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Coots v. Tankersley

United States District Court for the Eastern District of Texas, Tyler Division

June 25, 2021, Decided; June 25, 2021, Filed

CIVIL ACTION NO. 6:20-CV-00617-JCB

Reporter
2021 U.S. Dist. LEXIS 137367 *

JAMIE RAY COOTS, SHANNON LEE BROWN, Plaintiffs, v. VICTORIA TANKERSLEY, TANKERSLEY REAL ESTATE, Defendants.

Core Terms

animal, RECOMMENDS, lease, summary judgment, disability, dog, accommodation, cat, place of public accommodation, rental, reasonable accommodation, summary judgment motion, motion for sanctions, no evidence, establishment, nonmovant's, discovery, genuine, reasonable modification, motion to compel, lease agreement, dwelling, eviction, requests, repairs, fails

Counsel: **[*1]** Jamie Ray Coots, Plaintiff, Pro se, Murchison, TX.

Shannon Lee Brown, Plaintiff, Pro se, Murchison, TX.

Judges: JOHN D. LOVE, UNITED STATES MAGISTRATE JUDGE.

Opinion by: JOHN D. LOVE

Opinion

REPORT AND RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE

Before the court is Defendants Tankersley Real Estate and Victoria Tankersley's motion for summary judgment (Doc. No. 34). Plaintiffs have filed a response in opposition. (Doc. No. 40.) The court, having considered the pending motions and the evidence presented, **RECOMMENDS** that summary judgment be **GRANTED** and the asserted claims be dismissed as set forth herein.

BACKGROUND

On November 25, 2020, Plaintiffs Jamie Ray Coots and Shannon Lee Brown (collectively "Plaintiffs") filed this civil action, *pro se*, requesting to proceed *in forma pauperis*. (Doc Nos. 1, 2, 3.) Plaintiffs' original complaint alleged violations of the Americans With Disabilities Act ("ADA"), the Fair Housing Act ("FHA"), as well as allegations of breach of contract, intentional infliction of emotional distress, harassment, stalking, and gross negligence against Defendants Victoria Tankersley and Tankersley Real Estate (collectively "Defendants"). (Doc. No. 1.) Plaintiffs filed an amended complaint on December 10, 2020. (Doc. No. 7.) Plaintiffs' amended complaint again **[*2]** asserted violations of the ADA, the FHA, and intentional infliction of emotional distress. *Id.* at 3-4. Specifically, Plaintiffs contend that Ms. Brown has a disability and that she requested reasonable modifications of her existing lease term to allow use of a service dog for prescribed medical therapy. *Id.* at 3-4. Plaintiffs attach a doctor's note indicating that Ms. Brown has been diagnosed with bipolar depression, generalized anxiety disorder, Post-Traumatic Stress Disorder ("PTSD"), and sleep disorder. (Doc. No. 7-1, at 1.) A second note attached from Ms. Brown's physician states that "she be allowed to have a second companion Animal as part of her medical therapy to help with the transition period while her current service cat is passing." *Id.* at 2. Both notes are dated September 23, 2020. *Id.* Plaintiffs also attach their eviction notice for "failure to protect and maintain property in a manner acceptable to owner" and "excessive water usage" as well as other documents from the eviction proceedings. *Id.* at 3-5.

On December 14, 2020 the court granted Plaintiffs' motion to proceed *in forma pauperis*. (Doc. No. 8.) Thereafter, Defendants were served by the U.S. Marshals (Doc. Nos. **[*3]** 14, 15), and filed answers in response to Plaintiffs' amended complaint. (Doc. Nos. 16, 17.) On March 30, 2021, the court held a scheduling conference and issued a scheduling order. (Doc. Nos.

21, 22.) The court opened discovery and set a deadline of May 31, 2021[1] for dispositive motions to be filed. (Doc. No. 22.) On June 1, 2021, Defendants filed a motion for summary judgment and a motion to dismiss. (Doc. Nos. 34, 36.) Plaintiffs did not file a dispositive motion, but did file a motion to compel and a motion for sanctions. (Doc. Nos. 32, 33.)

