No. 17-1322

In The United States Court of Appeals
For The Seventh Circuit

MARSHA WETZEL,
Plaintiff-Appellant,

v.

GLEN ST. ANDREW LIVING COMMUNITY, LLC, et al.,
Defendants-Appellees,

On Appeal From The United States District Court
For The Northern District of Illinois

Case No. 1:16-cv-07598

The Honorable Judge Samuel Der-Yeghiayan

BRIEF AND REQUIRED SHORT APPENDIX OF PLAINTIFF-APPELLANT MARSHA WETZEL

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APPEARANCE & CIRCUIT RULE 26.1 DISCLOSURE STATEMENT

Appellate Court No: 17-1322

Short Caption: Wetzel v. Glen St. Andrew Living Community, LLC, et al.

To enable the judges to determine whether recusal is necessary or appropriate, an attorney for a non-governmental party or amicus curiae, or a private attorney representing a government party, must furnish a disclosure statement providing the following information in compliance with Circuit Rule 26.1 and Fed. R. App. P. 26.1.

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Marsha Wetzel

(2) The names of all law firms whose partners or associates have appeared for the party in the case (including proceedings in the district court or before an administrative agency) or are expected to appear for the party in this court:

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Foley & Lardner, LLP

(3) If the party or amicus is a corporation:

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N/A

ii) list any publicly held company that owns 10% or more of the party's or amicus' stock:

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Attorney's Printed Name: Kara Nicole Ingelhart

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Attorney's Signature: s/ Ellen M. Wheeler Date: March 8, 2017

Attorney's Printed Name: Ellen M. Wheeler

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Attorney's Signature: s/ John L. Litchfield Date: March 8, 2017

Attorney's Printed Name: John L. Litchfield

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JURISDICTIONAL STATEMENT

A. District Court Jurisdiction

Plaintiff-Appellant Marsha Wetzel brought this action alleging sex and sexual orientation discrimination and retaliation by Defendants-Appellees in violation of the Fair Housing Act, 42 U.S.C. §§ 3604 and 3617, pursuant to 42 U.S.C. § 3613. The District Court therefore had federal question jurisdiction under 28 U.S.C. §§ 1331 and 1343. The District Court also had supplemental jurisdiction under 28 U.S.C. § 1367(a) over Wetzel's related discrimination and retaliation claims under the Illinois Human Rights Act, 775 ILL. COMP. STAT. ANN. 5/1-103, 5/3-102, and 5/3-105.1.

B. Appellate Court Jurisdiction

The Court of Appeals has appellate jurisdiction pursuant to 28 U.S.C. § 1291. Wetzel seeks review of the District Court's Judgment and the Order and Opinion dismissing her complaint, entered January 18, 2017, which disposed of all parties' claims. No motion that would have tolled the time to appeal was filed. Wetzel filed her timely Notice of Appeal on February 17, 2017.

STATEMENT OF ISSUES

1. Did Wetzel's allegations that Defendants-Appellees deprived her of equal housing opportunity through their knowledge of and failure to address the severe and pervasive discriminatory hostile housing environment created by other residents in their senior housing facility state a claim upon which relief may be granted under the Fair Housing Act, 42 U.S.C. §§ 3604(b) and 3617?

2. Did Wetzel's allegations that Defendants-Appellees retaliated against her for complaining that the severe and pervasive discriminatory hostile housing environment created by other residents in their senior housing facility deprived her of equal housing opportunity state a claim upon which relief may be granted under the Fair Housing Act, 42 U.S.C. § 3617?

STATEMENT OF CASE

Plaintiff-Appellant Marsha Wetzel brings this appeal from the District Court's dismissal of her complaint alleging that the Defendants-Appellees denied her equal housing opportunity because of her sex and sexual orientation in violation of the Fair Housing Act and Illinois Human Rights Act.

Ms. Wetzel is a 69-year-old woman who lives at Glen St. Andrew Living Community ("GSALC") in Niles, Illinois, a property owned, leased, and managed by Defendants-Appellees Glen St. Andrew Living Community Real Estate, LLC, Glen St. Andrew Living Community, LLC, and Glen Health & Home Management (collectively, the "Corporate Defendants") as a residence for older adults. App. 10, 12-14. Wetzel moved to GSALC in November 2014, signing a Tenant's Agreement to rent Apartment 204, setting forth that, in exchange for her rental payment, GSALC would provide Wetzel with a private room and bathroom, utilities, maintenance, laundry facilities, three meals a day, and access to community rooms, enrichment programs, and consultation about health care and other necessities. App. 10, 15, 37-39.

Wetzel is a lesbian, and she moved to GSALC after the death of her partner of thirty years, Judy, with whom she raised a son, Josh. App. 11-12, 14-15. A social worker had helped Wetzel find GSALC when she had no place else to go. Wetzel had been evicted from the home she and Judy had shared by Judy's family and she was isolated from her remaining family. App. 15.

From the start of her interactions with staff and other residents at GSALC, Wetzel spoke openly about her sexual orientation and her life with Judy and Josh. App. 15. After a few months of living at GSALC, some residents began harassing Wetzel about being a lesbian, having a relationship with a woman, and raising a child with another woman—a pattern that would continue and worsen over the course of more than fifteen months. She was regularly and repeatedly 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, and taunted about her relationship with Judy and their son. App. 11, 15-20, 22, 24-25.

The main perpetrator of the harassment was a resident named Bob Herr, a former police officer whose behavior relentlessly intimidated and antagonized Wetzel. Several other residents engaged in harassing behaviors as well. Wetzel was called "fucking dyke," "fucking faggot," "homosexual bitch," "homo," and "fruit loop," among other slurs, and was told that homosexuals will burn in hell. Herr also referred to Josh as Wetzel's "homosexual-raised faggot son." App. 15-22, 24-25. Wetzel encountered this verbal harassment in common spaces throughout GSALC,

including the lobby, dining room, patio, mailroom, hallways, and elevators. App. 15-22, 24-25.

Verbal harassment escalated into physical harassment. Wetzel was spit on, threatened with bodily harm, intimidated, and repeatedly assaulted in the common areas throughout GSALC because of her sex and sexual orientation. App. 11, 15-22, 24-25. Wetzel, who is disabled, uses a scooter or walker to move around GSALC. In July 2015, Herr intentionally rammed her scooter while using homophobic slurs, causing her to fall out of its chair and off the ramp she was going up in the lobby, leaving her injured. App. 16. On other occasions, Herr threatened to "rip [Wetzel's] tits off," frightened her with his cane, blocked her ability to move around and enter common areas, taunted and intimidated her by lurking in areas where she was and seemingly taking photos of her with his phone, rammed her scooter from behind in an elevator, and told her how great it was that gay people were killed at the Pulse nightclub in Orlando, Florida. App. 18, 21-22, 24-25.

Wetzel strongly believes that Herr also hit her from behind in the mailroom in January 2016, calling her a "homo," knocking her forward over the front of her scooter and leaving her with a bump on her head and a black eye. Because she was hit from behind, she cannot be sure it was Herr, but in addition to his existing pattern of harassment, after the incident, he kept laughing and saying "ouch" while rubbing his head when Wetzel encountered him. App. 20-22.

Although the most prolific, Herr was not the only source of physical harassment Wetzel encountered. In September 2015, a different resident rammed

Wetzel's table in the dining room while verbally harassing her, knocking Wetzel to the floor with the table on top of her. Kitchen staff had to help remove the table from on top of Wetzel. App. 17. That same resident also spit on Wetzel while making homophobic comments when the two of them were in an elevator. *Id.*

Wetzel repeatedly complained about the sex- and sexual orientation-based harassment she experienced to the staff and administration of GSALC, including to: Defendants-Appellees Alyssa Flavin, GSALC's Executive Director; Carolyn Driscoll, GSALC's Director of Supportive Services and Resident Relations; and Sandra Cubas, Regional Director for Glen Health & Home Management (collectively, "the Administration"). App. 11, 13-14, 16-22, 24-25. Wetzel told the Administration about Herr's verbal harassment beginning in early spring 2015, and for a brief time, the harassment decreased. When it resumed a few months later, including the first incident of Herr's physical violence in the lobby, and Wetzel complained, the Administration failed to take any action. For over a year, Wetzel consistently reported the verbal and physical harassment, threats, and intimidation she experienced at the hands of Herr and other residents, and continually asked the Administration for help. App. 16-22, 24-25. Witnesses to some of the incidents, including GSALC staff and other residents, also reported the incidents to the Administration. App. 16, 22, 25.

Despite numerous complaints from both Wetzel and others on her behalf, the Administration failed to take any meaningful action to put a stop to the harassment and discrimination that Wetzel experienced. On the contrary, the Administration

ratified and condoned the abuse, denied the existence of her injuries, called her a liar, blamed her for all of the strife surrounding her, refused to provide copies of incident reports, and condoned and dismissed the harassing behavior of other residents. App. 16-22, 25. The Administration characterized the incident in which a resident rammed Wetzel's table while uttering slurs in the dining room as an accident. Cubas told Wetzel not to worry about Herr, and Flavin responded to Wetzel's complaint about Herr's threats of violence and blocking Wetzel's movement on the patio by saying, "Bob will be Bob." App. 16, 19, 25. Cubas told Wetzel that she did not see any discrimination happening to Wetzel. App. 19.

The Administration also intimidated Wetzel, blamed her for causing trouble, and made her believe her tenancy was in jeopardy. Defendant Driscoll responded to Wetzel's initial complaints about Herr's renewed harassment and violence by calling Wetzel into an office, locking the door, showing her a copy of her tenant's agreement with arrows highlighting particular provisions, telling her they could not believe her allegations because she is a trouble maker, and refusing to let her leave until she had asked three times, despite her having told them that she was having chest pains. App. 17. Defendant Driscoll also asked whether the admissions staff knew Wetzel was gay when she was admitted, implying that the Administration could have avoided having to deal with the harassment if only they had not admitted Wetzel in the first place. App. 22.

The Administration failed to take action to put an end to the hostile environment in which Wetzel lives despite having the clear ability to do so. The

terms of GSALC's Tenant's Agreement governing independent living apartments and Wetzel's tenancy gives them the authority to take action against tenants who engage in harassing behaviors. The Tenant's Agreement sets forth that "acts or omissions that constitute a direct threat to the health and safety of other individuals" are grounds for termination of the agreement, and that the obligation not to engage in such behavior is a responsibility of each tenant. It also obligates tenants not to engage in any activity that "unreasonably interferes with the peaceful use and enjoyment of the community by other tenants or threatens to damage the community's reputation." App. 15, 28, 36, 38-39. It states clearly that the Defendants-Appellees can give a tenant who is not conforming to his or her obligations under the Tenant's Agreement or to any other GSALC rule or regulation a 30-day warning, and if the tenant does not cure his or her non-compliance, the Defendants-Appellees can terminate their tenancy. App. 36, 41.

The Administration's failure to put an end to the discriminatory hostile housing environment in which Wetzel lives has caused her tremendous fear, anxiety, and emotional distress. Wetzel spends increased amounts of time in her room, withdrawing from the common areas where the harassment has persisted. She keeps her door locked whenever she is in her room and sleeps with the door barricaded out of fear that people will come into her room and hurt her or take or damage things that belonged to Judy. Even though the rent she pays to GSALC covers three meals a day, Wetzel has stopped sitting at her table in the dining room for meals, and only goes to the dining room when it was closing down or closed,

relying on outside groceries and some meager food items from the kitchen staff for food. She feels unsafe and unwelcome in her own home, has lost a significant amount of weight, and worries every time she leaves her room. App. 11, 18, 21-22, 25-26.

In addition to their failure to address the discriminatory hostile housing environment they allowed to persist, the Administration retaliated against Wetzel 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. App. 11, 13, 18-20, 23-24, 27-28. In response to Wetzel's complaints, they moved Wetzel to a less desirable seating location in the dining room, restricted her use of common spaces, and temporarily stopped her room cleaning services. App. 18-20. They also threatened and attempted to evict Wetzel through duplicity and fabrication. In November 2015, after Wetzel had complained to the Administration about harassment and assaults, Wetzel did not receive the usual rent notice taped to her door, though other residents did. She went to the business manager to pay her rent anyway, and while Wetzel's check was accepted, the business manager initially would not give her a receipt. Wetzel insisted, and was given an unsigned receipt unlike any she had received for submitting her rent in the past. Wetzel waited in the business office until the business manager agreed to sign the receipt. App. 19.

In April 2016, the Administration began attempting to evict Wetzel by baselessly alleging that she was smoking in her room in violation of GSALC's rules.

Cubas and Driscoll called her into a meeting and asked her to sign a statement that she had done so. Wetzel refused, told them that she only smokes outdoors, asked why the smoke detector in her very small room didn't go off if she had been smoking there as they claimed, and told them explicitly that she believed they were looking to get rid of her because she is a lesbian. They did not respond to Wetzel's questions or allegation, but told her that if they received one more report about her smoking in her room, she would be dismissed from GSALC. Cubas and Driscoll followed this with a letter, copying Flavin, stating that Wetzel had been warned about smoking in her room; that she refused to sign an updated no smoking policy; that if they smell smoke, or hear any reports of smoke, they will knock one time and then enter her room with or without her permission; and that any further violations of the no smoking policy would be grounds for termination of her lease. App. 23.

On April 24, 2016, Wetzel was awoken at around 5:00 a.m. when two staff members pounded on her door, claiming that they smelled cigarette smoke coming from her room. Wetzel offered to let the staff members into her room to check for smoke or any remnants of a cigarette, but they refused to enter, and when Wetzel suggested the staff members themselves smelled like smoke, one of them slapped her across the face and then left. Wetzel went to another resident's room for support and together they called the police, who came to the facility and took a report. Although Wetzel could describe the staff members generally, and could see that they were wearing staff badges, she could not identify them specifically because she had not put on her glasses before she answered the door. Wetzel met with Flavin

the next day. Flavin questioned whether it had really been staff members involved and seemed angry that Wetzel took legal steps to address this incident. App. 23-24. The Administration undertook these deceitful and baseless efforts to expel Wetzel from the facility rather than addressing the hostile housing environment they allowed to persist.

Wetzel filed this action on July 27, 2016, alleging that the Defendants-Appellees, in allowing her to be subjected to a pattern of severe and pervasive verbal and physical harassment, threats, and intimidation because of her sex and sexual orientation, and in retaliating against her for complaining about this harassment, deprived her of equal housing opportunity in violation of the Fair Housing Act and the Illinois Human Rights Act. The complaint alleged that the Administration's knowledge of and failure to address the hostile housing environment to which Wetzel has been subjected because of her sex and sexual orientation discriminated against her in the terms, conditions, and privileges of renting a place to live at GSALC, discriminated against her in the provision of services or facilities in connection with renting a place to live at GSALC, and unreasonably interfered with her right to use and enjoy her home. App. 11-13, 26-31. The complaint further alleged that in retaliating against Wetzel for complaining about the illegal harassment and discrimination she was experiencing at GSALC because of her sex and sexual orientation, the Administration coerced, intimidated, threatened, and interfered with Wetzel's exercise and enjoyment of her housing rights. App. 11-13, 27-31.

The Defendants moved to dismiss the complaint pursuant to FED. R. CIV. P. 12(b)(6) on August 22, 2016, and the District Court granted their motion on January 18, 2017. App. 1-9. The District Court dismissed on three grounds. First, the District Court rejected Wetzel's claims pursuant to 42 U.S.C. § 3617, holding that Wetzel's failure to plead specific discriminatory animus was fatal to her claim that Defendants interfered with her enjoyment of her fair housing rights, that no controlling precedent holds landlords liable for tenant-on-tenant harassment, and that Wetzel did not plead a retaliation claim. App. 4-6. Second, the District Court rejected Wetzel's claims pursuant to 42 U.S.C. § 3604(b), holding that the only permissible post-acquisition claims under that provision are those alleging constructive eviction or that the Defendants' actions have rendered the premises uninhabitable, that Wetzel's continued residence at GSALC waived her ability to claim constructive eviction, and that she pled neither that the premises are uninhabitable nor specific discriminatory animus on the part of the Defendants. App. 7-8. Third, having dismissed Wetzel's federal Fair Housing Act claims, the District Court declined to exercise supplemental jurisdiction over her Illinois Human Rights Act claims. App. 8.

