SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. LORI S. SATTLER** **PART** **02TR**

Justice

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TERRY NEWSON,

Plaintiff,

- v -

VIVALDI REAL ESTATE LTD., JASON HOROWYTZ, STEPHANIE DWAN

Defendant.

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INDEX NO. 452625/2022

MOTION DATE 06/28/2023

MOTION SEQ. NO. 002

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 002) 22, 23, 24, 27, 28, 30

were read on this motion to/for REARGUMENT/RECONSIDERATION.

In this action brought pursuant to the New York City Human Rights Law ("City HRL") alleging housing discrimination based on source of income, Defendants Jason Horowytz and Stephanie Dwan ("Unit Owners") move to reargue the Court's Decision and Order dated June 2, 2023 (NYSCEF Doc. No. 17, "Decision"), which denied their motion to dismiss the Complaint's cause of action against them. Plaintiff Terry Newson ("Plaintiff") opposes the motion.

The Complaint alleges that Plaintiff, who was eligible for housing vouchers through a program administered by New York City HIV/AIDS Services Administration ("HASA"), saw a rental listing for the Unit Owners' Brooklyn apartment on Zillow. He requested an application to rent the apartment through Zillow's contact form, at which time he asked whether the listing would accept HASA vouchers. The following day, he received an email from Kathy Woo ("Woo"), a real estate agent with Defendant Vivaldi Real Estate Ltd. ("Vivaldi"). She wrote: "To the bet [sic] of my knowledge, the building is not approved to receive any housing assistance vouchers." The Complaint alleges that Woo never subsequently contacted Plaintiff to

inform him that he could rent the apartment or to otherwise assist him with his inquiry or application. Plaintiff did not apply to rent the apartment or further communicate with Woo or anyone else regarding the apartment. Plaintiff commenced this action alleging violations of the City HRL's prohibition against housing discrimination based on source of income. He asserts separate causes of action against Vivaldi and the Unit Owners. The cause of action against the Unit Owners does not allege that the Unit Owners themselves engaged in discriminatory conduct, but rather that they "are vicariously liable for the discriminatory acts of the agents Vivaldi/Kathy Woo."

The Unit Owners moved to dismiss the Complaint as against them, and the Court denied their motion in the Decision. The Court found that the Complaint sufficiently pleads facts alleging a cause of action under New York City Administrative Code § 8-107(5) by alleging that Woo represented to Plaintiff that the apartment could not be rented to someone using HASA subsidies. The Unit Owners had further argued that they cannot be held responsible for Woo's conduct under § 8-107(5)(a). They argued that this section does not bind the Unit Owners for Woo's conduct and that the City HRL imposes vicarious liability on employers only, relying on § 8-107(13). The Court found that § 8-107(5)(a) applies to owners "or any agent . . . thereof," and that Woo was an agent of the Unit Owners. Therefore, it denied the Unit Owners' motion.

The Unit Owners now move for leave to reargue the Decision to the extent it found that they could be held vicariously liable for Woo's actions. They argue that such a finding is contrary to the express language of § 8-107(5)(a), which they maintain only provides that owners and their agents are liable for their own behavior. They further claim that the Court of Appeals "confirmed" that § 8-107(5)(a) imposes direct and not vicarious liability in *Doe v Bloomberg*, 36 NY3d 450, 460-461 (2021). They note that § 8-107(13) explicitly outlines when employers are

vicariously liable for discriminatory conduct, and that the *Doe* Court referred to that provision as "the vicarious liability provision" (*id.*). They maintain that because the legislature expressly chose to include a provision outlining the scope of vicarious liability as to employers, the Court cannot find that vicarious liability exists in any other context elsewhere in the statute.

Plaintiff opposes the motion. He argues that housing discrimination claims are tort claims, to which "traditional vicarious liability principles apply." He cites several federal cases in support of this argument, namely *Meyer v Holley*, 537 US 280 (2003) (traditional vicarious liability rules apply to housing discrimination claims brought under the Fair Housing Act). He contends that regardless of whether or not the City HRL includes an express vicarious liability provision related to owners, ordinary common law principles of vicarious liability apply.

