

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

CHICAGO LAWYERS' COMMITTEE FOR)
CIVIL RIGHTS UNDER THE LAW, INC.,)

Plaintiff,)

v.)

CRAIGSLIST, INC.,)

Defendants.)

Case No. 06 C 0657

MEMORANDUM OPINION AND ORDER

AMY J. ST. EVE, District Court Judge:

Plaintiff Chicago Lawyers' Committee for Civil Rights Under Law, Inc. ("CLC") has filed suit under 42 U.S.C. §3604(c) of the Fair Housing Act ("FHA") seeking monetary, declaratory, and injunctive relief against Defendant "craigslist, Inc." ("Craigslist"). CLC alleges that such relief is warranted because Craigslist publishes notices, statements, or advertisements with respect to the sale or rental of dwellings that indicate (1) a preference, limitation, or discrimination on the basis of race, color, religion, sex, familial status, or national origin; and (2) an intention to make a preference, limitation, or discrimination on the basis of race, color, religion, sex, familial status, or national origin. Craigslist has moved for judgment on the pleadings pursuant to Fed. R. Civ. P. 12(c) ("Rule 12(c)"), contending that Plaintiff's claim is barred based on the immunity afforded to "providers . . . of interactive computer services" ("ICSs") under 47 U.S.C. §230 ("Section 230"). For the reasons below, the Court grants Craigslist's motion.

LEGAL STANDARD

A motion under Rule 12(c) – a motion that a defendant may use to dismiss a complaint based on an affirmative defense, *see, e.g., McCready v. EBay, Inc.*, 453 F.3d 882, 892 n.2 (7th Cir. 2006) – is subject to the same standard as a motion to dismiss pursuant to Rule 12(b)(6). *Craigs, Inc. v. Gen. Elec. Capital Corp.*, 12 F.3d 686, 688 (7th Cir. 1993); *Thomason v. Nachtrieb*, 888 F.2d 1202, 1204 (7th Cir. 1989). Thus, a court must “view the facts in the complaint in the light most favorable to the nonmoving party,” *GATX Leasing Corp. v. Nat’l Union Fire Ins. Co.*, 64 F.3d 1112, 1114 (7th Cir. 1995), and cannot grant the motion “unless it appears beyond doubt that the plaintiff cannot prove any facts that would support his claim for relief.” *Thomason*, 888 F.2d at 1204 (citing *Conley v. Gibson*, 355 U.S. 41, 45-46, 78 S. Ct. 99, 101-02, 2 L. Ed. 2d 80 (1957)).

BACKGROUND

I. The Parties

Plaintiff CLC, a public interest consortium of forty-five law firms, is an Illinois non-profit organization with its principal place of business in Chicago, Illinois. (R. 1-1, Pl.’s Compl. at ¶5; R. 41-1, Pl.’s Motion to Supp. at ¶1.) CLC’s mission is to promote and protect civil rights, particularly the civil rights of the poor, ethnic minorities, and the disadvantaged. (R. 1-1, Pl.’s Compl. at ¶5.) CLC strives to eliminate discriminatory housing practices by: (1) educating people about their rights under the fair housing and fair lending laws; (2) investigating complaints of fair housing discrimination; (3) providing referral information for non-discrimination housing matters; (4) advocating on a wide range of housing related issues, such as public housing, increased affordable housing, and fair and equal mortgage lending opportunities; and (5) providing free legal services to individuals and groups who wish to exercise their fair housing rights and secure equal housing

opportunities. (*Id.*)

Defendant Craigslist is a Delaware corporation located in San Francisco, California that operates a website through “a small staff in a single office.” (*Id.* at ¶6; R. 15-1, Def.’s Motion at 1.) In a typical month, Craigslist posts more than 10 million items of “user-supplied information,” (R. 15-1, Def.’s Motion at 1), and user postings are increasing at a rate of approximately 100% per year. (*Id.* at 1 n.1.)

In addition to the parties’ submissions, the Court has granted leave to the National Fair Housing Alliance (“NFHA”) to submit an *amicus* brief. The NFHA is a non-profit corporation that represents approximately eighty five private, non-profit fair housing organizations throughout the country. (R. 17-2; NFHA Br. at 1.) NFHA was founded in 1988 “to lead the battle against housing discrimination and ensure equal housing opportunity for all people.” (*Id.*) The NFHA describes its mission as promoting equal housing, lending, and insurance opportunities through outreach, policy initiatives, advocacy, and enforcement. (*Id.*) Relying on the FHA, the NFHA and its members have undertaken enforcement initiatives in cities and states across the country. (*Id.*)

