

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

KAHIL GRANT,	:	CIVIL ACTION
Plaintiff,	:	NO. 01-1523
	:	
	:	
v.	:	
	:	
KINGSWOOD APARTMENTS,	:	
MORGAN PROPERTIES,	:	
DOREEN ANTONUCCI,	:	
Defendants	:	

MEMORANDUM

Giles, C.J.

December , 2001

I. Introduction

Kahlil Grant (“Grant”) filed a complaint with this court seeking compensatory and punitive damages against Kingswood Apartments, Morgan Properties, and Doreen Antonucci, (collectively “defendants”), for violation of the Fair Housing Act, 42 U.S.C. § 3604(b) (Count 1), and for state law breach of warranty of habitability (Count 2), fraud (Count 3), negligence/breach of contract (Count 4), and violation of the Pennsylvania Unfair Trade Practices and Consumer Protection Law (“UTPCPL”) (Count 5), 73 PA. CONS. STAT. § 201. In a Memorandum and Order, dated October 2, 2001, the court dismissed the fraud and UTPCPL claims, Counts 3 and 5 respectively, and the claim for punitive damages under breach of warranty of habitability and the claimed violation of the covenant of quiet enjoyment of premises, Count 2. Presently before the court, is defendants’ unanswered motion for summary judgment on the remaining claims. For the reasons that follow, defendants’ motion is granted in part and denied in part.

II. Factual Background

The allegation and facts were set forth in a Memorandum and Order on defendant's motion to dismiss. Grant v. Kingswood Apartments, No. CIV.A.01-1523, 2001 WL 1178796, at *1-2 (E.D.Pa. Oct. 2, 2001). As plaintiff again is the non-moving party, the relevant facts are construed in the same manner and the court will not repeat them again.

After hearing argument on the motion to dismiss, the court dismissed the fraud and UTPCPL claims, Counts 3 and 5 of the complaint respectively, and the claim for punitive damages under breach of warranty of habitability and the claimed violation of the covenant of quiet enjoyment of premises, Count 2. Defendants filed a motion for summary judgment on November 16, 2001 on the remaining claims. Plaintiff has not answered the motion.¹

III. Discussion

A. *Standard for Summary Judgment*

Rule 56 of the Federal Rules of Civil Procedure provides that a court should grant summary judgment "...if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." FED. R. CIV. P. 56(c). In making this determination, the court must draw the inferences from the underlying facts in the light most favorable to the party opposing the motion. See Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587-88 (1986).

¹ Since plaintiff has failed to answer defendants' summary judgment motion, the only evidence submitted by the plaintiff on file are the exhibits attached to the complaint: Exhibit 1 is an advertisement for the apartments and Exhibit 2 is the second page of the rules and regulations of the apartment complex.

When the nonmoving party bears the burden of persuasion at trial, the moving party may meet its burden on summary judgment by showing that the nonmoving party's evidence is insufficient to carry the burden. See Celotex Corp. v. Catrett, 477 U.S. 317, 322-23 (1986). A court must enter summary judgment "against a [non-moving] party who fails to make a showing sufficient to establish the existence of an essential element to that party's case, and on which that party will bear the burden of proof at trial. Id. at 322.

For a factual dispute to be "genuine" the evidence presented must be such that a reasonable jury could return a verdict for the non-moving party. The judge must ask whether a fair-minded jury could return a verdict for the plaintiff on the evidence presented. The mere existence of a scintilla of evidence in support of the plaintiff's position will be insufficient. "There must be evidence on which the jury could reasonably find for the plaintiff "upon whom the onus of proof is imposed." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 251-252 (1986).

1. Fair Housing Claim (Count 1)

Plaintiff purports to state a Fair Housing Act violation because the defendants "ignored his complaints and failed to enforce the [apartment complex] rules because he is black." (Compl. ¶¶ 20, 23.) Fair Housing Act claims are governed by the three-part burden of proof test established in McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973). See Chauhan v. M.Alfieri Co., Inc., 897 F.2d 123, 126-27 (3d Cir. 1990) (citing with approval other circuits applying the McDonnell Douglas framework to Fair Housing Act cases). First, the plaintiff has the burden of proving a prima facie case of discrimination by a preponderance of the evidence. Id. at 802. Second, if the plaintiff sufficiently establishes a prima facie case, the burden shifts to

the defendant to articulate some legitimate, nondiscriminatory reason for its action. Id. Third, if the defendant satisfies this burden, the plaintiff has the opportunity to prove by a preponderance of the evidence that the legitimate reasons asserted by the defendant are in fact mere pretext. Id. at 804.

Plaintiff has failed to make the requisite prima facie showing of discrimination. To establish a prima facie case of discrimination for his Fair Housing Act claim, plaintiff would have to establish that (1) he belongs to a protected class; (2) the plaintiff asked defendants to enforce the rules; (3) the defendants did not; and (4) nonmembers of the protected class were treated more favorably. See Dill v. Commonwealth of Pennsylvania, 3 F. Supp.2d 588, 591-592 (E.D. Pa. 1998) (adapting the McDonnell Douglas scheme to the relevant considerations of a specific case.) In order to make this showing of disparate treatment, Plaintiff would have to establish that defendants would have acted differently if he were white or if the noisy tenants were black. Plaintiff has presented absolutely no evidence of this type. His only purported support for the Fair Housing Act claim is that he is black and the tenants making the noise about which he complained are white. (Id. ¶ 24.) Thus, Plaintiff has failed to make a prima facie showing of discrimination and the defendants are entitled to judgment as a matter of law on the Fair Housing Act claim.

2. *Remaining State Law Claims*

Since plaintiff does not have a federal claim, the court dismisses the remaining state law claims, Breach of Warranty of Habitability (Count 2) and Negligence/Breach of Contract (Count 4), without prejudice to their being brought in a proper state forum. 28 U.S.C. § 1367(c)(3).

“It is well settled that, after disposal of a federal claim, a district court has discretion to hear,

dismiss, or remand a supplemental claim for which there is no independent basis for federal subject matter jurisdiction.” Henglein v. Informal Plan for Plant Shutdoen Benefits for Salaried Employees, 974 F.2d 391, 398 (3d Cir. 1992). The court exercises its discretion to dismiss the state law claims since the substantive merits of the claims have not been developed fully here and involve only issues of state law.

IV. CONCLUSION

For the above reasons, the motion for summary judgment is granted in part and denied in part. An appropriate order follows.

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Defendants :

JUDGMENT ORDER

AND NOW, this ___ day of December, 2001, upon consideration of Defendant's Motion for Summary Judgment, Docket #16, for the reasons stated in the attached memorandum, it hereby is ORDERED that the motion is GRANTED IN PART and DENIED IN PART. JUDGMENT is ENTERED for the Defendant on the Fair Housing Act claim (Count 1). Plaintiff's state law claims for breach of warranty of habitability (Count 2) and negligence/breach of contract (Count 4), are DISMISSED WITHOUT PREJUDICE to their being brought in a proper state forum.

BY THE COURT:

JAMES T. GILES C.J.

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