Wetzel filed the instant appeal.

SUMMARY OF ARGUMENT

Wetzel has stated a straightforward claim of hostile housing environment for which the Defendants-Appellees may be held liable under the Fair Housing Act. In dismissing her complaint, the District Court disregarded the well-established

frameworks for assessing hostile environment claims in both the housing and employment contexts in this Circuit and beyond. These frameworks make clear that a housing provider's duty to ensure equal housing opportunity is an ongoing obligation to the tenant, protecting the tenant against severe or pervasive discriminatory harassment that alters the terms, conditions, or privileges of her tenancy, deprives her of its facilities and services, and interferes with her enjoyment of her equal housing rights.

The housing provider is liable for hostile housing environments caused by the conduct of other residents if it knows or should have known that other tenants have engaged in a severe and pervasive pattern of discriminatory harassment and fails to take appropriate remedial action to end that harassment. This principle is supported by case law, Department of Housing and Urban Development regulations, tort principles embodied in the Fair Housing Act, and analogous employment discrimination case law. The District Court erred in disregarding these established principles, importing an intent requirement that does not apply in the hostile environment context. The District Court further erred in applying an overly cramped reading of this Court's jurisprudence regarding housing discrimination claims that arise post-acquisition, and completely ignoring Wetzel's clear-cut retaliation claim.

Wetzel has plainly alleged that she experienced a pattern of severe and pervasive harassment based on her sex and sexual orientation at the hands of other residents of Defendants-Appellees' facility; that she repeatedly made Defendants-

Appellees aware of the harassment; and that Defendants-Appellees failed to take action to end the harassment, instead acquiescing in the harassment and retaliating against her for complaining. Wetzel's complaint therefore states claims pursuant to 42 U.S.C. §§ 3604(b) and 3617 upon which relief may be granted. The District Court's dismissal should be reversed.

STANDARD OF REVIEW

This Court's review of the District Court's order granting Defendants-Appellees' motion to dismiss is *de novo,* with all well-pleaded facts and all reasonable inferences from them construed in the light most favorable to the Plaintiff-Appellant. *See Huri v. Office of the Chief Judge of the Cir. Ct. of Cook Cty.*, 804 F.3d 826, 829 (7th Cir. 2015).

ARGUMENT

The Fair Housing Act, 42 U.S.C. §§ 3601 et seq. ("FHA"), was enacted "to eradicate discriminatory practices within a sector of our Nation's economy," "to provide . . . for fair housing throughout the United States," and to "provide[]a clear national policy against discrimination in housing," *Texas Dep't of Hous. & Cmty. Affairs v. Inclusive Cmtys. Project, Inc.*, 135 S. Ct. 2507, 2521 (2015) (quotations omitted). Toward that end, section 804 of the FHA makes it unlawful "[t]o discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race, color, religion, sex, familial status, or national origin." 42 U.S.C. § 3604(b). Further, section 818 of the FHA deems it "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" the FHA. 42 U.S.C.A. § 3617.

These provisions, which Congress intended to be broadly remedial, *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 380 (1982), hold a housing provider responsible for maintaining its properties free from discrimination, including where the discrimination takes the form of a hostile housing environment, and prevent the provider from retaliating against a resident seeking to enforce her right to equal housing opportunity.

I. Wetzel's Complaint States a Viable Claim of Hostile Housing Environment Discrimination Against the Defendants-Appellees.

This Court has long recognized that the FHA applies to situations in which harassment based on sex is so severe and pervasive as to create a hostile housing environment that interferes with a resident's equal housing opportunity. *See DiCenso v. Cisneros*, 96 F.3d 1004, 1008 (7th Cir. 1996). Hostile housing environment claims have proceeded under both § 3604(b) and § 3617 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 Krueger v. Cuomo*, 115 F.3d 487, 491 (7th Cir. 1997) (affirming finding that sexual harassment of tenant violated §§

3604(b) and 3617); *DiCenso*, 96 F.3d at 1008 (recognizing hostile housing environment cause of action under both §§ 3604(b) and 3617); *see also Bloch v. Frischholz*, 587 F.3d 771, 781 (7th Cir. 2009) ("In some instances, we have held that the circumstances of the case make §§ 3604 and 3617 coextensive—a violation of one necessarily means a violation of the other.").

In setting the contours of a hostile housing environment claim, the *DiCenso* court imported the standards for hostile work environment claims under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e–2(a)(1) ("Title VII"):

> [A] claim is actionable "when the offensive behavior unreasonably interferes with use and enjoyment of the premises." . . . Whether an environment is "hostile" or "abusive" can be determined only by looking at all the circumstances, and factors may include the frequency of the discriminatory conduct; its severity; whether it is physically threatening or humiliating, or a mere offensive utterance; and whether it unreasonably interferes with an employee's work performance.

DiCenso, 96 F.3d at 1008 (quoting *Honce v. Vigil*, 1 F.3d 1085, 1090 (10th Cir. 1993) and citing *Harris v. Forklift Systems, Inc.*, 510 U.S. 17, 23 (1993)). As in the employment context, for harassment to be actionable, it must be sufficiently severe or pervasive that it "alter[s] the conditions of the housing arrangement." *Honce*, 1 F.3d at 1090; *see also DiCenso*, 96 F.3d at 1008 (citing *Meritor Savings Bank, FSB v. Vinson*, 477 U.S. 57, 67 (1986)).

A. Landlords May Be Held Liable For A Discriminatory Hostile Housing Environment Caused By Tenant-On-Tenant Harassment.

Without addressing any other aspect of Wetzel's hostile environment claim, the District Court's dismissal turned largely on its erroneous view that allegations of specific discriminatory intent on the part of the Defendants-Appellees are

necessary to support Wetzel's claims against them under §§ 3604(b) and 3617. App. 4-7. In so holding, the District Court completely ignored the prevailing jurisprudence regarding landlord liability for hostile housing environments stemming from discriminatory harassment by other tenants. Holding landlords like Defendants-Appellees liable for failing to remediate a discriminatory hostile housing environment created by tenant-on-tenant harassment is consistent with the prevailing case law, the regulations promulgated by the Department of Housing and Urban Development ("HUD") regarding hostile housing environment, the tort principles embodied in the FHA, and Title VII case law regarding an employer's failure to remedy a hostile work environment.[1]

1. Prevailing case law holds landlords liable for tenant-on-tenant harassment.

Countless courts within this Circuit and across the country 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 when those housing providers knew or should have known about the discriminatory conduct and failed to stop it. *See, e.g.*, *Krieman v. Crystal Lake Apartments Ltd. P'ship*, No. 05-C-0348, 2006 WL 1519320, at *11-12 (N.D. Ill. May 31, 2006); *Scialabba v. Sierra Blanca Condo. No. One Ass'n*, No. 00-C-5344, 2001 WL 803676,

[1] Landlord liability for allowing a discriminatory hostile housing environment to persist also advances the overarching purposes of the FHA. *See City of Chicago v. Matchmaker Real Estate Sales Ctr., Inc.*, 982 F.2d 1086, 1097 (7th Cir. 1992) (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.").

at *6 (N.D. Ill. July 16, 2001); *Wilstein v. San Tropai Condo. Master Ass'n*, No. 98-C-6211, 1999 WL 262145, at *11 (N.D. Ill. Apr. 22, 1999); *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, 363-66 (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); Consent Decree, *United States v. Applewood of Cross Plains, LLC*, No. 3:16-cv-00037-jdp (W.D. Wis. Jan. 20, 2016) ECF 4 (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").

In *Neudecker*, the Eighth Circuit addressed a claim of hostile housing environment based on disability. Neudecker had been subjected to a campaign of harassment by two other residents, including verbal harassment, threats, false accusations, and an assault, because of his disability, obsessive-compulsive

disorder. 351 F.3d at 363. Neudecker complained to the property manager, who failed to address the situation, and instead responded with further false accusations against Neudecker and a threat to evict him as reprisal for his continued complaints about the harassment. *Id.* The Court concluded that claims for disability harassment are actionable under the FHA and held that Neudecker had stated such a claim, having alleged that the housing provider subjected him to unwelcome harassment based on his disability and that the harassment was sufficiently severe to deprive him of his right to enjoy his home. *Id* at 364. Noting that Neudecker had not alleged that agents of the housing provider themselves had harassed him, the Court nonetheless held that he stated a claim against the provider because he had repeatedly complained about the constant harassment and threats to management to no avail. *Id.*

Instead of following this authority, the District Court invoked both *Bloch*, 587 F.3d 771, and *East-Miller v. Lake Cty. Highway Dep't*, 421 F.3d 558 (7th Cir. 2005), for the proposition that Wetzel's claims must fail because she did not allege discriminatory intent on the part of the Defendants-Appellees. App. 4-6. But each of those cases stands for the simple notion that there must be discriminatory intent by the actor causing the harassment, interference, and intimidation—a separate inquiry from whether the housing provider may be held liable for the resulting deprivation of equal housing opportunity. In *Bloch*, this Court concluded that a jury question existed as to whether the rule, interpretations, and clearing of religious artifacts were "intended to target the only group of residents for which the

prohibited practice was religiously required." 587 F.3d at 787. *East-Miller* involved claims by an African-American woman, whose family was the only African-American family in an all-white neighborhood, alleging that the Lake County Highway Department's damage to her property interfered with her enjoyment of her property in violation of § 3617. 421 F.3d at 562. The Court affirmed summary judgment for the county because East-Miller failed to provide any evidence that the alleged interference and intimidation was racially motivated, or indeed that the perpetrators even knew the family's race. *Id.* at 563-64.

Neither of these cases prevents Wetzel's claims, which plainly alleged that the harassment she experienced was invidiously motivated. As discussed *infra* at Part I(A)(3), in a hostile housing environment claim, whether under § 3604(b) or § 3617, that alone is a sufficient allegation of intent. She is not also required to allege that separate animus fueled Defendants-Appellees' failure to take corrective action to end the invidiously motivated harassment.

2. The Department of Housing and Urban Development has interpreted the FHA to impose liability on landlords for failing to address the hostile housing environment caused by tenant-on-tenant harassment.

The principle that landlords are liable for hostile housing environments that they know about and do not correct is reflected in the regulations on hostile environment harassment issued by the Department of Housing and Urban Development. *See* Department of Housing and Urban Development, *Quid Pro Quo and Hostile Environment Harassment and Liability for Discriminatory Housing Practices under the Fair Housing Act*, 81 Fed. Reg. 63054 (Sept. 16, 2016) (to be

codified at 24 C.F.R. 100) ("Harassment Rule"). This rule added § 100.7 to 24 CFR part 100, stating:

> (a) Direct liability.
>
> (1) A person is directly liable for: . . .
>
> (iii) Failing 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. The power to take prompt action to correct and end a discriminatory housing practice by a third-party depends upon the extent of the person's control or any other legal responsibility the person may have with respect to the conduct of such third-party.
>
> (2) For purposes of determining liability under paragraphs (a)(1)(ii) and (iii) of this section, prompt action to correct and end the discriminatory housing practice may not include any action that penalizes or harms the aggrieved person, such as eviction of the aggrieved person.
>
> (b) Vicarious liability. A person is vicariously liable for a discriminatory housing practice by the person's agent or employee, regardless of whether the person knew or should have known of the conduct that resulted in a discriminatory housing practice, consistent with agency law.

24 C.F.R. § 100.7. HUD explained 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 Fed. Reg. at 63067.[2]

[2] As HUD noted, the Harassment Rule "does not add any new forms of liability under the Act or create obligations that do not otherwise exist." 81 Fed. Reg. at 63068. Rather, the Rule "formalizes clear, consistent, nationwide standards for evaluating harassment claims

The District Court did not acknowledge the existence—let alone the applicability—of the Harassment Rule. 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). *See Meyer v. Holley*, 537 U.S. 280, 287-88 (2003) (*Chevron* deference is owed to HUD's reasonable interpretation of the Fair Housing Act, as "the federal agency primarily charged with the implementation and administration of the statute."). As this Court noted in *Bloch*, "[t]hough a rote application of Chevron deference might be inconsistent with the judicially enforceable nature of the FHA's private right of action, . . . the Supreme Court has nonetheless recognized that HUD's views about the meaning of the FHA are entitled to 'great weight.'" 587 F.3d at 781 (quoting *Trafficante v. Metro. Life Ins. Co.,* 409 U.S. 205, 210 (1972); other citations omitted). This Court, too, should give great weight to HUD's views about the FHA's imposition of liability on a landlord for tenant-on-tenant harassment.

3. Holding landlords liable for tenant-on-tenant harassment is consistent with the tort principles embodied in the FHA.

The application of negligence principles to impose liability on housing providers for the hostile environment created by other tenants comports with the Supreme Court's unequivocal recognition that "an action brought for compensation

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under the Fair Housing Act," and "[i]dentif[ies] traditional principles of direct and vicarious liability applicable to all discriminatory housing practices under the Fair Housing Act, including . . . hostile environment harassment." *Id.* at 63055.

by a victim of housing discrimination is, in effect, a tort action." *Meyer*, 537 U.S. at 285 (citing *Curtis v. Loether*, 415 U.S. 189, 195-196 (1974)). Applying tort principles to FHA claims, the Court has held that FHA damages claims lie where unlawful discrimination is the proximate cause of a plaintiff's injury, *Bank of Am. Corp. v. City of Miami, Fla.*, 137 S. Ct. 1296, 1305 (2017); that the FHA provides for vicarious liability of an employer for the acts or negligence of an agent in the course of her employment, *Meyer*, 537 U.S. at 285-86; and that a claim for damages under the FHA entitles a party thereto to a jury trial, *Curtis*, 415 U.S. 189. As the Court in *Curtis* made clear, the FHA "defines a new legal duty, and authorizes the courts to compensate a plaintiff for the injury caused by the defendant's wrongful breach." *Curtis*, 415 U.S. at 195.

HUD elaborated on the applicability of these tort principles in the hostile housing environment context in the Harassment Rule, noting that "[t]he 'knew or should have known' standard is well established in civil rights and tort law." 81 Fed. Reg. at 63066. HUD further clarified the contours of a housing provider's liability for to tenant-on-tenant harassment:

> 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 Fed. Reg. at 63067. Under these principles, Wetzel has plainly alleged a claim for holding Defendants-Appellees' liable for their wrongful breach of their duty to ensure equal housing opportunity to her by failing to take action to end the

discriminatory hostile housing environment created by the other tenants' harassment.[3]

Contrary to the District Court's holding, this negligence standard for landlord liability for hostile housing environment claims does not require a showing of specific discriminatory intent on the part of Defendants-Appellees. *See* 81 Fed. Reg. at 63068-69 ("negligence standard of liability . . . does not require proof of discriminatory intent or animus on the part of the provider"). The relevant discriminatory intent a claimant must demonstrate for purposes of a hostile housing environment claim is that which fueled the harassment. Wetzel does not *also* have to allege intentional discrimination by Defendants-Appellees in their failure to address or remedy the harassment. *See Galdamez v. Potter*, 415 F.3d 1015, 1022 (9th Cir. 2005) (hostile environment theory of liability "is grounded in negligence and ratification rather than intentional discrimination;" requiring proof that "discriminatory animus motivated the [employer's] failure to act" was "incorrect law").[4]

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[3] Furthermore, holding landlords liable for harm to their tenants as a result of the landlord's negligence is consistent with Illinois tort law, including when the harm is caused by a third party. *See, e.g.*, *Rowe v. State Bank of Lombard*, 125 Ill. 2d 203, 224-25 (1988) ("Thus a landlord may be liable for harm to a tenant, or those on the premises with the tenant's consent, if its negligence facilitates the criminal acts of a third person and the criminal activity is reasonably foreseeable."); *Stribling v. Chicago Hous. Auth.*, 34 Ill. App. 3d 551, 556 (1st Dist. 1975) (reversing dismissal of claims against landlord for robberies after landlord was put on notice of conditions that made successive robberies "eminently foreseeable"). Indeed, "where an injury could be reasonable foreseen from a negligent act or omission, it is not necessary that the precise injury which occurred should have been foreseen." *Enis v. Ba-Call Bldg. Corp.*, 639 F.2d 359 (7th Cir. 1980) (discussing Illinois law regarding liability of landlord to tenants).

