

Fair Hous. Justice Ctr., Inc. v ELJ Mgt. Co.

2025 NY Slip Op 34865(U)

December 9, 2025

Supreme Court, New York County

Docket Number: Index No. 153969/2022

Judge: Dakota D. Ramseur

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. DAKOTA D. RAMSEUR PART 34M

Justice

-----X

FAIR HOUSING JUSTICE CENTER, INC.,

Plaintiff,

- v -

E L J MANAGEMENT COMPANY, JACBAY INC., ASTORIA
35 INC., HARARI REALTY CORP., CONTACT REALTY
CORP., CHRISTIAN QUICENO

Defendant.

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INDEX NO. 153969/2022

MOTION DATE 01/14/2025

MOTION SEQ. NO. 006

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 006) 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110

were read on this motion to/for AMEND CAPTION/PLEADINGS

In May 2022, plaintiff Fair Housing Justice Center, Inc. interposed this housing discrimination action against defendants Jacobay Inc. and Astoria 35 Inc. (as owners of three apartment buildings in Brooklyn and Astoria), ELJ Management Company (as their property manager), Contact Realty Corp. (a real estate brokerage firm, that lists, advertises, and shows the buildings' units), Harari Realty (another corporate broker working with ELJ Management), and Christian Quiceno (a real estate broker with Contact Realty). Plaintiff alleges that each defendant violated provisions of the New York State Human Rights Law (hereinafter "NYSHRL") and New York City Human Rights Law ("NYCHRL") that make it an unlawful discriminatory practice for real estate owners and brokers to refuse to sell, rent, or lease housing accommodations to any person based on the lawful source of their income (referred to as "source of income discrimination"). In motion sequence 006, plaintiff moves pursuant to CPLR 3025(b) for leave to amend its complaint for a second time and name J C Dwight as an additional defendant. The motion is opposed.

BACKGROUND

Plaintiff is a New York City-based organization, which employs "testers" to pose as renters or homebuyers to assess whether real estate firms are complying with Executive Law §296 of the NYSHRL and Administrative Code §8-107 of the NYCHRL and ensure that firms are not discriminating based on a resident/tenant's source of income. (NYSCEF doc. no. 14 at ¶8, amended complaint.) According to plaintiff's proposed second amended complaint ("SAC"), in contrast to the above named-defendant owners and/or managers, it only learned of J C Dwight's "decision-making authority over the rental of apartments" in the three buildings in September 2024, when Contact Realty and Harari Realty produced emails allegedly showing that J C Dwight "received, reviewed, and decided whether to accept or reject rental application."

(NYSCEF doc. no. 99 at ¶ 22, proposed second amended complaint; *see also* NYSCEF doc. no. 98 at ¶¶7-8, plaintiff aff. in support.) As pled, those emails include 30 from Yair Harari, of Harari Realty, to J C Dwight employees that purport to be rental applications; another 14 from J C Dwight back to Harari to approve rental applications or send copies of leases; and 15 from J C Dwight employees to Harari that list vacant units in the three buildings. (NYSCEF doc. 99 at ¶22.) All emails are alleged to have been sent between 2021 and 2024. (*Id.*) As such, plaintiff's proposed SAC names J C Dwight as an additional defendant who engaged in the same income-source discrimination in violation of State and City HRL statutes as the other real estate entities. (*Id.* at ¶¶22, 64-65, 87, 105, counts 1 and 3.)

In addition to adding J C Dwight as a defendant, the proposed SAC includes various factual averments related to defendants' alleged delay in producing material responses to plaintiff's discovery demands. For example, in paragraphs 69 through 77, plaintiff alleges that Jacobay Inc., Astoria 35 Inc., and ELJ Management (identified as the "Alpert Defendants" in plaintiff's SAC) failed to respond to its document requests and interrogatories for 18 months and produced an insurance policy that identified J C Dwight as a named insured over a year after the Court first ordered its production. (*Id.* at ¶¶69-77.) Lastly, in citing defendants' "rent rolls" that show no tenants used a Section 8 housing voucher (*id.* at ¶¶64-68), plaintiff's proposed SAC alleges that defendants' Human Rights Law violations have continued through to the present. (*Id.*)

The Parties' Arguments

In support of leave to amend, plaintiff argues that the proposed amendments are sufficient to state cognizable causes of action against J C Dwight under State and City HRL statutes, and that the other named defendants cannot show that they would be prejudiced.

By contrast, defendants ELJ Management, Jacobay Inc. and Astoria 35 Inc. contend that the proposed SAC contains descriptions of the parties' discovery disputes that are immaterial, prejudicial, and unrelated to the "transactions, occurrences, or series of transactions or occurrences, intended to be proven or the material elements of his cause of action. (NYSCEF doc. no. 107 at 5, Alpert def. memo in opposition.) In their view, since plaintiff's description of this case's "history of discovery disputes" in the proposed SAC bears no relation to whether any of the defendants engaged in source-of-income discrimination, the Court must deny leave to amend in its entirety (as opposed to merely strike certain portions under CPLR 3024 [b]). (*Id.* at 5-6.) The Alpert Defendants also contend that claims against J C Dwight are untimely since the plaintiff's testers inquired into apartments in April, May, and June of 2021 and plaintiff is attempting to add J C Dwight outside the State and City HRL's respective three-year statute of limitations period. To this, they add that the "relation-back" doctrine does not apply as J C Dwight is not a party united in interest to any of the original parties and the claims against it do not arise out of the same conduct, transaction, or occurrence. (*Id.* at 12-14.) Lastly, they maintain leave to amend *is* prejudicial given the extensive litigation that has already occurred and the delay that a trial would result in if J C Dwight were to be added as a defendant. (*Id.* at 15.)