Discovery in this case revealed that on April 1, 2019, a residential lease was entered into between Plaintiffs and Defendant Victoria Tankersley—the owner of the leased residential property located at 194 Cottonwood, Murchison, TX 75778. (Doc. No. 34-3.) On March 10, 2020, Plaintiffs renewed the lease until March 31, 2021. (Doc. No. 34-5.) On September 12, 2020, the parties communicated via text message about a lease violation for dogs in the yard when Defendants informed Plaintiffs that there was dog poop all over the yard. (Doc. No. 34-11.) During the course of a text message exchange continuing into the next day, Mr. Coots informed Ms. **[*4]** Tankersley that Ms. Brown has a "mental problem covered in American with disabilities act" and that she suffers from "ptsd and panics". (Doc. Nos. 34-14; 34-15.) At this time, Plaintiffs also communicated that they did not own any animals other than a service animal. (Doc. No. 34-15.) Thereafter, the parties continued to communicate regarding a series of disputes about the rental property including rent, repairs, and damage to the property. (Doc. Nos. 34-13; 34-14; 34-15.) On September 15, 2020, Defendant Tankersley provided a Notice Terminating the Right to Occupancy via certified mail to Plaintiffs. (Doc. No. 34-20.) Two days later Plaintiffs served Defendant Tankersley with a Petition for Relief under *§ 92.0563 of the Texas Property Code*. (Doc. No. 34- 21.) Thereafter, on September 23, 2020, Defendant Tankersley filed a Petition for Eviction against Plaintiffs stating Plaintiffs had violated the lease agreement as follows: "unauthorized animals, failure to maintain property, [and] excessive water usage." (Doc. No. 34-45.) While the parties' eviction dispute proceeded before a Justice of the Peace, Plaintiffs eventually filed the instant action in federal court on November 25, 2020, alleging violations of the ADA and **[*5]** FHA against Defendants. (Doc. No. 1.) Presently, Plaintiffs still occupy the residence in Murchison, Texas. (Doc. Nos. 7; 34-6.) The federal claims are the subject of Defendants' dispositive motions. (Doc. Nos. 34, 36.)

[1] The court's scheduling order included a clerical error indicating that dispositive motions were due on May 31, 2021. However, May 31, 2021 was a federal holiday; therefore, motions were not due until June 1, 2021. *See Fed.R.Civ.P. 6(a)(1)(C)*.

LEGAL STANDARD

A motion for summary judgment should be granted if the record, taken as a whole, "together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." *Fed.R.Civ.P. 56*; *Celotex Corp. v. Catrett, 477 U.S. 317, 323-25, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986)*; *Ragas v. Tennessee Gas Pipeline Co., 136 F.3d 455, 458 (5th Cir. 1998)*. The Supreme Court has interpreted the plain language of *Rule 56* as mandating "the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, on which that party will bear the burden of proof at trial." *Celotex, 477 U.S. at 322*.

The party moving for summary judgment "must 'demonstrate the absence of a genuine issue of material fact,' but need not negate the elements of the nonmovant's case." *Little v. Liquid Air Corp., 37 F.3d 1069, 1075 (5th Cir. 1994)* (en banc) (quoting *Celotex, 477 U.S. at 323-25*). A fact is material if it might affect the outcome of the suit under the governing law. *Merritt-Campbell, Inc. v. RxP Prods., Inc., 164 F.3d 957, 961 (5th Cir. 1999)*. Issues of material fact are "genuine" only if they require resolution by a trier of fact **[*6]** and if the evidence is such that a reasonable jury could return a verdict in favor of the nonmoving party. *Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986)*; *Merritt-Campbell, Inc., 164 F.3d at 961*. If the moving party "fails to meet this initial burden, the motion must be denied, regardless of the nonmovant's response." *Little, 37 F.3d at 1075*.