[4] Having alleged direct evidence of discriminatory intent on the part of the harassers, Wetzel has also satisfied the mandate of *Kormoczy v. Sec'y, U.S. Dep't of Hous. & Urban*

HUD explicitly rejected a requirement of demonstrating discriminatory animus on the part of the housing provider before imposing liability. Pointing to HUD's own experience in administering and enforcing the FHA, the FHA's broad remedial purposes, relevant FHA case law, and the views of the EEOC regarding Title VII, HUD determined that a landlord's own actions in ratifying and acquiescing in the tenants' discriminatory harassment by failing to take appropriate remedial actions provides a sufficient basis for imposing liability. 81 Fed. Reg. at 63068-69 (citing, *e.g.*, *Texas Dep't of Hous. & Cmty. Affairs* , 135 S. Ct. at 2519 (holding that the "because of" clause in the Fair Housing Act does not require proof of discriminatory intent)); *see also, e.g.*, *Martinez*, 2007 WL 8435675, at *5 (defendants' ratification of a pattern of racially-based harassment and intimidation caused by a co-tenant stated claims under §§ 3604(b) and 3617); *cf. United States v. Sabbia*, No. 10-C-5967, 2011 WL 1900055, at *4 (N.D. Ill. May 19, 2011) (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)).

Dev., 53 F.3d 821, 823-24 (7th Cir. 1995), also cited by the District Court. App. 5. The *McDonnell Douglas* test is inapplicable to hostile environment claims. *See Santos v. The Boeing Co.*, No. 02 C 9310, 2004 WL 2515873, at *4 (N.D. Ill. Nov. 5, 2004) ("the analysis for a hostile work environment claim is separate from a discrimination claim which utilizes the *McDonnell Douglas* burden shifting approach.") (citing *Hilt–Dyson v. City of Chicago*, 282 F.3d 456, 462-63, 465 (7th Cir. 2002)); *Reeves v. Carrollsburg Condo. Unit Owners Ass'n*, No. CIV. A. 96-2495RMU, 1997 WL 1877201, at *5 (D.D.C. Dec. 18, 1997) (reliance on *McDonnell Douglas* and its progeny is misplaced because hostile housing environment claim involves direct evidence of discrimination).

4. Title VII case law supports holding landlords liable for tenant-on-tenant harassment.

Title VII case law regarding an employer's failure to remedy a hostile work environment is also instructive. *See Kyles v. J.K. Guardian Sec. Servs., Inc.*, 222 F.3d 289, 295 (7th Cir. 2000) ("Courts have recognized that Title VIII is the functional equivalent of Title VII, and so the provisions of these two statutes are given like construction and application.") (internal citations omitted). In *Burlington Indus., Inc. v. Ellerth*, 524 U.S. 742, 759 (1998), and *Faragher v. Boca Raton,* 524 U.S. 775, 799-800 (1998), the Supreme Court held that an employer may be liable under Title VII when its own negligence is a cause of the harassment. More specifically, the Court in *Ellereth* stated, "An employer is negligent with respect to sexual harassment if it knew or should have known about the conduct and failed to stop it. Negligence sets a minimum standard for employer liability under Title VII[.]" 524 U.S. at 759. It is the employer's own actions or failure to act to ensure the employee's equal employment opportunity that provides the basis for liability.

That the harassment here was perpetrated by other residents rather than those employed by the Defendants-Appellees does not alter their liability. This Court has made clear that employer liability for a hostile work environment may exist even when the hostile environment is created by non-employees. In *Dunn v. Wash. Cty. Hosp.*, 429 F.3d 689 (7th Cir. 2005), the Court held that the fact that a doctor engaging in discriminatory harassment was an independent contractor rather than an employee did not relieve the hospital of liability for the hostile work environment he created for female employees. Citing *Ellereth and Faragher* for the

proposition that an employer is responsible for any "discriminatory term or condition of employment that the employer fails to take reasonable care to prevent or redress," the Court stated,

> it makes no difference whether the person whose acts are complained of is an employee, an independent contractor, or for that matter a customer. Ability to "control" the actor plays no role. . . . [E]mployers have an arsenal of incentives and sanctions (including discharge) that can be applied to affect conduct. It is the use (or failure to use) these options that makes an employer responsible—and in this respect independent contractors are no different from employees. Indeed, it makes no difference whether the actor is human. Suppose a patient kept a macaw in his room, that the bird bit and scratched women but not men, and that the Hospital did nothing. The Hospital would be responsible for the decision to expose women to the working conditions affected by the macaw, even though the bird (a) was not an employee, and (b) could not be controlled by reasoning or sanctions. It would be the Hospital's responsibility to protect its female employees by excluding the offending bird from its premises. This is, by the way, the norm of direct liability in private law as well: a person "can be subject to liability for harm resulting from his conduct if he is negligent or reckless in permitting, or failing to prevent, negligent or other tortious conduct by persons, whether or not his servants or agents, upon premises or with instrumentalities under his control." . . . 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, 429 F.3d at 691–92 (7th Cir. 2005) (quoting *Restatement (2d) of Agency* § 213(d)) (emphasis in original); *see also Wells v. Winnebago Cty, Ill.*, 820 F.3d 864, 865 (7th Cir. 2016) (county may be held liable for decisions of state employees discriminating against county employee; "employers must control the behavior of others in the workplace, so as to ensure nondiscriminatory working conditions."); *Maalik v. Int'l Union of Elevator Constructors, Local 2*, 437 F.3d 650, 653 (7th Cir. 2006) (union held liable for failing to take action when union member mechanics

refused to train a black woman in union training program; "Both managers and union officials may prefer the quiet life, but Title VII requires action.").

Furthermore, in *Chaney v. Plainfield Healthcare Ctr.*, 612 F.3d 908 (7th Cir. 2010), this Court held that a long-term care facility's policy of acceding to the racial biases of its residents in restricting which residents an African-American staff member could interact with created a racially hostile work environment. Noting that it is widely accepted that an employer's catering to the discriminatory biases of its customers is not a defense for treating employees differently, this Court rejected the facility's argument that a patient's preference for white staff trumps the facility's duty to its employees to refrain from race-based work assignments. *Id.* at 913. The Court also rejected the notion that the facility had no other means of protecting employees from racial harassment by the residents other than by maintaining a racial preference policy. The facility had explored no other options, instead acceding to the residents' racial hostility, and the Court held that that created a hostile work environment. *Id.* at 914-15.[5]

[5] Other Courts of Appeals have similarly held employers liable for hostile work environments created by the harassment of non-employees. See, e.g., *Lockard v. Pizza Hut, Inc.*, 162 F.3d 1062, 1073–74 (10th Cir. 1998) (employer may be liable for harassment by customers "since the employer ultimately controls the conditions of the work environment."); *Rodriguez-Hernandez v. Miranda-Velez*, 132 F.3d 848, 855 (1st Cir. 1998) (employer's refusal to do anything about customer's sex-based harassment of employee stated hostile environment claim); *Crist v. Focus Homes, Inc.*, 122 F.3d 1107, 1112 (8th Cir. 1997) (employer may be liable for sex-based harassment by resident of care facility; employer "clearly controlled the environment in which [the resident] resided, and it had the ability to alter those conditions to a substantial degree"); *Folkerson v. Circus Circus Enters., Inc.*, 107 F.3d 754, 756 (9th Cir. 1997) (employer may be liable for sexual harassment by casino patron when employer ratifies or acquiesces in the harassment by not taking corrective actions); *Henson v. City of Dundee*, 682 F.2d 897, 910 (11th Cir. 1982) ("The environment in which an employee works can be rendered offensive in an equal degree by the acts of supervisors, . . . coworkers, . . . or even strangers to the workplace.").

The same principles apply to hostile housing environment cases. A provider of rental housing has the obligation to provide equal housing opportunity to the tenants and when the provider knowingly allows a discriminatory hostile housing environment to continue, it is the provider who deprives the tenant of equal housing opportunity, altering the terms and conditions of her tenancy and interfering with her rights to enforce and enjoy her lease. *Cf. Bradley v. Carydale Enters.*, 707 F. Supp. 217, 223 (E.D. Va. 1989) (denying motion to dismiss housing discrimination claim against landlord who failed to address co-tenant's discriminatory harassment; landlord's "toleration arguably interfered with plaintiff's right to enforce and enjoy her lease"). Stated differently, where a provider of rental housing is aware of severe and pervasive discriminatory harassment of a tenant by another tenant and does not take action to end that harassment, "the combined knowledge and inaction may be seen as demonstrable negligence, or as the [provider]'s adoption of the offending conduct and its results, quite as if they had been authorized affirmatively as the [provider]'s policy." *Faragher*, 524 U.S. at 789.

The District Court erred in wholly disregarding Wetzel's claims of hostile housing environment and its dismissal of those claims should be reversed.

B. Hostile Housing Environment Claims Are Permissible Post-Acquisition Claims Under the Fair Housing Act.

The District Court further erred in dismissing Wetzel's claims based on an overly narrow interpretation of this Court's jurisprudence on permissible FHA claims arising after a party has acquired the housing. App. 7-8. A complaint alleging discriminatory harassment that is sufficiently severe and pervasive to state

a claim of hostile housing environment falls directly within the category of post-acquisition claims the Seventh Circuit has explicitly allowed. *See Bloch*, 587 F.3d at 783 (citing *DiCenso*, 96 F.3d at 1006; *Honce*, 1 F.3d at 1090). This is so under even the most restrictive view of the FHA. *See Halprin v. Prairie Single Family Homes of Dearborn Park Ass'n*, 388 F.3d 327, 329, 330 (7th Cir. 2004) (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) (citing *DiCenso*, 96 F.3d at 1006).

The District Court's assertion that post-acquisition claims under § 3604(b) are limited to those alleging a deprivation of the privilege of sale to inhabit the premises—a claim of actual or constructive eviction—ignores the plain language of *Bloch*. In *Bloch*, 587 F.3d at 772, 782, this Court conclusively rejected the narrow application of the FHA solely to pre-acquisition claims set forth in *Halprin*, 388 F.3d 327. *Bloch* made clear that while constructive eviction claims are one type of permissible post-acquisition claim under § 3604(b), so too are claims stemming from discrimination by an authority whose governance is one of the terms and conditions of living in a dwelling. *See Bloch*, 587 F.3d at 779 ("the 'privilege' to inhabit the condo is not the only aspect of § 3604(b) that this case implicates"). For the Blochs, the Court held that the condominium association's ongoing ability to affect their rights constituted "terms and conditions" of their acquiring their home, such that discrimination by the association could be actionable under § 3604(b).

For Wetzel, her tenancy at GSALC is subject to the Tenant's Agreement, which not only entitles her to a host of services and facilities in exchange for her rent payments, but also conditions that tenancy on submitting to the rules, regulations, and governance of the Defendants-Appellees. Her ongoing landlord-tenant relationship with the Defendants-Appellees invokes the same post-acquisition guarantee to be free from discrimination in the "terms, conditions, or privileges of . . . rental of a dwelling, or in the provision of services or facilities in connection therewith, because of . . . sex." 42 U.S.C. § 3604(b).[6] As the U.S. District Court for the Middle District of Florida noted in *Richards v. Bono*,

> [A] rental arrangement involves an ongoing relationship between the landlord and tenant in which the landlord typically retains various powers, such as the right to increase rent or evict a tenant, and concomitant obligations, such as the duty to make repairs or provide other services and facilities. These powers and obligations exist over the duration of the rental. Because the plain meaning of "rental" contemplates an ongoing relationship, the use of that term in § 3604(b) means that the statute prohibits discrimination at any time during the landlord/tenant relationship, including after the tenant takes possession of the property.

No. 5:04CV484-OC-10GRJ, 2005 WL 1065141, at *3 (M.D. Fla. May 2, 2005); *see also Martinez*, 2007 WL 8435675, at *4 (distinguishing between sale and rental, noting "A sale of real property is a singular event, something concluded at a determinable point in time. . . . On the other hand, a rental arrangement involves

[6] Furthermore, given that Wetzel's hostile housing environment claim invokes the protections of both §§ 3604(b) and 3617, her claim is also a form of permissible post-acquisition claim under § 3617. *See* Part I, *supra* (discussing the coextensive coverage of these provisions for hostile housing environment claims); *Bloch*, 587 F.3d at 781-82 (addressing post-acquisition claims under § 3617).

an ongoing relationship between the landlord and tenant in which the landlord typically retains various powers.").

The HUD Harassment Rule also supports the viability of post-acquisition hostile housing environment claims, beyond those envisioned by the District Court's restrictive interpretation. The Harassment Rule states plainly that "the Act prohibits discrimination that occurs while a person resides in a dwelling," 81 Fed. Reg. at 63059, based on the text of the FHA itself and its interpretation by both prior regulations and existing jurisprudence. Pointing 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, the Harassment Rule "indicates circumstances in which residents—as opposed to just applicants—benefit from the Act's protections throughout their residency." *Id.*

As Wetzel's complaint may proceed without alleging constructive eviction, contrary to the District Court's ruling, there is no requirement that she vacate GSALC's hostile housing environment in order to maintain her claims. The decision in *Bloch* in no way required the Blochs to move out of their condominium in order to advance their claims under either §§ 3604(b) or 3617. 587 F.3d at 780-83. On the contrary, the *Bloch* court rejected the notion that a victim of housing discrimination must vacate their home before enforcing her right to equal housing opportunity, noting that such a requirement would frustrate the FHA's purpose of ensuring

"integrated and balanced living patterns." 587 F.3d at 782. Wetzel should be permitted to enforce those rights.

C. Wetzel's Complaint Alleged All Required Elements Of A Hostile Housing Environment Claim Against The Defendants-Appellees.

Wetzel has alleged sufficient facts to support her claims of hostile housing environment. Mirroring the basic elements of a hostile work environment claim, *DiCenso*, 96 F.3d at 1008, to establish a prima facie case, a claimant must show: (1) that she was subject to unwelcome harassment; (2) the harassment was based on her sex and sexual orientation; (3) the harassment was severe or pervasive so as to alter the conditions of her housing environment by creating a hostile or abusive situation; and (4) there is a basis for defendants' liability. *See Zayas v. Rockford Mem'l Hosp.*, 740 F.3d 1154, 1159 (7th Cir. 2014). Wetzel's complaint meets each of these elements.

1. Wetzel was subject to unwelcome harassment.

Wetzel has alleged that she endured nearly fifteen months of verbal and physical harassment, including name calling, slurs, profanity, threats, and multiple incidents of assault at the hands of several residents. App. 11, 26. This harassment has caused her tremendous anxiety and fear and is decidedly unwelcome.

2. The harassment Wetzel experienced was based on her sex and sexual orientation.

Wetzel has alleged that she was harassed because of her sex and sexual orientation, both of which are forms of discrimination prohibited by the FHA. App.