The Court also granted leave to file a joint *amicus* brief to ten companies and trade associations affiliated with the online and electronic communications industries (collectively, the “Service Providers”). These *amici* include: (1) Amazon.com, Inc., an online service that, through its website, offers millions of items for sale including jewelry, apparel, accessories, books, music, and DVDs; (2) AOL LLC, the operator the AOL.com website and the largest internet service provider (“ISP”) in the United States, offering service to millions of members; (3) eBay Inc.,¹ operator of a website featuring an online auction-style trading format that offers “a forum in which

¹ eBay has a minority stake of approximately 25% in Craigslist. (*Id.* at 2 n.1.)

today almost two hundred million users can sell goods directly to each other;” (4) Google Inc., an online provider that maintains the Google Web Search service, which is an index of more than eight billion Web pages from content providers around the world; (5) Yahoo! Inc., online provider that offers services, including a Web search engine and a network that hosts millions of personal websites, to more than 411 million individuals each month worldwide; (6) Electronic Frontier Foundation, a non-profit, member-supported civil liberties organization that “actively encourages and challenges industry, government, and the courts to support free expression, privacy, and openness in the information society;” (7) Internet Commerce Coalition, a coalition of ISPs, e-commerce companies, and trade associations; (8) NetChoice, a coalition of online businesses and consumers “who are united in promoting the increased choice and convenience enabled by e-commerce;” (9) NetCoalition, “the public policy voice” for providers of internet search technology, hosting services, ISPs, and Web portal services; and (10) United States Internet Service Provider Association, a national trade association that represents major American ISPs and network communications providers. (R. 28-1, Am. Motion for Leave at 2.)

II. The Pleadings

Craigslist operates a website that allows third-party users to post and read notices for, among other things, housing sale or rental opportunities. (R. 1-1, Pl.’s Compl. at ¶7; R. 13-1, Def.’s Ans. at ¶7.) The website, which is accessible at “chicago.craigslist.org” (among other web addresses), is titled “craigslist: chicago classifieds for jobs, apartments, personals, for sale, services, community: Non-commercial bulletin board for events, jobs, housing, personal ads and community discussion.” (R. 1-1, Pl.’s Compl. at ¶7; R. 13-1, Def.’s Ans. at ¶7.) The website contains a link entitled “post to classifieds” that, if clicked, will display a webpage located at

“post.craigslist.org/chi” and titled “chicago craigslist >> create posting.” (R. 1-1, Pl.’s Compl. at ¶8; R. 13-1, Def.’s Ans. at ¶8.) That webpage categorizes posts and advertisements and offers the following links: (1) “job,” (2) “gigs,” (3) “housing,” (4) “for sale/wanted,” (5) “resume,” (6) “services offered,” (7) “personal/romance,” (8) “community,” and (9) “event.” The webpage also contains additional links labeled “log into your account” and “(Apply for Account).” (R. 1-1, Pl.’s Compl. at ¶8; R. 13-1, Def.’s Ans. at ¶8.)

When a user clicks on the website link “housing,” the website will display a page located at “post.craigslist.org/chi/H” that bears the title “chicago craigslist > housing > create posting” and contains a line reading “Are you offering space/housing, or do you need space/housing?” (R. 1-1, Pl.’s Compl. at ¶9; R. 13-1, Def.’s Ans. at ¶9.) On this webpage, directly under this quoted text, there are two links labeled “I am offering housing” and “I need housing” as well as two other links (at the upper right of the page) labeled “log into your account” and “(Apply for Account).” (R. 1-1, Pl.’s Compl. at ¶9; R. 13-1, Def.’s Ans. at ¶9.)

When a user clicks on the link “I am offering housing,” the website displays a page located at “post.craigslist.org/chi/H?want=n,” also titled “chicago craigslist > housing > create posting.” (R. 1-1, Pl.’s Compl. at ¶10; R. 13-1, Def.’s Ans. at ¶10.) This webpage contains a line reading: “Your ad will expire in 7 days. Please choose a category:” followed by eight categorized links entitled: (1) “rooms & shares,” (2) “apartments for rent,” (3) “housing swap,” (4) “office & commercial,” (5) “parking & storage,” (6) “real estate for sale,” (7) “sublets & temporary,” and (8) “vacation rentals,” as well as two other links (at the upper right of the page) labeled “log into your account” and “(Apply for Account).” (R. 1-1, Pl.’s Compl. at ¶10; R. 13-1, Def.’s Ans. at ¶10.) Accessing any of these links opens a new webpage making available suggested and “[r]equired”

fields that comprise the content of the post or advertisement. (R. 1-1, Pl.'s Compl. at ¶10.) These content fields list rent or price, specific and general location, the title of the advertisement, a contact email address, and a description with the capability to add pictures. (R. 1-1, Pl.'s Compl. at ¶10.)

