UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

CHLOE PEDROZA,

Plaintiff,

v. **Case No. 6:22-cv-1445-CEM-EJK**

NATHANIEL WALDROP, DIXI ROMERO ORTIZ, WALDROP INVESTMENT GROUP LLC, EM INVESTMENT LLC, and NATIXI INVESTMENTS LLC,

Defendants.
_____/

ORDER

THIS CAUSE is before the Court on Defendants' Renewed Motion to Dismiss ("Motion," Doc. 25), to which Plaintiff filed an Opposition to Defendants' Motion to Dismiss (Doc. 29). For the reasons stated herein, Defendants' Motion will be denied.

I. BACKGROUND

Plaintiff is a previous tenant of Defendants, who own multiple residential rental properties in the Orlando, Florida area.[1] (Compl., Doc. 1, at 3–4). Plaintiff

[1] Plaintiff alleges that Defendants Nathaniel Waldrop and Dixi Romero Ortiz "own some properties in their own names and some properties in the names of [Defendant] limited liability companies." (Doc. 1 at 3).

alleges that she originally became a tenant of Defendants when a bank foreclosed on the condominium that Plaintiff was renting, and Defendants purchased the property out of foreclosure. (*Id.* at 4). Plaintiff and her family later moved to another condominium owned by Defendants. (*Id.*).

Plaintiff alleges the following events. On April 15, 2020, Defendant Nathaniel Waldrop "located [Plaintiff] on Facebook and . . . began sending messages through Facebook Messenger to [Plaintiff]." (*Id.*). Then, between January and October 2021, Waldrop "began sending inappropriate messages to [Plaintiff]," many of which were sexual in nature. (*Id.* at 5; *see also id.* at 5–8). For example, Waldrop offered Plaintiff money "to see [Plaintiff's] boobs" and for a "taste" of sexual activity with Plaintiff. (*Id.* at 6–7). Waldrop also "explicitly offered [Plaintiff] a house in exchange for sex, saying he would make her life 'a dream . . . big house Mercedes.'" (*Id.* at 7).

On December 20, 2021, Defendant Dixi Romero Ortiz, Waldrop's spouse, discovered Waldrop's messages to Plaintiff and contacted Plaintiff about them. (*Id.* at 3, 9). Ortiz told Plaintiff that she was "not surprised" by Waldrop's messages because Ortiz was aware that Waldrop had previously been "unfaithful with many women he met on Facebook." (*Id.* at 9). Ortiz then "accused [Plaintiff] of being complicit" in the sexual messages between Waldrop and Plaintiff. (*Id.*). Plaintiff responded to Ortiz by telling her that Plaintiff had denied Waldrop's sexual advances but had not told Ortiz about them because Plaintiff was "worried about losing her

family's home." (*Id.*). Ortiz responded by telling Plaintiff that Ortiz was "the only one who can decide" whether Plaintiff would lose her home. (*Id.*).

Plaintiff alleges that the foregoing messages from Waldrop and Ortiz "caused [her] emotional distress that caused bodily injury in the form of headaches, stomach aches, and other ailments." (*Id.* at 10). As a result, Plaintiff was forced to move to a new home not owned by Defendants, but "[t]he new home she ultimately found was not as good as the home she was renting from [Defendants]" and "the new home is in a less desirable neighborhood." (*Id.*).

Plaintiff filed suit, asserting three claims, alleging violations of the Federal Fair Housing Act (Count I) and Florida Fair Housing Act (Count II), and common law negligence. (*Id.* at 10–12). Defendants move to dismiss Plaintiff's Complaint for failure to state a claim upon which relief can be granted. (*See generally* Doc. 25).

II. LEGAL STANDARD

"A pleading that states a claim for relief must contain . . . a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). Pursuant to Federal Rule of Civil Procedure 12(b)(6), a party may move to dismiss a complaint for "failure to state a claim upon which relief can be granted." In determining whether to dismiss under Rule 12(b)(6), a court accepts the factual allegations in the complaint as true and construes them in a light most favorable to the non-moving party. *See United Techs. Corp. v. Mazer*, 556 F.3d 1260, 1269 (11th

Cir. 2009). Nonetheless, "the tenet that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions," and "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). Furthermore, "[t]o survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Id.* (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* Ordinarily, in deciding a motion to dismiss, "[t]he scope of the review must be limited to the four corners of the complaint." *St. George v. Pinellas Cnty.*, 285 F.3d 1334, 1337 (11th Cir. 2002).