26-27. *See Hively v. Ivy Tech Cmty. Coll. of Ind.*, 853 F.3d 339, 341 (7th Cir. 2017) (discrimination on the basis of sexual orientation is a form of sex discrimination). Wetzel was targeted with unambiguously sexist and homophobic epithets, comments, and slurs, sexual harassment, threats of sexual violence, and taunts about her gender non-conformity, her relationship with her female partner, and about their having raised a child together. App. 15-18, 20, 22, 24-25. These allegations amply assert that the harassment was because of sex and sexual orientation.

3. The harassment Wetzel experienced was severe and pervasive.

Wetzel has amply alleged that the harassment was sufficiently severe or pervasive to unreasonably interfere with her use and enjoyment of her home. *See DiCenso*, 96 F.3d at 1008. Drawing from the Title VII context, this Court has recognized that assessing whether harassment is sufficiently hostile or abusive requires looking at all the circumstances, considering factors such as its frequency, its severity, whether it is physically threatening or humiliating, and the level of its interference with a person's home life. *See id.* (citing *Harris*, 510 U.S. at 23).

An additional consideration is warranted in examining whether housing harassment is sufficiently severe or pervasive. Though applying the analytical frameworks of hostile work environment, courts have recognized that "harassment in the home is in some respects more oppressive" than harassment in the workplace, noting that it is a complete invasion of a person's life, from which there is no escape. *Beliveau v. Caras*, 873 F. Supp. 1393, 1397 n.1 (C.D. Cal. 1995). Unlike

the employee who can leave an offensive work environment by going home, a person living in a hostile housing environment has no refuge. *See Quigley v. Winter*, 598 F.3d 938, 947 (8th Cir. 2010) (that harassment took place in plaintiff's home deemed "even more egregious" because her home is "a place where [she] was entitled to feel safe and secure and need not flee"); *cf. Curtis v. Thompson*, 840 F.2d 1291, 1299-1301 (7th Cir. 1988) (reviewing Supreme Court case law recognizing "the right to privacy in the home as fundamental to this nation's concept of ordered liberty," the role of the home as "*the sacred retreat to which families repair for their privacy and daily way of living*," and "the very basic right to be free from sights, sounds, and tangible matter in the privacy of our homes.") (emphasis in original; quotations omitted).

Although at the pleading stage it is premature to draw conclusions about the extent of the severity and pervasiveness, the allegations must plausibly assert that the harassment was sufficiently abusive. *Huri*, 804 F.3d at 834. Wetzel has met that burden.

Wetzel endured regular harassment over the course of nearly fifteen months by multiple residents in her building. They harassed her in every public space in the facility, including the dining room, the patio, the lobby, the mailroom, and the elevators. They targeted her with profanity and slurs, with Herr calling her "fucking dyke," "homosexual bitch" and other epithets, and another resident telling her homosexuals will burn in hell. Herr threatened and intimidated her, both with his menacing gestures and aggressive impeding of her mobility and with his words,

threatening "to rip [her] tits off." She was also assaulted and injured on three separate occasions. App. 11, 15-22, 24-26. *See Lapka v. Chertoff,* 517 F.3d 974, 983 (7th Cir. 2008) ("We have held that assaults within the workplace create an objectively hostile work environment for an employee even when they are isolated.").

This pattern of verbal and physical harassment was incredibly disruptive for Wetzel and dramatically interfered with her use and enjoyment of her home. She increasingly withdrew from the common spaces in the building to avoid harassment, spending more time in her room and having to look to outside sources of food because of the fear and anxiety she experienced in the dining room, where she is supposed to receive three meals a day. She locks and barricades the door to her room out of fear that she or her property will be harmed. App. 18, 20-22, 24-26. These claims more than plausibly assert that the harassment Wetzel has experienced is severe and pervasive.

4. There is a basis for Defendants-Appellees' direct and vicarious liability.

Under Title VII, an employer may be liable for discriminatory harassment "if it knew or should have known about the conduct and failed to stop it." *Ellereth*, 524 U.S. at 759; *see also Daniels v. Essex Grp., Inc.*, 937 F.2d 1264, 1272 (7th Cir. 1991) (employer is liable "if the employer knew or should have known about an employee's acts of harassment and fails to take appropriate remedial action. . . . [A]n employer who has reason to know that one of his employees is being harassed in the

workplace by others on grounds of race, sex, religion, or national origin, and does nothing about it, is blameworthy.") (quotations omitted).

The same standard applies to a housing provider like Defendants-Appellees. *See Neudecker,* 351 F.3d at 365; *Fahnbulleh*, 795 F. Supp. 2d at 363-66; 24 C.F.R. § 100.7 (housing provider is directly liable for "failing 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.").

Here, there is no question that Defendants-Appellees "knew or should have known" of the harassment in question. Wetzel repeatedly complained, brought the harassment to their attention, inquired about incident reports, and sought the Administration's help.

The next inquiry is whether Defendants-Appellees took reasonable action to put an end to the harassment. Like an employer, if a housing provider "takes reasonable steps to discover and rectify the harassment . . . , it has discharged its legal duty." *McKenzie v. Ill. Dep't of Transp.*, 92 F.3d 473, 480 (7th Cir. 1996). The response to the harassment "must be reasonably calculated to prevent further harassment under the particular facts and circumstances of the case at the time the allegations are made." *Brooms v. Regal Tube Co.*, 881 F.2d 412, 421 (7th Cir. 1989).

Yet Wetzel alleges that, rather than taking action to stop the harassment, the Administration acquiesced in it, disdained and trivialized her complaints, denied the existence of her injuries, and failed to take action to stop the

harassment. They actively discouraged Wetzel from taking steps to address the harassment, and have repeatedly disregarded the egregiousness of the verbal and physical harassment and threats, trivializing the behavior, calling it an accident, and saying things like, "Bob will be Bob." App. 16-20, 22, 24-25. *Cf. Nabozny v. Podlesny*, 92 F.3d 446, 451 (7th Cir. 1996) (calling principal's dismissive response of "boys will be boys" to gay student's complaint of sexual harassment and assault by other student "astonishing"). They have penalized Wetzel by limiting her access to common areas and giving her less favorable seating in the dining room, intimidated her, blamed her for causing trouble, and made her believe that her tenancy was in jeopardy. App. 17-20, 22, 25. *See* 24 C.F.R. § 100.7 (a)(2) ("prompt action to correct and end the discriminatory housing practice may not include any action that penalizes or harms the aggrieved person"). Wetzel has sufficiently alleged that the Defendants-Appellees failed to take appropriate remedial action.

Finally, Wetzel has alleged that Defendants-Appellees had the power to take that remedial action. The Tenant's Agreement governing independent living apartments at GSALC gives the Administration the authority to terminate the lease if a tenant commits acts that directly threaten the health and safety of others. It also sets forth obligations on the part of all tenants not to engage in activities that "unreasonably interfere[] with the peaceful use and enjoyment of the community by other tenants or threaten[] to damage the community's reputation," and allows Defendants-Appellees to take action against a tenant who is not conforming to these obligations or to any other GSALC rule or regulation. App. 15,

28, 36, 38-39. This Agreement gave the Defendants-Appellees the authority to act in the face of the discriminatory harassment committed by other residents, which both threatened Wetzel's health and safety and interfered with her peaceful use and enjoyment of the community. The ongoing landlord-tenant relationship Defendants-Appellees had with the residents who harassed Wetzel gave them a variety of ways to take remedial actions. *See Chaney*, 612 F.3d at 914-15 (long-term care facility had range of options for dealing with a hostile resident including notifying residents of nondiscrimination rules and securing the resident's consent to comply prior to admission, attempting to reform the resident's behavior after admission, and advising employees that they can seek protection from racially harassing residents).

Wetzel's allegations that the Administration knew about the invidious harassment, and failed to take sufficient remedial action despite having the power to do so are sufficient to state a claim that the Administration is directly liable for the discriminatory hostile housing environment to which Wetzel has been subjected.

Further, Wetzel sufficiently alleged a claim of vicarious liability for the Administration's discriminatory housing practices on the part of the Corporate Defendants, who employ and authorize the Administration to act on their behalf and as their agents in their ownership, leasing, and management of GSALC. App. 13-14; *see also Meyer*, 537 U.S. at 285 (traditional vicarious liability rules apply under the FHA); 24 C.F.R. § 100.7(b) ("A person is vicariously liable for a discriminatory housing practice by the person's agent or employee, regardless of

whether the person knew or should have known of the conduct that resulted in a discriminatory housing practice, consistent with agency law.").

The District Court's dismissal of Wetzel's hostile housing environment claims under §§ 3604(b) and 3617 should be reversed.

II. Wetzel Stated a Claim for Retaliation.

The District Court erred in asserting that Wetzel has not pled a retaliation claim. App. 6. The District Court's blanket assertion, without any analysis or explanation, is plainly contradicted by the repeated and explicit allegations in the complaint that Defendants-Appellees retaliated against Wetzel for complaining about the harassment she experienced. App. 11, 13, 27-31.[7]

A claim for retaliation arises under § 3617 when a housing provider has coerced, threatened, intimidated, or interfered with the claimant on account of her engaging in activity protected by the FHA. *See Davis v. Fenton*, Nos. 16-2121, 16-2165, 2017 WL 2295753, at *2 (7th Cir. May 26, 2017) ("The Act does prohibit retaliation against a person for exercising his or her rights under the Act"); *Neudecker*, 351 F.3d at 363-64 (tenant alleged retaliation claim under § 3617 by asserting that landlord threatened to evict him in response to his complaints about

[7] The District Court's only mention of "retaliation" is this sentence: "To the extent Wetzel references conduct by Defendants after she complained, the court notes that Wetzel has not pled a retaliation claim." App. 6. Because there is no elucidation of or support for this statement, it is possible that the District Court was asserting that Wetzel is not making a claim for retaliation. But Wetzel clearly set forth in Count I, Fair Housing Act: "Defendants retaliated against Marsha in violation of the FHA, 42 U.S.C. § 3617, by limiting her access to facilities and resources, by intimidating and threatening her, and by attempting to evict her through duplicity and fabrication because Marsha asserted her right to an equal opportunity to use and enjoy the property without being subject to sex-based harassment." App. 29-30.

other tenants' disability-related harassment). In *Herndon v. Hous. Auth. of S. Bend, Ind.*, 670 F. App'x 417 (7th Cir. 2016), this Court addressed the pleading standards for a claim of retaliation in order to survive a motion to dismiss:

> Herndon alleged all that she needed to when she wrote that the defendants retaliated against her by using "intimidating harassments and threats to terminate [her] lease," threatening eviction in response to her complaint to the Human Rights Commission, and performing "repeated housing inspections, at times twice a month." These allegations, if proven, could show that her rights under the statute were violated, and that is all that is required of her at this stage.

670 F. App'x at 419 (citing *Skinner v. Switzer*, 562 U.S. 521, 530 (2011)).

As well, in *Mehta v. Beaconridge Improvement Ass'n*, 432 F. App'x 614 (7th Cir. 2011), this Court held that Mehta provided fair notice of a retaliation claim by alleging that the defendant (1) restricted his family's access to shared spaces like the clubhouse, pool, and tennis court, (2) maliciously designated their account as delinquent, (3) performed unnecessary work on their property, billed them, and (4) threatened to place a lien on their home for failure to pay for it, all in response to his complaint of disparate treatment. *Id.* at 617.

Wetzel's complaint more than met these standards. She explicitly alleged:

> Defendants have also retaliated against Marsha for complaining about the illegal harassment and discrimination she was experiencing at GSALC because of her sex and sexual orientation. The Administration responded to Marsha's complaints by limiting her access to GSALC facilities and resources, and by threatening and attempting to kick her out of GSALC. Defendants have coerced, intimidated, threatened, and interfered with Marsha's exercise and enjoyment of her housing rights.

App. 27-28; *see also* App. 29-31. More specifically, Wetzel asserted that the Administration retaliated against her for complaining about the relentless discriminatory harassment she was experiencing by: (1) moving her to a less

desirable seating location in the dining room, restricting her use of common spaces, and temporarily stopping her room cleaning services, App. 18-20; (2) attempting to evict her by tricking her into not paying her rent by not giving her a notice and trying to avoid giving her a signed receipt for her payment, App. 19; and (3) threatening to evict her based on false allegations of violating facility smoking policies, App. 23-24. Wetzel has therefore pled a viable claim of retaliation pursuant to § 3617.

CONCLUSION

Ms. Wetzel respectfully requests that the District Court's judgment be reversed, her claims pursuant to both the Fair Housing Act and the Illinois Human Rights Act be reinstated, and the matter be remanded for further proceedings.

Dated: June 12, 2017

Respectfully submitted,

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CERTIFICATE OF RULE 32 COMPLIANCE

Pursuant to Rule 32(a)(7) of the Federal Rules of Appellate Procedure, I hereby certify that this brief complies with the stated type-volume limitations. The text of this brief was prepared in Century Schoolbook 12 point font, with footnotes in Century Schoolbook 11 point font. All portions of the brief, other than the Disclosure Statements, Table of Contents, Table of Authorities, and the Certificates of Counsel, contain 11,345 words. This certification is based on the word count function of the Microsoft Office Word word processing software, which was used in preparing this brief.

Dated: June 12, 2017

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CERTIFICATE OF SERVICE

I hereby certify that on June 12, 2017, I caused a true and correct copy of the foregoing BRIEF AND REQUIRED SHORT APPENDIX OF PLAINTIFF-APPELLANT to be electronically filed with the Clerk of the Court for the United States Court of Appeals for the Seventh Circuit by using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

Dated: June 12, 2017

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CIRCUIT RULE 30(d) STATEMENT

Pursuant to Circuit Rule 30(d), counsel certifies that all material required by Circuit Rule 30(a) and (b) are included in the Appendix.

Dated: June 12, 2017

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No. 17-1322

In The United States Court of Appeals
For The Seventh Circuit

MARSHA WETZEL,
Plaintiff-Appellant,

v.

GLEN ST. ANDREW LIVING COMMUNITY, LLC, et al.,
Defendants-Appellees,

On Appeal From The United States District Court
For The Northern District of Illinois

Case No. 1:16-cv-07598

The Honorable Judge Samuel Der-Yeghiayan

REQUIRED SHORT APPENDIX OF PLAINTIFF-APPELLANT MARSHA WETZEL

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

Marsha Wetzel,

Plaintiff(s),

v.

Glen St. Andrew Living Community, LLC, et al.,

Defendant(s).

Case No. 16 C 7598
Judge Samuel Der-Yeghiayan

JUDGMENT IN A CIVIL CASE

Judgment is hereby entered (check appropriate box):

☐ in favor of plaintiff(s)
and against defendant(s)
in the amount of $,

which ☐ includes pre–judgment interest.
☐ does not include pre–judgment interest.

Post-judgment interest accrues on that amount at the rate provided by law from the date of this judgment.

Plaintiff(s) shall recover costs from defendant(s).

☒ in favor of defendant(s) 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
and against plaintiff(s) Marsha Wetzel
.

Defendant(s) shall recover costs from plaintiff(s).

☐ other:

This action was *(check one)*:

☐ tried by a jury with Judge presiding, and the jury has rendered a verdict.
☐ tried by Judge without a jury and the above decision was reached.
☒ decided by Judge Samuel Der-Yeghiayan on a motion to dismiss.

