

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION**

CASE NO. 24-80640-CIV-CANNON

**RABBI NAFTALY HERTZEL,
HENYA HERTZEL, and
CHABAD ISRAELI CENTER, INC.,**

Plaintiffs,

v.

LOGGERS' RUN, INC. *et al.*,

Defendants.

ORDER DENYING MOTION TO DISMISS

THIS CAUSE comes before the Court upon Defendants' Motion to Dismiss Plaintiffs' First Amended Complaint (the "Motion") [ECF No. 41], filed on May 1, 2025. The Court has reviewed the First Amended Complaint and accompanying attachments [ECF No. 37; ECF No. 37-1 through ECF No. 37-8], the Motion, Plaintiffs' Opposition [ECF No. 46], and Defendants' Reply [ECF No. 49]. The Court also heard extensive argument on the Motion on July 16, 2025 [ECF No. 51]. Following careful review, and fully advised in the premises, the Court finds no basis to dismiss any of Plaintiffs' claims at this stage. The Motion is therefore **DENIED**.

DISCUSSION¹

Plaintiffs Rabbi Naftaly Hertz, his wife Henya Hertz, and Chabad Israeli Center, Inc., a non-profit entity serving the Florida Jewish community (collectively, "Plaintiffs"), bring this action against homeowners' association Loggers' Run Association, Inc. ("Loggers' Run" or the

¹ The facts in this Order are drawn from Plaintiffs' First Amended Complaint [ECF No. 37] and attachments thereto, and are accepted as true at this stage.

“HOA”); the HOA’s management company, Campbell Property Management and Real Estate, Inc.; and individual members of the HOA Board of Governors Ronald Harp and Harry Dietz (collectively, “Defendants”). Plaintiffs allege discriminatory housing practices in violation of 42 U.S.C. § 1982, the Fair Housing Act (“FHA”), 42 U.S.C. § 3601 *et seq.*, and the Florida Fair Housing Act (“FFHA”), Fla. Stat. § 760.20 *et seq.* [ECF No. 37].

At a high level, Plaintiffs allege that Defendants carried out a coordinated campaign to slow the growth of the Jewish population in the Loggers’ Run, and in doing so, unlawfully interfered with Plaintiffs’ ability to enjoy the use of their property free from racial and religious discrimination [ECF No. 37 ¶¶ 1–11]. These alleged hostilities ultimately culminated in this lawsuit, where Plaintiffs bring the following ten claims:

Count I – 42 U.S.C. § 1982 (Deprivation of Property Rights)

Count II – FHA (Disparate Treatment)

Count III – FHA (Facial Discrimination)

Count IV – FHA (Hostile Housing Environment)

Count V – FHA (Interference and Retaliation)

Count VI – FFHA (Disparate Treatment)

Count VII – FFHA (Facial Discrimination)

Count VIII – FFHA (Hostile Housing Environment)

Count IX – FFHA (Land Use and Permitting Discrimination)

Count X – FFHA (Interference and Retaliation)

[ECF No. 37].

In response to these allegations, Defendants filed the present Motion, which asserts various affirmative defenses and then advances a hodgepodge of overlapping arguments on the merits, many of which stray from the pleadings, and most of which lack a focused discussion of the essential elements of each of the claims. *See e.g.*, ECF No. 41 pp. 23–27.

Upon full review of the Motion, and with the benefit of extensive oral argument, the Court concludes that Plaintiffs have plausibly stated claims for each of the ten counts alleged in the Amended Complaint under the associated substantive law applicable to each claim. The Court

also concludes that none of Defendants’ proffered affirmative defenses provides a basis to dismiss any of Plaintiffs’ claims at this stage.² Ultimately, Defendants’ challenges either require this Court to weigh issues of disputed facts; to go outside the pleadings; to disregard various portions of the well-pled allegations; or to surgically parse out the Amended Complaint to strike certain allegations.³ Such requests exceed this Court’s obligation to “accept all well-pleaded facts as true, and [] make all reasonable inferences in favor of the plaintiff.” *Thompson v. RelationServe Media, Inc.*, 610 F.3d 628, 631 n.5 (11th Cir. 2010). And to the extent Defendants claim to lack sufficient notice of the allegations and theories presented [ECF No. 41 pp. 8–10 (characterizing the First Amended Complaint as a “shotgun pleading”; ECF No. 49 pp. 5–6 (same)], the factual content and structure of the Amended Complaint show otherwise.