III. ANALYSIS

A. Count I—Federal Fair Housing Act; Count II—Florida Fair Housing Act

Count I alleges a claim under the Federal Fair Housing Act ("Federal FHA"), 42 U.S.C. § 3601 *et seq.*, and Count II alleges a claim under the Florida Fair Housing Act ("Florida FHA"), Fla. Stat. § 760.20 *et seq.* The Federal FHA makes it unlawful to "discriminate against any person in the terms, conditions, or privileges of . . . rental of a dwelling . . . because of . . . sex." 42 U.S.C. § 3604(b). The Florida FHA

"contains statutory provisions that are substantively identical to the [Federal FHA], and the facts and circumstances that comprise the federal and state fair housing claims are the same." *Loren v. Sasser*, 309 F.3d 1296, 1299 n.9 (11th Cir. 2002). Additionally, Florida courts have found "the application of the [Florida FHA] by the federal courts to be instructive and persuasive." *Dornbach v. Holley*, 854 So. 2d 211, 213 (Fla. 2d DCA 2002). Therefore, the Court will only analyze the Federal FHA claim brought by Plaintiff, but the analysis and conclusions therein apply equally to Plaintiff's Florida FHA claim.

The Federal FHA protects, *inter alia*, "a tenant . . . from receiving differential or less favorable treatment in housing terms, conditions, or privileges if the but-for cause of that treatment is her sex." *Fox v. Gaines*, 4 F.4th 1293, 1296 (11th Cir. 2021). The Eleventh Circuit has held that this protection applies to sexual harassment, both in the form of "hostile housing environment and quid pro quo sexual harassment," "provided the plaintiff demonstrates that she would not have been harassed but for her sex." *Id.* at 1297.

Defendants argue that Plaintiff's claim under the Federal FHA must be dismissed because Plaintiff fails to plead facts sufficient to support a Federal FHA claim under either a hostile housing environment or quid pro quo theories. The Court first considers whether Plaintiff has stated a claim under the hostile housing environment theory.

A hostile housing environment exists when a defendant subjects a plaintiff "to unwelcome sexual harassment" that is "sufficiently severe or pervasive so as to interfere with or deprive [the plaintiff] of her right to use or enjoy her home." *Id.* at 1296 n.6 (quoting *Quigley v. Winter*, 598 F.3d 938, 946–47 (8th Cir. 2010)); *see also* 24 C.F.R. § 100.600(a)(2). "Whether hostile environment harassment exists depends upon the totality of the circumstances," 24 C.F.R. § 100.600(a)(2)(i), and "[w]hether unwelcome conduct is sufficiently severe or pervasive as to create a hostile environment is evaluated from the perspective of a reasonable person in the aggrieved person's position," *id.* § 100.600(a)(2)(i)(C). "Factors to be considered to determine whether hostile environment harassment exists include, but are not limited to, the nature of the conduct, the context in which the incident(s) occurred, the severity, scope, frequency, duration, and location of the conduct, and the relationships of the persons involved." *Id.* § 100.600(a)(2)(A). "Hostile environment harassment does not require a change in the economic benefits, terms, or conditions of the dwelling or housing-related services or facilities," *id.* § 100.600(a)(2), and "[n]either psychological nor physical harm must be demonstrated to prove that a hostile environment exists," but "[e]vidence of psychological or physical harm may, however, be relevant in determining whether a hostile environment existed," *id.* § 100.600(a)(2)(B). *See id.* § 100.600(b) (noting that a finding of hostile environment harassment "does not require physical contact").

Defendants contend that "the content of Waldrop's messages amount to innocuous incidents that do not otherwise meet the 'sufficiently severe and pervasive' standard" and that the messages "at worst, amount to occasional, isolated incidents of annoying, or offhand comments." (Doc. 25 at 11). Defendants then point out that "nowhere in these messages does Waldrop ever threaten Plaintiff, let alone with physical harm" or subject Plaintiff to "any unwelcomed contact with Plaintiff's physical body." (*Id.* at 12).