Section 8-107(5)(a) provides:

> It shall be an unlawful discriminatory practice for the owner, lessor, lessee, sublessee, assignee, or managing agent of, or other person having the right to sell, rent or lease or approve the sale, rental or lease of a housing accommodation, constructed or to be constructed, or an interest therein, or any agent or employee thereof:
> (1) Because of the actual or perceived race, creed, color, national origin, gender, age, disability, sexual orientation, uniformed service, marital status, partnership status, or immigration or citizenship status of any person or group of persons, or because of any lawful source of income of such person or persons, or because children are, may be or would be residing with such person or persons: . . .
> (c) To represent to such person or persons that any housing accommodation or an interest therein is not available for inspection, sale, rental or lease when in fact it is available to such person.

The section also contains a parallel provision applying to real estate brokers (§ 8-107[5][c]). The City HRL must be "construed liberally for the accomplishment of the uniquely broad and remedial purposes thereof" and any exceptions or exemptions are to be construed narrowly (§ 8-130; *Williams v New York City Hous. Auth.*, 61 AD3d 62, 66-69 [1st Dept 2009]).

The Unit Owners argue that the Court of Appeals in *Doe v Bloomberg* expressly found that § 8-107(5)(a) does not make an owner liable for acts of its agent. In that case, the Court addressed whether an individual with an ownership interest in a business entity may be found to be an "employer" for purposes of workplace harassment claims brought under § 8-107(1). The Court held that "where a plaintiff's employer is a business entity, the shareholders, agents, limited partners, and employees of that entity are not employers" under the City HRL (36 NY3d at 459). Therefore, the Court found that these individuals may not be found vicariously liable pursuant to § 8-107(13)(b) in actions alleging workplace harassment. To the extent that "owners" are mentioned in the decision, they are discussed as part of the Court's analysis concluding that "owners" are distinct from "employers." Thus, this Court rejects the Unit Owners' assertion that *Doe* precludes a finding that a housing owner can be vicariously liable for discriminatory acts of an agent.

Section 8-107(5)(a) applies to "owners . . . or any agent . . . thereof." It is well established that, under common law, principals may be held vicariously liable in tort for acts of their agents acting within the scope of their authority (*Bigio v Coca-Cola Co.*, 675 F3d 163, 175 [2d Cir 2012], citing *Osipoff v City of New York*, 286 NY 422 [1941]; *see also News Am. Mktg. v Lepage Bakeries, Inc.*, 16 AD3d 146, 148 [1st Dept 2005]). "An action for housing discrimination is, in effect, a tort action, and ordinary tort-related vicarious liability rules apply. These principles provide that liability generally flows from the agent to the principal" (*Keith Short & Fair Hous. Justice Ctr. v Manhattan Apts., Inc.*, 916 F Supp 2d 375, 399 [SD NY 2012] [citing *Meyer*, 537 US at 285]).

The Court finds that the City Council intended for § 8-107(5)(a) to incorporate these common law principles such that housing owners can be held liable for an agent's acts

performed within their scope of authority. This interpretation is consistent with the requirement that the City HRL be construed "broadly in favor of discrimination plaintiffs, to the extent that such a construction is reasonably possible" (*Albunio v City of New York*, 16 NY3d 472, 477 [2011]). Likewise, given that there is substantial identity between the language and purposes of the City HRL and the Fair Housing Act (*Stalker v Stewart Tenants Corp.*, 93 AD3d 550, 551-552 [1st Dept 2012], citing *Sayeh v 66 Madison Ave Apt. Corp.*, 73 AD3d 459, 461 [1st Dept 2010], *Mitchell v Shane*, 350 F3d 39, 47 n 4 [2d Cir 2003]), and that the City HRL must be "assessed under more liberal standards, going beyond the counterpart state or federal civil rights laws (*Bennett v Time Warner Cable, Inc.*, 138 AD3d 598, 599 [1st Dept 2016]), a finding that the City HRL does not provide for vicarious liability would render it narrower than its federal counterpart, and therefore would be at odds with the statute's uniquely broad and remedial purposes.

Accordingly, the motion for leave to reargue is denied.

12/21/2023
DATE

LORI S. SATTLER, J.S.C.

CHECK ONE:		CASE DISPOSED		[X]	NON-FINAL DISPOSITION		
		GRANTED	[X] DENIED		GRANTED IN PART		OTHER
APPLICATION:		SETTLE ORDER			SUBMIT ORDER		
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN			FIDUCIARY APPOINTMENT		REFERENCE