SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

EQUAL RIGHTS CENTER,	)	
Plaintiff	)	
	)	**Case No. 2022-CA-1582-R(RP)**
v.	)	
	)	**Judge Neal E. Kravitz**
ADAMS INVESTMENT GROUP, LLC, *et al.*,	)	
	)	
Defendants	)	

OMNIBUS ORDER DENYING DEFENDANTS ENTRATA, INC.'S AND BARKAN MANAGEMENT COMPANY, INC.'S MOTIONS TO DISMISS

Before the court are three motions to dismiss: two filed by defendant Entrata, Inc. ("Entrata"), and one filed by defendant Barkan Management Company, Inc. ("Barkan"). Entrata moves to dismiss the claims alleged against it in the third amended complaint of plaintiff Equal Rights Center ("ERC"), as well as those alleged against it in the complaint of intervening plaintiff District of Columbia ("the District"). Entrata contends that both plaintiffs lack standing to sue, *see* Super. Ct. Civ. R. 12(b)(1), and that both plaintiffs' complaints fail to state a claim on which relief can be granted, *see* Super. Ct. Civ. R. 12(b)(6). Barkan moves to dismiss the claims alleged against it in ERC's third amended complaint, contending that the third amended complaint fails to state a claim on which relief can be granted. *See id*. All three motions have been fully briefed.

The court has carefully considered the parties' arguments and the entire record of the case. For the following reasons, the court concludes that all three motions must be denied.

Background

ERC is a national civil rights organization that employs federal, state, and local anti-discrimination laws to advocate for an end to discriminatory practices in housing, employment, and public accommodations. The third amended complaint names Entrata, Barkan, Adams

Investment Group LLC, Adams-Cathedral LLC, and Broadhouse Management Group LLC ("Broadhouse") as defendants. ERC alleges that as owners and managers of the Adams View apartments on Wisconsin Avenue NW the defendants have maintained a policy of refusing to rent apartments to prospective tenants with Housing Choice vouchers (commonly known as Section 8 vouchers). ERC alleges that the defendants' policy violates provisions of the District of Columbia Human Rights Act ("DCHRA") prohibiting source-of-income discrimination, *see* D.C. Code §§ 2-1402.21(a), (e), and the effectuation of policies having a disparate and discriminatory impact on renters based on race, *see* D.C. Code § 2–1402.68. ERC alleges further that through their violations of the DCHRA the defendants have engaged in an unfair or deceptive trade practice within the meaning of the District of Columbia Consumer Protection Procedures Act ("DCCPPA"). *See* D.C. Code § 28-3904.

Entrata is a nationwide corporation that provides support to property management companies through "property management software and solutions" and "call center support to assist property managers with leasing inquiries." Entrata Mot. at 2. Pursuant to a contract with Broadhouse, Entrata fielded calls and inquiries from prospective tenants of Adams View. *Id.*

Adams-Cathedral LLC was the owner of Adams View at all times relevant to the complaint. Adams Investment Group LLC is the owner of the real estate investment portfolio of which Adams View is a part.

On December 16, 2022, the court granted the District's motion for leave to intervene and allowed the District to file its own complaint against the defendants echoing ERC's allegations.

Barkan was named as a defendant for the first time in ERC's third amended complaint. It is a property management company alleged to be a successor-in-interest to Broadhouse.

Legal Standard

A complaint is subject to dismissal under Rule 12(b)(6) for failure to state a claim on which relief can be granted if it does not satisfy the requirement, set forth in Rule 8(a)(2), that it contain "a short and plain statement of the claim showing that the pleader is entitled to relief." *See Potomac Dev. Corp. v. District of Columbia*, 28 A.3d 531, 543–44 (D.C. 2011). The notice pleading rules do "not require detailed factual allegations," *id*. (internal quotation marks omitted) (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)), and all factual allegations in a complaint challenged under Rule 12(b)(6) must be presumed true and liberally construed in the plaintiff's favor, *Grayson v. AT&T Corp.*, 15 A.3d 219, 228–29 (D.C. 2011) (en banc). Nevertheless, "a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face," and the plaintiff must plead "factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Potomac Dev. Corp.*, 28 A.3d at 544 (internal quotation marks omitted) (quoting *Iqbal*, 556 U.S. at 678). Although a plaintiff can survive a Rule 12(b)(6) motion even if "recovery is very remote and unlikely," *Grayson*, 15 A.3d at 229 (internal quotation marks omitted), the "factual allegations must be enough to raise a right to relief above the speculative level," *OneWest Bank, FSB v. Marshall*, 18 A.3d 715, 721 (D.C. 2011) (internal quotation marks and brackets omitted). Conclusory allegations "are not entitled to the assumption of truth," and while "legal conclusions can provide the framework of a complaint, they must be supported by factual allegations." *Potomac Dev. Corp.*, 28 A.3d at 544 (citing *Iqbal*, 556 U.S. at 664).