The webpage further offers the option to “anonymize[]” a contact email address with a newly-assigned and unique email address using the domain name “craigslist.org.” (R. 1-1, Pl.'s Compl. at ¶10.) When a user clicks on the link “I need housing” the website displays a webpage located at “post.craigslist.org/chi/H?want=y” that bears the title “chicago craigslist > housing > posting.” This webpage categorizes posts and advertisements under links to the following: (1) “apts wanted,” (2) “real estate wanted,” (3) “room/share wanted,” and (4) “sublet/temp wanted.” (R. 1-1, Pl.'s Compl. at ¶11; R. 13-1, Def.'s Ans. at ¶11.) When a user clicks on these links, the webpage offers the option to anonymize a contact email address and the same suggested and “[r]equired” fields appear as when a user clicks on links associated with the “I am offering housing” link. (R. 1-1, Pl.'s Compl. at ¶11; R. 13-1, Def.'s Ans. at ¶11.) The webpage link titled “log in to your account,” opens a webpage titled “craigslist: account log in” that lists an “Email/Handle” field and a “Password” field so that those with “craigslist accounts” may access their personal accounts, prior postings, responses to such postings, and other information. (R. 1-1, Pl.'s Compl. at ¶12; R. 13-1, Def.'s Ans. at ¶12.) This sign-in page has a line that reads “need help?” followed by a link that enables a user to send an email to the email address “accounts@craigslist.org.” (R. 1-1, Pl.'s Compl. at ¶12; R. 13-1, Def.'s Ans. at ¶12.) The webpage link titled “Apply for Account,” opens a new webpage located at “accounts.craigslist.org/login/signup,” titled “craigslist: account signup,” that directs individuals to type a five-letter verification word, to provide a contact email address, and to

click on a button to “create account” so that prior content and information may be saved and accessed later. (R. 1-1, Pl.’s Compl. at ¶13; R. 13-1, Def.’s Ans. at ¶13.) When home-seekers are interested in posted sale or rental housing opportunities, they obtain the necessary contact information from content published on Craigslist’s website. (R. 1-1, Pl.’s Compl. at ¶14.)

CLC alleges that, through the above-described process, Craigslist publishes housing advertisements on its website that indicate a preference, limitation, or discrimination, or an intention to make a preference, limitation, or discrimination, on the basis of race, color, national origin, sex, religion and familial status. (*See also id.* ¶¶142-51 (alleging that CLC continuously monitors Craigslist’s website and that it has diverted substantial time and money away from its fair housing program to efforts directed in response to Craigslist’s publication of discriminatory housing advertisements).) Here is a sampling of the allegedly objectionable statements within rental postings on Craigslist’s website:

- “African Americans and Arabians tend to clash with me so that won’t work out” (R. 1-1, Pl.’s Compl. at ¶17)
- “Neighborhood is predominantly Caucasian, Polish and Hispanic” (*Id.* at ¶18)
- “NO MINORITIES” (*Id.* at ¶19)
- “Non-Women of Color NEED NOT APPLY” (*Id.* at ¶21)
- “looking for gay latino” (*Id.* at ¶24)
- “This is not in a trendy neighborhood – very Latino” (*Id.* at ¶26)
- “This neighborhood is probably what you’ve heard . . . predominantly hispanic, but changing slowly” (*Id.* at ¶27)
- “All in a vibrant southwest Hispanic neighborhood offering great classical Mexican culture, restaurants and businesses” (*Id.* at ¶28)
- “Requirements: Clean Godly Christian Male.” (*Id.* at ¶30)

- “Owner lives on the first floor, so tenant must be respectful of the situation, preferably not 2 guys in their mid twenties, who throw parties all the time” (*Id.* at ¶33)
- “LADIES PLEASE RENT FROM ME” (*Id.* at ¶34)
- “This is what I am looking for . . . and the more a candidate has, the less I will ask in rent: Female Christian” (*Id.* at ¶37)
- “Christian single straight female needed.” (*Id.* at ¶39)
- “Only Muslims apply” (*Id.* at ¶40)
- “near St Gertrudes [sic] church” (*Id.* at ¶41)
- “Walk to shopping, restaurants, coffee shops, synagogue.” (*Id.* at ¶43)
- “very quiet street opposite church” (*Id.* at ¶48)
- “Catholic Church, and beautiful Buddhist Temple within one block” (*Id.* at ¶54)
- “Apt. too small for families with small children” (*Id.* at ¶60)
- “Perfect for 4 Med students” (*Id.* at ¶61)
- “Perfect place for city single” (*Id.* at ¶63)
- “absolutely ideal for a young professional and socialite!” (*Id.* at ¶67)
- “Perfect for Young Family or 2 Broke ASS Roommates” (*Id.* at ¶79)
- “young cool landlord who wants one nice quiet person to rent her basement” (*Id.* at ¶81)
- “Non-smoking adults preferred” (*Id.* at ¶82)

CLC alleges that these and similar statements discourage or prohibit home-seekers from pursuing housing and thus decrease the number of units available to them. (*Id.* at ¶¶ 16, 20, 22, 29, 35, 59.)

