SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

DISTRICT OF COLUMBIA	:	
	:	
v.	:	Case No. 2020 CA 002870 B
	:	
THE BURRELLO GROUP, LLC, *et al.*	:	

ORDER

The Court grants plaintiff District of Columbia's motion for reconsideration.

The Court denied the District's motion for summary judgment on liability on October 21, 2021. The October 21 Order explains the relevant background.

On November 18, the District filed its motion for reconsideration of the portion of the October 21 Order concerning intent to discriminate. Defendants The Burello Group, LLC and José Burello filed their opposition on December 1.

I. LEGAL STANDARD

The standard under Rule 54(b) for reconsideration of interlocutory orders like the October 21 Order is whether reconsideration is consonant with justice. *See Marshall v. United States*, 145 A.3d 1014, 1019 (D.C. 2016). Reconsideration is warranted if, for example, moving parties "present newly discovered evidence, show that there has been an intervening change in the law, or demonstrate that the original decision was based on a manifest error of law or was clearly unjust." *See Bernal v. United States*, 162 A.3d 128, 133 (D.C. 2017) (cleaned up). However, "it is well-established that motions for reconsideration, whatever their procedural basis, cannot be used as an opportunity to reargue facts and theories upon which a court has already ruled, nor as a vehicle for presenting theories or arguments that could have been advanced earlier." *Ali v. Carnegie Institute of Washington*, 309 F.R.D. 77, 81 (D.D.C. 2015) (cleaned up); *Estate of Gaither v. District of Columbia*, 771 F. Supp. 2d 5, 9-10 (D.D.C. 2011).

"The burden is on the moving party to show that reconsideration is appropriate and that harm or injustice would result if reconsideration were denied." *United States ex rel. Westrick v. Second Chance Body Armor, Inc.*, 893 F. Supp. 2d 258, 268 (D.D.C. 2012).

II. DISCUSSION

The District has carried its burden to show that the Court's original ruling was based on a manifest error of law.[1]

In its October 21 Order, the Court found no genuine dispute that advertisements on apartment-listing websites stating "Not approved for vouchers" indicate that prospective tenants with housing vouchers cannot rent the property and thereby violate the provision of the D.C. Human Rights Act ("DCHRA") prohibiting discrimination on the basis of income: "The natural take-away from the unadorned statement in the advertisement is that voucher holders need not apply." October 21 Order at 4. The Court denied summary judgment on liability only because of a genuine dispute about whether defendants posted these advertisements wholly or partially for a discriminatory reason. *Id*.

However, *Feemster v. BSA Ltd. Partnership*, 548 F.3d 1063, 1070 (D.C. Cir. 2008) (cleaned up), held that under the DCHRA (like Title VII), "when a policy is discriminatory on its face, the defendant's motive is irrelevant." Although this D.C. Circuit decision is not binding on this Court, this Court has found persuasive the reasoning in *Feemster*. *See Equal Rights Center v. Belmont Crossing Apartments, LLC*, 2018 D.C. Super. LEXIS 8, at *4-5 (D.C. Superior Court Oct. 22, 2018).

[1] The District is not raising an argument that it did not raise in its summary judgment motion. Albeit in conclusory and overbroad terms in a footnote, the District stated in its summary judgment motion that "there is no intent requirement for liability under D.C. Code § 2-1402.21(a)(5)." Defendants did not directly dispute this proposition in their opposition.

Defendants' only response is to invoke the burden-shifting test adopted in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973). *See* Opp. at 3-4. However, the test applies only if the plaintiff does not proffer direct evidence of intentional discrimination. *See Lemmons v. Georgetown University Hospital*, 431 F. Supp. 2d 76, 86 (D.D.C. 2006). Here, defendants committed a facial violation of the DCHRA, and as *Feemster* correctly held, motive is therefore irrelevant. The advertisements themselves are illegal, regardless of defendants' motive.

III. CONCLUSION

For these reasons, the District is entitled as a matter of law to summary judgment that defendants violated the DCHRA. The only remaining issues involve remedies. The parties should be able to reach agreement on that issue. If the parties think that a mediator may help them reach agreement, they should jointly contact chambers, and chambers will arrange for mediation through the Multi-Door Dispute Resolution Division. If the parties cannot reach agreement on their own or through mediation, the District should file a motion concerning remedies by January 14, 2022, and defendants should file their opposition by January 28. Based on the briefing, the Court will decide whether a hearing is warranted.

Accordingly, the Court orders that:

1. The District's motion for reconsideration is granted.

2. The District's motion for summary judgment as to liability on Counts I-IX is granted.

3. Defendants are liable as a matter of law for violating the DCHRA's prohibition on discrimination based on the source of income.

4. The District shall file any motion concerning remedies by January 14, 2022, and defendants shall file any response by January 28.

Anthony C. Epstein
Judge

Date: December 6, 2021

Copies via CaseFileXpress to all counsel