IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

BUCKEYE COMMUNITY HOPE FOUNDATION, et al.,	)	
Plaintiffs,	)	Case No. 16-cv-4430
v.	)	Judge Milton J. Shadur
VILLAGE OF TINLEY PARK, et al.,	)	Magistrate Judge Susan E. Cox
Defendants.	)	

Defendants' Motion to Dismiss Plaintiffs' Complaint

Village of Tinley Park ("Village"), Village of Tinley Park Board of Trustees ("Board"), Village of Tinley Park Plan Commission ("Commission"), David G. Seaman, Michael J. Pannitto ("Pannitto"), Jacob C. Vandenberg, and Brian H. Younker ("Younker") (collectively, "defendants"), by their undersigned attorneys, hereby request that this Court enter an Order, pursuant to Federal Rule of Civil Procedure 12(b)(1) and 12(b)(6), dismissing the complaint filed by Buckeye Community Hope Foundation and Buckeye Community Sixty Nine, LP (referred to jointly throughout as "Buckeye"), and in support thereof state:

Introduction

Buckeye has filed a 53-page complaint, containing 200 paragraphs of allegations, seeking declaratory, injunctive, and compensatory relief. Buckeye contends that it suffered discrimination from the actions of the defendants in relation to a low-income housing development Buckeye wants to develop at the intersection of 183rd Street and Oak Park Avenue in the Village of Tinley Park, Illinois ("Property"). However, as discussed more fully below, in these 53 pages, Buckeye fails to adequately plead any of its counts, instead spending over 15 pages of the complaint detailing the Village's "historical resistance to racial integration," the

demographics of the Village and comments from citizens of the Village who are not defendants in this case opposing the low income housing development. As such, as discussed more fully below, the complaint should be dismissed in its entirety.

Motion to Dismiss Pursuant to Rule 12(b)(6)

To survive a motion to dismiss pursuant to Rule 12(b)(6), the complaint must "state a claim to relief that is plausible on its face." *HSBC North America Holdings*, at 958 (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)). Stated another way, a motion to dismiss pursuant to 12(b)(6) "tests whether the complaint states a claim on which relief may be granted." *Access Living of Metropolitan Chicago v. Prewitt*, 111 F. Supp. 3d 890, 894 (N.D. Ill. 2015) (citing *Richards v. Mitcheff*, 696 F. 3d 635, 637 (7th Cir. 2012)). If, after viewing it in the light most favorable to the plaintiff, the complaint fails to state such a claim, then the court must dismiss the case. *Dunmars v. City of Chicago*, 22 F. Supp. 2d 777, 780 (N.D. Ill. 1998).

I. The complaint should be dismissed in its entirety because Buckeye has failed to plead an adequate factual basis for each of its eleven counts.

Buckeye filed a complaint that contains 53 pages and 200 paragraphs. However, within this lengthy complaint Buckeye has failed to plead how any of the first 178 paragraphs apply to each count of the complaint. Instead, each count of the complaint is only 2 paragraphs long, with the first realleging and incorporating the facts contained in paragraphs 1 through 178 and the second simply stating that the "Defendants, through their actions and the actions of their agents:" (1) "are liable for violation of Plaintiffs' rights under" the statutes on which Counts 1-10 are based and (2) "tortiously interfered with Plaintiffs' contract to purchase the [P]roperty" in Count 11. Buckeye does not plead how or if any of the facts in paragraphs 1-178 are applicable to Counts 1-11. This is problematic because, as discussed more fully below, there appears to be no factual basis for many of the counts in the complaint leaving Defendants to attempt to infer

how or when they allegedly violated Buckeye's statutory rights or tortiously interfered with the contract to purchase the Property. Accordingly, for this reason alone, the complaint should be dismissed.

II. Counts Four and Eight should be dismissed because Buckeye has not alleged any handicap or disability as required pursuant to the Fair Housing Act § 3604(f) & Illinois Human Rights Act § 3-102.1.

Counts Four and Eight should be dismissed because Buckeye has not alleged anywhere in the complaint any discrimination based on a "handicap" or a "disability," as required by 42 U.S.C. § 3604(f) and 775 ILCS 5/3-102.1, respectively. Specifically, Count Four is brought pursuant to 42 U.S.C. § 3604(f) which states that it is unlawful to "[t]o discriminate in the sale or rental, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a *handicap*..." or "[t]o discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection with such dwelling, because of a *handicap*..." (emphasis added). Count Eight is brought pursuant to 775 ILCS 5/3-102.1 which states that "[i]t is a civil rights violation to refuse to sell or rent or to otherwise make unavailable or deny a dwelling to any buyer or renter because of a *disability* of that buyer or renter, a *disability* of a person residing or intending to reside in that dwelling after it is sold, rented or made available or a *disability* of any person associated with the buyer or renter." (emphasis added). There are absolutely no allegations in the complaint that there have been any actions or alleged discrimination based on either a "handicap" or a "disability." As such, Counts Four and Eight should be dismissed.

