STATE OF CONNECTICUT
COMMISSION ON HUMAN RIGHTS AND OPPORTUNITIES
OFFICE OF PUBLIC HEARINGS

Commission on Human Rights and Opportunities, *ex rel.* Marcia McIntosh-Waller, Complainant	**:**	**CHRO NO: 0750080** **HUD NO: 01-07-0200-8**
v.		
Donna and David Vahlstrom, Respondents	**:**	**September 21, 2007**

RULING
RE: RESPONDENTS' MOTION TO DISMISS

Preliminary Statement

On August 6, 2007, the respondents (Donna and David Vahlstrom) filed a motion to dismiss (motion to dismiss) the present complaint on the grounds that: 1) the complainant (Marcia McIntosh-Waller) lacks standing and/or has failed to state a claim upon which relief may be granted; and 2) the commission on human rights and opportunities (commission) lacks jurisdiction over this complaint because it is a private dispute between neighbors. On August 20, 2007, the commission filed an objection to the motion to dismiss. On September 4, 2007[1], the respondents filed a reply memorandum (reply) responding to the commission's objection. The respondents argued, in part, that by using the standard for a motion for summary judgment, the complaint should be dismissed because no relief can be granted as a matter of law.

[1] The respondents timely filed their reply memorandum via facsimile on September 4, 2007. In the commission's reply to the respondents' reply memorandum filed September 20, 2007, it incorrectly stated that the respondents had filed their reply late on September 6, 2007. Commission's reply, p. 4. As the commission's reply was untimely filed, it was not considered.

Reply, pp. 5, 8. For the reasons stated herein, the motion to dismiss is hereby Granted in part and Denied in part.

Procedural History

On December 18, 2006, the complainant filed a housing discrimination complaint (complaint) against the respondents, her neighbors, alleging that on or about August 10, 2006 and ongoing the respondents discriminated against the complainant and her family by exercising a pattern of intimidation and harassment based on her race (black) and ancestry (Jamaican), causing herself and her family stress and severe emotional damages. The complainant alleged that the respondents' actions violated Connecticut General Statutes § 46a-64c (a) et seq., 42 U.S.C. §§ 1981 and 1982, and Title VIII of the Civil Rights Act of 1968, as amended and enforced through § 46a-58 (a).

DISCUSSION

Ms. McIntosh-Waller, as the only party-complainant in this matter, has alleged that the respondents discriminated against her and her family by harassing them because of her race and ancestry. She alleged that the respondents "continued a pattern of racial harassment that began the day [they] moved in." Complaint, p. 1. She alleged specific incidents in support of her allegations of discrimination and harassment that: 1) "Donna Vahlstrom knocked on [her] door complaining about [her] sons making too much noise"; 2) "David Vahlstrom made accusations that [her] children were using drugs and that they were drug dealers"; 3) "Donna Vahlstrom accosted [her] son Jayrado who was sitting on the front porch listening to music through his headphones. Donna complained that the music was too loud and stated, 'You people are ignorant'"; 4) "Donna Vahlstrom sprayed [her] son and his friend Rychelle Gilbert with a water hose

and stated, 'all you black people look the same without a doo-rag on.' Donna Vahslstrom also stated that she was, 'trying to wash the black off'"; 5) "Donna Vahlstrom placed trash outside [her] front door"; 6) "[She] was discriminated against by the [r]espondents by a pattern of intimidation and harassment based on [her] race"; and 7) "[t]he continuous harassment by respondents has caused [her] and her family undue stress and severe emotional damages." Complaint, p.1. The respondents correctly stated in their reply that only these allegations as alleged in the complaint could be considered for this motion and such is the case. Reply, p.1.

