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

DIANE LINK WALLACE, et. al., )  
)  
Plaintiffs, )  
)  
v. )  
)  
THE CHICAGO HOUSING )  
AUTHORITY, et al., )  
)  
Defendants. )


No. 03 C 0491  
The Honorable Judge  
Ruben Castillo

NOTICE OF FILING

TO: CHRISTINA M. TCHEN DONALD HUBERT  
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PLEASE TAKE NOTICE that on March 10, 2004, Plaintiffs filed with the Clerk of the United States District Court for the Northern District of Illinois, Eastern Division, **Plaintiffs' Reply to Defendants' Memorandum in Opposition to Plaintiffs' Motion to Reconsider Section I of this Court's December 23, 2003 Memorandum Opinion and Order**, a copy of which is hereby served upon you.

Respectfully submitted,

  
One of the Attorneys for Plaintiffs

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

WALLACE, et al.,	)	
	)	
Plaintiffs,	)	No. 03 C 0491
	)	Hon. Ruben Castillo
v.	)	
	)	
CHA, et al.,	)	
	)	
Defendants.	)	

**Plaintiffs' Reply to Defendants' Memorandum in Opposition to Plaintiffs' Motion to Reconsider Section I of this Court's December 23, 2003 Memorandum Opinion and Order**

In reply, Plaintiffs respectfully ask this Court to redirect its attention to the Fair Housing Act claims challenging perpetuation of segregation (Count V), adverse discriminatory impact (Counts VIII, IX, and X), and racial steering (Count VI). We address these issues in Parts II-IV below. Part I addresses the review standard applicable on Plaintiffs' Motion to Reconsider. In Part V, we address whether the Relocation Rights Contract could interrupt CHA's Fair Housing Act liability as an "intervening event," and whether the Plan for Transformation had any effect on the continuing resegregation of CHA relocatees.

**I. This Court has Authority to Reconsider Its Own Non-Final Ruling**

When an order "adjudicates fewer than all the claims of a case," a motion for reconsideration is appropriate when it is "consonant with justice," or if a court has "made an error not of reasoning but of apprehension." *Young v. Murphy*, 161 F.R.D. 61, 62 (N.D. Ill. 1995). Defendants quote two cases out of context to propose that this Court lacks authority to reconsider its own ruling on the motion to dismiss. Both *Trustees of Pension, Welfare &*

*Vacation Fringe Benefit Funds of IBEW Local 701 v. Pyramid Electric*, 223 F.3d 459, 461 (7th Cir. 2000), and *Avitia v. Metro. Club of Chicago, Inc.*, 49 F.3d 1219, 1227-28 (7th Cir. 1995), examine the court's power over final orders, and the interrelation of that power to the requirements for an appeal. They do not stand for the proposition that this Court cannot consider its non-final ruling.

## **II. The Response's Factual Assertions are Inappropriate at the Motion to Dismiss Stage**

The Response is written as if the only facts alleged in Plaintiffs' Amended Complaint are a single instance when CHA steered Ms. Hart and a single instance when CHA steered Ms. Maples. (Def. Opp. at 7, 10-12.) In actuality, Plaintiffs allege a pattern-or-practice since 1995 of "displacing Plaintiffs from their homes to allow the rapid demolition" of CHA buildings. (Am. Comp. ¶ 68.) Plaintiffs further allege that this pattern-or-practice is augmented by CHA's inappropriate or non-existent relocation policies. (Am. Comp. ¶ 70.) Finally, Plaintiffs allege that this pattern-or-practice "had the effect of discouraging Plaintiffs from inspecting or renting in" opportunity areas (*Id.*) These factual allegations must be accepted as true at this stage. *Lee v. City of Chicago*, 330 F.3d 456, 459 (7th Cir. 2003)(complaint reviewed "in the light most favorable to the plaintiff, taking as true all well-pleaded factual allegations and making all possible inferences from those allegations in [complainant's] favor").<sup>1</sup>

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<sup>1</sup> As stated in Plaintiffs' opening memorandum, the Amended Complaint repeatedly uses such phrases as "policies and practices" and "continuously and consistently," phrases which should be interpreted against the background of cases that refer to similar phrases as conveying the concept of pattern or practice. (Motion, pp. 4-5, and n. 2.) Without reasoned discussion, CHA's Opposition simply asserts that these are allegations of discrete acts.