If the movant meets this burden, *Rule 56* requires the opposing party to go beyond the pleadings and to show by affidavits, depositions, answers to interrogatories, admissions on file, or other admissible evidence that specific facts exist over which there is a genuine issue for trial. *EEOC v. Texas Instruments, Inc., 100 F.3d 1173, 1180 (5th Cir. 1996)*; *Wallace v. Texas Tech. Univ., 80 F.3d 1042, 1046-47 (5th Cir. 1996)*. The nonmovant's burden may not be satisfied by argument, conclusory allegations, unsubstantiated assertions, metaphysical doubt as to the facts, or a mere scintilla of evidence. *Matsushita Elec. Indus. Co. v. Zenith Radio, 475 U.S. 574, 585, 106 S. Ct. 1348, 89 L. Ed. 2d 538*

(1986); *Wallace, 80 F.3d at 1047*; Little, 37 F.3d at 1075.

When ruling on a motion for summary judgment, the Court is required to view all justifiable inferences drawn from the factual record in the light most favorable to the nonmoving party. Matsushita, 475 U.S. at 587; Adickes v. S.H. Kress & Co., 398 U.S. 144, 158-59, 90 S. Ct. 1598, 26 L. Ed. 2d 142 (1970); Merritt-Campbell, Inc., 164 F.3d at 961. However, the Court will not, "in the absence of any proof, assume that the nonmoving party could or would prove the necessary facts." McCallum Highlands, Ltd. v. Washington Capital Dus, Inc., 66 F.3d 89, 92 (5th Cir. 1995), *as modified*, *70 F.3d 26 (5th Cir. 1995)*. Unless there is sufficient evidence for a reasonable jury to return a verdict in the opposing party's favor, there is no genuine issue for trial, and summary **[*7]** judgment must be granted. Celotex, 477 U.S. at 322-23; Anderson, 477 U.S. at 249-51; Texas Instruments, 100 F.3d at 1179.

DISCUSSION

I. Defendants' Motion for Summary Judgment (Doc. No. 34)

Defendants move for summary judgment on all of Plaintiffs' asserted claims brought pursuant to the ADA and the FHA. (Doc. No. 34.) Plaintiffs contend that their ADA and FHA claims are viable and that genuine issues of material fact exist for trial. (Doc. No. 40.)

a. ADA Claims

Defendants argue they are entitled to summary judgment on Plaintiffs' ADA claims because Title III of the ADA does not apply to either Defendant because it applies to commercial facilities and public accommodations and Defendants are private entities. (Doc. No. 34, at 11.) Defendants further argue that the ADA does not apply to service cats and does not apply to Mr. Coots because he does not allege a disability. *Id.* at 13-14. Plaintiffs contend that the ADA applies because Defendants are members of a Homeowner's Association ("HOA") that requires compliance. (Doc. No. 40, at 15-17.)

As discussed above, Plaintiffs allege a violation of the ADA against Defendants for failing to make a reasonable modification of the lease terms to allow the use of service animal prescribed for medical therapy. (Doc. No. 7, at 3.) Title III **[*8]** of the ADA prohibits discrimination against persons with disabilities in places of public accommodation. *See* 42 U.S.C. § 12182(a). Section 12182(a) provides: "No individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by any person who owns, leases (or leases to), or operates a place of public accommodation." *Id.* § 12182(a). As discussed, Defendants first contend that they cannot be liable under Title III of the ADA because they are private entities who do not lease or operate a place of public accommodation. The statute does not define "place of public accommodation," but it does define "public accommodation." Under the statute, "private entities are considered public accommodations ... if the operations of such entities affect commerce" and fall into one of twelve enumerated categories. 42 U.S.C. § 12181(7). The twelve enumerated categories under the statute include:

> [A]n inn, hotel, motel, or other place of lodging, except for an establishment located within a building that contains not more than five rooms for rent or hire and that is actually occupied by the proprietor of such establishment **[*9]** as the residence of such proprietor; a restaurant, bar, or other establishment serving food or drink; a motion picture house, theater, concert hall, stadium, or other place of exhibition or entertainment; an auditorium, convention center, lecture hall, or other place of public gathering; a bakery, grocery store, clothing store, hardware store, shopping center, or other sales or rental establishment; a laundromat, dry-cleaner, bank, barber shop, beauty shop, travel service, shoe repair service, funeral parlor, gas station, office of an accountant or lawyer, pharmacy, insurance office, professional office of a health care provider, hospital, or other service establishment; a terminal, depot, or other station used for specified public transportation; a museum, library, gallery, or other place of public display or collection; a park, zoo, amusement park, or other place of recreation; a nursery, elementary, secondary, undergraduate, or postgraduate private school, or other place of education; a day care center, senior citizen center, homeless shelter, food bank, adoption agency, or other social service center establishment; and a gymnasium, health spa, bowling alley, golf course, or other **[*10]** place of exercise or recreation.

Id.

Here, Plaintiffs are renting a private residence located at 194 Cottonwood Murchison, Texas. (Doc. No. 34-3.) The parties are signators to a residential lease agreement and Plaintiffs are the only occupants of the residence. *Id.* Nothing about the home indicates that it is leased or operated as a "place of public accommodation" and it bears no substantial similarity to any of the categories enumerated in 42 U.S.C. § 12181(7). Indeed, Plaintiffs make no allegations that Defendants operate a place of public accommodation such that Title III would be applicable to the lease agreement. In response to Defendants' motion for summary judgment, Plaintiffs contend for the first time that Defendants are part of an HOA that would require compliance with the ADA. (Doc. No. 40, at 15-17.) However, as Plaintiffs' own argument points out, such application of the ADA would apply to community association areas that are *open to the public*, such as common spaces for events, tennis courts, parking lots, restrooms, rental offices, playgrounds, etc. *Id.* at 15-16; *see* Kalani v. Castle Vill. LLC, 14 F. Supp. 3d 1359 (E.D. Cal. 2014) (finding that neighborhood's clubhouse, restroom, rental and sales office, and parking lot were public accommodations for purposes **[*11]** of the ADA). Nothing about the leased property in question is alleged to be "community" property not solely used by the residents. Plaintiffs' response to the motion fails to point out what about the property or the alleged HOA would render the property a place of public accommodation. As such, the court agrees that on the record before it, Title III of the ADA is inapplicable and Defendants are entitled to summary judgment on Plaintiffs' ADA claims. The court **RECOMMENDS** that Plaintiffs' ADA claims be dismissed with prejudice.

b. FHA Claims

Defendants also argue that they are entitled to summary judgment on Plaintiffs' FHA claims because Plaintiffs are not aggrieved persons under the FHA, Plaintiffs are not disabled under the FHA, Plaintiffs never requested a reasonable accommodation, and there is no causal connection to Plaintiffs' injury. (Doc. No. 34, at 14-17.) Plaintiffs contend that Ms. Brown is disabled for purposes of the FHA, that they never needed to make a formal request to accommodate, and that factual issues remain for trial. (Doc. No. 40, at 22-26.)