The respondents filed the present motion to dismiss the complaint claiming that the complainant lacks standing to pursue the present action because 1) the two incidents containing alleged racially derogatory language or conduct did not involve the complainant but involved her son, Jayrado Waller, and a third party, his friend, and 2) the law does not permit a parent to seek relief for harm to her child without the parent filing a complaint in the child's name by a guardian or next friend (e.g., parent), which the complainant did not do here. The respondents also argued that because the complainant's son is not a party to the present complaint, the allegations concerning conduct directed at her son should be stricken. As a result, the remaining allegations fail to state a colorable claim for relief because they merely show a noise complaint between neighbors rather than racially motivated behavior. Thus, the respondents argued the complainant failed to state a claim of discrimination on her behalf.

Secondly, the respondents claim that the commission lacks jurisdiction over this complaint because 1) it involves a private dispute between neighbors not covered by General Statutes § 46a-64c (a), specifically § 46a-64c (a) (9), which only bars

discrimination in housing as it relates to the sale or rental of real estate, and 2) it involves a private dispute between neighbors not covered by 42 U.S.C. §§ 1981 and 1982 and the federal Fair Housing Act (also FHA), specifically 42 U.S.C. § 3617.

I

STANDING AND

FAILURE TO STATE CLAIM FOR WHICH RELIEF CAN BE GRANTED

"The Connecticut Supreme Court has held that in addressing claims under the state's fair housing statutes, one may look to guidance from the case law interpreting the federal fair housing statutes. *Chestnut Realty, Inc. v. Commission on Human Rights and Opportunities*, 201 Conn. 350, 358 (1986). The United States Supreme Court has stated that the Fair Housing Act, 42 U.S.C. §3601 et seq. ('Title VIII') is 'a comprehensive open housing law.' *Jones v. Alfred H. Mayer Co*., 392 U.S. 409, 413 (1968). In order to achieve its purpose, its provisions must be construed broadly. *Trafficante v. Metropolitan Life Ins. Co*., 409 U.S. 205, 211-12 (1972); *Cabrera v. Jakabovitz*, 24 F.3d 372, 388 (2nd Cir. 1994); *Ohana v. 180 Prospect Place Realty Corp*., 996 F.Supp. 238, 240 (E.D.N.Y. 1998) (citing to *Trafficante*). The same liberal interpretation holds true for the anti-discriminatory housing provisions in the state statutes, General Statutes §§ 46a-64b and 46a-64c." *Commission on Human Rights & Opportunities ex rel. Little v. Clark*, CHRO No. 9810387 (2000 WL 35457571) (August 2, 2000, p. 7).

Section 46a-64c (a) (9) makes it a discriminatory practice "[t]o coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of his having exercised or enjoyed, or on account of his having aided or encouraged any

other person in the exercise or enjoyment of, any right granted or protected by this section." Similarly, 42 U.S.C. § 3617 provides, in pertinent part, that "[i]t shall be unlawful to coerce, intimidate, threaten or interfere with any person in the exercise or enjoyment of, or on account of his having exercised or enjoyed, or on account of his having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by section 3603, 3604, 3605, or 3606 of this title."

"The Fair Housing Act makes it unlawful '[t]o refuse to sell or rent ... or otherwise make unavailable or deny, a dwelling to any person because of ... [race].' 42 U.S.C. § 3604(a). The phrase 'otherwise make unavailable' has been interpreted to reach a wide variety of discriminatory housing practices, including discriminatory zoning restrictions. . . . The FHA confers standing to challenge such discriminatory practices on any 'aggrieved person,' 42 U.S.C. § 3613 (a) (1) (A). That term is defined to include any person who- (1) claims to have been injured by a discriminatory housing practice; or (2) believes that such person will be injured by a discriminatory housing practice that is about to occur. 42 U.S.C. § 3602(i). This definition requires only that a private plaintiff allege 'injury in fact' within the meaning of Article III of the Constitution, that is, that he allege 'distinct and palpable injuries that are "fairly traceable" to [defendants'] actions.' *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 375-76, 102 S.Ct. 1114, 1122-23, 71 L.Ed.2d 214 (1982). An injury need not be economic or tangible in order to confer standing. See, e.g., *id*. at 376, 102 S.Ct. at 1123 (deprivation of social benefits of living in an integrated neighborhood constitutes cognizable injury); *Gladstone, Realtors v. Village of Bellwood*, 441 U.S. 91, 111-12, 99 S.Ct. 1601, 1613-14, 60 L.Ed.2d 66 (1979) (same). See also H.R.Rep. No. 711, 100th Cong.2d Sess. 23, *reprinted in* 1988