ANALYSIS

I. The Statutes at Issue

A. The Fair Housing Act

To redress this alleged injury, CLC here seeks a declaratory judgment that Craigslist violated 42 U.S.C. §3604(c) (“Section 3604”) of the FHA,² which “prohibits racial discrimination of all kinds in housing.” *Tyus v. Urban Search Mgmt.*, 102 F.3d 256, 260 (7th Cir. 1996). Section 3604(c), in particular, makes it unlawful:

To make, print, or publish, or cause to be made, printed, or published any notice, statement, or advertisement, with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on race, color, religion, sex, handicap, familial status, or national origin, or an intention to make any such preference, limitation, or discrimination.

42 U.S.C. §3604(c). As the NFHA points out in its *amicus* submission, courts have held that Section 3604(c) applies to a variety of media, including newspapers, *see, e.g., Ragin v. New York Times Co.*, 923 F.2d 995, 999-1000 (2^d Cir. 1991), brochures, *Saunders v. Gen. Servs. Corp.*, 659 F. Supp. 1042, 1057-59 (E.D. Va. 1987), multiple listing services, *Wheatley Heights Neighborhood Coalition v. Jenna Resales Co.*, 447 F. Supp. 838, 842 n.3 (E.D.N.Y. 1978), telecommunication devices for the deaf, *United States v. Space Hunters, Inc.*, 429 F.3d 416, 420 (2^d Cir. 2005), a housing complex’s “pool and building rules,” *Fair Hous. Cong. v. Weber*, 993 F. Supp. 1286, 1289-91 (C.D. Cal. 1997),

² CLC also seeks an injunction that bars Craigslist from continuing to publish discriminatory notices and further requires, among other things, that Craigslist: (1) develop a non-discriminatory policy that states, at a minimum, that all submissions to its website are subject to federal fair housing laws, (2) post a short statement on its website summarizing Craigslist’s non-discrimination policy, (3) report to the U.S. Department of Housing and Urban Development and to CLC any individual or entity seeking to post a discriminatory housing advertisement on Craigslist’s website, (4) delete accounts and prevent website access to individuals who post or attempt to post discriminatory housing advertisements, and (5) implement screening software to preclude discriminatory advertisements from being published on Craigslist’s website. (*Id.* at 18-20.)

as well as “any other publishing medium.” *United States v. Hunter*, 459 F.2d 205, 211 (4th Cir. 1972). (R. 17-2, NFHA’s Br. at 8-9.) Along the same lines, the United States Department of Housing and Urban Development (“HUD”) has issued a regulation³ construing Section 3604(c) as applying to “[w]ritten notices and statements includ[ing] any applications, flyers, brochures, deeds, signs, banners, posters, billboards or any documents used with respect to the sale or rental of a dwelling.” 24 C.F.R. §100.75.

B. The Communications Decency Act

Notwithstanding the FHA’s broad scope, Craigslist argues that Plaintiff’s Complaint fails on the pleadings because of the immunity afforded under Section 230(c)(1) of the CDA. Section 230(c) consists of two operative provisions, each under the subheading “Protection for Blocking and Screening of Offensive Materials.”⁴

³ The Secretary of HUD retains the “authority and responsibility for administering” the FHA, 42 U.S.C. §3608, and may promulgate regulations to carry out the FHA, 42 U.S.C. §3614a.

⁴ In the two subsections immediately preceding Section 230(c), Congress identified certain findings and policies:

(a) Findings. The Congress finds the following: (1) The rapidly developing array of Internet and other interactive computer services available to individual Americans represent an extraordinary advance in the availability of educational and informational resources to our citizens. (2) These services offer users a great degree of control over the information that they receive, as well as the potential for even greater control in the future as technology develops. (3) The Internet and other interactive computer services offer a forum for a true diversity of political discourse, unique opportunities for cultural development, and myriad avenues for intellectual activity. (4) The Internet and other interactive computer services have flourished, to the benefit of all Americans, with a minimum of government regulation. (5) Increasingly Americans are relying on interactive media for a variety of political, educational, cultural, and entertainment services.

(b) Policy. It is the policy of the United States – (1) to promote the continued development of the Internet and other interactive computer services and other interactive media; (2) to preserve the vibrant and competitive free market that presently exists for the Internet and other interactive computer services, unfettered by Federal or State regulation; (3) to encourage the development of technologies which maximize user control over what

