

Mobile Home Village Inc. v. Township of Jackson

No. 95-0004 (D.N.J. 6-14-95)

P-H Prentice Hall Fair Housing Fair Lending Reporter [¶ 16,018]

[1] Township may not require a mobile home park to restrict occupancy to persons 55 and over if it does not qualify for an exemption to the Fair Housing Act.

(2) Township may not require a property owner to attempt to qualify for the older persons exemption to the Fair Housing Act.]

Anne E. Thompson, U.S. District Judge

OPINION THE COURT: This matter is before the court on the motion of plaintiff Mobile Home Village, Inc. for partial summary judgment pursuant to FED. R. Civ. P. 56. Plaintiff Mobile Home Village, Inc. has operated a mobile home part named Southwind Village Mobile Home Park ("Southwind") in the Township of Jackson, New Jersey since the 1970's. Southwind is categorized as a senior citizens' park and is governed by a license issued pursuant to Chapter 77 of the Revised General Ordinances of Jackson Township. Because Mobile Home Village operates under a senior citizens' park license, only individuals over age fifty-five may live there. JACK. TWP. REV. GEN. ORD. § 77-14.

For ten years Mobile Home Village renewed its license to operate as a senior citizens' mobile home park. In 1988, Congress amended the Fair Housing Act ("FHA"), 42 U.S.C. § 3601-3631. to prohibit discrimination based on familial status. 42 U.S.C. § 3604. The amendment provides an exemption to this prohibition, however, for residences qualifying as "housing for older persons." 42 U.S.C. § 3607 (b)(2). In order to qualify for this exemption, a housing provider must meet specific requirements including the provision of "significant facilities and services specifically designed to meet the physical or social needs of older persons." 42 U.S.C. § 3607 (b)(2)(C)(i). Although Mobile Home Village had been operating pursuant to the Jackson Township senior park license prior to the 1988 Amendments, it neither applied nor attempted to qualify for the federal "housing for older persons" exemption. In fact, since 1991, Mobile Home Village has accepted younger tenants who do not meet the age requirements of the Jackson Township ordinance. Consequently, Jackson Township prosecuted Mobile Home Village for violating the ordinance.

On January 3, 1995, Mobile Home Village filed the instant Complaint. Mobile Home Village asserts it is no longer able to operate a senior citizens' park pursuant to Jackson Township ordinance. Plaintiff claims it cannot bar underage individuals from becoming residents in its park without violating the FHA. Because the FHA prohibits discrimination against families with minor children, plaintiff concludes it is required to sell or rent to individuals of all ages. See 42 U.S.C. § 3604. Plaintiff further contends Jackson Township cannot force Southwind to meet the requirements of the FHA exemption. Thus Mobile Home Village seeks to have this Court invalidate Jackson Township's age restricting ordinance pursuant to the Supremacy Clause of Constitution. Mobile Home Village now moves for partial summary judgment declaring the invalidity of Jackson Township Ordinance § 77-14 and enjoining further enforcement of the ordinance against it. The court may enter summary judgment if there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. FED. R. CIV.P. 56; *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). Once the moving party has satisfied this initial burden the opposing party must establish that a genuine issue exists. *Jersey Central Power & Light Co. v. Lacey Township*, 772 F.2d 1103, 1109 (3d Cir. 1985), cert. denied, 475 U.S. 1013 (1986). The non-moving party receives the benefit of all reasonable doubts and inferences drawn from the underlying facts. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986); *Pollock v. American Tel. & Tel. Long Lines*, 794 F.2d 860, 864 (3d Cir. 1986). If the non-moving party bears the burden of proof at trial as to a dispositive issue, Rule 56 (e) requires him to go beyond the pleadings and designate specific facts showing that there is a genuine issue for trial. *Celotex*, 477 U.S. at 324; *Schoch v. First Fidelity Bancorporation*, 912 F.2d 654, 657 (3d Cir. 1990).