U.S.Code Cong. & Admin.News 2173, 2184 (current statutory definition of 'aggrieved person' was meant 'to reaffirm the broad holdings' of *Havens Realty Corp. v. Coleman and Gladstone*, *Realtors v. Village of Bellwood*)." (Citations omitted.) *LeBlanc-Sternberg v. Fletcher*, 67 F.3d 412, 424-25 (1995). "What it means to be 'aggrieved' is a question of standing, and questions of standing often turn[ ] on the nature and source of the claim asserted." (Citation omitted.) *Leibovitz v. New York City Transit Authority*, 252 F.3d 179, 185 (2001). Accordingly, the complainant's standing is dependent upon her allegations of a hostile housing environment and the laws that govern such an environment. See *Warth v. Seldin*, 422 U.S. 490, 500 (1975).

Whether the complainant has standing to bring a complaint of hostile housing environment invoking the protections of General Statutes § 46a-64c (a) (9), the Fair Housing Act, 42 U.S.C. § 3617 and 42 U.S.C. §§ 1981 and 1982 is determined by examining the standard used for a hostile housing environment claim which was properly analyzed in *Commission on Human Rights & Opportunities ex rel. Little v. Clark,* supra, 2000 WL 35457571. In *Little*, the Presiding Referee determined that a claim of hostile housing environment can be analyzed by applying the same standard used for hostile work environment claims. "As a starting point in the analogy, both Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e et seq. ('Title VII') and General Statutes §46a-60(a) prohibit discrimination in employment on the basis of the employee's sex. The Connecticut statutes also explicitly prohibit sexual harassment (see § 46a-60(a)(8)) and, although the federal statutes do not explicitly proscribe such harassment, the U.S. Supreme Court has unequivocally declared that sexual harassment in the workplace is a form of sex discrimination prohibited by Title VII.

Meritor Savings Bank, FSB v. Vinson, 477 U.S. 57, 66 (1986). Because Title VII shares the same purpose as Title VIII—to end bias and prejudice—sexual harassment should be actionable under Title VIII and its Connecticut counterparts. See, e.g., *Reeves v. Carrollsburg Condominium Owners Assoc*., Fair Housing-Fair Lending Rptr., No. 96-2495, p.16,250.5 (D.D.C. 1997); *New York ex rel. Abrams v. Merlino*, 694 F.Supp. 1101, 1104 (S.D.N.Y. 1988).

"Indeed, federal courts have held that sexual harassment in the housing context is a form of sex discrimination prohibited by 42 U.S.C. §§ 3604 (a) and (b). Like employment-related sexual harassment actions under Title VII, a violation of Title VIII may be established by demonstrating either "quid pro quo" harassment or a hostile environment. *DiCenso v. Cisneros*, 96 F.3d 1004, 1008 (7th Cir. 1996); *Honce v. Vigil*, 1 F.3d 1085, 1088-90 (10th Cir. 1993); *Williams v. Poretsky Management, Inc*., 955 F.Supp. 490, 494-96 (D.Maryland 1996); *Beliveau v. Caras*, 873 F.Supp. 1393, 1397 (C.D. California 1995). Several state courts have also interpreted their housing statutes to allow a cause of action to redress sexual harassment. See, e.g., *Szkoda v. Illinois Human Rights Commission,* 302 Ill. App.3d 532 (1998); *Brown v. Smith*, 55 Cal. App. 4th 767 (1997); *Gnerre v. Commission Against Discrimination*, 402 Mass. 502 (1988). To establish a prima facie case of hostile housing environment due to sexual harassment, a plaintiff must show (1) that the conduct was unwelcome; (2) that the conduct was based on the plaintiff's sex; (3) that the conduct was sufficiently severe or pervasive to alter the plaintiff's living conditions and create an abusive environment; and (4) that the defendant knew or should have known of the harassment, yet took no action to correct

the situation. *Reeves v. Carrollsburg Condominium*, supra, 16,250.6; *Williams v. Poretsky Mgmt*., supra, 955 F.Supp. 496.

