the LAGRASSOS' neighbors because failure to take action is not a "direct and intentional act of interference." In sum, the LAGRASSOS failed to allege a cause of action against the ASSOCIATION for violating 42 U.S.C.A. § 3617, and therefore, dismissal of Count II is appropriate.

MOTION TO STRIKE PLAINTIFFS' CLAIM FOR PUNITIVE DAMAGES

In their prayer for relief, the LAGRASSOS seek punitive damages from the ASSOCIATION alleging that the ASSOCIATION's conduct demonstrated a reckless disregard for those of certain religious backgrounds and the acts and omissions, i.e., the alleged discriminatory actions, were willful and performed with actual or implied malice. (D.E. No. 7, Prayer for Relief, ¶¶ 4). However, throughout the 81 paragraph Complaint, the LAGRASSOS do not provide **any** fact content that would demonstrate and/or allow the Court to draw a reasonable inference that the ASSOCIATION's actions were intended to discriminate against the LAGRASSOS because of their religious belief. (See D.E. No. 7).

"The Eleventh Circuit has not discussed when punitive damages become available in Fair Housing Act cases." *See Nazarova v. Hillcrest E. No. 22, Inc.*, No. 18-60387-CIV-GAYLES/SELTZER, 2018 WL 3544339, at *6 (S.D. Fla. July 3, 2018) (*citing United States v. Gumbaytay*, 757 F. Supp. 2d 1142, 1150 (M.D. Ala. 2011)). However, when analyzed when punitive damages are available under the Fair Housing Action, this Court has adopted the standard established in *Kolstad v. American Dental Association*, 527 U.S. 526, 533–39 (1999), which held that punitive damages are appropriate when the defendant's conduct is shown to be motivated by evil motive or intent or when it involves reckless or callous indifference to the federally protected right of others. *See Nazarova v.*

Hillcrest E. No. 22, Inc., No. 18-60387-CIV, 2018 WL 3544339, at *6. "Malice" and "reckless" ultimately forces on the actor's state of mind and "pertains to the defendant's knowledge that he may be acting in violation of federal law, not his awareness that he is engaging in discrimination." *Id.*

In the instant case, the LAGRASSOS assert conclusory statements that the ASSOCIATION's conduct had a discriminatory effect on the LAGRASSOS due to their religion and that the ASSOCIATION violated 42 U.S.C.A. § 3604(b) and 42 U.S.C.A. § 3617 on the basis of their religion. (D.E. No. 7, ¶¶ 2, 65). However, there are no facts that support that the ASSOCIATION's action was motivated by religious discrimination. (See D.E. No. 7). Moreover, there are no factual allegations that the ASSOCIATION made any and/or caused to be made any religious discrimination towards the LAGRASSOS. (See D.E. No. 7). Therefore, the LAGRASSOS' mere statement the ASSOCIATION's conduct demonstrated a reckless disregard for those of certain religious backgrounds and the actions and omission described were willful and perform with actual or implied malice are conclusory and do not support a claim for punitive damages. The LAGRASSOS have not demonstrated that the ASSOCIATION acted with malice intent and/or reckless. Therefore, the LAGRASSOS' claim for punitive damages must be stricken.

WHEREFORE, Defendant, SEVEN BRIDGES HOMEOWNERS ASSOCIATION, INC., respectfully request that this Honorable Court grant its Motion to Dismiss and Motion to Strike Plaintiffs' Claim for Punitive Damages, and any other relief this Court deems just.

[CERTIFICATE OF SERVICE NEXT PAGE]

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on August 25, 2020, I electronically filed the foregoing documents with the Clerk of Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record identified on the attached Service List in the manner specified, either via transmission of Notices of Electronically Filing generated by CM/ECF or in some other authorized manner for those Counsel or Parties who are not authorized to receive electronically Notice of Electronic Filing.

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CASE NO. 9:20-cv-81163– MIDDLEBROOKS/Brannon

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