UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 20-81163-CV-MIDDLEBROOKS/Matthewman

JEFFREY LAGRASSO and
DEBORAH LAGRASSO,

Plaintiffs,

v.

SEVEN BRIDGES HOMEOWNERS
ASSOCIATION, INC.,

Defendant.
_____/

ORDER

THIS CAUSE comes before the Court on Plaintiffs Jeffrey LaGrasso and Deborah LaGrasso's ("Plaintiffs") Supplemental Brief on Disparate Treatment Theory of Count I (DE 179). Defendant Seven Bridges Homeowners Association ("Defendant") responded, to which Plaintiffs replied. (DE 184; DE 185). For the following reasons, I decline to enter judgment for either Party on Plaintiffs' disparate treatment theory of Count I. That claim shall proceed to a jury trial.

On May 14, 2021, I entered an Order on Cross-Motions for Summary Judgment (DE 178), granting judgment in favor of Defendant on Count II and on Count I to the extent Plaintiffs brought that count under a hostile housing environment theory. Plaintiffs moved for summary judgment on Count I under both a hostile housing environment theory and a disparate treatment theory (DE 120 at 5–10). Defendant moved for summary judgment as to Count I with respect to the hostile housing environment theory but not the disparate treatment theory (DE 118 at 6–12). Upon considering the Parties' summary judgment submissions, the record, and applicable law, I was inclined to enter judgment in favor of Defendant on the disparate treatment theory of Count I; however, I was foreclosed from doing so, as Defendant had not

moved for judgment on that theory. As such, in accordance with Federal Rule of Civil Procedure 56(f), I directed Plaintiffs to file supplemental briefing relating to that one outstanding theory of liability. In reviewing the supplemental briefing, I am now persuaded that a triable issue exists for the jury to decide.

In their Motion for Summary Judgment on the § 3604(b) Claim, Plaintiffs argued that Defendant subjected Plaintiffs to disparate treatment on the basis of their religion by identifying purportedly anti-semitic postings on Mrs. LaGrasso's Facebook page and sanctioning her for them, while taking no action against Ms. Tannenholz for her conduct. (DE 120 at 8–11). For the purpose of analysis, I assumed that Mrs. LaGrasso belongs to a protected class (Christians), and that she suffered adverse treatment in regard to housing in the form of a monetary assessment and suspension of use of the communal facilities. *See Harris v. Itzhaki*, 183 F.3d 1043, 1051 (9th Cir. 1999) (identifying elements of a prima facie violation of § 3604(b) based on a disparate treatment theory as (1) the plaintiff is a member of a protected class; (2) the plaintiff suffered adverse treatment in regards to housing, and (3) the plaintiff's protected class status was in part a motivating factor for their adverse treatment). I therefore framed the question before me as whether a reasonable jury presented with the evidence in this case could conclude that Plaintiffs' protected class status was in part a motivating factor for the adverse treatment. *See, e.g., Hinson v. Clinch Cty., Georgia Bd. of Educ.*, 231 F.3d 821, 828–29 (11th Cir. 2000). I found that a jury could not, as Plaintiffs had not set forth any individual piece of direct or circumstantial evidence that Defendant sanctioned Mrs. LaGrasso because of her status as a Christian. This finding was also informed by the manner in which Plaintiffs briefed the issue, which focused exclusively on Defendant's decision to sanction Mrs. LaGrasso because of her purportedly anti-semitic Facebook posts, rather than taking a more holistic view of the record. I also concluded that the evidence did not support a finding that Ms. Tannenholz and Mrs. LaGrasso were similarly situated. *See Schwarz v. City of Treasure Island*, 544 F.3d 1201, 1216 (11th Cir.

2008) (requiring a plaintiff to show that he or she has been treated differently than similarly situated people outside of the protected class to establish a disparate treatment claim).

In their Supplemental Brief, Plaintiffs direct the Court's attention for the first time to a Title VII employment discrimination case, *Smith v. Lockheed-Martin Corp.*, 644 F.3d 1321 (11th Cir. 2011), that stands for the proposition that a plaintiff, who cannot establish a *prima facie* case for intentional discrimination on summary judgment under the *McDonnell Douglas* burden-shifting framework or produce a satisfactory comparator, "will always survive summary judgment if he [or she] presents circumstantial evidence that creates a triable issue concerning the employer's [here, housing provider's] discriminatory intent." *Smith*, 644 F.3d at 1328. "A triable issue of fact exists if the record, viewed in a light most favorable to the plaintiff, presents a convincing mosaic of circumstantial evidence that would allow a jury to infer intentional discrimination by the decisionmaker." (*Id.* (citations and internal quotation marks omitted)).

Upon careful consideration of the Parties' supplemental memoranda, and viewing the evidence in the light most favorable to Plaintiffs, I am persuaded that this record, holistically, contains adequate circumstantial evidence to allow a jury to reasonably infer that Defendant discriminated against Plaintiffs in part due to their status as Christians, or at least as non-Jewish community members. As such, I find that summary judgment in favor of Defendant is not warranted with respect to Plaintiffs' disparate treatment discrimination theory of Count I. Accordingly, that claim shall proceed to trial.

SIGNED in Chambers at West Palm Beach, Florida, this 25th day of June, 2021.

DONALD M. MIDDLEBROOKS
UNITED STATES DISTRICT JUDGE

cc: Counsel of Record