"To take the analysis one step further, although the court in *Reeves* cited to *Williams*, a sexual harassment action, for the appropriate prima facie case, it notably articulated the second criterion as '[the conduct] was based on the sex or <u>other protected characteristic</u> of the plaintiff.' (Emphasis added.). Accordingly, the court went on to hold that both sexual and racial harassment claims may proceed under the hostile housing environment theory.[ ] *Reeves v. Carrollsburg Condominium*, supra, 16,250.6 n. 10. By implication, therefore, this premise should extend to other protected classes as well. Indeed, in *Wilstein v. San Tropai Condominium Master Association*, 1999 WL 262145 [,] 11 (N.D. Ill.), the federal district court, without articulating a specific prima facie model, followed *DiCenso* and *Reeves* in finding that the plaintiff set forth a cause of action under Title VIII by alleging that certain residents of his condominium complex created a hostile housing environment because of his handicap and his religion. See also *Schroeder v. DeBertolo*, 879 F.Supp. 173 (D. Puerto Rico 1995) (defendants harassed mentally ill plaintiff and thus interfered with free exercise of her housing rights in violation of §3604 and §3617)." *Commission on Human Rights & Opportunities ex rel. Little v. Clark*, supra, 2000 WL 35457571, 7. Although, in *Little*, the complainant was the direct victim of the respondents' discriminatory and harassing conduct, our hostile environment laws do not limit a cause of action for harassment to only that which is specifically targeted to a particular victim, but harassment that causes a hostile environment which injures anyone in the environment.

In *Leibovitz v. New York Transit Authority*, 252 F.3d 179, 185 (2d Cir. 2001), the

court held that the plaintiff who was not the direct target of discrimination had standing under Article III [of the Constitution] to bring a claim of hostile work environment in order to redress her emotional injuries. "The fact that the injury to Leibovitz from working in a hostile environment may have been an indirect result of the harassment of other women does not necessarily preclude Article III standing. See [*Warth v. Seldin*, supra, 422 U.S. 504-05,] ('When a governmental prohibition or restriction imposed on one party causes specific harm to a third party ... the indirectness of the injury does not necessarily deprive the person harmed of standing to vindicate his rights.'). Finally, this injury, if proved, is remediable through a damage award. See *Meritor Sav. Bank, FSB v. Vinson*, 477 U.S. 57, 65-66, 106 S.Ct. 2399, 91 L.Ed.2d 49 (1986) (holding that noneconomic injury resulting from 'a hostile environment based on discriminatory sexual harassment' is actionable under Title VII) (emphasis omitted). The district court was correct in determining that Leibovitz had Article III standing to bring this claim."

The court further held, "we recognize that evidence of harassment directed at other co-workers can be relevant to an employee's own claim of hostile work environment discrimination. 'Because the crucial inquiry focuses on the nature of the workplace environment as a *whole*, a plaintiff who herself experiences discriminatory harassment need not be the target of other instances of hostility in order for those incidents to support her claim.' [*Cruz v. Coach Stores, Inc.,* 202 F.3d 560, 570 (2d Cir. 2000)] (emphasis added); accord *Whidbee v. Garzarelli Food Specialties*, Inc., 223 F.3d 62, 70 n. 9 (2d Cir.2000) (citing *Cruz* for proposition that environment as a whole is relevant to individual plaintiff's hostile work environment claim); *Perry v. Ethan Allen, Inc*., 115 F.3d 143, 151 (2d Cir.1997) (concluding evidence of harassment directed at

women other than plaintiff is relevant to hostile environment analysis) . . .;" *Leibovitz v. New York Transit Authority,* supra, 252 F.3d 190.