III. Count Eleven should be dismissed because Buckeye failed to allege a breach of the relevant contract as required for a tortious interference claim.

Count Eleven for tortious interference with contract should be dismissed because Buckeye has not plead all of the required elements, namely, it has not pled a breach of the

relevant contract. In Illinois, the elements necessary for tortious interference with contract are: "(1) the existence of a valid and enforceable contract between the plaintiff and another; (2) the defendant's awareness of this contractual relation; (3) the defendant's intentional and unjustified inducement of a breach of the contract; (4) a subsequent breach by the other, caused by the defendant's wrongful conduct; and (5) damages." *Instant Tech., LLC v. DeFazio*, 40 F. Supp. 3d 989, 1016-17 (N.D. Ill. 2014) (Holderman, D.J.) (*quoting HPI Health Care Services, Inc. v. Mt. Vernon Hospital, Inc.*, 131 Ill. 2d 145 (1989)).

In the complaint, Buckeye alleges that the defendants "tortiously interfered with plaintiffs' contract to purchase the property at 183rd Street and Oak Park Avenue intended to be the site of The Reserve Development." Compl. ¶200. However, Buckeye nowhere pleads that there has actually been a breach of this contract. In fact, the only other mention of this contract is the allegation that the defendants are interfering with Buckeye's "ability to contract for the purchase of this property" and "ability to enter into a contract for the purchase of the subject property." Compl. ¶¶173, 177. Absent such an allegation of a breach of the contract, the required elements for a tortious interference with contract claim have not been met and Count Eleven should be dismissed.

IV. Count Seven of the Complaint should be dismissed because the defendants were not parties to a real estate transaction as required under section 3-102 of the Illinois Human Rights Act.

Count Seven of the complaint alleges a violation of section 3-102 of the IHRA. Compl. ¶¶ 192. Specifically, section 3-102 states that "[i]t is a civil rights violation for an owner or any other person engaging in a real estate transaction, or for a real estate broker or salesman, because of unlawful discrimination or familial status, to…" engage in a number of prohibited activities such as "[r]efuse to engage in a real estate transaction with a person or to discriminate in making available such a transaction."

This count should be dismissed because Buckeye has not alleged that there was a "real estate transaction," that the defendants were a party to a "real estate transaction," or that any of them acted as a "real estate broker or salesman" as required by section 3-102. Nor can Buckeye make these allegations because the defendants in this case were not a party to the contract at issue and were not acting as a real estate broker. As such, Count Seven should be dismissed.

V. The Board and the Commission do not have the legal capacity to be sued and should be dismissed from the action entirely.

Buckeye named both the Board and the Commission as defendants in this action; however, neither of these municipal subdivisions are legal entities with the capacity to be sued. Therefore, the complaint fails under Rule 12(b)(6) to state a claim on which relief can be granted because Buckeye cannot recover from the Board or the Commission.

Pursuant to Federal Rule of Civil Procedure 17(b)(3), for all parties that are neither individuals nor corporations, the capacity to be sued is determined by the law of the state where the court is located. Fed. R. Civ. P. 17(b)(3). Therefore, Illinois law is determinative as to whether either the Board or the Commission have the capacity to be sued.

Under Illinois law, a party to litigation must have a legal existence, either natural or artificial, to sue or be sued. *Jackson v. Village of Rosemont*, 180 Ill. App. 3d 938, 937 (1st Dist. 1988). "'[A]lthough a municipal corporation and the individual members of its city council may have the capacity to sue and be sued, the council itself may not be a legal entity for the purposes of rule 17(b).'" *Bonilla v. City Council of City of Chicago*, 809 F. Supp. 590, 599 (N.D. Ill. 1992) (quoting 6A Wright, Miller, & Kane, Federal Practice and Procedure § 1562 (2d ed. 1990)). Additionally, courts have held that departments which are merely organizational divisions of a municipality do not enjoy independent legal existence and are not suable entities.