### III. Plaintiffs' Perpetuation of Segregation and Adverse Disparate Impact Claims Necessarily Allege a Pattern-or-Practice

The Response accepts that, if a claim cannot be articulated based on an isolated incident, then the claim is timely if any act that is part of that claim falls within the limitations period. (Def. Opp. at 10.) Defendant's Response does not contest that Plaintiffs' perpetuation of segregation and adverse disparate impact claims are just such claims that cannot be articulated based on an isolated incident. The Response does not mention either of these claims at all.

Instead, the Response speaks generically of Plaintiffs' claims, as if they are a single, highly individual, and completely undefined claim. A representative statement occurs on page 12 of Defendant's Memorandum in Opposition, where Defendants write:

Whether such claims – if true – amount to discrimination, there is no question that they are claims for direct, discrete acts that accrued when they happened.

However, the segregation of the purported class in this case could not have been achieved through the relocation of one single family out of a CHA development and into a segregated neighborhood. The single act of moving Ms. Wallace's family to a South Side neighborhood is not enough to perpetuate the segregation of CHA families. A discrete act is not enough to state such a cause of action for perpetuation of segregation. *United States v. Yonkers Board of Education*, 624 F.Supp. 1276, 1374 (S.D.N.Y. 1985) (“[T]he case before us is a pattern and practice case, the very essence of which is a recognition that the illegal basis of actions may emerge clearly only when the actions are viewed together.”); *Betsey v. Turtle Creek Assoc.*, 736 F.2d 983, 987 (4th Cir. 1984).

This is similarly true in relation to adverse disparate impact. It cannot be said that an adverse disparate impact claim is a claim “for direct, discrete acts that accrued when they

happened.” (Def. Opp. at 12.) Only a policy, pattern or practice can have an adverse disparate impact on a protected group. A single discrete act towards one individual in that group is not enough to adversely impact the whole group. *Metropolitan Housing Development Corp. v. Village of Arlington Heights*, 558 F.2d 1283, 1290 (7th Cir. 1977)(adverse disparate impact exists where there is a “greater adverse impact on one racial group than on another”); *Simms v. First Gibraltar Bank*, 83 F.3d 1546, 1555 (5th Cir. 1996)(“[T]he question is whether a policy, procedure, or practice . . . has a significantly greater discriminatory impact on members of a protected class.”)

Plaintiffs allege a pattern-or-practice of the displacement of the purported class to allow the rapid demolition of their homes, augmented by CHA’s inappropriate or non-existent relocation policies. (Am. Comp. ¶¶ 68, 70.) Racial steering is only tangentially related to this claim. If Defendants addressed this pattern-or-practice, their argument that “the *character* of plaintiffs’ claims [alleges] ‘discrete discriminatory acts,’” (Def. Opp. at 8 (emphasis in original)) would be immediately exposed to its inherent contradiction. The “character” of Plaintiffs’ perpetuation of segregation and adverse disparate impact claims is that they cannot be articulated based on a “discrete discriminatory act.” *Yonkers*, 624 F.Supp. at 1374; *Simms*, 83 F.3d at 1555; *Betsey*, 763 F.2d at 987; *Honorable v. The Easy Life Real Estate System, Inc.*, 182 F.R.D. 553, 564 (N.D. Ill. 1998); Robert G. Schwemm, *Housing Discrimination: Law and Litigation* § 10:7 at 10-53.