In addition, the court in *City of Hartford v. Casati***,** Superior Court, judicial district of Hartford, No. CV000599086S, (2001 WL 1420512, 5) (Berger, J.), stated "[t]hat discriminatory terms and comments are not used in the presence of or directed at particular individuals has provided no defense to employers under employment discrimination laws. Just as a racial epithet need not be directed at a plaintiff in order to contribute to a hostile work environment ... the fact that a plaintiff learns second-hand of a racially derogatory comment or joke by a fellow employee or supervisor also can impact the work environment." (Internal quotation marks omitted; citation omitted.)

The respondents argued that the complainant has no standing to assert a claim on her behalf because she has not alleged that she was present when the alleged racially derogatory language or conduct occurred, nor has she alleged that conduct was directed at her. Motion to Dismiss, pp. 4-6. In keeping with the aforementioned case law, here, the complainant has standing to bring a hostile housing environment claim. The complainant alleged that the discrimination involving harassment because of her race and ancestry was directed toward her as well as toward her son and his friend. The harassing conduct directed toward her son and his friend contributed to the hostile housing environment even though the complainant may have learned of some of the harassment second-hand from her son.

Additionally, the respondents argued that the allegations pertaining to the complainant's son for which the complainant was not present, should be stricken

because he is not a party-complainant, and as a result, the remaining allegations fail to state a colorable claim for relief. Motion to Dismiss, pp. 5-6. Because one must look to the environment "as a whole", the allegations concerning complainant's son must remain and therefore, the complainant has also stated a claim for which relief can be granted.

II

LACK OF JURISDICTION OVER HOUSING DISCRIMINATION BETWEEN NEIGHBORS

"The standards for deciding a motion to dismiss on subject matter jurisdiction grounds are well established. A motion to dismiss . . . properly attacks the jurisdiction of the court, essentially asserting that the plaintiff cannot as a matter of law and fact state a cause of action that should be heard by the court . . . A motion to dismiss tests, *inter alia*, whether, on the face of the record, the court is without jurisdiction. When a ... court decides a jurisdictional question raised by a pretrial motion to dismiss, it must consider the allegations of the complaint in their most favorable light . . . [A] court must take the facts to be those alleged in the complaint, including those facts necessarily implied from the allegations, construing them in a manner most favorable to the pleader. Where a decision as to whether a court has subject matter jurisdiction is required, every presumption favoring jurisdiction should be indulged." (Internal quotation marks omitted; citations omitted.) *Landry v. Zborowski*, Superior Court, judicial district of Tolland, Docket No. TTD CV 07 6000211S, (2007 WL 2570398, 1) (Vacchelli, J.).

Contrary to respondents' argument that the standard for a motion for summary judgment should be applied to analyze the instant case (Reply, p. 5), the present motion

to dismiss must be treated as is. The commission's regulations do not provide for the filing of a motion for summary judgment. Therefore, this motion must be analyzed pursuant to the proper standard for a motion to dismiss, which is whether the allegations of the complaint (as a matter of law and fact) state a cause of action that should be heard by this tribunal. In deciding the present motion to dismiss, I am not required to find that the complainant satisfied the elements of a hostile housing environment claim, which requires that the harassment be severe and pervasive (see *Britell v. State of Connecticut, Department of Correction*, Superior Court, judicial district of New Haven, No. CV 930351853S (1997 WL 583840, 13-14), *aff'd*, 247 Conn. 148 (1998)), as the respondent suggests. Reply, pp. 6-8. She merely must satisfy the standard for a motion to dismiss. Here, the complainant has alleged sufficient facts to establish a cause of action for discrimination in housing. It is the role of the trier of fact at a public hearing to determine whether the complainant's proof of her allegations satisfies the standard necessary to prevail on a hostile housing environment claim, which includes considering the totality of the circumstances, not to be decided at this juncture. (See *Faragher v. City of Boca Raton*, 524 U.S. 775, 787-88 (1998); *Harris v. Forklift Systems, Inc*., 510 U.S. 17 (1993)).