See Dr. Martin Luther King, Jr. Movement Inc. v. City of Chicago, 435 F. Supp. 1289, 1294 (N.D. Ill. 1977) (holding that the Department of Streets and Sanitation is not a suable entity and striking it as a separate defendant); *see also Dunmars*, at 780-81 (holding that police department does not have a separate legal existence and was not a suable entity).

According to the above cases, it is clear that the Board and the Commission do not have a legal existence independent of the municipality of which they are a part for the purposes of Rule 17(b). Because they do not have the capacity to be sued, both the Board and the Commission should be dismissed.

VI. Defendants Pannitto and Younker cannot be individually liable because they have immunity pursuant to the Communications Decency Act and should be dismissed.

Buckeye seeks recovery from Pannitto and Younker in Counts One through Five, Seven through Nine, and Eleven. Buckeye has named Pannitto and Younker in their individual capacity and not in their official capacity as village trustees. Complaint, ¶¶ 16, 18. Buckeye's only allegations against Pannitto and Younker is that their role as moderators of the "Concerned Citizens for Tinley Park" Facebook group is a violation of the FHA and IHRA. Such a position is directly contradicted by the Communications Decency Act ("CDA"), 47 U.S.C. § 230(c), which prohibits treating the user of an interactive computer service as the publisher or speaker of third-party speech.

Section 230(c)(1) of the CDA states, "[n]o provider or *user* of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider." 47 U.S.C. § 230(c)(1) (emphasis added). The issue of speech on interactive computer services that violates the FHA was addressed in *Chicago Lawyers' Committee for Civil Rights Under Law, Inc. v. Craigslist, Inc.*, 519 F. 3d 666 (7th Cir. 2008). In *Chicago Lawyers'*, the plaintiff brought suit against the defendant, an online classified

provider, for ad postings that allegedly violated sections 3604(a), (b), and (c) of the FHA. The court held that the defendant "[was] not the author of the ads and could not be treated as the 'speaker' of the posters' words." *Id.* at 671.

Just as in *Chicago Lawyers'*, Pannitto and Younker cannot be held as the authors of any posts on the "Concerned Citizens for Tinley Park" Facebook group page that they did not author, simply because they serve as moderators of group. Further, the complaint points to nothing in Pannitto and Younker's actions as moderators as having induced any particular posting by a third-party or expressing a preference for discrimination. *Chicago* Lawyers', at 671. Buckeye's complaint mentions Pannitto in a total of four paragraphs, Complaint, ¶¶ 1, 16, 94, and 100, yet fails to provide a single statement attributable to Pannitto that could support a claim of violating the FHA or the IHRA. Similarly, Buckeye's complaint refers to Younker in five paragraphs, Complaint, ¶¶ 1, 18, 93, 94, and 100, but once again fails to provide a single statement by Younker that violates the FHA or IHRA. Pursuant to Rule 12(b)(6), a plaintiff must "state a claim to relief that is plausible on its face." *HSBC North America Holdings*, at 958 (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)). Without any statement directly attributable to either Pannitto or Younker, they cannot be held individually liable for the comments of others because of the immunity granted to them pursuant to the CDA. Therefore, Buckeye has failed to state a claim upon which relief can be sought, and Pannitto and Younker should be dismissed.

Motion to Dismiss Pursuant to 12(b)(1)

As set forth in the 12(b)(6) motion above, each of the eleven counts pled by Buckeye consists of two paragraphs, an incorporation paragraph and a paragraph stating the following, or some slight variation thereof: "Defendants, through their actions and the actions of

their agents, are liable for the violation of Plaintiffs' rights under the federal Fair Housing Act." Without giving any explanation as to what specific actions of any of the defendants led to what specific violations of the cited statutes or common law rights, defendants are left to fill in the blanks and speculate as to what plaintiffs intend. However, in the event that the Court determines that the counts are sufficiently pled to state claims, defendants move to dismiss them under Federal Rule of Civil Procedure 12(b)(1).

A motion to dismiss pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure tests the jurisdictional sufficiency of the complaint. Fed. R. Civ. P. 12(b)(1); *County of Cook v. HSBC North America Holdings, Inc.*, 136 F. Supp. 3d 952, 957 (N.D. Ill. 2015). Article III of the Constitution limits federal courts to adjudicating actual cases or controversies, which requires that a party must have standing for each cause of action it asserts. U.S. CONST., ART. III, § 2; *Parvati Corp. v. City of Oak Forest, Ill.*, 630 F. 3d 512, 516 (7th Cir. 2010). "Standing is an essential component of Article III's case-or-controversy requirement." *Apex Digital, Inc. v. Sears, Roebuck & Co.*, 572 F. 3d 440, 443 (7th Cir. 2009) (citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992)). As such, the plaintiff bears the burden of asserting jurisdiction and establishing standing. *Apex Digital*, at 443. Buckeye cannot meet that burden here.