A complaint is subject to dismissal under Rule 12(b)(1) for a lack of subject matter jurisdiction if the plaintiff lacks standing to bring the claims alleged. *UMC Dev., LLC v. District of Columbia*, 120 A.3d 37, 43 (D.C. 2015).

Discussion

The court will address each of the moving defendants' arguments in turn.

I. Entrata's Motions to Dismiss

Entrata contends that the claims brought against it by both ERC and the District fail for two reasons: (1) as a third-party contractor and subagent of Broadhouse, Entrata is not a proper party to claims brought under either the DCHRA or the DCCPPA; and (2) both ERC and the District lack standing to sue under those statutes.

A. Agency

Entrata argues that it was an agent acting in "good faith" on behalf of a "disclosed principal" at all relevant times and that it therefore cannot be held liable consistent with long-established principles of agency law. *See Henderson v. Phillips*, 195 A.2d 400, 402 (D.C. 1963). Entrata contends, in this regard, that it did not establish the discriminatory policies at issue and that its role was strictly limited to giving callers information provided by Broadhouse. *See* Entrata Mot. at 2. ERC responds that Entrata's employees directly participated in the discriminatory action by telling callers that Adams View did not accept Section 8 voucher holders, rendering Entrata's status as an agent or sub-agent immaterial.

The court finds Entrata's agency-based arguments unpersuasive. While *Henderson* and other similar cases address agent liability in breach of contract cases in which agents have entered into contracts on behalf of their principals, the analysis is different where, as here, the issue "is whether an agent can be held personally liable for violating a statute on behalf of a principal." *Scott v. Fedchoice Fed. Credit Union*, 274 A.3d 318, 327 (D.C. 2022) (allowing for agent liability under the Maryland Consumer Debt Collection Act). Entrata thus cannot rely on its status as an agent to absolve itself of liability for ERC's claims.

Relatedly, Entrata argues that analogous cases brought under the federal Fair Housing Act ("FHA") limit liability to landlords or housing providers. As an example, Entrata cites to *Clifton Terrace Assocs., Ltd. v. United Techs. Corp*., 929 F.2d 714, 719 (D.C. Cir. 1991), in which the court examined both the FHA and the DCHRA and held that an owner could not sue an elevator company for refusing to provide service to his building. Entrata contends that ERC and the District do not allege that Entrata itself acted with discriminatory motive, and that for all it knew, there could have been a legitimate reason behind the policy, such as the existence of rents exceeding the voucher program limits. Entrata protests that the plaintiffs are essentially requiring it to act as its clients' legal consultant. Finally, Entrata argues that it cannot be held liable for discrimination under a disparate impact theory because it had no policy or practice of its own beyond that of following its client's instructions.

None of these rationales and arguments absolves Entrata of its responsibility to comply with the law. Entrata points to no section of the DCHRA that limits the class of persons and entities that may be held accountable for violations of the statute's anti-discrimination provisions. Indeed, the DCHRA plainly states that "[i]t shall be an unlawful discriminatory practice to do any of the following acts…" D.C. Code § 2–1402.21. The only exceptions recognized in § 2–1402.24 pertain to owner-occupied and single-family homes rented by the owner. *Clifton Terrace* dealt with a third-party contractor that had no agency relationship of any kind with the owner or management. That is not the situation here. And Entrata's argument that ERC must allege a policy or practice with discriminatory effects that originated with Entrata is merely a restatement of its good-faith agent argument; Entrata has not pointed to any authority that says the perpetrator of an "unlawful discriminatory practice," *see* D.C. Code §§ 2–1402.21, 2–1402.68, must also be the party that establishes the policy or practice. The district court's