Date: 1/18/2017

Thomas G. Bruton, Clerk of Court

Michael Wing , Deputy Clerk

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

MARSHA WETZEL,	)	
	)	
Plaintiff,	)	
	)	
v.	)	**No. 16 C 7598**
	)	
GLEN ST. ANDREW LIVING COMMUNITY, LLC, et al.,	)	
	)	
Defendants.	)	

MEMORANDUM OPINION

SAMUEL DER-YEGHIAYAN, District Judge

This matter is before the court on Defendants Glen St. Andrew Living Community, LLC's (GSALC), Defendant Glen St. Andrew Living Community Real Estate, LLC's, Defendant Glen Health & Home Management, Inc.'s, Defendant Alyssa Flavin's (Flavin), Defendant Carolyn Driscoll's (Driscoll), and Defendant Sandra Cubas' (Cubas) motion to dismiss. For the reasons stated below, Defendants' motion to dismiss is granted.

BACKGROUND

Marsha Wetzel (Wetzel) alleges that she moved to GSALC in November 2014. Wetzel alleges that she signed a tenant agreement with GSALC on November 26, 2014 to rent an apartment and in exchange for her rental payment, GSALC would

provide a private room, bathroom, utilities, maintenance, laundry facilities, three meals a day, access to community rooms and other necessities. Wetzel alleges that over fifteen months, she was subjected to a severe and pervasive pattern of discrimination, threats, harassment, and intimidation because of her gender and sexual orientation. Wetzel includes in her complaint claims brought under the Fair Housing Act (FHA) for alleged violations of 42 U.S.C. § 3617 (Section 3617) and 42 U.S.C. § 3604 (Section 3604) (Count I), and claims brought under the Illinois Human Rights Act, 775 ILCS 5/3-102, 5/3-105.1 (Count II). Defendants move to dismiss all claims.

LEGAL STANDARD

In ruling on a motion to dismiss brought pursuant to Federal Rule of Civil Procedure 12(b)(6) (Rule 12(b)(6)), the court must draw all reasonable inferences that favor the plaintiff, construe the allegations of the complaint in the light most favorable to the plaintiff, and accept as true all well-pleaded facts and allegations in the complaint. *Appert v. Morgan Stanley Dean Witter, Inc.*, 673 F.3d 609, 622 (7th Cir. 2012); *Thompson v. Ill. Dep't of Prof'l Regulation*, 300 F.3d 750, 753 (7th Cir. 2002). A plaintiff is required to include allegations in the complaint that "plausibly suggest that the plaintiff has a right to relief, raising that possibility above a 'speculative level'" and "if they do not, the plaintiff pleads itself out of court." *E.E.O.C. v. Concentra Health Services, Inc.*, 496 F.3d 773, 776 (7th Cir. 2007)(quoting in part *Bell Atlantic Corp. v. Twombly*, 127 S.Ct. 1955, 1965 (2007));

see also *Morgan Stanley Dean Witter, Inc.*, 673 F.3d at 622 (stating that "[t]o survive a motion to dismiss, the complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face," and that "[a] claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged")(quoting *Ashcroft v. Iqbal*, 556 U.S. 662 (2009))(internal quotations omitted).

DISCUSSION

I. Section 3617 Claims

A. Discriminatory Intent.

Defendants argue that Wetzel's FHA Section 3617 claim should be dismissed because Wetzel has failed to plead any intentional discrimination on the part of the Defendants. The FHA prohibits "interfer[ing] with any person in the exercise or enjoyment of, or on account of [her] having exercised or enjoyed, . . . any right granted or protected by Section 3603, 3604, 3605, or 3606 of this title." 42 U.S.C. § 3617. The Seventh Circuit has established that in order to prevail on a Section 3617 claim, the plaintiff must show that "(1) she is a protected individual under the FHA, (2) she was engaged in the exercise or enjoyment of her fair housing rights, (3) the defendants coerced, threatened, intimidated, or interfered with the plaintiff on account of her protected activity under the FHA, and (4) the defendants were

motivated by an intent to discriminate." *Bloch v. Frischholz*, 587 F.3d 771, 783 (7th Cir. 2009). The Seventh Circuit has stated that "a showing of intentional discrimination is an essential element of a § 3617 claim." *East-Miller v. Lake County Highway Dept.*, 421 F.3d 558, 563 (7th Cir. 2005). A plaintiff must show that the defendants "had a discriminatory intent either directly, through direct or circumstantial evidence, or indirectly, through the inferential burden shifting method known as the *McDonnell Douglas* test." *Kormoczy v. Sec'y, U.S. Dep't of Hous. & Urban Dev.*, 53 F.3d 821, 823-24 (7th Cir. 1995).

Wetzel argues that she is not required to allege discriminatory intent and cites to *Texas Dep't. of Hous. & Cmty. Affairs v. Inclusive Communities Project, Inc.*, 135 S. Ct. 2507 (2015). However, in *Inclusive Communities Project*, the Supreme Court found that discriminatory intent is not required to be plead in cases alleging disparate-impact under the FHA. *Id.* at 2518-19. In contrast, a "plaintiff must establish that the defendant had a discriminatory intent or motive" when pleading a disparate-treatment case. *Id.* at 2513. In the instant action, Wetzel alleges a claim of disparate-treatment under the FHA. Thus, Wetzel is required to plead facts alleging discriminatory intent by Defendants.

Defendants argue that Plaintiff has failed to allege any discriminatory motive or intent to discriminate on the part of Defendants due to her sexual orientation and/or gender. Defendants contend that Wetzel's complaints relate to discriminatory actions by other tenants, for which the Defendants cannot be held liable. Wetzel alleges that she was verbally harassed by tenants. Wetzel also alleges that she was

physically harassed by other tenants due to her sexual orientation and gender. Wetzel alleges that she complained about the tenant's harassment to Defendants and that the harassment did not end. On April 24, 2016, Wetzel alleges that she was awoken at 5:00 am and was physically confronted by Defendants' employees after they accused her of smoking in the room. Wetzel alleges that she called the police and filed a police report in regards to the incident. Wetzel argues that Defendants actions and failure to intervene constitute an implicit ratification of the other tenants' discrimination.

Wetzel does not allege any discriminatory motive or intent to discriminate on the part of the Defendants. Wetzel does not allege any facts that suggest any actions taken against her by Defendants that were based on her gender or sexual orientation. Wetzel fails to cite any discriminatory animus, motive, or intent. Thus, Wetzel has fails to allege facts that plausibly suggest a right to pursue relief under Section 3617.

Wetzel argues that holding landlords liable for tenant-on-tenant discrimination where the landlord was aware of the discrimination is consistent with the underlying purpose of the FHA. However, Wetzel fails to cite controlling precedent establishing this legal standard and the Seventh Circuit precedent indicates that intent to discriminate should be pled. *See Bloch,* 587 F.3d at 771. Therefore, Defendants' motion to dismiss the Section 3617 claims is granted. To the extent Wetzel references conduct by Defendants after she complained, the court notes that Wetzel has not pled a retaliation claim.

II. Section 3604(b) Claims

Defendants argue that Wetzel has failed to state a claim under Section 3604(b). Section 3604(b) makes it unlawful "[t]o discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race, color, religion, sex, familial status, or national origin." 42 U.S.C. § 3604(b). Depriving an individual of "the right to inhabit the premises. . .by making the premises uninhabitable violates Section 3604(b)." *Bloch*, 587 F.3d at 779. In post-acquisition cases, Section 3604(b) may apply to bring a claim of constructive eviction. *See Bloch*, 587 F.3d at 779 (7th Cir. 2009)(stating that constructive eviction is an option for post-acquisition cases under Section 3604). In order "[t]o establish a claim for constructive eviction, a tenant need not move out the minute the landlord's conduct begins to render the dwelling uninhabitable." *Bloch*, 587 F.3d at 778. However, "it is well-understood that constructive eviction requires surrender of possession by the tenant." *Id.* Also, "[i]f the tenant fails to vacate within a reasonable time, she waives her claim for constructive eviction." *Id.* Wetzel contends that post-acquisition claims may be alleged under the FHA. Defendants do not dispute that contention. However, Defendants argue that Wetzel's allegations fail to contain sufficient facts stating a plausible cause of action under Section 3604. Wetzel alleges that she continues to reside at GSALC. Wetzel also fails to allege GSALC is uninhabitable, and, as stated above, does not allege that Defendants acted as they did due to her sexual orientation or gender. Accordingly, Wetzel has failed to state facts that plausibly suggest a right

to pursue relief under Section 3604(b). Therefore, Defendants' motion to dismiss the Section 3604 claims is granted.

III. Remaining State Law Claims

Having resolved the federal claims in this case, the court must determine whether to continue to exercise supplemental jurisdiction over the remaining state law claims. Once the federal claims in an action no longer remain, a federal court has discretion to decline to exercise supplemental jurisdiction over any remaining state law claims. *See Wright v. Associated Ins. Cos.*, 29 F.3d 1244, 1251-52 (7th Cir. 1994)(stating that "the general rule is that, when all federal-law claims are dismissed before trial," the pendent claims should be left to the state courts). The Seventh Circuit has indicated that there is no "'presumption' in favor of relinquishing supplemental jurisdiction. . . ." *Williams Electronics Games, Inc. v. Garrity*, 479 F.3d 904, 906-07 (7th Cir. 2007). The Seventh Circuit has stated that, In exercising its discretion, the court should consider a number of factors, including "the nature of the state law claims at issue, their ease of resolution, and the actual, and avoidable, expenditure of judicial resources. . . ." *Timm v. Mead Corp.*, 32 F.3d 273, 277 (7th Cir. 1994). The court has considered all of the pertinent factors and, as a matter of discretion, the court declines to exercise supplemental jurisdiction over the remaining state law claims brought under the IHRA. Such claims are therefore dismissed without prejudice.

CONCLUSION

For the foregoing reasons, Defendants' motion to dismiss is granted.

Samuel Der-Yeghiayan
United States District Court Judge

Dated: January 18, 2017

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.	)	Civil Action No. _____

COMPLAINT FOR DECLARATORY, INJUNCTIVE, AND OTHER RELIEF

1. Plaintiff Marsha Wetzel ("Plaintiff" or "Marsha") brings this complaint for declaratory, injunctive, and other relief against Defendants Glen St. Andrew Living Community, LLC; Glen St. Andrew Living Community Real Estate, LLC; Glen Health & Home Management, Inc.; and their administrators Alyssa Flavin, Carolyn Driscoll, and Sandra Cubas (collectively, "Defendants"). Plaintiff seeks to end and obtain redress for Defendants' discriminatory denial of equal housing opportunity. In support of her claims, Plaintiff alleges as follows:

INTRODUCTION

2. Marsha moved into an apartment at Glen St. Andrew Living Community ("GSALC") in Niles, Illinois in November 2014.

3. Marsha is a lesbian. She moved into GSALC after the death of her partner of 30 years, Judith Kahn ("Judy"), with whom she raised a son.

4. Throughout most of her time at GSALC, Marsha has been subjected to a pattern of discrimination and harassment because of her sex and sexual orientation, including persistent verbal harassment, threats, intimidation, and three separate assaults, at the hands of other residents. She has been called countless homophobic slurs, taunted about her relationship with Judy and their child, threatened with bodily harm, bullied and intimidated in all of the communal spaces in the facility, and physically injured by other residents, all because she had a committed relationship and created a family with another woman and because she is a lesbian.

5. Marsha repeatedly complained about the sex- and sexual orientation-based harassment she has experienced to the administration of GSALC, including Executive Director Alyssa Flavin, Director of Supportive Services Carolyn Driscoll, and Regional Director of Operations Sandra Cubas (collectively, "the Administration"). Other GSALC staff and residents witnessed some of the incidents and reported them to the Administration. Defendants have taken no meaningful action to stop the harassment, but instead have marginalized and alienated Marsha and retaliated against her for complaining about the harassment.

6. The harassment and violence Marsha has experienced at GSALC because of her sex and sexual orientation is so severe and pervasive that it has created a hostile housing environment. Marsha lives with tremendous fear and anxiety, and has been deprived of the right to live in her home in peace. Defendants' failure to correct and end the harassment and discrimination Marsha has faced because of her sex and sexual orientation denies Marsha equal housing opportunity.

7. Marsha now brings this action for violation of her civil rights, as secured by the Fair Housing Act, Title VIII of the Civil Rights Act of 1968, as amended ("the Fair Housing Act" or "FHA"), 42 U.S.C. §§ 3604, 3617, and by the Illinois Human Rights Act ("IHRA"), 775 Ill. Comp. Stat. Ann. 5/3-102, 5/3-105.1.

JURISDICTION AND VENUE

8. This Court has subject matter jurisdiction over this matter pursuant to 42 U.S.C. § 3613 and 28 U.S.C. §§ 1331 and 1343, because Plaintiff is an aggrieved person alleging discrimination in violation of the Fair Housing Act and because the Fair Housing Act claims alleged herein arise under the laws of the United States, including those laws providing for the protection of civil rights.

9. Venue is proper in this district under 28 U.S.C. § 1391(b) because the alleged discrimination occurred in this district and the housing property at issue is located in this district.

10. This Court has supplemental jurisdiction over Plaintiffs' claims under the laws of the State of Illinois because they are so related to the Plaintiff's federal claims that the state and federal claims form part of the same case or controversy pursuant to 28 U.S.C. § 1367(a).

AGGRIEVED PERSON, DEFENDANTS, AND THE SUBJECT PROPERTY

11. Plaintiff Marsha Wetzel, age 68, lives at GSALC, 7000 North Newark Avenue, Niles, Illinois. Marsha is a lesbian. She is a woman who had a thirty-year intimate, committed relationship with another woman and who raised a son together with her female partner. Marsha has been harmed by Defendants' discrimination against her in the terms, conditions, and privileges of housing rental; discrimination against her in the provision of housing related services and facilities; creation of a hostile housing environment; threats, intimidation, and

interference with her enjoyment of a dwelling; and retaliation against her for complaining about the discrimination she has experienced, all because of her sex and sexual orientation.

12. Upon information and belief, Defendant Glen St. Andrew Living Community Real Estate, LLC is an Illinois corporation that owns the land and building where GSALC ("the Subject Property") is located, having purchased it subject to the rights of the property's existing residents in 2014. The Subject Property includes a 55-bed intermediate care unit, 47 units of assisted living, and 107 independent living apartments, which are intended as residences for older adults.

13. Upon information and belief, Glen St. Andrew Living Community, LLC is an Illinois corporation that leases the Subject Property from Defendant Glen St. Andrew Living Community Real Estate, LLC. Defendant Glen St. Andrew Living Community, LLC is licensed by the State of Illinois to provide assisted living and long term care at the Subject Property.

14. Upon information and belief, Defendant Glen Health and Home Management, Inc., manages the Subject Property. (Collectively, Defendants Glen St. Andrew Living Community Real Estate, LLC, Glen St. Andrew Living Community, LLC, and Glen Health & Home Management are the "Corporate Defendants.")

15. Upon information and belief, Defendant Alyssa Flavin ("Flavin") is the Executive Director of the Subject Property and is employed and authorized by the Corporate Defendants to act on their behalf in the overall operation and maintenance of the Subject Property, including in taking adverse actions against residents.

16. Upon information and belief, Defendant Carolyn Driscoll ("Driscoll") is employed and authorized by the Corporate Defendants to serve as an agent and as the Director of Supportive Services and Director of Resident Relations at the Subject Property.

17. Upon information and belief, Defendant Sandra Cubas ("Cubas") is employed as the Regional Director of Operations for Defendant Glen Health & Home Management, and is authorized by the Corporate Defendants to serve as their agent with responsibility for the overall operation and management of the Subject Property.

18. The Subject Property constitutes a "dwelling" within the meaning of 42 U.S.C. § 3602(b) and is not exempt from the requirements of the FHA.

19. The Subject Property constitutes both "real property" and a "housing accommodation" within the meaning of 775 Ill. Comp. Stat. Ann. 5/3-101 and is not exempt from the requirements of the IHRA.