Accordingly, it is **ORDERED AND ADJUED** as follows:

1. Defendants’ Motion to Dismiss [ECF No. 41] is **DENIED**.
2. Counts I through X of the First Amended Complaint [ECF No. 37] may proceed to

² Defendants raise fair arguments in favor of their statute of limitations defense (except as to Counts III and VII), but on the facts alleged, it is not apparent that any of the claims are time-barred. If reasserted, the Court will be required to determine whether any of the federal discriminatory housing practices alleged in the First Amended Complaint occurred or were not terminated within two years from the date on which Plaintiffs commenced this action, 42 U.S.C. § 3613(a)(1)(A)—with similar analyses for the remaining statutes of limitations, *see* Fla. Stat. § 760.35; Fla. Stat. § 720.311 (tolling statute of limitation for state claims upon the serving of a of a demand for pre-suit mediation); *see also* *Goodman v. Lukens Steel Co.*, 482 U.S. 656, 660–62 (1987) (mandating the use of a state’s residual personal injury statute of limitations for §§ 1981 and 1982 actions); Fla. Stat. § 95.11(3)(p) (providing for a four-year residual limitations period).


³ As an example, in arguing for dismissal of III, VII, and IX, Defendants say that any discrimination is the fault of the developer, insisting that “there has been no construction of churches, religious structures, or other commercial structures on any portion of the Association’s Committed Property”—but the Amended Complaint explicitly alleges that “Multiple church buildings exist on property within the HOA” and “Board members of the HOA attend these Churches” [ECF No. 41 p. 24; ECF No. 37 ¶ 58].

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discovery.

3. The Court expresses no opinion on the ultimate merits of any of the claims in the Amended Complaint or on the applicability of any of Defendants' proffered defenses.⁴
4. On or before **August 7, 2025**, Defendants shall file an answer to Plaintiffs' Amended Complaint [ECF No. 37].

ORDERED in Chambers at Fort Pierce, Florida, this 17th day of July 2024.


AILEEN M. CANNON
UNITED STATES DISTRICT JUDGE

cc: counsel of record

⁴ In denying Defendants' Rule 12(b)(6) bid to dismiss Counts III and VII, the Court does not definitively resolve the facially discriminatory nature of the cited rules and/or declarations. It is sufficient to conclude, for present purposes, that Plaintiffs have stated a plausible claim for a violation of 42 U.S.C. § 3604(b) under a theory of facial discrimination, because the cited rules and declarations appear to provide one set of rules for "churches," while facilities such as clubhouses, bowling facilities, and other secular social facilities enjoy separate status [ECF No. 37-7 pp. 4-9]. Defendants respond, among other contentions, that (1) the Developer, not Loggers' Run, owns the property at issue; and (2) Loggers' Run does not even have the authority to allow the construction of churches in Loggers' Run [ECF No. 41 pp. 23-24]. But like much of Defendants' arguments, these points implicate matters outside the pleadings. A more fulsome factual record and legal presentation is necessary to resolve these claims on summary judgment or at trial.

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Southern District of Florida

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Docket Text:

ORDER DENYING MOTION TO DISMISS Motions terminated: re [41] Defendant's MOTION TO DISMISS [37] Amended Complaint/Amended Notice of Removal, FOR FAILURE TO STATE A CLAIM filed by Harry Dietz, Campbell Property Management and Real Estate, Inc., Ronald Harp, Loggers' Run, Inc.. On or before August 7, 2025, Defendants shall file an answer to Plaintiffs' Amended Complaint ECF No. [37]. Campbell Property Management and Real Estate, Inc. response/answer due 8/7/2025; Harry Dietz response/answer due 8/7/2025; Ronald Harp response/answer due 8/7/2025; Loggers' Run, Inc. response/answer due 8/7/2025. Motions terminated: [41] Defendant's MOTION TO DISMISS [37] Amended Complaint/Amended Notice of Removal,, FOR FAILURE TO STATE A

CLAIM filed by Harry Dietz, Campbell Property Management and Real Estate, Inc., Ronald Harp, Loggers' Run, Inc.. Signed by Judge Aileen M. Cannon on 7/17/2025. See attached document for full details. (pc)

9:24-cv-80640-AMC Notice has been electronically mailed to:

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