decision in *Nat'l Fair Hous. All. v. Travelers Indem. Co.*, 261 F. Supp. 3d 20, 33 (D.D.C. 2017), which Entrata cites for the requirement that a disparate impact claim allege a discriminatory policy, provides no guidance on this issue; *Travelers* discussed the need to allege a policy rather than merely a one-time decision or series of discrete decisions, but did not expound on where such a policy must originate. Indeed, those who set policies and those who enact them are frequently not the same. *See Meritor Sav. Bank, FSB v. Vinson*, 477 U.S. 57, 75 (1986) (observing that company-wide discriminatory policies are "generally effected through the actions of individuals"). Entrata thus fails to establish that its role as an agent immunizes it from suit under the DCHRA.

Entrata also argues that the plaintiffs' DCCPPA claims fail—first, because its liability under the DCCPPA is predicated solely on its corresponding liability under the DCHRA; and second, because it is not a "merchant" providing goods or services to consumers within the meaning of the DCCPPA. Entrata argues that only an "aiding and abetting" theory could explain its involvement in the alleged wrongdoing and that the DCCPPA does not provide for aiding and abetting liability. In response, ERC argues that the DCCPPA sets forth a broad definition of "merchant" as "a person . . . who in the ordinary course of business does or would sell, lease (to), or transfer, either directly or indirectly, consumer goods or services," *see* D.C. Code § 28–3901(a)(3), and that the statute explicitly includes transactions arising from landlord-tenant relations, *see* D.C. Code § 28–3905(k)(6). ERC notes that other judges of this court have extended DCCPPA liability to third-party dealers and distributors, reasoning that the statute applies to all those on the "supply side" of a transaction. *See District of Columbia v. Student Aid Ctr., Inc.*, 2016 D.C. Super. LEXIS 11, at *7 (Aug. 17, 2016) (Rigsby, J); *District of Columbia v. Polymer80, Inc.*, 2022 D.C. Super. LEXIS 42, at *12 (Sep. 12, 2022) (Scott, J.).

For the reasons stated above, the court has determined that the DCHRA claims may proceed, making Entrata's first argument moot. The court also agrees with the decisions of other judges of this court holding that the DCCPPA creates liability not only for an entity with which a good or service originates but for any associates that further the entity's commercial plan. Entrata thus also fails to establish its exclusion from liability under the DCCPPA.

B. The Plaintiffs' Standing to Sue

Entrata argues that the court should apply Article III standing requirements to determine that neither ERC nor the District has demonstrated a concrete and particularized injury-in-fact. *See Friends of Tilden Park, Inc. v. D.C.*, 806 A.2d 1201, 1207 (D.C. 2002) (quoting *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992)). In its reply brief, Entrata argues further that the organizational standing codified in the DCCPPA, *see* D.C. Code § 28–3905(k)(1)(C), should be rejected as an impermissible "waiver" of Article III requirements.

As a threshold matter, and as Entrata acknowledges, the District of Columbia Courts are not Article III courts, but rather are Article I courts established more than fifty years ago through an act of Congress. *See* D.C. Code §§ 11–101(2), 11-901 *et seq*. Thus, although the Court of Appeals has sometimes adopted Article III standing requirements for prudential reasons, *see, e.g.*, *Tilden Park*, 806 A.2d at 1206; *Welsh v. McNeil*, 162 A.3d 135, 144 (D.C. 2017), standing in the District of Columbia Courts is ultimately a matter of District of Columbia law, established either by local statute or by local judicial precedent. It is not a matter of federal constitutional law. *See Animal Legal Def. Fund v. Hormel Foods Corp.*, 258 A.3d 174, 181 (D.C. 2021) (noting that the District of Columbia Courts generally follow Article III standards "for prudential reasons" and in furtherance of "sound judicial policy," and that prudential judgment is "subject to legislative override").