FACTS

20. Marsha was born on September 12, 1947 in Hammond, Indiana. She grew up in Indiana, earned a high school degree, and worked a variety of jobs, including factory work and as a security guard. Marsha has faced a variety of health issues throughout her life, including severe arthritis and gastrointestinal issues, has had multiple leg surgeries, and has been disabled since in or about the early 1980s.

21. Marsha is a lesbian. She is a woman whose primary emotional and romantic attachments are to other women, and she shared an intimate committed relationship with Judith Kahn ("Judy") for thirty years.

22. Marsha met Judy in 1982 and they quickly fell in love. Although they could not legally marry, Marsha and Judy had a commitment ceremony in their home on May 8, 1983, after which they went on a honeymoon road trip across the United States. They built a life together, sharing three different homes. Marsha supported Judy as she completed her studies to

become a psychologist. In 1993, they welcomed an adopted baby into their family, whom they named Joshua ("Josh").

23. In 2011, Judy was diagnosed with stage IV colon cancer. Marsha cared for Judy throughout her illness, seeing to her every need until she entered hospice care. Judy died in November 2013.

24. After Judy's death, Judy's family evicted Marsha from the home she and Judy had shared. She also became estranged from Josh, who struggled emotionally after Judy's death. Marsha had lost the love of her life, was isolated from her son, and had nowhere to live. A social worker helped Marsha find an apartment to rent at GSALC.

25. Marsha moved into GSALC in November 2014. During her intake interview with GSALC staff member Debbie DuFore ("Debbie"), Marsha talked openly about her sexual orientation and about her life with Judy and Josh.

26. Marsha signed a Tenant's Agreement with GSALC on November 26, 2014 to rent Apartment 204 and has lived there from that time until the present. The Agreement set forth that, in exchange for her rental payment, GSALC would provide Marsha with a private room and bathroom, utilities, maintenance, laundry facilities, three meals a day, and access to community rooms, enrichment programs, and consultation about health care and other necessities. Upon information and belief, the Corporate Defendants are parties to the Agreement.

27. From the beginning of her time at GSALC, Marsha was open with other residents about her relationship with Judy, their raising Josh, and her sexual orientation.

28. In or about April of 2015, another GSALC resident named Robert Herr ("Bob") began verbally harassing Marsha, regularly calling her names and using homophobic slurs like "fucking dyke," "fucking faggot," "homosexual bitch," and other words to that effect when they

would encounter each other in the facility. He taunted her about her relationship with Judy, and told Marsha that if she had ever had a sexual relationship with a man, she would never want a woman again, or words to that effect. Bob is a former police officer, and Marsha felt intimidated and upset by Bob's behavior.

29. Marsha complained about Bob's harassment to Defendants Flavin, Driscoll, and Cubas, and for a time, Bob's harassment seemed to decrease. Marsha sent a thank you note to Defendant Cubas for her help with the situation.

30. Starting in or about late June 2015, Bob was out of GSALC for several weeks. Not long after he returned to GSALC in late July 2015, Marsha encountered Bob in the lobby. Marsha was going up a ramp in the lobby in the scooter she uses to move around GSALC due to her disability. Bob came down the ramp, uttered a homophobic slur, and rammed Marsha's scooter with his walker hard enough to tip her chair and knock her off the ramp, leaving a large bruise on her arm. This incident was witnessed by a GSALC staff member – Patty Hayes ("Patty"), the receptionist—who stated at the time that she saw the whole thing, or words to that effect.

31. On or about August 3, 2015, Marsha spoke to Defendant Cubas and reported Bob's behavior and the assault. Marsha believed that Patty had also reported the incident to Defendant Cubas. Defendant Cubas was aloof, told Marsha not to worry about Bob's behavior or words to that effect, and said that Patty never reported the incident. Marsha talked with Patty, who said she had reported it, but also started suggesting that maybe she did not really see anything. At some point, Marsha also showed Defendant Cubas her bruised arm and Defendant Cubas stated that she did not see a bruise at all, or words to that effect.

32. After Marsha reported Bob's behavior and the assault to Defendant Cubas, Bob started harassing Marsha with greater frequency again. In addition to using slurs when he encountered her, Bob told Marsha that Defendant Flavin does whatever he tells her to, or words to that effect. Marsha complained to Defendants Flavin and Driscoll about Bob's ongoing behavior, and they argued with Marsha about the assault and called Marsha a liar. Marsha met with Defendant Driscoll on or about August 28, 2015. Defendant Driscoll and GSALC's business manager, Alona Valencia ("Alona"), called Marsha into an office and locked the door to the room behind her. Defendant Driscoll showed Marsha a copy of her tenant's agreement with several post-it arrows pointing to various provisions, and told Marsha they could not believe her because she is a trouble maker who always lies and twists things, or words to that effect. Marsha responded that she believed she was being treated unfairly based on her sexual orientation, told them that she was having chest pains, and asked them to open the door three times before they let her leave.

33. Around this same time, another GSALC resident, Elizabeth Rivera ("Elizabeth"), also began harassing Marsha, saying things like, "you look like a man," and "homosexuals will burn in hell," or words to that effect. At or about the end of September, Elizabeth made similar comments again while she rammed her wheelchair into the table where Marsha was sitting in the dining hall. The table was knocked on top of Marsha and kitchen staff had to help remove it.

34. A few days thereafter, Marsha encountered Elizabeth in the elevator. Elizabeth once again made similar homophobic comments and spit at Marsha. Marsha went back to her room to change her shirt, which had become stained with Elizabeth's spit.

35. Soon after, Marsha was talking about Elizabeth having spit on her with other residents out on the patio. One resident, Audrey Chase ("Audrey") thought it was funny and

directed a homophobic slur at Marsha. Marsha became angry with Audrey, and Audrey falsely reported to Defendants Flavin and Driscoll that Marsha was saying negative things about her.

36. On another occasion in or about late summer 2015, Marsha was in the elevator with both Bob and Audrey. Bob hit the back of Marsha's scooter with his walker. Audrey told the Administration that it was Marsha who had hit Bob.

37. When Marsha complained to Defendants Flavin and Driscoll about both Elizabeth's and Audrey's conduct, rather than addressing it, the Administration placed the blame on Marsha and responded by changing Marsha's seating in the dining room to less desirable locations. Marsha began eating in her room more often because she was afraid of what would happen in the dining room despite that GSALC was supposed to provide all of her meals. Marsha was later told by Defendant Cubas that there was an incident report for Elizabeth's behavior in the dining room. Marsha asked the Administration for a copy, but never received one.

38. Through about the end of October 2015, Marsha had several negative interactions with Defendant Flavin, who repeatedly said Marsha was lying and told Marsha that ten people a day complain about her. Defendant Flavin also barred Marsha from spending time in the lobby for a period of time.

39. Marsha had a phone call with Defendant Cubas in or about late October 2015, and soon after, spoke to her in the day room. Marsha told Defendant Cubas that if they want her to leave, she would but that they had better put it in writing that the reason is because she is gay. Defendant Cubas responded that she was not telling Marsha to leave, and Marsha said, "Then do something to help me," or words to that effect.

40. At the beginning of November 2015, Marsha did not receive a rent notice taped to her door as had been the usual procedure, although other residents did. Marsha went to Alona to pay her rent. Alona accepted Marsha's check, but initially would not give her a receipt. Marsha stayed in Alona's office until she received a receipt, although it did not look like the same receipt she had received every other month when she had submitted her rent. It also was not signed, as the usual receipts were. Marsha insisted that Alona sign the unusual receipt, which Alona eventually did.

41. On or about November 2, 2015, Defendant Flavin told Marsha that, while she was allowed to go to the lobby to get coffee, Defendant Flavin still did not want Marsha being in the lobby. Marsha asked why everyone else, including Bob, was allowed to be in the lobby and she was not. Defendant Flavin did not respond.

42. On or about November 17, 2015, Marsha and her social worker, Kristi Kagan, had a meeting with Defendants Flavin, Driscoll, and Cubas, set up by Ms. Kagan in an attempt to improve the relationship between the Administration and Marsha. Marsha complained about the harassment and the two incidents of physical assault against her, and showed them the unusual receipt she received after not getting her rent notice. The Administration denied that the incident with Bob had occurred, said Patty had changed her story, claimed the incident with Elizabeth was an accident, said that Marsha was wrong about what was happening, and said that Marsha is the problem. Defendant Cubas stated, "I see no discrimination here," or words to that effect.

43. Through the remainder of November and December 2015, Marsha continued to experience verbal harassment from Bob. Bob also worked to alienate Marsha from other residents, including Ed Sloper ("Ed"), who began pulling his wife away whenever she spoke to Marsha because Bob had told Ed that Marsha was gay, and who began glaring at Marsha,

making her feel uncomfortable in the dining room. Marsha also continued to be subjected to discriminatory and retaliatory treatment by the Administration, with Defendants Flavin and Driscoll responding to Marsha's complaints about a particular maintenance employee by ending all room cleaning for Marsha and Defendant Driscoll taunting Marsha for not having visitors on Christmas.

44. On January 5, 2016, Marsha was attacked from behind while she was in the mailroom. She did not see the person who hit her on the head, but heard them say "homo" as she was knocked forward over the front of her scooter. She went back to her room and cried, but did not seek medical attention. She did not report it to the staff immediately because she did not think they would believe her and because she felt that they twist everything she says.

45. On January 6, 2016, Marsha reported the attack to Defendants Flavin and Driscoll, who offered for her to see the on-site doctor. Marsha refused because that doctor does not accept Medicaid and she would have had to pay him in full. Marsha had a bump on her head and a black eye but did not lose consciousness or have vision problems so she did not pursue it. Below is a true and correct copy of a photograph that accurately shows how Marsha looked on January 6, 2016.

46. On or about January 10, 2016, Marsha asked a staff person named Linda at the front desk for a copy of any incident reports from the mailroom assault and Linda could not find one. On or about January 12, 2016, Marsha asked Carolyn for a copy and was told residents cannot see or have copies of reports.

47. After the January 5 incident, in addition to the verbal harassment, Bob repeatedly laughed at Marsha while rubbing his head and saying "Ouch." As a result and because of Bob's previous harassment of and assault on Marsha, Marsha strongly suspects he is the person who attacked her on January 5, 2016. She is extremely scared of Bob and feels threatened and intimidated by him. Marsha also encountered Bob early in the morning on or about January 18 lurking in the mailroom while she was doing her laundry. She quickly went to the lobby where there were other people, and has since stopped doing laundry early in the day in order to avoid encountering Bob while she is alone. In addition, she has stopped going to the third floor of

GSALC because that is where Bob lives. She also has eaten in her room more often, rather than getting all of her meals in the dining room, the dining room in order to avoid Bob.

48. On or about January 24, 2016, Defendant Driscoll asked Marsha if Debbie from admissions knew she was gay. Marsha said yes.

49. In or about February 2016, Marsha's friend Kathy was receiving hospice care on the fifth floor. Marsha visited her regularly and overheard the nurses complaining about Marsha's visitation, asking something to the effect of "what are they, a gay couple?"

50. Bob's verbal harassment of Marsha continued through the early months of 2016. In addition to regularly calling her names and saying things like "Judy died to get away from you," or words to that effect, he began referring to Josh as Marsha's "homosexual-raised faggot son," or words to that effect.

51. Marsha felt intimidated by Bob's seemingly close relationship with the Administration. On or about February 5, 2016, she saw Bob coming out of Defendant Flavin's office. Defendant Flavin had her arm around Bob's shoulder and the two of them were laughing and petting Defendant Flavin's dog. On or about April 14, 2016, Marsha saw Defendant Cubas go over to Bob's table in the dining room, put her arm around him and pat him warmly, as the two of them talked and laughed together.

52. On or about March 30, 2016, Marsha and another resident, Rachael Carlin ("Rachael"), were in the dining room waiting for breakfast to be served. Bob called Marsha "fruit loop" as he passed by and walked away laughing. Rachael reported Bob's name calling to Alona. When Marsha asked Defendant Driscoll about the incident on or about April 4, Defendant Driscoll told Marsha that Rachael said she never witnessed anything.

53. On April 19, 2016, Marsha received a letter from Defendants Cubas and Driscoll about needing to schedule a mandatory meeting within 24-48 hours to discuss an important matter. At the meeting, Defendants Cubas and Driscoll alleged that Marsha had been smoking in her room and asked Marsha to sign a letter reiterating her knowledge of the facility's smoking policy and pledging to stop violating the policy. Marsha refused to sign the letter because she had not been smoking in her room and would not sign something that suggested that she had been. Marsha told Defendants Cubas and Driscoll something to the effect of that she felt they were looking for a way to get rid of her because she is a lesbian. She asked why they do not do anything when she is called "faggot," even though they were so quick to respond to allegations about her smoking, or words to that effect. Marsha told them that she smokes outdoors only, asked Defendants Cubas and Driscoll why the smoke detector in her small room did not go off if she was allegedly smoking in it, and asked them for the names of those who reported her. Defendants Cubas and Driscoll did not respond to Marsha's questions, but told Marsha that if they received one more report about her smoking in her room, Marsha would be dismissed from GSALC.

54. On or about April 20, Marsha received a letter from Defendants Cubas and Driscoll, with a copy to Defendant Flavin, GSALC stating that she had been warned about smoking in her room and that she refused to sign an updated no smoking policy. The letter stated that if they smell smoke, or hear any reports of smoke, they will knock one time and then enter her room with or without her permission, and that any further violations of the no smoking policy would be grounds for termination of her lease.

55. On April 24, 2016, Marsha was awoken at around 5:00 in the morning by a pounding on her door. She opened the door to find two staff members who said that they were

from the fifth floor, that they smelled cigarette smoke coming from her room, and that they wanted to know if she was smoking. Marsha had been sleeping and had not been smoking. She offered to let the staff members into her room to check for smoke or any remnants of a cigarette. They refused to enter. Marsha said something about how the staff members themselves smelled like smoke, and one of the staff members slapped Marsha across the face. After the staff members left, Marsha cried and went to Rachael's room. Rachael sat with Marsha while she called the police, who came to the facility and took a report. Although Marsha could describe the staff members generally, and could see that they were wearing staff name badges, she could not identify them specifically because she had not put on her glasses before she answered the door.

56. On April 25, 2016, Marsha and Rachael met with Defendant Flavin about the April 24 incident. Marsha told Defendant Flavin that she did not like being hit by anyone, resident or staff. Defendant Flavin questioned whether it had really been staff members involved. Marsha repeated the information she had given the police. Defendant Flavin seemed angry that Marsha took legal steps to address this incident.

57. Bob was out of the facility during May, and Marsha returned to eating regularly in the dining room while he was gone. After he returned on or about June 5, he resumed his harassment. In addition to using anti-gay slurs, Bob taunted and intimidated Marsha, seemingly taking photographs of her with his phone, and standing near her in the dining hall and laughing at her. Marsha was anxious and had trouble swallowing food whenever Bob was in the dining hall with her.

58. On or about June 7, Marsha encountered Bob as she was coming out of the lobby and was waiting for the elevator. Bob came down hallway, calling Marsha a "faggot" and a

"fucking faggot," or words to that effect and saying something about "the homosexual piece of garbage you raised."

59. On or about June 8, 2016, Marsha was on the patio smoking. When she attempted to go back inside, Bob was blocking the entrance with his legs and cane. When Marsha said "excuse me," Bob started yelling at her. He picked up his cane in the middle and Marsha thought he was going to hit her. Bob threatened "to rip [her] tits off," or words to that effect. He went inside and grabbed the door and held it behind him so that Marsha could not get in for a short time before letting go and walking away. Marsha felt bullied, intimidated, and scared.

