

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

RHONDA HENDERSON; ROBERTA  
FAULKS; and RACHEL CHURCH on  
behalf of themselves and all others  
similarly situated,

Plaintiffs,

Case No. 2:20-cv-12649  
Hon. Sean F. Cox  
Mag. Judge R. Steven Whalen

vs.

VISION PROPERTY MANAGEMENT, LLC,  
VPM HOLDINGS, LLC, FTE NETWORKS, INC.,  
US HOME RENTALS, LLC, KAJA HOLDINGS,  
LLC, KAJA HOLDINGS 2, LLC, MI SEVEN, LLC,  
IN SEVEN, LLC, RVFM 4 SERIES, LLC, ACM  
VISION V, LLC, ACP ROADMASTER, LLC, ACP  
NASH, LLC, ACP MP INVESTMENTS, LLC, DSV  
SPV 1, LLC, DSV SPV 2, LLC, DSV SPV 3, LLC,  
BOOM SC, ALAN INVESTMENTS III, LLC,  
ARNOSA GROUP, LLC, ARNOSA HOMES LLC,  
MOM HAVEN 13, LP, ATALAYA CAPITAL  
MANAGEMENT LP, ANTONI SZKARADEK,  
and ALEX SZKARADEK,

Defendants.

---

**REPLY BRIEF IN SUPPORT OF ACM VISION V, LLC'S MOTION TO  
DISMISS COUNT V OF PLAINTIFFS' FIRST AMENDED COMPLAINT**

## **Accusing ACMV of Delay and Filing Serial Motions is Inaccurate**

Recognizing that they cannot defend the merits regarding their claims against ACM Vision V, LLC (ACMV), Plaintiffs oppose this motion on alleged procedural improprieties. This is a waste of judicial and litigant resources. To the extent there has been any “delay” in addressing Plaintiffs’ deficient pleadings, it is a result of the following:

- On September 29, 2020, the three Plaintiffs filed a 109-page, 9 Count, 400 paragraph complaint against 24 Defendants.
- On October 7, 2020, the Court *sua sponte* dismissed all state law claims without prejudice.
- On January 6, 2021, ACMV and Atalaya Capital Management (Atalaya) moved to dismiss the Complaint as to them.
- Two days later, the Court issued an Order permitting Plaintiffs the choice of either responding to the motion or filing an amended complaint within 21 days of the date of that Order.
- On the evening of January 29, the last day on which Plaintiffs could comply with the Court’s Order, Plaintiffs filed their 108-page, 384 paragraph FAC.
- On February 9, 2021, days before it was due, Atalaya and ACMV renewed their motion to dismiss.
- On March 2, 2021, again on the last possible date, Plaintiffs filed their opposition to the renewed motion, noting that ACMV had not addressed Count V in the renewed motion.

- The very next day, ACMV cured this oversight by counsel by filing a short motion to dismiss Count V, so all of the pleading deficiencies could be addressed by the Court at the same time.<sup>1</sup>
- On March 12, 2021, the Court issued a Notice of Hearing for both the renewed motion to dismiss and the instant motion to dismiss Count V.

In view of the foregoing, and noting that this Court’s practice guidelines provide that motions to dismiss may be filed at any time, there was clearly no reason for Plaintiffs to waste judicial and litigant resources by devoting the first half of their response to procedural, rather than substantive, issues.

### **Plaintiffs Have Not Alleged Any Transaction with ACMV or Atalaya<sup>2</sup>**

The crux of the renewed motion to dismiss and this motion to dismiss Count V as to ACMV remains the same – no Plaintiff in this case alleges any transaction involving either moving defendant. The issue is *not* whether plaintiffs have alleged

---

<sup>1</sup> Counsel acknowledges that it proceeded quickly to cure its oversight regarding Count V and gave Plaintiffs’ counsel very little time to respond to a request for concurrence. In view of Plaintiffs’ vituperative response to this motion, clearly there was no prejudice to Plaintiffs or the Court by moving quickly.

<sup>2</sup> Although Atalaya is not a party to this motion, Plaintiffs speciously suggest in footnote 1 on page 1 of their response that Atalaya has “admitted” to being a lender to the Vision entities. They cite to statements in the renewed motion to dismiss, *which are addressing Plaintiffs’ allegations*. Plaintiffs allege that Atalaya was a lender of funds to the Vision entities. Although incorrect, that allegation is taken as true for purposes of these motions to dismiss. All Atalaya did was alert the Court that it is a matter of public record that it is a registered investment advisor under federal law, and does not “lend” money to anyone. Rather, it manages money of others.

plausible claims against *someone*; the issue is whether plaintiffs have alleged plausible claims against *movants*. They clearly have not.

When Plaintiffs finally get to arguing the merits of Count V of the FAC, they argue that they have adequately pled a claim for violation of the Truth in Lending Act against ACMV. Yet nowhere in the FAC is there any allegation that any of the *Plaintiffs'* home transactions were either with ACMV, or subsequently assigned to ACMV.

Plaintiffs (and their counsel) know who owns the homes in which they reside. Plaintiffs (and their counsel) know who has liens against their homes. If ACMV was involved in any financing transaction with them, or ACMV subsequently became an assignee of any financing transaction with them, it would be easy to so allege. But they do not, because ACMV has nothing to do with any of the Plaintiffs in this case.

Plaintiffs appear to be proceeding under the misapprehension that if there is some putative class member out there that might have had some nexus with ACMV, then they can proceed with their putative class action. As previously briefed to the Court, that is not the law. Absent one or more of the named Plaintiffs having a plausible claim, dismissal of movants from this putative class action is required at this time.

### **Conclusion –Dismissal is Appropriate**

According to the FAC, Vision and its affiliated entities engaged in certain racially motivated, predatory, unlawful lending/real estate transactions with the Plaintiffs and others. Further according to the FAC, Vision and its parent, VPM Holdings, “conducted *all* the property acquisition, management, rental, and sale activities, and *all* interaction with consumers and contracting activities relating to the Visions homes.” (FAC, ¶14).

Plaintiffs have admitted they have not alleged and cannot allege that any funds provided by Atalaya (or any fund that Atalaya manages) were used by Vision in connection with any of their home transactions. And worse, Plaintiffs (and their counsel) know that ACMV does not own their homes, does not have liens against their homes, and are not assignees of any financing transaction involving their homes.

Atalaya and ACMV have already suffered injury as a result of being wrongfully accused of engaging in some nefarious, racially discriminatory transactions. Plaintiffs clearly had no factual basis to so accuse them. Movants have acted swiftly and timely to have the Court address the deficient pleadings and to extricate them from a case in which they simply do not belong. They respectfully request dismissal of the FAC as to them at this time.

Respectfully submitted:

By: /s/ Keefe A. Brooks  
BROOKS WILKINS SHARKEY & TURCO PLLC  
*Attorneys for Defendants Atalaya and ACMV Only*  
401 S. Old Woodward, Suite 400  
Birmingham, Michigan 48009  
248-971-1800  
brooks@bwst-law.com  
P31680

DATED: March 26, 2021

**CERTIFICATE OF SERVICE**

I hereby certify that on March 26, 2021, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system which will send notification of such filing to all counsel of record.

By: /s/ Keefe A. Brooks  
BROOKS WILKINS SHARKEY & TURCO PLLC  
401 S. Old Woodward, Suite 400  
Birmingham, Michigan 48009  
(248) 971-1800  
brooks@bwst-law.com  
P31680