I. Counts One through Five, alleging violations of the Fair Housing Act, should be dismissed for failing to meet the ripeness standard under the case or controversy requirement of Article III.

Buckeye brings five causes of action alleging violations under the Fair Housing Act ("FHA"), 42 U.S.C. § 3604(a), (b), (c), (f) and § 3617. Compl. ¶¶ 179-188. While not set forth in the Counts themselves, defendants will infer that the purported violations can be found in paragraphs 168 through 171 of the complaint, in which Buckeye alleges that defendants' actions have the purpose and effect of discriminating on the basis of race, national origin and familial

status. Compl. ¶¶ 168-171. As for exactly what "actions" have allegedly caused this harm, defendants will further infer that they appear to be set forth in paragraph 166 of the complaint, which points to the Village's "continuing, unwarranted delays in taking action on The Reserve proposal . . . constitute[ing] a constructive denial of Buckeye's application by the Village." The question is thus whether Buckeye's claim of a "constructive denial" having the purpose and effect of discrimination, is sufficient to meet the requirement that Buckeye plead a "final action" taken by the defendants such that Buckeye's claims are ripe for adjudication by this Court. As seen below, that allegation is insufficient to meet the pleading obligation and so the complaint should be dismissed.

The ripeness doctrine originates from the "case or controversy" requirement under the constitution. U.S. CONST., ART. III, § 2, CL. 1. A case is ripe for adjudication when the controversy is final and not dependent on future uncertainties. *Texas v. United States*, 523 U.S. 296, 300 (1998). A case is not ripe when the dispute is "hypothetical, speculative or illusory." *Wisconsin Cent., Ltd. v. Shannon*, 539 F. 3d 751, 759 (7th Cir. 2008). If a case is not ripe for adjudication, a federal court has no jurisdiction to hear it. *Biddison v. City of Chicago*, 921 F. 2d 724, 726 (7th Cir. 1991).

Final action on a zoning request must be taken before a plaintiff has a ripe claim related to a zoning determination under the FHA. *See Safe Harbor Retreat LLC v. Town of East Hampton*, 629 Fed. Appx. 63 (2nd Cir. 2015) (plaintiff's challenge under FHA to town's zoning board of appeals' determination was not ripe because determination was not final); *Keith v. Volpe*, 858 F. 2d 467, 477 (2nd Cir. 1988) (developer satisfies injury in fact requirement when city denies developer's zoning change and permit applications thus creating a barrier to constructing housing that developer planned to build); *U.S. v. Village of Palatine*, 37 F. 3d 1230,

1233 (7th Cir. 1994) (where plaintiffs claimed that village did not make a reasonable accommodation under the FHA, claim was not ripe where special use approval from the village had not been requested); *Barnabei v. Chadds Ford Township,* 125 F. Supp. 3d 515 (E.D. Pa. 2015) (FHA claim not ripe where local land-use board had not issued its decision); *Omnipoint Communications, Inc. v. Zoning Hearing Board of East Peanssboro Township,* 4 F. Supp. 2d 366, 370 (M.D. Pa. 2001) ("[i]n the context of land use cases, a landowner's claim challenging the actions of local land planning authorities is not ripe until those authorities have had an opportunity to render a final decision on the dispute"); *Oxford House v. City of Virginia Beach,* 825 F. Supp. 1251, 1261-62 (E.D. Va. 1993) (plaintiff's FHA claim against city was not ripe because city had not denied a conditional use permit under zoning scheme).

Buckeye has not pled a justiciable case or controversy under the FHA because the dispute is not ripe. According to the complaint, The Plan Commission has referred consideration of The Reserve back to the Planning Department for review. Compl., ¶¶ 143, 161. Buckeye never alleges that the Commission, or any agency of Tinley Park, made a final decision denying the application for The Reserve. *Id.* Buckeye cannot manufacture the existence of a final decision by claiming a "constructive denial," especially when that claim flies in the face of other allegations showing that consideration of the development has been sent back to the Planning Department for review. Because no final decision on Buckeye's application has been alleged, Counts One through Five alleging violations of the FHA are not ripe for judicial determination.

II. Counts Seven through Nine, alleging violations of the Illinois Human Rights Act, fail to meet both the constitutional limitation and prudential limitation required for standing.