60. Marsha wrote a complaint about Bob's behavior on the patio. In response, Defendant Flavin approached Marsha, and told her she had been smoking in the wrong place. When Marsha said that Bob was preventing her from going to the right place, Defendant Flavin said, "Bob will be Bob," or words to that effect, and told Marsha to make sure to smoke in the right place. Defendant Flavin did not address Bob's threatening behavior toward Marsha.

61. On or about June 28, Marsha was standing with an activities staff member named Lisa waiting for the elevator. Bob came out of the lobby, and walked by saying words to the effect of, "Too bad you can't walk, or you'd be the fucking grand marshal of the gay pride parade." Lisa said to Bob, "Don't talk to her like that." Bob continued, saying something to the effect of how great it is that all the gays were killed at the Pulse nightclub in Orlando. Lisa filed a report of Bob's behavior, but Marsha is unaware of any action being taken against Bob.

62. As a result of the harassment and discrimination Marsha has experienced, she spends increased amounts of time in her room. She keeps the door locked whenever she is in her room and she sleeps with the door barricaded so that no one can enter her room. She is scared that people will come into her room and hurt her or take or damage things that belonged to Judy.

Marsha has not regularly sat at her table in the dining room for meals since Bob's threats on June 8, and she goes to the dining room when it is closing down or closed in order to get out to the patio. She relies on the groceries her caregiver brings her for food, as well some meager food items the kitchen staff provides her, despite that her rent to GSALC is supposed to provide her with three meals a day.

63. As a result of the harassment and discrimination Marsha has experienced and continues to experience tremendous anxiety and fear. She feels unsafe and unwelcome in her own home. She has lost a significant amount of weight. She worries every time she leaves her room.

64. For more than fifteen months, Marsha has been subjected to a pattern of severe and pervasive verbal and physical harassment, threats, and intimidation because of her sex and sexual orientation. This has created a hostile environment that has unreasonably interfered with Marsha's right to use and enjoy her home, discriminated against her in the terms, conditions, and privileges of renting a place to live at GSALC, and discriminated against her in the provision of services or facilities in connection with renting a place to live at GSALC.

65. Marsha has been subjected to this severe and pervasive verbal and physical harassment because she is a woman whose primary emotional and romantic attachments are to other women, and because she shared an intimate, committed relationship with Judy for thirty years. Marsha would not have been subjected to this hostile housing environment if she were a man whose primary emotional and romantic attachments are to women, or if she were a man who shared an intimate, committed relationship with a woman for thirty years.

66. Marsha has been subjected to this severe and pervasive verbal and physical harassment because she is a woman who defies sex-stereotypes, including stereotypes about the

sex of the person to whom a woman should be attracted, about the sex of the person with whom a woman should have a relationship and raise children, and about how a woman should appear or act.

67. Marsha has been subjected to this severe and pervasive verbal and physical harassment because of her association with women. If Marsha's primary emotional and romantic attachments were to men or had Judy been a man, Marsha would not have been subjected to this hostile housing environment.

68. Defendants have utterly failed to take prompt action to correct or end the discriminatory conduct of the other residents toward Marsha despite having a duty to do so. Defendants knew or should have known that Marsha was being subjected to extensive unwelcome harassment because of her sex and sexual orientation and that this harassment was sufficiently severe and pervasive as to create a hostile environment. Defendants disregarded Marsha's complaints and those of witnesses to the verbal and physical harassment Marsha experienced. Defendants have actively discouraged Marsha from taking steps to address the harassment and violence she has experienced because of her sex and sexual orientation. Any actions taken by Defendants in response have penalized or harmed Marsha rather than correcting or ending the hostile environment created by the harassment and discrimination of the other residents.

69. Defendants have also retaliated against Marsha for complaining about the illegal harassment and discrimination she was experiencing at GSALC because of her sex and sexual orientation. The Administration responded to Marsha's complaints by limiting her access to GSALC facilities and resources, and by threatening and attempting to kick her out of GSALC.

Defendants have coerced, intimidated, threatened, and interfered with Marsha's exercise and enjoyment of her housing rights.

70. Defendants' duty to correct and end the discriminatory conduct of the other residents toward Marsha stems both from their own policies and from federal and state law.

71. The Tenant's Agreement governing independent living apartments at GSALC sets forth that "acts or omissions that constitute a direct threat to the health and safety of other individuals" are grounds for termination of the agreement, and sets forth that the obligation not to engage in such behavior is a responsibility of each tenant. It also obligates tenants not to engage in any activity that "unreasonably interferes with the peaceful use and enjoyment of the community by other tenants or threatens to damage the community's reputation." Despite ample evidence that Bob and Elizabeth engaged in acts that directly threatened Marsha's health and safety, and that several residents engaged in activities that unreasonably interfered with Marsha's peaceful use and enjoyment of GSALC, Defendants failed to take any action against any of the perpetrators of harassment, intimidation, discrimination, and violence toward Marsha.

72. Defendants also owe Marsha a duty to ensure her equal housing opportunity free from discrimination on the bases of sex and sexual orientation under the FHA and the IHRA, both of which make it unlawful to discriminate in making housing available, in the terms, conditions, and privileges of housing, and in providing services or facilities in connection therewith. The hostile environment created by the severe and pervasive harassment Marsha has experienced based on her sex and sexual orientation and Defendants' failure to correct or end the harassment have had the effect of discriminating against Marsha's rental of a dwelling in violation of both the FHA and the IHRA.

CAUSES OF ACTION

COUNT I
VIOLATION OF THE FAIR HOUSING ACT

73. Plaintiff realleges and incorporates by reference all allegations contained in paragraphs 1-72 as if set forth fully herein.

74. Pursuant to 42 U.S.C. § 3604, the FHA prohibits a person from making unavailable or denying a dwelling to any person "because of . . . sex." It also prohibits discriminating against any person in the terms, conditions, or privileges of renting a dwelling, or in the provision of services or facilities in connection therewith "because of . . . sex."

75. Pursuant to 42 U.S.C. § 3617, the FHA also makes it unlawful to coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of any right granted or protected by substantive protections of the FHA.

76. Defendants engaged in unlawful sex discrimination in violation of the FHA, 42 U.S.C. § 3604. Defendants have discriminated against Marsha in the terms, conditions, and privileges of renting her apartment at GSALC, and in the provision of services and facilities in connection therewith because of Marsha's sex, including because of sexual orientation;

77. Defendants violated the FHA, 42 U.S.C. § 3604, by failing to fulfill their duty to take prompt action to correct and end the sex-based harassment suffered by Marsha at the hands of other residents;

78. Defendants violated the FHA, 42 U.S.C. § 3617, by failing to fulfill their duty to take prompt action to correct and end the sex-based harassment suffered by Marsha at the hands of other residents; and

79. Defendants retaliated against Marsha in violation of the FHA, 42 U.S.C. § 3617, by limiting her access to facilities and resources, by intimidating and threatening her, and by

attempting to evict her through duplicity and fabrication because Marsha asserted her right to an equal opportunity to use and enjoy the property without being subject to sex-based harassment.

80. Defendants' actions were taken intentionally, willfully, and in disregard for Marsha's federally-protected rights, and constituted a discriminatory housing practice, as defined in 42 U.S.C. § 3602(f).

81. Marsha is an "aggrieved person" as defined in 42 U.S.C. § 3602(i).

82. Marsha has been injured by Defendants' discriminatory conduct and has suffered damages as a result. Accordingly, under 42 U.S.C. § 3613(c), Marsha is entitled to and seeks actual damages, punitive damages, injunctive relief, and reasonable attorneys' fees and costs.

COUNT II
VIOLATION OF THE ILLINOIS HUMAN RIGHTS ACT

83. Plaintiff realleges and incorporates by reference all allegations contained in paragraphs 1-72 as if set forth fully herein.

84. Pursuant to 775 Ill. Comp. Stat. Ann. 5/1-103, 5/3-102 (a), (b), the IHRA prohibits discrimination in making available the rental or lease of a home "because of" a person's sex or sexual orientation. It also prohibits discriminatorily altering the terms, conditions, or privileges of the rental or lease of a home, and discrimination in furnishing facilities or services in connection with the rental or lease of a home "because of" a person's sex or sexual orientation,

85. Pursuant to 775 Ill. Comp. Stat. Ann. 5/3-105.1, the IHRA also makes it unlawful to coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of any right granted or protected by Article 3 of the IHRA.

86. Defendants engaged in unlawful sex and sexual orientation discrimination in violation of the IHRA, 775 Ill. Comp. Stat. Ann. 5/3-102. Defendants have discriminated against

Marsha in the terms, conditions, and privileges of renting her apartment at GSALC, and in the furnishing of facilities and services in connection therewith because of Marsha's sex and sexual orientation;

87. Defendants violated the IHRA, 775 Ill. Comp. Stat. Ann. 5/3-102, by failing to fulfill their duty to take prompt action to correct and end the sex-based and sexual orientation-based harassment suffered by Marsha at the hands of other residents;

88. Defendants violated the IHRA, 775 Ill. Comp. Stat. Ann. 5/3-105.1, by failing to fulfill their duty to take prompt action to correct and end the sex-based and sexual orientation-based harassment suffered by Marsha at the hands of other residents; and

89. Defendants retaliated against Marsha in violation of the IHRA, 775 Ill. Comp. Stat. Ann. 5/3-105.1, by limiting her access to facilities and resources, by intimidating and threatening her, and by attempting to evict her through duplicity and fabrication because Marsha asserted her right to an equal opportunity to use and enjoy the property without being subject to sex-based and sexual orientation-based harassment.

90. Defendants' actions were taken intentionally, willfully, and in disregard for Marsha's state-protected rights, and constituted unlawful discrimination and a civil rights violation, as defined in the IHRA, 775 Ill. Comp. Stat. Ann. 5/1-103 (D), (Q), 5/3-102.

91. Marsha is an "aggrieved person" as defined in 775 Ill. Comp. Stat. Ann. 5/1-103 (B).

92. Marsha has been injured by Defendants' discriminatory conduct and has suffered damages as a result. Accordingly, under 775 Ill. Comp. Stat. Ann. 5/10-102, Marsha is entitled to and seeks actual damages, punitive damages, injunctive relief, and reasonable attorneys' fees and costs.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that this Court enter an order:

A. Declaring that the discriminatory conduct of Defendants as set forth above violates the Fair Housing Act, as amended, 42 U.S.C. §§ 3601, *et seq*.;

B. Declaring that the discriminatory conduct of Defendants as set forth above violates the Illinois Human Rights Act, 775 Ill. Comp. Stat. Ann 5.1-101 *et seq*.

C. Permanently enjoining Defendants, their agents, employees, successors, and all other persons in active concert or participation with any of them from:

i. discriminating in the sale or rental of, or otherwise making unavailable or denying, a dwelling to any person because of sex or sexual orientation;

ii. discriminating against any person in the terms, conditions, or privileges of a sale or rental of a dwelling, or in the provision of services or facilities in connection with such dwelling, because of sex or sexual orientation;

iii. coercing, intimidating, threatening, or interfering with any person in the exercise or enjoyment of, or on account of his or her having exercised or enjoyed or on account of his or her having aided or encouraged any other person in the exercise or enjoyment of any right protected by the Fair Housing Act or the Illinois Human Rights Act.

D. Requiring Defendants to take such affirmative steps as may be necessary to restore, as nearly as practicable, Marsha Wetzel to the position she would have but in but for the discriminatory conduct;

E. Requiring Defendants to take affirmative action, including but not limited to instituting and carrying out policies and practices to prevent unlawful discrimination (including

on the basis of sex and sexual orientation) in the future and to eliminate, to the extent practicable, the effects of Defendants' unlawful practices;

F. Requiring Defendants to complete a fair housing training in order to prevent the reoccurrence of discriminatory housing practices in the future and to eliminate, to the extent practicable, the effects of their unlawful practices;

G. Awarding Plaintiff compensatory and punitive damages pursuant to the Fair Housing Act, 42 U.S.C. § 3613(c)(1), and the Illinois Human Rights Act, 775 Ill Comp. Stat. Ann. 5/10-102(C)(1);

H. Awarding Plaintiff the costs and disbursements of this action, including reasonable attorneys' fees; and

I. Granting such other and further relief in favor of Plaintiff as this Court deems just and proper.

Respectfully submitted,

Dated: July 27, 2016

By: s/ *Karen L. Loewy*

Attorneys for Plaintiff Marsha Wetzel

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EXHIBIT

A

ST. ANDREWS LIFE CENTER

TENANT'S AGREEMENT

SECTION I - PARTIES

THIS AGREEMENT, made as of the 26 day of November, 20 14, by and between ST. ANDREWS LIFE CENTER, an Illinois not-for-profit corporation ("Owner") and Marsha Wetzel ("Tenant")

SECTION II – PREMISES

The Owner hereby leases to Tenant, and Tenant hereby leases from Owner those premises of the ST. ANDREWS LIFE CENTER known as Apartment 204 located at 7000 North Newark Avenue, Niles, Illinois 60714 ("Premises")

SECTION III – TERM AND TERMINATION

(1) Term. The term of this Agreement shall commence as of the date of Tenant's occupancy ("Occupancy Date") and continue until terminated pursuant to Section (2), below.

(2) Termination. This Agreement shall terminate upon the earliest of the following:

(a) Upon the written agreement of Tenant and Owner.

(b) Pursuant to Section XVII of this Agreement, upon written notice by Owner to Tenant, if Tenant fails to meet his/her financial obligations of tenancy.

(c) Pursuant to Section XVII of this Agreement, upon written notice by Owner to Tenant, if Tenant fails to comply with the terms of this Agreement;

(d) Pursuant to Section XVII of this Agreement, upon written notice by Owner to Tenant, if Tenant fails to comply with the terms of the Tenant Handbook or other rules or regulations promulgated by Owner;

(e) Upon written notice by Owner to Tenant, if Tenant engages in acts or omissions that constitute a direct threat to the health and safety of other individuals or result in substantial physical damage to the property of others;

(f) Upon the death of Tenant or, in the case of more than one tenant, the death of the last surviving Tenant;

(g) Upon expiration of a thirty (30) day period following receipt by Owner of written notice of Tenant's intent to terminate this Agreement without cause; or

(h) Pursuant to Sections XI or XV of this Agreement

(3) **Surrender of Unit.** Upon the termination of this Agreement, Tenant will return the Premises keys to Owner and will leave the Premises in as good condition as it was when Tenant took possession of the Premises (subject to any alterations or improvements made by Tenant which Owner decides to retain), except for reasonable wear and tear. Tenant agrees to reimburse Owner for any and all damage and costs of restoring the Unit to the condition existing at the beginning of Tenant's occupancy (subject to any alterations or additions made by Tenant which Owner decides to retain), except for reasonable wear and tear.

(4) **Obligations Upon Termination.** Upon the termination of this Agreement, neither party will have any further obligations hereunder except for (a) obligations accruing prior to the termination of this Agreement and (b) obligations, promises or covenants set forth in this Agreement that are expressly made to extend beyond the termination of this Agreement.

SECTION IV – RENT

(a) Tenant shall pay to Owner as rent at such place as may be designated by Owner, the sum of Twelve thousand twenty four U.S. Dollars, ($12,024.) annually, in monthly installments of one thousand two U.S. Dollars, ($1002.00) each payable in advance of the first day of each calendar month, and on a prorated basis at the same rate for fractions of the month if the term shall begin any day except on the first day of the calendar month ("Rent").

(b) Rent shall be subject to an increase on July 1 of each year. The amount of such increase, if any, shall be based on increases in operating costs as determined by Owner.

(c) The amount of Rent presumes that the Premises shall be exempt from real property taxes. In the event the Owner is required to pay real property taxes, Rent shall be increased as follows:

(1) The additional annual rent shall be determined by multiplying the total taxes by a fraction, the numerator of such fraction shall be the square feet in the Premises leased hereunder and the denominator shall be the total square feet of the individual apartments in the community.