Defendants either ignore the severity of the allegations in the Complaint or misunderstand the standard for a hostile housing environment claim. The Complaint alleges that Waldrop's unwelcome messages persisted for at least eight months, with Waldrop sometimes messaging Plaintiff more than sixty times in one day, many of those messages being "overtly sexual." (Doc. 1 at 6; *id.* (Waldrop messaging Plaintiff that "he was 'a fan of big boobs'"); *id.* (Waldrop offering Plaintiff "'$200 to see [Plaintiff's] boobs' and '200 cash' for two pictures"); *id.* at 7 (Waldrop asking Plaintiff if she "masturbate[s] often"); *id.* at 8 (Waldrop telling Plaintiff that he wanted to "make kids" with her)). The nature, scope, and severity of this conduct—overtly sexual messages—along with the frequency and duration of the alleged sexual harassment—many months of sometimes daily messages—certainly supports a hostile housing environment claim.

Also supportive of Plaintiff's claim is Waldrop and Plaintiff's landlord-tenant relationship, which placed Waldrop in a position of authority over her. *Noah v. Assor*, 379 F. Supp. 3d 1284, 1292 (S.D. Fla. 2019) (citing *Salisbury v. Hickman*, 974 F. Supp. 2d 1282, 1293 (E.D. Cal. 2013)) (noting that the allegations of harassment were particularly concerning "in the context of a landlord-tenant relationship"). Similarly, the location of the harassment—Waldrop messaging Plaintiff in her own home, a home that Defendants owned and rented to Plaintiff—supports Plaintiff's claim because "[a] tenant should be able to feel secure in her own home." *Id.* at 1292 (quoting *Quigley v. Winter*, 584 F. Supp. 2d 1153, 1157 (N.D. Iowa 2008)) (collecting cases); (*see also* Doc. 1 at 5 (noting that Waldrop collected Plaintiff's rent "in person" at her home)).

Additionally, the fact that Waldrop never made physical contact with or physically harmed Plaintiff does not defeat Plaintiff's claim. *See* 24 C.F.R. § 100.600(a)(2)(B), (b). Rather, Plaintiff's allegations of emotional distress and bodily injury resulting from that distress tends to support a claim of hostile environment harassment. *See id.* § 100.600(a)(2)(B). Considering the totality of the circumstances and weighing all of these factors, the allegations in the Complaint are more than sufficient to plead a claim for both Federal FHA and Florida FHA

violations based on a hostile housing environment theory.[2] *Noah*, 379 F. Supp. at 1291 (S.D. Fla. 2019) (collecting cases). Counts I and II will not be dismissed.[3]

B. Count III—Negligence

Count III alleges a claim for common law negligence. Under Florida law,[4] a claim of negligence consists of four elements—"a duty, breach of that duty, causation, and damages." *Virgilio v. Ryland Grp., Inc.*, 680 F.3d 1329, 1339 (11th Cir. 2012) (citing *Curd v. Mosaic Fertilizer, L.L.C.*, 39 So. 3d 1216, 1227 (Fla. 2010)). Defendants argue that Plaintiff has failed to state a claim for negligence for several reasons. The Court will address each argument in turn.

First, Defendants argue that "under Florida law, a cause of action for sexual harassment under a common law negligence theory is not recognized." (Doc. 25 at 15). In support of this contention, Defendants cite *Miller v. Bank of America Corporation* but do not provide any further argument or elaboration.[5] No. 05-81114-RYSKAMP/VITUNAC, 2006 U.S. Dist. LEXIS 111605 (S.D. Fla. Apr. 6, 2006). *Miller* cites *City of Miami Beach v. Guerra*, which does hold that "Florida does not recognize a cause of action for sexual harassment under a common law negligence

[2] Because the Court finds that Plaintiff has adequately pled claims under the hostile environment harassment theory, the Court need not address whether Plaintiff had also pled claims under any other theory, such as the quid pro quo theory or a retaliation theory.

[3] Defendants do not make any arguments as to whether all Defendants should be found responsible for Waldrop's conduct. Therefore, these claims will proceed as to all Defendants.

[4] At this stage, all parties seem to agree that Florida law applies to Count III.