Defendants Harari Realty Corp and Contact Realty Corp. oppose plaintiff's motion on different grounds. They contend that, since plaintiff's testers did not actually have Section 8

vouchers, they did not actually violate the statute, which would mean that plaintiff lacks the standing and capacity to bring this suit. (NYSCEF doc. no. 103 at 2-8, aff. in opposition.) In its reply, plaintiff maintains that the proposed amendments (1) are timely under the continuing wrong doctrine, (2) that the proposed allegations are neither scandalous nor prejudicial, and (3) that any delay was a direct result of defendants' failure to comply with discovery deadlines. (NYSCEF doc. no. 98 at 4-9, plaintiff's reply.)

DISCUSSION

Leave to amend pleadings should be freely granted in the absence of prejudice or surprise so long as the proposed amendment is not palpably insufficient as a matter of law. (*Mashinsky v Drescher*, 188 AD3d 465, 466 [1st Dept 2020].) Leave to amend may be denied when the proposed allegations fail to establish any element of the underlying cause of action as such allegations are deemed palpably insufficient. (*See Ganeiva v Black*, 216 AD3d 424 [1st Dept 2023].)

At the outset, the Court must reject Harari Realty and Contact Realty's argument that plaintiff lacks standing because its testers did not actually have Section 8 vouchers. Their affidavit does not, and cannot, cite to appellate caselaw—whether Federal or State—in which a court has held that an advocacy organization has no standing where it (1) employs testers to ensure compliance the State and City Human Rights Laws and (2) alleges that the defendants discriminated against said testers based on prohibited characteristics. The Court's finding is in line with the New York State Division of Human Rights, which expressly found that housing advocacy organizations, such as plaintiff, "can file a complaint about any discriminatory policy or practice of a housing provider... which is revealed by responses of a housing provider to inquires by the agency or its testers." (*See Housing Rights Initiative, Inc. v Elliman*, 2023 NY Slip Op. 31497(U) [Sup. Ct. NY County 2023].) As *Elliman* further noted, the guidance cites a variety of cases that recognize organizational standing to seek injunctive or monetary relief based on discriminatory statements made to testers. (*See Fair Housing Justice Center, Inc. v Allure Rehabilitation Services LLC*, 2017 US Dist LEXIS 157882 [EDNY 2017]; *Olsen v Stark Homes, Inc.*, 759 F3d 140 [2d Cir. 2014].) Lastly, Harari Realty and Contract Realty do not challenge that plaintiff, like in *Elliman*, has sufficiently pled an organizational harm through its diversion of resources to investigate and uncover potential discrimination that has been the basis for standing in federal court cases such as *Moya v United States Dept. of Homeland Sec.* (975 F3d 120, 130 [2d Cir. 2020]), *Housing Rights Initiative v Compass, Inc.* (2023 US Dist. LEXIS 25235 [SDNY 2023]) and *Fair Housing Justice Center Inc. v 203 Jay St. Associates, LLC* (2022 US Dist. LEXIS 138975 [EDNY 2022].)

The Court also finds, on this record, that the proposed SAC's causes of action against J C Dwight are timely. Actions under the NYSHRL and NYCHRL have a three-year statute of limitations. (*See New York Executive Law § 297[5]; Administrative Code of City of New York § 8-502.*) The continuing harm doctrine is an exception to the general rule that the statute of limitations runs from the time of the cause of action and may be applied where there are a series on continuing wrongs to toll the running of the limitations period to the date of the last wrongful act. (*See 225 ADC Realty Corp. v Popular Jewelry Corp.*, 111 AD3d 510 [1st Dept 2023] citing *Capruso v Village of King Point*, 23 NY3d 631 [2014].) Under both the State and City HRLs, the

continuing wrong doctrine must be construed liberally to achieve their broadly remedial purposes. (*Center for Independence of the Disabled v Metropolitan Transp. Auth.*, 184 AD3d 197, 201 [1st Dept 2020]; New York Executive Law § 300; Administrative Code of City of New York § 8-130.) As such, dismissal is not warranted unless it can be said, as a matter of law, that the alleged acts, if proven, were not part of a single continuing pattern of unlawful conduct extending into the limitation period. (*Ferraro v New York City Dept. of Educ.*, 115 AD3d 497, 497-498 [1st Dept 2014].)