i. Standing

As a threshold consideration for the court, Defendants contend that Plaintiffs do not have standing to bring a private **[*12]** cause of action under the FHA because they are not aggrieved persons and because there is no causal connection between the illegal action of Defendants and the Plaintiffs' injury. (Doc. No. 34 at 14-15, 17.) "The FHA affords a private cause of action to any 'aggrieved person.'" Chavez v Aber, 122 F. Supp. 3d 581, 592 (W.D. Tex. 2015) (quoting Lincoln v. Case, 340 F.3d 283, 289 (5th Cir. 2003) An "'[a]ggrieved person' includes any person who...(1) claims to have been injured by a discriminatory housing practice." 42 U.S.C. § 3602(i)(1). Under the FHA, "[t]he sole requirement for standing...is the Article III minima of injury in fact." Chavez, 122 F. Supp. 3d at 592 (quoting Havens Realty Corp. v. Coleman, 455 U.S. 363, 372, 102 S. Ct. 1114, 71 L. Ed. 2d 214 (1982)). Additionally, a "plaintiff satisfies the injury in fact requirement if there is a 'distinct and palpable injury fairly traceable to the challenged action." *Id.* (citing L & F Homes & Dev., L.L.C. v. City of Gulfport, Miss., 538 F. App'x 395, 400 (5th Cir. 2013) (citing Havens Realty, 455 U.S. at 375-376)). Further, "it must be 'likely'...that the injury will be "redressed by a favorable decision." Lujan v. Defenders of Wildlife, 504 U.S. 555, 561, 112 S. Ct. 2130, 119 L. Ed. 2d 351 (citing Simon v. Eastern Ky. Welfare Rights Org., 426 U.S. 26, 38, 96 S. Ct. 1917, 48 L. Ed. 2d 450 (1976)).

Here, Plaintiffs claim that Defendants refused Plaintiffs' request of reasonable modifications of the existing lease that should be afforded due to Ms. Brown's disability. (Doc. No. 7 at 3-4.) The injury Plaintiffs assert is that they "are being forced to come up with additional money to relocate, or move out of their residence and into the streets because of Defendants unlawful actions." **[*13]** *Id.* at 5. Plaintiffs' alleged injury is not speculative, but instead a palpable injury that they are facing because Plaintiffs have to find a new place to live. Viewing the facts in a light most favorable to Plaintiffs, the injury of having to look for a new residence would not have occurred if Defendants had provided the reasonable modification as alleged. Moreover, the injury alleged can be made whole through compensation. As such, the court is satisfied that Plaintiffs have alleged sufficient facts to satisfy standing to bring a private cause of action under the FHA. Accordingly, the court will consider the merits of Plaintiffs' allegations under the FHA.

ii. Reasonable Accommodation Claim

The FHA, as applicable here, makes it unlawful to "discriminate in the [ ] rental [of], or to otherwise make unavailable or deny, a dwelling to any ... renter because of" such individual's disability. *42 U.S.C. § 3604(f)(1)*. It also prohibits discrimination "against any person in the terms, conditions, or privileges of ... rental of a dwelling, or in the provision of services or facilities in connection with such dwelling, because of" the renter's disability. *42 U.S.C. § 3604(f)(2)*. For purposes of the FHA, discrimination also includes a **[*14]** refusal to make "reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling." *42 U.S.C. § 3604(f)(3)(B)*.

As discussed above, Plaintiffs contend that Defendants refused to make a reasonable accommodation to modify the lease agreement to allow the use of a service dog. (Doc. No. 7, at 3-4.) "Reasonable accommodation claims under the FHA ... require that a reasonable accommodation be provided to the plaintiffs if necessary to allow the plaintiffs to have usage and enjoyment in a facility equivalent to individuals who are not disabled." *Providence Behav. Health v. Grant Rd. Pub. Util. Dist., 902 F.3d 448, 459 (5th Cir. 2018)*. To prevail on a claim for failure to make a reasonable accommodation, the plaintiff must establish the following: (1) he or an associate of his is handicapped within the meaning of *§ 3602(h)* and the defendant knew or should have known of this fact; (2) an accommodation may be necessary to afford the handicapped person an equal opportunity to use and enjoy the dwelling; (3) such accommodation is reasonable; and (4) the defendant refused to make the requested accommodation. *Astralis Condominium Ass'n v. Sec'y, U.S. Dept. of Housing & Urban Development, 620 F.3d 62, 67 (1st Cir. 2010)*; *DuBois v. Ass'n of Apartment Owners of 2987 Kalakaua, 453 F.3d 1175, 1179 (9th Cir. 2006)*; *Chavez v. Aber, 122 F. Supp. 3d 581, 595 (W.D. Tex. 2015)*.