Statutory provisions and prior decisions of the Court of Appeals make it clear that ERC meets the requirements for standing at the pleading stage under both the DCHRA and the DCCPPA. For example, in *Equal Rights Ctr. v. Props. Int'l*, 110 A.3d 599, 605 (D.C. 2015), another case brought by ERC in circumstances nearly identical to those presented here, the Court of Appeals held that ERC's allegations that the defendants harmed ERC's mission and necessitated a diversion of ERC's resources to combat the defendants' discriminatory actions were sufficient at the pleading stage to demonstrate standing under the DCHRA. The Court of Appeals distinguished the diversion of an organization's resources to counteract an injury from the organization's mere incurrence of litigation expenses. *Id.*; *see also Travelers*, 261 F. Supp. 3d at 26. The court here similarly concludes that ERC has pled sufficient facts—describing its efforts to educate voucher holders, social service providers, and government entities in response to the allegedly discriminatory acts of Entrata and its co-defendants—to establish standing under the DCHRA, at least at the pleading stage.

As to the DCCPPA, the statute expressly empowers a public interest organization to sue on behalf of the interests of a consumer or a class of consumers. *See* D.C. Code § 28–3905(k)(1)(D). The Court of Appeals has created a three-part test to determine whether a public interest organization has standing under § 28–3905(k)(1)(D). In *Hormel Foods*, 258 A.3d at 185, the Court of Appeals held that to have organizational standing under this provision a plaintiff must (1) be a public interest organization, (2) identify "a consumer or a class of consumers" who could bring suit in their own right, and (3) have a "sufficient nexus" to those consumers' interests to adequately represent them.[1] The DCCPPA defines a public interest organization as

[1] The court in *Hormel Foods* also discussed the legislative history of the DCCPPA and noted that the D.C. Council amended the statute in 2012 to add §§ (k)(1)(C) and (D), thereby distinguishing the current version of the statute from the previous version analyzed in *Grayson v. AT&T Corp.*, 15 A.3d 219 (D.C. 2011). Entrata's reliance in its briefing on an analysis of the previous version of the statute is thus misplaced.

"a nonprofit organization that is organized and operating, in whole or in part, for the purpose of promoting interests or rights of consumers." D.C. Code § 28–3901(a)(15).

ERC has satisfied the *Hormel Foods* test. First, it is undisputed that ERC is a public interest organization within the meaning of § 28–3901(a)(15). ERC is a nonprofit organization whose stated mission includes the elimination of discrimination in housing. Second, ERC has identified a class of consumers who could bring suit in their own right under the DCCPPA. The third amended complaint clearly identifies Housing Choice voucher holders seeking housing in the District as the consumers ERC aims to assist through the litigation. *See* D.C. Code § 28–3901(a)(2)(A) (including lessees as a class of consumers protected by the statute). And third, ERC's mission in eliminating discrimination is self-evidently in alignment with the interests of Housing Choice voucher holders in expanding their access to housing. ERC thus has the requisite nexus to the class of persons to be protected through the litigation.

Entrata's argument challenging the District's standing to sue under the DCHRA and the DCCPPA is similarly unavailing. The District has explicit statutory authority to bring civil enforcement actions under both statutes. *See* D.C. Code §§ 2–1403.16a (DCHRA), 28–3909 (DCCPPA).

Entrata's final argument is that it has remedied any future harm by updating its systems to reflect a non-discriminatory policy on behalf of Adams View, thereby nullifying the plaintiffs' requests for injunctive relief. Injunctive relief, however, is a remedy, not a cause of action, and the court thus rejects this argument as premature at the pleading stage.

For the foregoing reasons, Entrata's motions to dismiss ERC's third amended complaint and the District's complaint must be denied in full.

II. Barkan's Motion to Dismiss

Barkan contends that ERC has not pled sufficient facts to establish that it assumed Broadhouse's liabilities when it purchased Broadhouse and took over its property management portfolio. Barkan states that it completed its purchase of Broadhouse on August 31, 2021, *see* Barkan Mot. at 5, after the period encompassing the alleged discriminatory actions. ERC responds that the third amended complaint contains sufficient factual allegations to sustain a plausible claim that Barkan is functioning as a continuation of Broadhouse, thereby subjecting Barkan to liability as a successor-in-interest to its predecessor. ERC also alleges that Barkan continued Broadhouse's practice of informing prospective tenants that Adams View did not accept Section 8 voucher holders. TAC ¶ 65.