Not every issue of fact will be sufficient to defeat a motion for summary judgment; issues of fact are genuine "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986); *Big Apple BMW, Inc. v. BMW of North America, Inc.*, 974 F.2d 1358, 1363 (3d Cir. 1992), cert. denied 113 S.Ct. 1262 (1993). Further, the opposing party cannot rest upon mere allegations; it must present actual evidence Page 16,018.2 that creates a genuine issue of material fact. *Liberty Lobby Inc.*, 477 U.S. at 249 (citations omitted). Jackson Township initially argues that summary judgment should be denied because it requires further discovery regarding plaintiff's claims. A court may deny summary judgment where the opposing party has had an inadequate opportunity to obtain discovery. See *Radich v. Godde*, 886 F.2d 1391, 1393 (3d Cir. 1989) (applying FED. R. CIV.P. 56 (f)). Rule 56 (f) specified the procedure to be followed, and explicitly provides that the party must file an affidavit setting forth why the time is needed. Although a court need not allow further discovery when there is no reason to believe it will lead to denial of a motion for summary judgment, *Pacific Service Stations Co. v. Mobile Oil Corp.*, 689 F.2d 1055, 1066 (Em. App. 1982), the court "is obliged to give a party opposing summary judgment an adequate opportunity to obtain discovery." *Dowling v. City of Philadelphia*, 855 F.2d 136, 139 (3d Cir. 1988). The determination of the adequacy of discovery at the summary judgment stage is committed to the discretion of the trial court. *Postore v. Bell Telephone Co. of Pennsylvania*, 24 F.3d 508, 510 (3d Cir. 1994). In the instant case, defendant did not file a Rule 56 (f) affidavit. Rule 56 (f) clearly requires that an affidavit be filed. See *Radich*, 886 F.2d at 1394. "The purpose of the affidavit is to ensure that the nonmoving party is invoking the protection of Rule 56 (f) in good faith and to afford the trial court the showing necessary to assess the merit of a party's opposition." *Id.* (citations omitted). An unsworn brief opposing plaintiff's motion for summary judgment is not an affidavit. In light of Jackson Township's failure to comply with Rule 56 (f), the purported need for further discovery cannot be a basis for denying or deferring the motion for summary judgment. The Fair Housing Act is "broad and inclusive" in protecting against conduct which interferes with fair housing rights and is subject to "generous construction." *People Helpers, Inc. v. City of Richmond*, 789 F. Supp. 725, 731 (E.D. Va. 1992) (quoting *Trafficante v. Metropolitan Life Ins. Co.*, 409 U.S. 205, 209 (1972)).

The FHA contains the following prohibition: [I]t shall be unlawful — (a) To refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, color, religion, sex, familial status, or national origin. 42 U.S.C. § 3604. The FHA further provides: It shall be unlawful to coerce, intimidate, threaten or interfere with any person in the exercise or enjoyment of his having exercised or enjoyed, or on account of his having aided or encouraged any

other person in the exercise or enjoyment of, any right granted or protected by section 3603, 3604, 3605 or 3606 of this title. 42 U.S.C. § 3617. Fair housing discrimination cases are subject to the three-part test articulated in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 93, S.Ct. 1817 (1973). Secretary, HUD, on behalf of *Herrone v. Blackwell*, 908 F.2d 864, 870 (11th Cir. 1990). In the instant case, however, plaintiff has produced direct evidence of discrimination, Jackson Township Ordinance § 77-14 expressly requires discrimination against families with minor children. Thus there is no need to use the *McDonnell Douglas* test. See *Massaro*, 3 F.3d at 1476 n. 6; *Trans-World Airlines, Inc. v. Thurston*, 469 U.S. 111, 121, 105 S.Ct. 613, 621 (1985).

In enacting the 1988 Amendments, Congress recognized "that some older Americans have chosen to live together with fellow senior citizen[s] in retirement-type communities." *United States v. City of Hayward*, 36 F.3d 832, 836 (9th Cir. 1994), petition for cert. filed (Apr. 24, 1995) (quoting H.R. Rep. No. 711, 100th Cong., 2d Sess., 21 (1988)). It therefore exempted "housing for older persons" from the familial-status provisions of the FHA. See 42 U.S.C. § 3607. Section 3607 (b)(2) describes three types of housing that qualify as housing for older persons, one of which is housing intended and operated for occupancy by at least one person 55 years of age or older per unit. In determining whether housing qualifies as housing for older persons under this subsection, the Secretary shall develop regulations which require at least the following factors: (i) the existence of significant facilities and services specifically designed to meet the physical or social needs of older persons, or if the provision of such facilities and services is not practicable, that such housing is necessary to provide important housing opportunities for older persons; and (ii) that at least 80 percent of the units are occupied by at least one person 55 years of age or older per unit; and (iii) the publication of, and adherence to, policies and procedures which demonstrate an intent by the owner or Page 16,018.3 manager to provide housing for persons 55 year of age or older. 42 U.S.C. § 3607 (b)(2)(C).