Plaintiffs' FHA claim fails as a matter of law. Here, there is no evidence in the record to **[*15]** suggest that Plaintiffs ever made a requested accommodation regarding the allowance of a service animal. The only communication that appears to have been made to Defendants regarding a service animal was a responsive text message on September 13, 2020, wherein Mr. Coots stated he did not own any animals other than a service animal. (Doc. No. 34-15.) However, there is no communication that suggests Plaintiffs ever made a request to Defendants regarding the allowance of a service animal. The record is not even clear as to what kind of animal was necessary or needed at the property. While Plaintiffs' complaint mentions the refusal of allowing the use of a "service dog" (Doc. No. 7), the note from Ms. Brown's doctor only mentions a "service cat" and that she be allowed a second companion animal while the cat is passing. (Doc. No. 7-1, at 2.) It is unclear whether Ms. Brown needed a service cat on the property, a service dog, both, or neither, and, as discussed, no requests regarding any service animal were made.

In Plaintiffs' response to summary judgment, they appear to clarify that they had a service cat named "Lily" who was passing, for whom they did not need to make a request for accommodation, **[*16]** but that they did request a second animal—a dog—as a service animal for when the cat passed away. (Doc. No. 40 at 24-25.) Accepting that indeed it was a service dog at issue, Plaintiffs point to no evidence that a request for a service dog was ever made. As discussed, Plaintiffs rely on a letter from Ms. Brown's doctor discussing a "service cat" and that she be allowed a second companion animal while the cat is passing. (Doc. No. 7-1, at 2.) However, that letter cannot serve as a request that resulted in the harm alleged by Plaintiffs because that letter was signed by Ms. Brown's doctor on September 23, 2020—seven days after Defendant Tankersley provided a Notice Terminating the Right to Occupancy via certified mail to Plaintiffs. (Doc. No. 34-20.) In other words, there would be no causal connection between the timing of this letter from Ms. Brown's doctor and Defendants' notice of eviction.

Moreover, Plaintiffs' allegations regarding an alleged reasonable modification to the lease agreement to allow the use of service dog make little sense in view of the express terms of the lease agreement which already state "[a]n assistance animal is not considered a pet" in the provision precluding **[*17]** pets. (Doc. No. 34-3, at 3.) Because there is no evidence that Plaintiffs ever made a request regarding the allowance of a service animal, there is no record to determine whether such a request was reasonable, and there is no evidence that Defendants ever refused any such request. For these reasons, Plaintiffs' FHA claim fails as a matter of law and Defendants are entitled to summary judgment on this claim. The court **RECOMMENDS** that Plaintiffs' FHA claim be dismissed with prejudice.

c. Tort Claims

Plaintiffs also allege claims for intentional or reckless infliction of emotional distress against Defendants. (Doc.

No. 7, at 4.) As to these state law claims, the court *sua sponte* addresses its subject matter jurisdiction and declines to exercise supplemental jurisdiction. Because the court has recommended dismissing all claims over which it has original jurisdiction, the court recommends declining to exercise supplemental jurisdiction over the remaining state law claims. 28 U.S.C. § 1326(c)(3); *see* Carnegie-Mellon Univ. v. Cohill, 484 U.S. 343, 350, 108 S. Ct. 614, 98 L. Ed. 2d 720 (1988); *see also* Enochs v. Lampasas County, 641 F.3d 155, 161 (5th Cir. 2011) (explaining that the rule in the Fifth Circuit "is to dismiss state claims when the federal claims to which they are pendent are dismissed"). Consideration of the relevant factors of judicial economy, convenience, **[*18]** fairness, and comity, particularly in light of the early stage of this case, suggests against this court's exercise of pendant jurisdiction over these state law claims. The court's recommended dismissal of plaintiff's ADA and FHA claims supports this conclusion. The court therefore **RECOMMENDS** that the alleged tort claims be **DISMISSED** without prejudice.