Buckeye brings three causes of action pursuant to the Illinois Human Rights Act ("IHRA"), 775 ILCS 5/3-102, 102.1, and 105.1. Compl. ¶¶ 191-196. As with the causes of action brought pursuant to the FHA, it is entirely unclear what actions of defendants that Buckeye

claims violated the IHRA, and Buckeye has not alleged any actual discrimination (i.e., a final decision) to satisfy the injury-in-fact requirement for standing. Additionally, Buckeye cannot escape the prudential limitation that bars it from asserting the rights of a third-party.

In *Warth v. Seldin*, 422 U.S. 490 (1975), the Supreme Court outlined a two-part test for analyzing whether a plaintiff has standing. *U.S. General, Inc. v. City of Joliet*, 432 F. Supp. 346, 350 (7th Cir. 1977) (citing *Warth*). The first part consists of the constitutional limitation of justiciability. In order to satisfy the constitutional limitation, a plaintiff must assert a personal stake in the outcome of the litigation. Stated another way, the constitutional limitation for standing contains three elements: 1) injury-in-fact; 2) causal connection; and 3) likelihood the injury will be redressed by a favorable decision. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992). In order to satisfy the injury-in-fact element, Buckeye must allege that it suffered a distinct and palpable injury that is concrete and particularized. *Oak Ridge Care Center, Inc. v. Racine County, Wis.*, 869 F. Supp. 867, 873 (E.D. Wis. 1995); *County of Cook v. HSBC North America Holdings, Inc.*, 136 F. Supp. 3d 952, 958 (N.D. Ill. 2015). Further, that injury cannot be conjectural or hypothetical. *HSBC North America*, at 958.

As discussed above, Buckeye has alleged that consideration of The Reserve has merely been sent back to the Planning Department for review. Complaint, ¶¶ 143, 161. Without an actual denial, Buckeye's claims of harm are speculative and so there has been no allegation of injury-in-fact. At present, any purported injury would be hypothetical and in contravention of the constitutional limitation to standing.

The second part of the *Warth* test consists of the prudential limitation. In order to satisfy the prudential limitation, a plaintiff must assert his own legal rights and not the rights of third-parties. Here, Buckeye is asserting the rights of third-parties, namely the potential tenants

of the planned development. Accordingly, Buckeye cannot meet the prudential limitation on standing.

While there are exceptions to the prudential limitation, such as a direct relationship between the plaintiff and the third-party or an express or implied grant of standing by Congress. *U.S. General, Inc.*, at 350 (citing *Warth*), neither of the exceptions to the prudential limitation are present under the IHRA. Buckeye has not alleged any direct link between it and any third-party. Buckeye's complaint fails to allege that any tenants have been selected or that any tenants have been put on a waiting list. Compl. ¶¶ 59-62. The only allegation regarding any potential tenant indicates that 17 units "will be covered by project-based vouchers" and the households will be selected from the Chicago Regional Housing Initiative waiting list. Compl. ¶ 62. Buckeye has failed to and cannot allege an *existing* relationship with the third-party minority group families to circumvent the prudential limitation. *See U.S. General Inc.*, at 354 (holding that no exception to the prudential limitation exists without an existing relationship between the plaintiff and the third-party and when the relief requested would not redress the third-party's injury). Accordingly, Counts Seven through Nine should be dismissed.

III. Count Six, alleging a violation of Title VI of the Civil Rights Act of 1964, should be dismissed because the prudential limitation to standing bars asserting the rights of a third-party.

Count Six should be dismissed because Buckeye lacks standing to assert a claim that the Village violated "[p]laintiffs' rights under Title VI of the Civil Rights Act of 1964, 42 U.S.C.A. § 2000d *et seq.*" Compl. ¶ 190. Section 2000d states, "[n]o person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." 42 U.S.C. § 2000d (2015). Because Buckeye does not have its own

racial identity to assert its own rights, it cannot assert the rights of a third-party without some exception to the prudential rule as discussed above.

