

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
LYNCHBURG DIVISION**

DONNA FOX BOLDIN,

Plaintiff,

v.

ALISON WINGFIELD and CECILEY HUSELIN,

Defendants.

CIVIL NO. 6:10cv0010

MEMORANDUM OPINION

JUDGE NORMAN K. MOON

This matter is before the court on the Defendants' Motions to Dismiss the Complaint (docket nos. 6 & 8). For the following reasons, the Defendants' Motions will be granted.

I. BACKGROUND¹

Plaintiff Donna Boldin ("Plaintiff") is an African-American woman who lived in a residential property operated by Rush Homes of Lynchburg, Virginia. In April, 2009, Plaintiff called the police to complain about excessive noise coming from her upstairs neighbor, who was Caucasian. Approximately two weeks later, Plaintiff was served with an eviction notice to vacate the property by May 31, 2009. On May 5, 2009, Plaintiff submitted what she describes as a reasonable accommodation request to Defendant Allison Wingfield ("Wingfield"), Executive Director of Rush Homes. Plaintiff requested 90 days to move to a two-bedroom apartment to avoid the excessive noise. In response, Wingfield informed Plaintiff that if she paid her June rent on time, she would be permitted to remain in the property through June. Wingfield also

¹ The alleged facts have been adduced from the Complaint. The Complaint, filed *pro se* by Plaintiff, appears to be a portion of an administrative complaint filed by Plaintiff, although it is unclear with what agency or entity that complaint may have been filed.

informed Plaintiff that if the rent was not timely received, Plaintiff would be required to vacate the premises by May 31, 2009.

Based on those limited alleged facts, Plaintiff asserts that Defendants “subjected her to different terms and conditions because of race and handicap,” and that Defendants “refused to rent to her because of race and refused her request for a reasonable accommodation because of handicap.”

The Defendants have moved to dismiss all claims pursuant to Fed. R. Civ. P. 12(b)(6), and have moved to dismiss the claims for lack of subject matter jurisdiction pursuant to Fed. R. Civ. P. 12(b)(1).

II. STANDARD OF REVIEW

Federal Rule of Civil Procedure 8(a)(1) requires a complaint to include “a short and plain statement of the grounds for the court’s jurisdiction.” In consideration of a motion to dismiss under Federal Rule of Civil Procedure 12(b)(1), the court is to “regard the pleadings’ allegations as mere evidence on the issue, and may consider evidence outside the pleadings without converting the proceeding to one for summary judgment.” *Richmond, Fredericksburg & Potomac R.R. Co. v. United States*, 945 F.2d 765, 768 (4th Cir. 1991).

“The purpose of a Rule 12(b)(6) motion is to test the sufficiency of a complaint,” not to “resolve contests surrounding the facts, the merits of a claim, or the applicability of defenses.” *Edwards v. City of Goldsboro*, 178 F.3d 231, 243–44 (4th Cir. 1999). In considering a Rule 12(b)(6) motion, a court must accept all allegations in the complaint as true and must draw all reasonable inferences in favor of the plaintiff. *See id.* at 244; *Warner v. Buck Creek Nursery, Inc.*, 149 F. Supp. 2d 246, 254–55 (W.D. Va. 2001). The plaintiff must allege facts that “raise a right to relief above the speculative level.” *Bell Atlantic Corp. v. Twombly*, 127 S.Ct. 1955, 1965

(2007).

The Plaintiff in this case is proceeding *pro se*. *Pro se* pleadings are held to a less stringent standard than those drafted by attorneys. *Gordon v. Leeke*, 574 F.2d 1147, 1151 (4th Cir.1978). This Court is charged with liberally construing a pleading filed by a *pro se* litigant to allow for the development of a potentially meritorious claim. *Boag v. MacDougall*, 454 U.S. 364, 365 (1982) (per curiam). The Fourth Circuit has noted that district courts “must be especially solicitous of civil rights plaintiffs.” *Gordon*, 574 F.2d at 1151. Accordingly, courts must “examine the *pro se* complaint to see whether the facts alleged, or the set of facts which the plaintiff might be able to prove, could very well provide a basis for recovery under any of the civil rights acts . . . in the federal arsenal for redress of constitutional deprivations.” *Id.*

III. DISCUSSION

Turning first to the jurisdictional question, Plaintiff states in her Complaint that Defendants “subjected her to different terms and conditions because of race and handicap, refused to rent to her because of race and refused her request for a reasonable accommodation because of handicap.” Although Plaintiff does not directly articulate the federal question or questions that her Complaint raises, the allegations in the Complaint appear to implicate federal constitutional protections and federal civil rights law. Furthermore, in her response to Defendants’ motion to dismiss, Plaintiff asserts that 42 U.S.C. § 3601 (the Federal Housing Act) “prohibits discrimination.” Because the Court must liberally construe *pro se* pleadings and must be “especially solicitous of civil rights plaintiffs,” I conclude that the Complaint sufficiently invokes this Court’s jurisdiction under 28 U.S.C. § 1331. Accordingly, Defendants’ motion to dismiss on jurisdictional grounds is denied.

Turning to Defendants’ 12(b)(6) motion, I conclude that Plaintiff has failed to state a

claim upon which relief may be granted. Although Plaintiff alleges that she received an eviction notice, and that she believes that she was “subjected to different terms and conditions because of race and handicap,” she goes on to say that once she requested an accommodation, she was told she could remain in the property if she paid her rent in a timely fashion. Nothing further is alleged. From the limited alleged facts of the Complaint, the Court cannot discern what if any harm Plaintiff actually suffered. Indeed, Plaintiff fails to allege whether or not she was actually denied the request to move to another location on the property. Similarly, Plaintiff fails to allege whether or not she was actually evicted or otherwise suffered harm due to the alleged discrimination. That is, Plaintiff asserts that she was the victim of discriminatory treatment, but fails to assert any actual harm that resulted from that alleged discrimination. As noted previously, *pro se* complaints, however unskillfully pleaded, are to be liberally construed. *Vinnedge v. Gibbs*, 550 F.2d 926, 928 (4th Cir. 1997). Despite the substantial leeway afforded to *pro se* litigants, however, the Court is not required to find meritorious claims in vague and conclusory allegations. *See Beaudett v. City of Hampton*, 775 F.2d 1274, 1277-78 (4th Cir. 1985). Because Plaintiff has failed to allege any acts that raise her right to relief above a speculative level, Defendants’ motion to dismiss for failure to state a claim is granted without prejudice.

IV. CONCLUSION

For the foregoing reasons, Defendants’ motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(1) is DENIED, and Defendants’ motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(6) is GRANTED. Plaintiff shall have 21 days to amend her Complaint, should she desire to do so. An appropriate Order will follow.

The Clerk of the Court is hereby directed to send a certified copy of this Memorandum

Opinion and accompanying Order to all counsel of record and to the Plaintiff.

ENTERED: This _____ Day of April, 2010



NORMAN K. MOON
UNITED STATES DISTRICT JUDGE