II. Plaintiffs' Motion to Compel and Motion for Sanctions (Doc. Nos. 32, 33)

While Plaintiffs did not file a motion for summary judgment, they did file a motion to compel and a motion for sanctions. (Doc. Nos. 32, 33.) Plaintiffs' motion to compel suggests that while they received initial and supplemental disclosures from Defendants, they believe they have not received full discovery regarding this case. (Doc. No. 32.) Specifically, Plaintiffs refer to their document requests 1 through 4 which request: (1) the Rental Lease Inventory and Conditions Form Report(s), referenced in section 15 paragraph B on page 7 of the rental lease, relevant inspection reports of the inventory and conditions submitted to them upon move-in by Plaintiffs and/or created by Defendants; (2) any repairs or work orders; (3) work done; (4) text communications concerning **[*19]** repairs, and/or the full conversations with certain witnesses. *Id.* at 5-6. Defendants contend that they have fully produced all documentation in their possession that is relevant to all pleaded claims and defenses. (Doc. No. 35.)

Materials and information are discoverable if they are "relevant to any party's claim or defense" and they are "proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit." Fed.R.Civ.P. 26(b)(1). Here, the requests that form the basis of Plaintiffs' motion to compel all relate to the condition of the property, repairs, and work orders. Any relevance of the work done to the property in view of Plaintiff's pleaded ADA and FHA claims regarding accommodation for a service animal is not apparent. Moreover, as discussed above, those claims are legally insufficient. There is no indication that any production, to the extent the requested documents were not already fully produced by Defendants, would **[*20]** impact the court's recommendation as to those claims. As such, Plaintiff's motion to compel (Doc. No. 32) is **DENIED**.

Similarly, reviewing Plaintiff's motion for sanctions (Doc. No. 33), the court cannot ascertain a basis for sanctions. Plaintiffs' motion requests sanctions for alleged spoliation by Defendants. (Doc. No. 33.) Specifically, Plaintiffs contend that Defendants destroyed evidence from text messages and social media posts. (Doc. No. 33, at 12-14.) Rule 37 provides allows a party to move for sanctions if a party fails to make a disclosure required under Rule 26(a). Fed.R.Civ.P. 37(a). However, as discussed above, there is no evidence that Defendants failed to comply with Rule 26 in this case and there is no evidence of spoliation. Rather, from the court's review of the evidence presented at summary judgment, it appears all relevant information has been produced. Accordingly, Plaintiff's motion for sanctions (Doc. No. 33) is **DENIED**.

CONCLUSION

For the reasons discussed herein, the court **RECOMMENDS** that Defendants' motion for summary judgment (Doc No. 34) be **GRANTED**. The court further **RECOMMNEDS** that Plaintiffs' ADA and FHA claims be dismissed with prejudice and that Plaintiffs' state law claims be dismissed without prejudice. **[*21]** Plaintiffs' motion to compel and motion for sanctions (Doc. Nos. 32, 33) are **DENIED**. Because a recommendation has been made as to the disposition of all claims asserted in this matter, the court further **RECOMMENDS** that final judgment be entered in accordance with the court's findings and conclusions.

Within 14 days after receipt of the Magistrate Judge's Report, any party may serve and file written objections to the findings and recommendations contained in this Report. A party's failure to file written objections to the findings, conclusions and recommendations contained

in this Report within fourteen days after being served with a copy shall bar that party from *de novo* review by the District Judge of those findings, conclusions and recommendations and, except on grounds of plain error, from appellate review of unobjected-to factual findings and legal conclusions accepted and adopted by the District Court. *Douglass v. United States Auto. Ass'n, 79 F.3d 1415, 1430 (5th Cir. 1996)* (en banc), *superseded by statute on other grounds*, *28 U.S.C. § 636(b)(1)* (extending the time to file objections from ten to fourteen days).

So ORDERED and SIGNED this 25th day of June, 2021.

/s/ John D. Love

JOHN D. LOVE

UNITED STATES MAGISTRATE JUDGE

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