A

Section 46a-64c (a) (9) and Fair Housing Act 42 U.S.C. § 3617

The respondents argued that § 46a-64c (a) (9) and § 3617 do not apply to a private dispute between neighbors and that § 46a-64c (a) (9) and § 3617 only apply to claims of discrimination involving real estate transactions (sale and rental of housing; real-estate related transactions and brokerage services). However, this tribunal has

previously found that § 46a-64c (9) and 42 U.S.C. § 3617 prohibit discrimination between neighbors. *Commission on Human Rights & Opportunities ex rel. Little v. Clark*, supra, 2000 WL 35457571, 7. As stated in *Commission on Human Rights & Opportunities ex rel. Little v. Clark*, supra, 7-8, "several courts, liberally construing Title VIII, have disagreed with such narrow reading. For example, in *Schroeder v. DeBertolo*, 879 F.Supp. 173 (D. Puerto Rico 1995), the federal District Court stated, '[t]he language of [§3604(f)] does not lend itself to such a narrow interpretation. The phrase "to otherwise make unavailable or deny" sweeps activities which go beyond the initial sale or rental transaction under the scope of the section. Once [the plaintiff] became the owner of the unit, her housing rights did not terminate. She had the continuing right to quiet enjoyment and use of her condominium unit and common areas in the building. Her right to obtain a dwelling free from discriminatory conduct of others encompassed the right to maintain that dwelling. Id. at 176-77. See also *Evans v. Tubbe*, 657 F.2d 661 (5th Cir. 1981) (recognizing cause of action under §§3604 and 3617 against neighbors who interfere with continuing right to use and enjoy one's home).'

"[T]he protection of Title VIII (and thus those of its state counterpart) not only extends beyond the time of sale or rental but also prohibits individuals not involved in the sale, rental or other control of the property (e.g., neighbors) from interfering with one's continuing right to use and enjoy his or her rented or purchased property. See, e.g., *Sofarelli v, Pinellas County*, 931 F.2d 718, 722 (11th Cir. 1991); *Evans v. Tubbe*, supra, 657 F.2d 663 fn.3; *Wilstein v. San Tropai Condominium*, supra, 1999 WL 262145 *11; *Ohana v. 180 Prospect Place Realty Corp*., supra, 996 F.Supp 242-43; *Schroeder v. DeBartolo*, supra, 879 F.Supp. 177; *Seaphus v. Lilly*, 691 F.Supp. 127 (N.D. Ill.

1988); *Riedel v. Human Relations Commission of the City of Reading*, 559 Pa. 34, 43 n.2 (1999) (Saylor, J., concurring)." Therefore, in the instant case, the complainant has stated a cause of action under § 46a-64c (a) (9) and 42 U.S.C. § 3617 because she has alleged the respondents, her neighbors, caused her intimidation and harassment which can be construed as to interfere with the use and enjoyment of her property.

The motion to dismiss the complainant's claims under § 46a-64c(a) (9) and § 3617 is denied.

B

42 U.S.C. § 1981

The respondents argued that the complainant failed to state a cause of action under § 1981 because she did not allege a contractual relationship between herself and the respondents. Section 1981 (a) provides: "All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other." Section 1981 (b) states: "For purposes of this section, the term "make and enforce contracts" includes the making, performance, modification, and termination of contracts, and the enjoyment of all benefits, privileges, terms, and conditions of the contractual relationship." "Section 1981 clearly applies to contracts." *Hunter v. American General Life and accident Insurance Company*, 375 F. Sup. 2d 442, 446 (D.S.C. 2005) (see also *Caddy v. J.P. Morgan Chase Bank*, 2007 WL 1678118 (10th Cir. 2007)). In *Domino's Pizza, Inc. v. McDonald*, 126 S.Ct. 1246, 1249-

50 (2006), the court held, "[a]ny claim brought under § 1981, therefore, must initially identify an impaired 'contractual relationship,' § 1981 (b), under which the plaintiff has rights." See also *Runyon v. McCrary*, 427 U.S. 160 (1976) (§ 1981 applies when racial discrimination interferes with or prevents a contractual relationship.) In order to state a cause of action pursuant to § 1981, the complainant must allege that a contractual relationship existed between she and the respondents. This she has failed to do. The complainant has not alleged any facts that she has rights under a contract that the respondents have interfered with because of her race.