As a general matter, a business entity that acquires the assets of another business is not responsible for the other business's liabilities and debts. *See Jackson v. George*, 146 A.3d 405, 413 (D.C. 2016). There are four exceptions to the general rule, however: (1) where there is an implied or express agreement to assume liabilities, (2) where the transaction amounts to a "de facto merger," (3) where the successor company is a "mere continuation" of its predecessor, and (4) where the transaction is fraudulently designed to escape liability for debts. *Id.* In considering whether a successor is functioning as a "mere continuation" of its predecessor, a court may consider several factors, including whether there is a common identity of officers, directors, and stockholders in the purchasing and selling corporations; the sufficiency of the consideration exchanged during the sale; whether the predecessor entity failed to arrange to meet its contractual obligations; and any continuation of the corporate entity of the seller. *Sodexo Operations, LLC v. Not-For-Profit Hosp. Corp.*, 264 F. Supp. 3d 262, 268 (D.D.C. 2017) (citing *Bingham v. Goldberg, Marchesano, Kohlman, Inc.*, 637 A.2d 81, 91-92 (D.C. 1994)).

ERC argues that the third exception identified in *Jackson* applies and that it has sufficiently alleged Barkan's status as a "mere continuation" of Broadhouse. ERC points to statements in the third amended complaint alleging that Barkan hired all of Broadhouse's employees and kept at least one manager in a similar role, TAC ¶ 28, and that Barkan holds itself out as the entity "fka" ("formerly known as") Broadhouse, TAC ¶ 31. In reply, Barkan argues that ERC's claims fail because ERC has not alleged facts supporting all four factors set forth in *Sodexo*; that ERC's allegations relating to the hiring of employees do not go to the question of whether there was a continuation of "officers, directors, and stockholders"; and that ERC has made a fatal omission by neglecting specifically to allege that there was a continuation of the corporate entity of Broadhouse, which Barkan argues is the "gravamen" of the test. *See Sodexo*, 264 F. Supp. 3d at 268. Separately, Barkan contends that the statement in paragraph 65 of the third amended complaint—that Barkan continued the alleged discriminatory practices on its own account—is a conclusory allegation with no factual underpinning.

The court is not persuaded by Barkan's arguments. As an initial matter, Barkan's assertion that ERC must allege facts supporting all four *Sodexo* factors is incorrect. The factors listed in *Sodexo* are factors a court "may" consider, *see id.*, and are neither compulsory nor exhaustive. It is apparent, moreover, that the question whether an entity is functioning as the mere continuation of its predecessor is a highly fact-specific inquiry that likely merits discovery regarding the entities' respective corporate filings and business practices, among other relevant issues. The court thus concludes that ERC's allegations, though not as comprehensive as they might be, are sufficient for the action to proceed against Barkan on the plausible theory that Barkan is a mere continuation of Broadhouse. Given this conclusion, the court need not rule on

the sufficiency of what Barkan contends is ERC's bare-bones pleading regarding Barkan's continuation of the allegedly discriminatory policies on its own behalf.

Conclusion

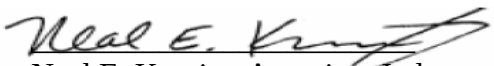
For the foregoing reasons, it is this 1st day of September 2023

ORDERED that Entrata's motions to dismiss Equal Rights Center's third amended complaint and the District of Columbia's complaint are **denied**. It is further

ORDERED that Barkan's motion to dismiss Equal Rights Center's third amended complaint is **denied**. It is further

ORDERED that Entrata and Barkan have until September 15, 2023 to file answers to Equal Rights Center's third amended complaint, and that Entrata has until September 15, 2023 to file an answer to the District of Columbia's complaint. It is further

ORDERED that the case remains set for mediation on March 20, 2024 at 9:00 a.m.



Neal E. Kravitz, Associate Judge
(Signed in Chambers)

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