Because these claims cannot be articulated based on a discrete discriminatory act, it is natural that the statute of limitations should require filing “not later than 2 years after the . . . termination of an alleged discriminatory housing practice.” 42 U.S.C. § 3613(a)(1)(A). Further,

where Congress does not adopt such language, the Supreme Court has interpreted this “termination” concept into the statute to accommodate claims consisting of multiple acts “which may not be actionable on [their] own.” *National Railroad Passenger Corp. v. Morgan*, 536 U.S. 101, 115 (2002); (Plaintiffs’ Motion to Reconsider at 10 fn. 4). In terms of Plaintiffs’ perpetuation of segregation and adverse disparate impact claims, Plaintiffs urge this Court to consider the inherent incompatibility of these particular pattern-or-practice claims to a statute of limitations doctrine that is triggered by a discrete discriminatory act. Instead, Plaintiffs request that this Court follow the statutory and precedential guidance that begins the statute of limitations period at the termination of the discriminatory practice.

#### **IV. Plaintiffs’ Steering Claims are Timely under *Havens***

The Response misleads the Court in suggesting that *Havens Realty Corp. v. Coleman*, 455 U.S. 363 (1982), did not find a continuing violation respecting the pattern-or-practice of steering in that case. The Response is wrong when it argues that “[i]n *Havens*, there was only one claim of steering, and it was timely filed.” (Def. Opp. at 10.) In fact, the Supreme Court addressed instances of steering involving three individuals named Willis, Coleman and Coles.

As the Court wrote:

Willis and Coleman have alleged that petitioners’ continuing pattern, practice, and policy of *unlawful racial steering* has deprived them of the benefits of interracial association arising from living in an integrated neighborhood. Plainly the claims, as currently alleged, are based not solely on isolated incidents involving the two respondents [Willis and Coleman], but a continuing violation manifested in a number of incidents – including at least one (involving Coles) that is asserted to have occurred within the 180-day period.

*Id.* at 380-81 (emphasis supplied). The Court found the incidents of steering, which occurred prior to the statute of limitations cut-off, timely because these incidents were part of a “pattern, practice, and policy of unlawful racial steering.” *Id.* at 380.

The Court did not find a continuing violation respecting only one individuals’ (Coleman’s) false information claim under § 804(d) of the Fair Housing Act. Respecting that claim, the court found a lack of connection between the timely steering allegation of Coles and untimely false information claim alleged by Coleman.<sup>2</sup> *Id.* at 381.

The Defendants’ analysis of *Havens* confuses the concepts of standing and cause of action. *Havens* recognized that “neighborhood injury” is sufficient injury to give rise to *standing* under Article III of the Constitution. *Id.* at 372-79, Schwemm § 12A:2 at 12A-5. However interrelated the concepts, *standing* does not establish a *cause of action*. The Fair Housing Act provides causes of action, and steering is one such cause of action. *City of Chicago v. Matchmaker Real Estate Sales Center Inc.*, 982 F.2d 1086, 1096 (7th Cir. 1992). *Havens* clearly addressed steering as a type of cause of action under the Fair Housing Act. Schwemm § 13:5 at 13-14. As such, when *Havens* ruled that Willis’ and Coleman’s claims were timely, the Court found a continuing violation based on the character of that steering claim – “a continuing violation manifested in a number of incidents.” *Havens*, 455 U.S. at 381. Plaintiffs similarly allege a pattern-or-practice of racial steering, not just in the initial move from a CHA building,

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<sup>2</sup> The Court in *Havens* found no connection between the two allegations because the claimant had standing as a “tester” and could not allege that the timely racial steering incidents involving another Plaintiff deprived her of her tester right to receive truthful information. *Id.* at 381. See also *Village of Bellwood v. Gorey*, 664 F. Supp. 320, 327 (N.D. Ill. 1987). Since none of the Plaintiffs in this case are testers, the Court’s limitation is irrelevant here.

but also in subsequent moves. (Am. Comp. ¶¶ 255-56, 95-117.) Accordingly, *Havens* is directly on point, and should be applied to CHA's pattern-or-practice of racial steering.