[5] To be clear, the entirety of Defendants' argument on this issue consists of a single sentence and the citation to *Miller*. (*See* Doc. 25 at 15).

theory," but that holding applies to "a negligence action based on alleged sexual harassment in the workplace." 746 So. 2d 1159, 1159 (Fla. 3d DCA 1999). Plaintiff's allegations of sexual harassment did not occur in an employment context, and Defendants have failed to explain why the bar established in *City of Miami Beach* would apply to the entirely different situation presented by Plaintiff's allegations. Therefore, Defendants have not met their burden to show that Plaintiff's negligence claim must be dismissed on this basis.

Next, Defendants argue that Plaintiff has failed to state a claim for negligence because Plaintiff has not alleged that Defendants owed a duty to her. Specifically, Defendants contend that "[t]here is no duty for a 'member' of a partnership entity to protect a tenant of the rental property owned by the partnership entity from sexual harassment by the partnership's employees." (Doc. 25 at 15). There are two arguments here. First, that Plaintiff failed to plead that Defendants owed a duty to her, and second, that Defendants legally did not owe a duty to her. As to the first argument, Defendants are mistaken. Plaintiff expressly alleges that Defendants had a duty to protect her and other tenants from Waldrop's known history of sexual harassment. (Doc. 1 at 12). As to the second argument, Defendants have not met their burden because Defendants have not cited any legal authority in support of their proposition regarding a landlord's legal duty or nonexistence thereof. Under Florida law, "a landlord ha[s] a duty to warn prospective tenants about a tenant known to

commit sexual assaults on the premises." *T.W. v. Regal Trace, Ltd.*, 908 So. 2d 499, 506 (Fla. 4th DCA 2005). While not completely analogous, this legal authority suggests that this duty to warn tenants could reasonably extend to information Defendants knew about Waldrop's alleged history of sexual harassment.

Finally, Defendants argue that "Plaintiff unsuccessfully attempts to allege a cause of action for negligence . . . based on a vicarious liability theory." (Doc. 25 at 15). Defendants concede that as a basic proposition "a principal employer is vicariously liable for the negligence of its agent." (Doc. 25 at 15). The Court agrees that an employer can be held liable for the negligence of its employee under the doctrine of *respondeat superior*. *Zivojinovich v. Barner*, 525 F.3d 1059, 1066 (11th Cir. 2008) (citing *Pope v. Winter Park Healthcare Group, Ltd.*, 939 So. 2d 185, 187 (Fla. 5th DCA 2006)). Additionally, per the allegations in Plaintiff's Complaint, she has alleged that Waldrop, Ortiz, and the three LLCs "have . . . formed a general partnership." (Doc. 1 at 3). Defendants do not assert any arguments or provide any legal authority regarding liability of partners in a partnership.

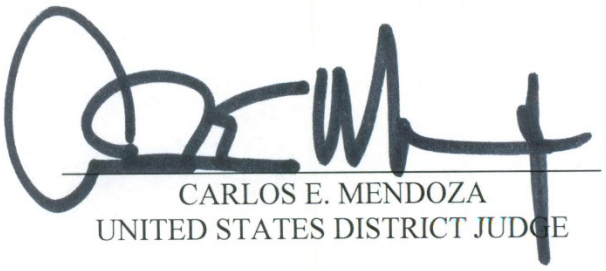
Defendants then appear to assert two—or maybe three—separate but related arguments regarding *respondeat superior*, none of which is supported by any legal authority. The Court simply will not engage an argument that is not supported by any legal authority. *Watkins v. Goodyear Pension Plan*, No. 4:17-cv-461-VEH, 2018 U.S. Dist. LEXIS 70264, at *16–17 (N.D. Ala. Apr. 26, 2018) (refusing to address

arguments that were not made during briefing, noting that "[t]he Court will not fill in the gaps for [the plaintiff]," and explaining that "under the adversary system the Court does not serve as counsel's law clerk" (quotation omitted)). Count III will not be dismissed.

IV. CONCLUSION

In accordance with the foregoing, it is **ORDERED** and **ADJUDGED** that Defendants' Renewed Motion to Dismiss (Doc. 25) is **DENIED**.

DONE and **ORDERED** in Orlando, Florida on January 31, 2023.



CARLOS E. MENDOZA
UNITED STATES DISTRICT JUDGE

Copies furnished to:

Counsel of Record