(2) Such additional rent shall be payable on the first day of each calendar month.

(d) In the event Rent presumes more than one tenant living on the Premises and after the Occupancy Date the number of tenants living on the Premises is permanently reduced, then there shall be a reduction in Rent as determined by Owner. Such reduction shall be the current, per month, market cost for an additional tenant for each tenant who is no longer residing on the Premises.

SECTION V - FINAL PAYMENT

When this Agreement is terminated pursuant to Section III, above, Tenant or his/her estate shall be liable for Rent until the last day of the calendar month in which all persons and property belonging to Tenant are removed from the Premises

SECTION VI - USE OF PREMISES

(a) The Premises leased herein are intended for retirement living. Tenant agrees to use the Premises and conduct himself/herself in a manner consistent with such a community. Tenant agrees not to engage in any activity that Owner determines unreasonably interferes with the peaceful use and enjoyment of the community by other tenants or threatens to damage the community's reputation and further agrees to abide by the restrictions of this Section.

(b) The Premises shall not be used for the conduct of any business or profession. Notwithstanding the foregoing, Tenant may entertain business associates or clients and may, if he/she has a separate business location, occasionally use the Premises to perform an isolated business transaction or client interview.

SECTION VII – VISITORS/INVITEES

(a) Tenant may have Tenant's visitors or invitees (including caregivers) stay with him/her on the Premises from time to time in accordance with the rules and regulations promulgated by Owner.

(b) Tenant agrees to be responsible for the conduct of any visitor or invitee (including any caregiver) of Tenant and shall ensure each such visitor or invitee's compliance with all rules and regulations to which Tenant is bound.

(c) Owner reserves the right to prescribe additional rules and regulations for visitors and invitees (including caregivers) of Tenant that are not inconsistent with the terms of this Agreement.

ECTION VIII - OWNER SERVICES

(a) In addition to use of the Premises, Owner shall provide at no extra charge three (3) well-balanced meals per day to be served in a central location at a time selected by Owner.

(b) Owner shall provide for the use of all tenants, a community room(s) for use in accordance with the rules and regulations promulgated by Owner.

(c) Owner shall develop a life enrichment program for tenants. Any such activities are optional and may require additional payments for specific programs and/or supplies.

(d) Owner shall be available for consultation with Tenant on the subject of how to obtain health care and other necessities of life. The cost of any health care required by Tenant or the cost of any other necessities of life required by Tenant which are not specifically provided under this Agreement shall be the sole responsibility of Tenant

(e) Owner shall supply a heating unit and air conditioner for Tenant's use

(f) Owner shall make available laundry facilities for all tenants.

(g) Owner shall supply locks for all doors. These locks are not to be removed or replaced except by Owner. No additional locks shall be installed.

(h) Owner shall be responsible for painting the Premises at intervals deemed appropriate by Owner.

(i) Owner shall supply adequate heat for the Tenant's Premises

(j) Owner shall, upon request, make or permit Tenant to make reasonable modifications to the Premises as reasonably necessary for Tenant's use and at Tenant's expense. Should Tenant make such modifications, all such work shall be performed diligently, in a first-class workmanlike manner and under Owner's direction.

SECTION IX – TENANT'S RESPONSIBILITIES

(a) Tenant shall have sole responsibility for the cost of the following items:

(1) Telephone service for his/her Premises

(2) Tenant shall maintain his/her Premises in a clean, safe and habitable condition.

(3) Furniture for his/her Premises. Owner can provide furniture if needed

(4) Nursing or supportive care services provided to Tenant

(b) Tenant shall not bring into his/her Premises any dishwasher, refrigerator, freezer or other large electrical appliance without prior written approval of Owner.

(c) Tenant shall make no alteration to the electrical wiring or plumbing fixtures, which have been installed in his/her Premises without the prior written approval of Owner.

(d) Upon termination of this Agreement, Tenant or his/her estate shall remove all of Tenant's furniture and other personal property.

(e) Tenant will provide Owner with an executed copy of his/her Power of Attorney for Property and Health Care, if any, and any amendments thereto.

(f) Tenant shall comply with the terms of the Tenant Handbook and all other rules and regulations promulgated by Owner, as may be amended from time to time.

(g) Tenant shall not engage in any act or omission that constitutes a direct threat to the health and safety of other individuals or results in substantial physical damage to the property of others.

SECTION X – NON-ASSIGNABILITY

Tenant may not assign this Agreement, nor any part thereof, nor may Tenant sublet any part of the Premises. In the event an assignment or subletting is attempted, this Agreement may be immediately terminated solely at the Owner's option.

SECTION XI - OWNER'S TITLE

Title to the Premises is vested in the Owner. Tenant shall do no act that shall encumber Owner's title. If Tenant causes any encumbrance, he/she shall cause the same to be removed solely at Tenant's expense.

SECTION XII - REPAIRS AND ALTERATIONS

(a) Tenant covenants and agrees with Owner to take good care of and keep in clean and workable condition the Premises and their fixtures, and to commit and suffer no waste therein; that no changes or alterations of the Premises shall be made, or partitions erected, or no painting may be done, without the prior written approval of Owner; and that no wallpapering or wallpaper borders may be affixed without the prior written approval of Owner.

(b) Tenant will pay for all repairs required to the walls, windows, glass, ceiling, paint, plastering, plumbing work, pipes and fixtures belonging to the Premises whenever damage or injury to the same shall have resulted from misuse or neglect by Tenant or Tenant's visitors; and Tenant agrees to pay for any and all repairs that shall be necessary to put the Premises in the same condition as when he/she entered therein, reasonable wear and tear excepted, and the expense of such repair shall be included within the terms of the Agreement and any judgement by confession entered therefore.

(c) At any time Owner may, at Owner's own expense, make repairs, alterations, additions, or improvements in or to the Building or any part thereof, including the Premises, and during operations, may close entrances, doors, corridors, elevators or other facilities, all without liability to Tenant by reason of interference, inconvenience or annoyance.

SECTION XIII - RIGHTS RESERVED BY THE OWNER

(a) The Owner reserves the following rights:

(1) To change the name of the corporation or retirement community or its address without notice or liability to Tenant.

(2) To enter the Premises if Tenant has not been heard from or Tenant's whereabouts not known for a period under circumstances that would lead a reasonable person to suspect Tenant may be in need of assistance.

(3) During the last thirty (30) days of the term of this Agreement or any part thereof, if Tenant vacates the Premises, to decorate, remodel, repair, alter or otherwise prepare the Premises for reoccupancy.

(4) To retain passkeys to the Premises and to establish a key control system which designates distribution and use of such keys. Outside door keys and Premises keys may be duplicated by Owner only, and not by Tenant, and must be returned upon vacating the Premises.

(5) The Owner may enter the Premises and may exercise any or all foregoing rights thereby reserved to it without being deemed guilty of an eviction or

disturbance of Tenant's use or possession and without being liable in any manner to Tenant.

(6) To inspect the Premises or the Building as may be necessary or desirable for the safety, protection or preservation of the Premises or the Building or Owner's interests, or as may be necessary or desirable in the operation of the Building.

(7) To approve the weight, size and location of furniture and equipment and articles in and about the Premises and the Building, and to require all such equipment and furniture and bulky items to be moved in and out of the Building and the Premises at such time or times as may be fixed by Owner and in such a manner as Owner shall prescribe and, in all events as Tenant's responsibility.

SECTION XIV – EMINENT DOMAIN

In the event that the whole or any part of the Building or Premises shall be lawfully condemned or taken in any manner for any public or quasi-public use, at Owner's option, this Agreement and the term hereby granted shall forthwith cease and terminate on the date of the taking of possession by the condemning authority and Owner shall be entitled to receive the entire award without any payment to Tenant; Tenant hereby assigns to Owner Tenant's interest in the award, if any, and the Rent shall be apportioned as of such date and the Membership Fee refunded in accordance with Section V of this Agreement

SECTION XV – WAIVER OF SUBROGATION

Each party hereto hereby waives all claims for recovery from the other party for any loss or damage to any of its property insured under valid and collectible insurance policies covering loss by fire or any of the perils insured under the standard extended coverage rider.

SECTION XVI – DEFAULT

(a) If Tenant defaults in the payment of Rent and Tenant does not cure such default within twenty (20) days after demand for payment of such Rent, Tenant shall be in default of this Agreement and Owner may at its sole option terminate this Agreement.

(b) If Tenant fails to conform to the provisions of this Agreement, or any additional rules or regulations promulgated by the Owner and such defect is not cured within thirty (30) days of demand by Owner, Tenant shall be in default of this Agreement and Owner may at its sole option terminate this Agreement.

'ECTION XVII– CONFESSION

Tenant hereby irrevocably constitutes any attorney of any court of record in this state, attorney for Tenant in Tenant's name, on default by Tenant of any of the covenants herein, and upon complaint made by Owner, or its agent or assignees, and filed in any such court, to enter Tenant's appearance in any such court of record, waive process and service thereof, and confess judgment, from time to time, for any Rent which may be

due to Owner, or Owner's assignees by the terms of this Agreement with costs and a reasonable sum for attorney's fees, and to waive all errors and all right of appeal from said judgment. and to consent in writing that a writ of execution may be issued immediately.

SECTION XVIII - AMENDMENTS

At any time this Agreement may be altered or amended. Any alteration or amendment of this Agreement must be in writing and signed by both parties except as may be otherwise provided by this Agreement.

SECTION XIX - CONDITION OF PREMISES

Tenant acknowledges that the Premises are in good repair, except as herein otherwise specified, and that no representations as to the condition or the repair thereof have been made by Owner, or Owner's agent, prior to or at the execution of this Agreement that are not herein expressed.

SECTION XX - POSSESSION

In the event of the failure of Owner to deliver possession of the Premises at the time of commencement of the term of this Agreement, neither Owner nor its agents or management contractor shall be liable for any damage caused thereby, nor shall this Agreement thereby become void or voidable, nor shall the term be extended, but Tenant shall not be liable for Rent until possession is delivered.

SECTION XXI - PLURALS, SUCCESSORS

The words, "Tenant" and "Owner" wherever herein occurring in use shall be construed to mean "Owners" and "Tenants" in case more than one person constitutes either party to this Agreement and all such persons shall be jointly and severally liable hereon; and all covenants and agreements herein contained shall be binding upon and inure to their respective successors, heirs, executors, administrators and assigns and be exercised by their attorney or agent.

SECTION XXII – MISCELLANEOUS

(a) No receipt of money from Tenant after the termination of this Agreement; after the service of any notice; after the commencement of any suit; or after final judgment for possession shall renew, reinstate, or extend the term of this Agreement or affect any such notice, demand or suit.

(b) No waiver of any default of Tenant hereunder shall be implied from any omission by Owner to take any action on account of such default if such default persists or be repeated, and no express waiver shall affect any default other than the default specified in the express waiver and then only for the time and to the extent therein stated.

(c) The headings of sections are for convenience only and do not limit or construe the contents of the sections.

(d) Provisions inserted or affixed hereto shall not be valid unless appearing in the duplicate original held by Owner and signed by both parties.

(e) Owner and its employees and agents shall not be liable for damages or injuries to any Tenant, any visitor or invitee (including caregiver) of Tenant, or any other person occurring on the Premises or any part thereof, and Tenant agrees to hold harmless Owner and its employees and agents from any and all such claims. This provision shall survive the termination of this Agreement.

(f) In the event of the necessity of the employment of an attorney by Owner because of Tenant's violation or breach of any term, condition or covenant or for enforcement thereof under this Agreement, Tenant agrees to pay Owner any costs or fees involved, including reasonable attorney's fees, whether or not suit has been instituted. All such payment shall be considered additional accrued Rent and shall be so cured hereunder. This provision shall survive the termination of this Agreement.

(g) Tenant is liable for any costs, expenses, damages, injuries, losses or other liabilities (collectively "Liabilities") which are caused by Tenant's negligence or willful act or by that of any visitor or invitee (including any caregiver) of Tenant. Tenant agrees to indemnify Owner and its employees and agents for all Liabilities, including reasonable attorney's fees, arising from Tenant's negligence or willful act or that of any visitor or invitee (including caregiver) of Tenant. This provision shall survive the termination of this Agreement.

(h) Unless Owner has written directions on how to dispose of Tenant's personal property, Owner shall dispose of any personal property not claimed within thirty (30) days after this Agreement has been terminated. Tenant agrees to reimburse Owner for any and all costs of removal and/or storage of Tenant's personal property. Owner is not responsible for the loss of any of Tenant's personal property due to theft, fire, water, or any other cause.

(i) All information required to be submitted by Tenant constitutes a material part of this Agreement, and Tenant represents and warrants that such information is accurate and complete and contains no material misrepresentation or omission. By signing this Agreement, Tenant warrants that, in Tenant's judgment, Tenant's income and assets are adequate to meet Tenant's financial obligations to Owner and to cover Tenant's personal and incidental expenses during the term of this Agreement.

(j) This Agreement is subordinate to any present or future lease, mortgage or land use restriction affecting the community. Upon request, Tenant agrees to execute, acknowledge and deliver to lenders such further written evidence of such subordination as such lenders may reasonably require.

(k) Any notices which any party may or is required to give pursuant to this Agreement must be in writing and either be given personally to the person to whom the notice is directed or mailed to the person by certified or registered mail, return receipt requested. Notice is to be given to Tenant at the address set forth in this Agreement and to Owner at Saint Andrew.

Notices will be considered given when received if given personally, or, if mailed, when deposited, postage prepaid, in the mail.

(l) Owner's rights and remedies under this Agreement are cumulative. The exercise of any one or more of Owner's rights and remedies hereunder will not exclude or preclude Owner from exercising any other right or remedy.

(m) This Agreement, including any exhibit or other attachment, constitutes the entire Agreement between Owner and Tenant with respect to the subject matter hereof. Owner is not liable for, nor bound in any manner, by any statements, representations or promises made by any person representing or purporting to represent Owner unless such statements, representations or promises are set forth in this Agreement.

(n) No breach of Owner's obligations under this Agreement will result from an interruption of, or failure to provide, contracted services due to an act of God or other cause beyond the reasonable control of Owner, specifically including strikes or other forms of labor disturbances, government edicts, regulations and/or embargoes, acts of war or terrorism, shortages of labor or materials, fire, flood, inclement weather, interruption of utility services, or acts of Tenant or any visitor or invitee (including caregiver) of Tenant

(o) This Agreement shall be construed and interpreted in accordance with the laws of the State of Illinois without regard to conflict of laws. In the event any provision of this Agreement is determined by a court of competent jurisdiction to be illegal or invalid, that provision shall be construed and enforced, to the extent practicable and legal, as if it had been more narrowly drawn so as not to be illegal or invalid, and the remainder of this Agreement shall remain in force.

I, THE UNDERSIGNED HAVE READ THE ABOVE AGREEMENT, TERMS AND CONDITIONS AND RULES, AND I AGREE TO ABIDE BY THEM AS A CONDITION TO MY RESIDENCE AT ST. ANDREWS LIFE CENTER. I ACKNOWLEDGE AND AGREE THAT THE COMMUNITY IS INTENDED FOR OCCUPANCY BY PERSONS AGE SIXTY-TWO (62) YEARS AND OLDER

IN WITNESS WHEREOF, this instrument has been duly executed by the parties hereto, in duplicate, each of which executed counterparts shall be deemed and considered an original document, as of the day and year first above written.

RESURRECTION HEALTH CARE, INC. d/b/a
ST. ANDREWS LIFE CENTER

OWNER BY: _____ Date: 11-26-14

TENANT: Marsha Wetzel Date: 11-26-14

TENANT: _____ Date: _____

WITNESS: _____ Date: 11-26-14