Even accepting Defendants' flawed analysis, Plaintiffs' steering claims are of the same nature as the claims Defendants identify as a "neighborhood claim."<sup>3</sup> (Def. Opp. at 11.) All named Plaintiffs plead their desire to live in "a racially integrated neighborhood." (Am. Comp. ¶¶ 10-16.) All the Plaintiffs who have moved out of CHA family housing allege that they were denied the ability to live in an integrated neighborhood because of CHA's action or inaction. (Am. Comp. ¶¶ 131, 136, 141-44, 157, 161, 166-70, 182-88, 199-201, 209, 224-26.) They plead the injury of being "denied the opportunity to rent dwelling units in racially integrated areas of economic opportunity." (Am. Comp. ¶ 39.) Plaintiffs do not seek individual monetary damages for the steering, but instead request injunctive relief. Just like in *Havens*, Plaintiffs in this case complain of the denial of their right to live in an integrated neighborhood because of steering, and these claims should continue to be found timely so long as one act comprising the claim occurs within the statute of limitations. *Havens*, 455 U.S. at 380-81.

**V. The Relocation Rights Contract and the Plan For Transformation Are Not "Intervening Events"**

In language that should control at this stage of the case, the Complaint alleges that the Relocation Rights Contract had no effect, curative or otherwise, on the resegregatory pattern in which CHA has relocated hundreds of families, on the disparate impact that pattern is having, and has had on Plaintiffs, and on the persisting steering practices with which relocation is in part

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<sup>3</sup> Comparing named Plaintiffs to fair housing testers is strikingly inappropriate. (Def. Opp. at 11-12.) Clearly, Plaintiffs did not serve as testers, and, unlike a tester, actually suffered the harm of moving into segregated neighborhoods. (Am. Comp. ¶¶ 138, 150, 163, 171, 200, and 226.)

being carried out. (Am. Comp. ¶¶ 72, 86.) Ignoring this, the Response looks outside the pleadings to argue that other events under the “Plan for Transformation” cut off liability. (Def. Opp. at 7.) This argument is improper at the motion to dismiss stage. *Lee*, 330 F.3d at 459 (stating all possible inferences in plaintiffs favor must be made from the allegations of the complaint).

Plaintiffs allege in their First Amended Complaint that the “Plan for Transformation” is nothing more than a catch-phrase for a plan to demolish and redevelop CHA properties that began in 1995. (Am. Comp. ¶ 86.) Plaintiffs also allege that adoption of this catch-phrase has had no effect on the pattern-or-practice of rapid demolition with no or inadequate relocation services. (Am. Comp. ¶ 72.) At the motion to dismiss stage, those factual allegations must be accepted as true. *Lee*, 330 F.3d at 459 (7th Cir. 2003).

Whether or not any action or combination of actions by CHA remedied CHA’s violation of the Fair Housing Act should be decided by the trier of fact. At this stage, in light of the academic studies that have found an unbroken continuum of resegregation regardless of when relocatees moved, it is impossible to conclude that a major curative event occurred. (Am. Comp. ¶¶ 72(c), 121 and Exhibit A.). CHA’s claims about the effectiveness of the Relocation Rights Contract and the Plan for Transformation must therefore be rejected.

## **VI. Conclusion**

In the two years since *Morgan* was decided, no court other than this one has applied *Morgan* to the Fair Housing Act’s statute of limitations. *Morgan*’s “discrete acts” analysis interprets statutory language completely distinct from the Fair Housing Act’s “termination” language. Plaintiffs’ perpetuation of segregation and adverse disparate impact claims are

necessarily pattern-or-practice claims, for which the statute of limitations begins at the termination of the pattern-or-practice. Plaintiffs' steering claims are similarly alleged as a pattern-or-practice, and are timely under *Havens*. A contrary finding would be a departure from the language of the Fair Housing Act and Supreme Court precedent interpreting that Act.

Respectfully submitted,

  
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**CERTIFICATE OF SERVICE**

I, Lisa T. Alexander, an attorney, hereby certify that on Wednesday, March 10, 2004, I caused a true and correct copy of **Plaintiffs' Reply to Defendants' Memorandum in Opposition to Plaintiffs' Motion to Reconsider Section I of this Court's December 23, 2003 Memorandum Opinion and Order** to be served by hand delivery upon:

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