Exemptions to the FHA are affirmative defenses and the defendant has the burden of proving their availability. *Hooker v. Weathers*, 990 F.2d 913, 915 (6th Cir. 1993). Thus, it is Jackson Township's burden to demonstrate that Southwind is entitled to discriminate pursuant to the "housing for older persons" exemption. "Exemptions from the Fair Housing Act are to be construed narrowly, in recognition of the important goal of preventing housing discrimination." *Massaro v. Mainlands Section 1 & 2 Civic Ass'n*, 3 F.3d 1472, 1475 (11th Cir. 1993), cert. denied, 115 S.Ct. 56 (1994); accord *United States v. Columbus Country Club*, 915 F.2d 877, 882-83 (3d Cir. 1990), cert. denied, 501 U.S. 1205, 111 S.Ct. 2797 (1991). Housing must at least meet the above three requirements to qualify for the exemption. *City of Hayward*, 36 F.3d at 837. Thus in order to qualify as "housing for older persons," Southwind must provide "significant facilities and services specifically designed to meet the physical or social needs of older persons, or if the provision of such facilities and services is not practicable, that such housing is necessary to provide important housing opportunities for older persons." 42 U.S.C. § 3607 (b). Under current regulations promulgated by the Department of Housing and Urban Development, "significant facilities and services" include: social and recreational programs, continuing education, information and counseling, recreational, homemaker, outside maintenance and referral services, an accessible physical environment, emergency and preventative health care programs, congregate dining facilities, transportation to facilitate access to social services and services designed to encourage residents to use the services and facilities available to them. 24 C.F.R. § 100.304 (b)(1). Although a facility need not have all the features cited in 24 C.F.R. § 100.304 (b)(1) to qualify, Southwind's facilities are certainly insufficient. Based on the evidence submitted, no genuine issue of fact exists with respect to whether Southwind provides "significant facilities and services specifically designed to meet the physical or social needs of older persons." Southwind provides its residents with a clubhouse, activity room billiard-card room, bingo machine, kitchen for social activities, coin operated laundry facility, sidewalks and a shuffleboard court. Certification of Kenneth W. Biedzynski, Ex. A. Plaintiff provides no social, recreational, educational, emergency or health care programs. *Id.* Neither does plaintiff provide counseling, homemaker services, outside maintenance or transportation. *Id.* Southwind is located in a rural environment, and is not within reasonable walking distance of anything but a Wawa convenience store. *Id.*, Ex. A. at 4. At most, plaintiff provides only "those facilities which any landlord expecting to please his or her tenants would provide." See *Park Place Home Brokers v. P-K Mobile Home Park*, 773 F. Supp. 46, 52 (N.D. Ohio 1991). None of Southwind's amenities and programs are tailored to the needs of senior citizens. It is clear that plaintiff's facilities do not constitute "significant facilities" under FHA. See *City of Hayward*, 36 F.3d at 837; *Lanier v. Fairfield Communities, Inc.*, 776 F. Supp. 1533, 1536-37 (M.D. Fla. 1990). Since the enactment of the 1988 Amendments, plaintiff's mobile home park has not qualified as "housing for older persons." [fn1]

Because plaintiff's mobile home park fails to qualify as "housing for older persons" under the FHA, it is unable to discriminate against families with minor children. Acknowledging this fact, plaintiff has permitted individuals who are less than fifty-five years of age to live in Southwind. Plaintiff asserts that Jackson Township cannot compel housing providers to discriminate against a federally protected class. Specifically, plaintiff claims the enforcement of Jackson Township Ordinance § 77-14 is contrary to the provisions of the FHA. Chapter 77-14 of the Jackson Code provides that "[t]he occupancy of any senior citizens' mobile home park shall be limited to persons who are fifty-five (55) years of age or over," with several exceptions not pertinent to this litigation.