Here, plaintiff's proposed SAC alleges that J C Dwight is headquartered at the same address as defendant ELJ Management and that Charles Alpert is the principal owner of both entities. (NYSCEF doc. no. 99 at ¶22.) Further, even though plaintiff's testers did not submit housing applications for units in the three apartment buildings in 2021, plaintiff has pled that J C Dwight "received, reviewed, and decided whether to accept or reject rental application" from the building's owners and Harari Realty from 2021, when the limitations period would have accrued, through to 2024. And plaintiff has also pled, from defendants' rent roll records, that no apartment in the three buildings has been rented to someone with a Section 8 voucher at any point from 2007 to 2024. Considering, then, the relationship between J C Dwight to ELJ Management, its involvement in approving and denying application at these buildings for a period that extends into the three-year statute of limitations window, and the added allegation that no Section 8 voucher has been accepted by the building's ownership or management, the Alpert Defendants have not established, as a matter of law, that the complained-of conduct were discrete, isolated acts and not part of a single continuing pattern of unlawful conduct.

The Alpert Defendants' contention that the proposed SAC contains immaterial and/or prejudicial allegations relating to the parties' discovery responses is aimed at the factual averments in paragraph 22, an accompanying footnote, and paragraphs 66 through 77, a section entitled "FHJC Did Not Learn About J C Dwight's Involvement in the Alpert Defendants' Unlawful Discrimination Until Recently." (NYSCEF doc. no. 99.) To the extent that the Court were inclined to strike individual allegations that it found were immaterial or prejudicial, the Alpert Defendants note—and plaintiff does not dispute—that the proposed SAC is not, as of yet, an official pleading, which would mean those allegations cannot be stricken pursuant to CPLR 3024 (b). (*See* NYSCEF doc. no. 107 at 9-10; NYSCEF doc. no. 108 at 15-16, plaintiff reply memo of law.) Instead, these defendants contend that the leave must be denied in its entirety and that plaintiff should be required to move to amend without the purportedly defective paragraphs. (*Id.*) The Court agrees.

In reviewing the proposed SAC, the complained-of paragraphs do make material allegations against J C Dwight. As described above, paragraph 22 asserts that J C Dwight's principal owner is Charles Alpert, that it had "decision-making" authority, and that J C Dwight employees communicated with defendant Harari Realty in accepting or denying apartment applications. Each is relevant to plaintiff's claim that J C Dwight "refuse to sell, rent, lease, or approve the sale or rental or otherwise deny housing to a person based upon the lawful source of income." Yet the same paragraphs also assert allegations that are clearly immaterial to plaintiff's rental discrimination causes of action and, ultimately, prejudicial to defendants. For example, in paragraph 22, plaintiff cites to the content of emails communicated between J C Dwight and Harari Realty in assessing rental application, emails which are then referred to in paragraphs 69

and 73 in the context of the Alpert Defendants’ “significant and ongoing delays during the pendency of this action in producing discovery... [which] substantially delayed plaintiff’s ability to discover J C Dwight until [they] produced emails revealing its existence.” (NYSCEF doc. no. 99 at ¶¶22, 69, 73.) In paragraph 77, plaintiff again accuses these defendants of failing to timely respond to discovery requests for a year and a half, which “should have included information and documents showing J C Dwight’s involvement in reviewing and deciding whether to accept or reject rental applications.” (Id. at ¶77.) The same can be said for paragraphs 64 through 68, which cite rental rolls that were purportedly exchanged after Alpert Defendants’ delay. Footnote 2 is perhaps even more prejudicial. Plaintiff explains that the emails produced thus far “likely do not represent all emails exchanged between J C Dwight and [the defendants]...because [the Alpert Defendants] represented during discovery that some of their responsive emails were destroyed or deleted.” (Id. at n 2.) As the Alpert Defendants contends, the nature of the parties’ discovery dispute is in no way relevant to the transactions or occurrence that plaintiff must prove in order to show that J C Dwight, or any of the other defendants, discriminated against individuals with Section 8 vouchers. Moreover, it strains credulity to believe that allegations accusing defendants of delaying, destroying, or hiding evidence during discovery would not be prejudicial to defendants.¹ Accordingly, since (1) neither party disputes that the Court is without authority to strike the prejudicial elements of the proposed SAC under CPLR 3024(b), and (2) motions for leave to amend should be denied where the opposing party has identified prejudice to them that would result from granting the motion (See *Ganeiva v Black*, 216 AD3d 424 [1st Dept 2023]), plaintiff’s motion must be denied.

Accordingly, for the foregoing reasons, it is hereby

ORDERED that plaintiff’s motion for leave to amend is denied with leave to renew; and it is further

ORDERED that counsel for the Alpert Defendants shall serve a copy of this order, along with notice of entry, on all parties within ten (10) days.

This constitutes the Decision and Order of the Court.

12/9/2025
DATE

DAKOTA D. RAMSEUR, J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>
	<input type="checkbox"/>	GRANTED	<input checked="" type="checkbox"/> DENIED	GRANTED IN PART	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER		SUBMIT ORDER	
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE

¹ Plaintiff suggests that the complaint cannot be prejudicial because a jury will not see it. The Court is not persuaded. (See *Atkins v Metronome Events, Inc.*, 132 NYS3d 15 [1st Dept 2020] [new trial not warranted where jury viewed complaint, even when it was not placed into evidence].)