In *U.S. General, Inc.*, the plaintiff, a low-income housing developer, brought suit against the City of Joliet and various city officials seeking monetary damages from the denial of building permits. *U.S. General*, 432 F. Supp. at 348. The plaintiff sought to construct two low-income housing developments, but, in order to do so, needed to secure a zoning change for one of the developments. *Id.* at 349. It presented a rezoning proposal, but the city council declined to adopt it by way of an ordinance. After that, the plaintiff then submitted an application for a building permit, which was denied. *Id.* Among other causes of action, the plaintiff alleged a violation 42 U.S.C. § 2000d. *Id.* at 350. The court utilized the standing test as outlined in *Warth* and held that the plaintiffs did not have standing under § 2000d. *Id.* at 354. It found that, even though there are exceptions to the prudential requirement, this "general civil rights statute[]" did not waive the prudential requirement. The court directly contrasted § 2000d with the Fair Housing Act, noting that Congress intended to expand standing and created an exception to the prudential requirement. Additionally, it reasoned that its holding was supported by the lack of any existing relationship between the plaintiff and the third-party and that the relief the plaintiff requested would not redress the injury to the third-party. *Id.*

Just like the plaintiff in *U.S. General*, Buckeye lacks standing for a cause of action under § 2000d as it cannot satisfy the prudential requirement. Given that § 2000d does not waive the prudential requirement for standing through either an explicit or implicit act of Congress, Buckeye only has standing to assert its rights and not the rights of third-parties. However, Buckeye, as a corporation, "has no racial identity and cannot be the target of the [defendants'] alleged discrimination." *Village of Arlington Heights v. Metropolitan Housing*

Development Corporation, 429 U.S. 252, 263 (1977). Therefore, Buckeye does not have standing to bring this cause of action, and it should be dismissed.

IV. Count Ten alleging a violation of the Illinois Civil Rights Act should be dismissed because the prudential limitation to standing bars asserting the rights of a third-party.

Count Ten of Buckeye's complaint alleges a violation of the Illinois Civil Rights Act of 2003 ("ICRA"), 740 ILCS 23/5. Compl. ¶ 198. Buckeye lacks standing to bring this cause of action because, once again, it cannot satisfy the prudential requirement of asserting its own rights and not the rights of a third-party.

Section 5 of the ICRA states, in relevant part:

> (a) No unit of State, county, or local government in Illinois shall: (1) exclude a person from participation in, deny a person the benefits of, or subject a person to discrimination under any program or activity on the grounds of that person's race, color, national origin, or gender; or (2) utilize criteria or methods of administration that have the effect of subjecting individuals to discrimination because of their race, color, national origin, or gender.

740 ILCS 23/5(a) (West 2016).

"[The] ICRA was patterned on Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d, which prohibits race and national origin discrimination in federally assisted programs." *Weiler v. Village of Oak Lawn*, 86 F. Supp. 3d 874, 889 (N.D. Ill. 2015) (citing 93d Ill. Gen. Assemb., H. Deb., April 3, 2003, at 146). Further, courts have held that the ICRA was not intended to create new rights, but merely created a state court remedy that had been previously available in federal courts. *Illinois Native American Bar Ass'n v. Univ. of Illinois by its Board of Trustees*, 368 Ill. App. 3d 321, 327 (1st Dist. 2006); *see also Dunnet Bay Construction Co. v. Hannig*, 2014 WL 552213, at *24 (C.D. Ill. 2014). Because of its derivative nature, Illinois courts have "looked to cases concerning alleged violations of federal civil rights statutes to guide

[their] interpretation of the [ICRA]." *Weiler*, at 889 (quoting *Central Austin Neighborhood Ass'n v. City of Chicago*, 2013 IL App (1st) 123041, ¶ 10).

Because the ICRA was patterned on § 2000d, the same analysis used for standing under § 2000d should be applied in determining Buckeye's standing under the ICRA. As previously discussed, the court in *U.S. General* specifically held that the developer-plaintiff did not have standing under § 2000d. *U.S. General*, at 354. Again, the court did so because it reasoned that such general civil rights statutes did not waive the prudential requirement barring asserting the rights of third-parties. *Id.* Therefore, it must follow that Buckeye does not have standing to assert a claim under the ICRA, and Count Ten must be dismissed.

Conclusion

WHEREFORE, the Village, the Board, the Commission, David G. Seaman, Pannitto, Jacob C. Vandenberg, and Younker request that this Court enter an order as follows:

a. dismissing Buckeye's entire complaint;
b. dismissing Pannitto and Younker;
c. dismissing the Board and the Commission with prejudice;
d. dismissing Counts Four and Eight with prejudice; and
e. for any further relief as this Court deems just and appropriate.

Respectfully submitted,

VILLAGE OF TINLEY PARK, VILLAGE OF TINLEY PARK BOARD OF TRUSTESS, VILLAGE OF TINLEY PARK PLAN COMMISSION, DAVID G. SEAMAN, MICHAEL J. PANNITTO, JACOB C. VANDENBERG & BRIAN H. YOUNKER

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