Jackson Township contends its licensing requirements do not violate the FHA. It is defendant's position that plaintiff has an affirmative obligation to the senior residents to continue to operate Southwind as a senior citizen park. The core of defendant's argument is that plaintiff has an affirmative obligation to attempt to qualify for the FHA's "housing for older persons" exemption. Page 16,018.4

Both the statutory and regulatory language of the FHA exemption focus on the actions and intent of the owner or manager of the housing complex. *Massaro*, 3 F.3d at 1477. The language of § 3607 (b)(2) indicates that owners and managers are the only ones who can claim the exemption. Judge Nicholas H. Politan thoroughly addressed this point in *Cedar Hills Developers, Inc. v. Township of Wyckoff Civil No. 89-5391, Fair Housing-Fair Lending (P-H) ¶ 15,675 (D.N.J. Dec. 11, 1990)*. In that case, Judge Politan held that the Township of Wyckoff could not force a housing provider to meet the FHA's "housing for older persons" exemption: **When Congress passed this law it carefully considered its effect on previously established "seniors" communities. It recognized that, unfortunately, the interest and legitimate desires of all seniors could not always be reconciled with the similarly persuasive interest of families with children. Congress intended that in such cases the latter interest would supersede the former. More importantly, Congress most clearly provided that in order to qualify for the Housing for Older Person exemption the community would have to demonstrate its entitlement to the exemption. The regulations carefully echo this requirement and similarly place the affirmative burden of proof on the party seeking the exemption. See 24 C.F.R. § 100.304 ("... the owner or manager of evidence ...").**

These provisions demonstrate that the discretionary decision concerning the community's method of compliance must rest with the

owner. In this case, the owner made the decision to comply by selling its units on a wholly nondiscriminatory basis. Under the law, the decision must be respected. Common sense supports this conclusion. Cedar Hills agreed to build a community to comply with Wyckoff's original zoning ordinance. It did not agree to build a community that would comply with the Housing For Older Person exemption of the Fair Housing Act. In fact, as presently structured the community fails to meet that exemption and Wyckoff cannot lawfully force it into compliance. To do so would vest Wyckoff with a power the Constitution vested in the hands of Congress and would, moreover, place a financial burden upon the plaintiff that it neither contractually undertook nor is statutorily required to shoulder. Id. at 16,467-68.

Judge Politan's reasoning is persuasive. The FHA exclusively grants discretion regarding the method of compliance to the "owner or manager." 42 U.S.C. § 3607 (b)(2). The owner or manager may either provide housing on a nondiscriminatory basis or show that it is entitled to an exemption. Jackson Township cannot compel plaintiff to meet the requirements of the FHA exemption. Moreover, Jackson Township has pointed to no authority empowering a local government to force a housing provider to meet the "housing for older persons" exemption. Upon the enactment of the 1988 FHA Amendments, Mobile Home Village had a choice either to terminate its senior-citizens-only policy or to convert to qualified senior housing. The Court refuses to adopt a rule that would deprive landowners of this choice. See City of Hayward, 36 F.3d at 838. Pursuant to the Supremacy Clause of the United States Constitution, Jackson Township's ordinance cannot override the dictates of the FHA. The FHA grants an owner or manager discretion to decide whether to qualify for the "housing of older persons" exemption. Jackson Township is powerless to negate this federally mandated discretion by demanding plaintiff meet the requirements of the 1988 Amendments. Prior to 1988, Mobile Home Village managed Southwind pursuant to Jackson Township Ordinance § 77-14. Plaintiff has never agreed nor attempted to manage Southwind pursuant to the "housing for older persons" exemption of the Fair Housing Act. In fact, as presently structured Southwind fails to meet that exemption and Jackson Township cannot lawfully force plaintiff into compliance. To do so would vest Jackson Township with a power the Constitution vested in the hands of Congress and would place a financial burden upon plaintiff that it is not statutorily required to shoulder. Thus Jackson Township Ordinance § 77-14 is invalid as applied to Southwind. For the foregoing reasons, plaintiff's motion for partial summary judgment is granted. The age restriction of Jackson Township Ordinance § 77-14 is declared invalid as applied to Southwind because it conflicts with the FHA's prohibition of discrimination against families with minor children. In addition, Jackson Township is enjoined from enforcing the age restriction of § 77-14 against Mobile Home Village for its operation of Southwind.

An appropriate Order is filed herewith. Thank you very much, Counsel.

[fn1] The 1988 Amendments to the FHA do not contain a "grandfather clause" permitting pre-1988 senior citizen parks to continue discriminating against families with minor children if the housing lacks "significant facilities and services" City of Hayward, 36 F.3d at 838 n. 2. See 42 U.S.C. §3607 (b)(3)(A)