The motion to dismiss the complainant's § 1981 claim is granted.

C

42 U.S.C. § 1982

The Respondents argued that § 1982 only applies to sale or rental of property and that the complainant must show that "she was denied the opportunity to rent or to inspect or negotiate for the rental of [an apartment]." Motion to dismiss, p. 10. The respondents also argued "there is nothing in this case to indicate that Complainant's property interest has been impaired" and, therefore, she has failed to state a cause of action under § 1982. Reply, p. 4. I disagree. The court in *Whisby-Myers v. Kiekenapp,* 293 F.Sup.2d 845 (N.D.Ill 2003) (where African-American neighbors brought action against white neighbors for race discrimination) rejected the proposition that § 1982 only prohibits discrimination involving a sale or rental of property. 42 U.S.C. § 1982 provides: "All citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property."

The court in *Whisby-Myers v. Kiekenapp,* supra, 293 F.Sup.2d 849-50*,* held that "[s]ection 1982's reference to the right to 'hold' property indicates that it is not confined to property transactions. . . . When interpreting a statute, a court must attempt to provide meaning to every word in the statute. *. . .* To give effect to each term in the statute, the term 'hold' must have a meaning different from the terms 'purchase,' 'lease,' 'sell,' and 'convey.' . . . We agree with those courts that have concluded that section 1982's protection of the right 'to hold' property includes the right to use one's property. See *United States v. Brown*, 49 F.3d 1162, 1167 (6th Cir.1995) (Jewish synagogue members who were scared to come and go from the synagogue as a result of a drive-by shooting were deprived of their right to use property); *United States v. Greer*, 939 F.2d 1076, 1091 (5th Cir.1991) (finding that the phrase 'to hold' under Section 1982 can mean 'to use' property), *aff'd en banc*, 968 F.2d 433 (5th Cir.1992); [*Bryan v. Polston, No. IP 00-1064-C,* 2000 WL 1670938, 5-6 (S.D.Ind. Nov. 2, 2000)] (harassing and intimidating conduct by neighbors prevents individuals from holding property); *Byrd v. Brandeburg*, 922 F.Supp. 60, 64 (N.D.Ohio 1996) (allegations of racially motivated firebombing were sufficient to state claim for inability to hold property under § 1982); *United States v. Three Juveniles*, 886 F.Supp. 934 (D. Mass.1995) (slashing of tires and carving of an anti-Semitic slogan on a car is prohibited by § 1982, which protects the use of a motor vehicle); *Johnson v. Smith*, 810 F.Supp. 235, 237-38 (N.D.Ill.1992) (burning of cross on plaintiffs' lawn prevented plaintiffs from using property as protected by § 1982); [*Stirgus v. Benoit*, 720 F.Supp. 119, 122 (N.D.Ill.1989)] (firebombing of home prevented individuals from holding property in violation of § 1982)." (Citations omitted.)

In the instant case, the complainant, as in *Whisbey-Meyers,* has stated a cause of action under § 1982 by virtue of her allegations that the use of her home has been interfered with because of the respondents' racial harassment of herself and her family. Essentially, the complainant alleged her right to hold property has been infringed upon. The motion to dismiss the complainant's § 1982 claim is denied.

CONCLUSION

For the foregoing reasons, the respondents' motion to dismiss is granted as to the complainant's allegations based on lack of jurisdiction for failure to state a cause of action under 42 U.S.C. § 1981. The motion to dismiss is denied as to the claims of a lack of standing, failure to state a claim for which relief can be granted and lack of jurisdiction for failure to state a cause of action under § 46a-64c (a) (9), 42 U.S.C. § 3617 and 42 U.S.C. § 1982.

So Ordered this _____ day of September 2007.

_____
The Honorable Donna Maria Wilkerson
Presiding Human Rights Referee

c. Ms. Marcia McIntosh-Waller
Attorney Michelle Dumas Keuler
Attorney Andrew Houlding