SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

DISTRICT OF COLUMBIA	:	Case Number: 2023 CAB 6762
	:	
v.	:	Judge: Shana Frost Matini
	:	
REALPAGE, INC. *et al.*	:	Status Hearing: September 26, 2025
	:	

ORDER

Before the Court is Defendant AvalonBay Communities, Inc.'s ("AvalonBay" or "Defendant") Motion for Judgment on the Pleadings ("Mot."), filed July 14, 2025. Plaintiff the District of Columbia ("the District" or "Plaintiff") filed its Opposition ("Opp.") on July 28, 2025, and Defendant filed its Reply on August 4, 2025.[1] After reviewing the parties' briefs, the record of this case, and the applicable law, the Court denies Defendant's Motion.

Factual and Procedural Background

The District of Columbia filed a Complaint on November 1, 2023 against Defendant RealPage, Inc. ("RealPage") and fourteen landlord Defendants[2] alleging a violation of the District of Columbia Antitrust Act, D.C. Code §§ 28-4501 *et seq.* The District filed an Amended

[1] On August 18, 2025, AvalonBay filed a Notice of Supplemental Authority to notify the Court of a recent Ninth Circuit opinion in *Gibson v. Cendyn Grp., LLC*, No. 24-3576, 2025 U.S. App. LEXIS 20830 (9th Cir. Aug. 15, 2025), in support of its argument that courts have found that allegations of purchasing licenses for software are not sufficient for a claim under the Sherman Act. *See* Suppl. at 1; Mot. at 3, 6-8; Reply at 4. The Court need not consider this nonbinding opinion here, as it serves as support for an issue that this Court has already ruled upon in its April 7, 2025 Order—whether the District has plausibly made a claim for violations of the District of Columbia Antitrust Act, D.C. Code §§ 28-4501 *et seq.* against AvalonBay.

[2] The landlord Defendants include Avenue5 Residential, LLC; AvalonBay Communities, Inc.; Bell Partners, Inc.; Bozzuto Management Company; Camden Development, Inc.; Equity Residential Management, LLC; Gables Residential Services, Inc.; Greystar Management Services, LLC; Highmark Residential, LLC; JBG Associates, LLC; Mid-America Apartments, LP; Paradigm Management II, LP; UDR, Inc. The claims against Defendant William C. Smith & Co., Inc. were resolved in the Consent Judgment and Order issued on June 2, 2025.

Complaint on January 8, 2025[3] and AvalonBay filed its Motion to Dismiss on January 22, 2025. On April 7, 2025, this Court denied AvalonBay's Motion, and AvalonBay filed an Answer to the Amended Complaint on April 21, 2025, followed by the instant Motion on July 14, 2025.

Standard of Review

A motion for judgment on the pleadings pursuant to Rule 12(c) is appropriately filed "[a]fter the pleadings are closed – but early enough not to delay trial[.]" Super. Ct. Civ. R. 12(c). The standard for a motion for judgment on the pleadings is essentially the same as the standard for a motion to dismiss filed pursuant to Superior Court Civil Rule 12(b)(6). *See Rollins v. Wackenhut Servs.*, 802 F. Supp. 2d 111, 116-17 (D.D.C. 2011) (citations omitted).

"To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." *Potomac Dev. Corp. v. District of Columbia*, 28 A.3d 531, 544 (D.C. 2011) (quotation and citation omitted). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* (citation omitted). "Where a complaint pleads facts that are merely consistent with a defendant's liability, it stops short of the line between possibility and plausibility of entitlement to relief." *Id.* (quotation and citation omitted). "To satisfy Rule 8(a), plaintiffs must nudge their claims across the line from conceivable to plausible." *Tingling-Clemmons v. District of Columbia*, 133 A.3d 241, 246 (D.C. 2016) (quotation and citation omitted).

A motion for "[j]udgment on the pleadings may be granted only if, on the facts as so admitted, the moving party is clearly entitled to judgment." *See Wilson Courts Tenants Ass'n,*

[3] The Amended Complaint follows a December 23, 2024 Order issued by the Honorable Todd E. Edelman denying the District's request to reconsider the May 29, 2024 Order dismissing AvalonBay from this matter and granting the District's request to amend its Complaint.

Inc. v. 523–525 Mellon Street, LLC, 924 A.2d 289, 292 (D.C. 2007) (citing *Bennings Assocs. v. Joseph M. Zamoiski Co.*, 379 A.2d 1171, 1173 (D.C. 1977)). When considering a motion for judgment on the pleadings, "the trial court is required to view the facts presented in the pleadings and the inferences to be drawn therefrom in the light most favorable to the nonmoving party." *Id.* "[A] motion for judgment on the pleadings should not be granted where there is a genuine issue of material fact." *Id.*

Analysis

AvalonBay argues that the District's Amended Complaint fails to allege a proper claim for conspiracy against AvalonBay because the District is not pursuing a standalone claim for its "COVID theory,"[4] which AvalonBay asserts is the only viable claim against it. *See generally* Mot. AvalonBay contends that the District has adopted the statements made in a sur-reply filed in a case in an antitrust case pending in Maryland[5] in which counsel for the District in this matter serves as counsel for the State of Maryland and asserts similar claims against RealPage, AvalonBay, and other defendant landlords. Mot. at 3-4. In its Opposition, the District argues that AvalonBay's Motion is essentially a motion for reconsideration of the Court's denial of AvalonBay's motion to dismiss under the guise of a Rule 12(c) motion and thus should be denied. Opp. at 5. The District asserts that if the Court reaches the substance of the Motion and considers the parties' interpretations of the April 7, 2025 Order as AvalonBay asks it to do, it should find that AvalonBay incorrectly interpreted the Order. *Id.* at 9-12.

[4] The "COVID theory" refers to allegations set forth by the District that Defendants met to discuss the impact of the COVID-19 pandemic on rent pricing as set forth in the Amended Complaint in paragraphs 116-121. *See* Mot. at 14-15.

[5] The case referenced by AvalonBay is *Brown v. Highmark Residential, LLC*, No. C-24-CV-25-003948 (Md. Cir. Ct.) ("Maryland action").

In its Reply, AvalonBay reiterates its argument that the District adopted the statements of its lawyers in the Maryland action and asserts that AvalonBay is not asking the Court to reconsider its April 7 Order. Reply at 1. AvalonBay argues that the District cannot pursue its overarching conspiracy claim against AvalonBay and that the Court did not find that the District had properly pleaded parallel conduct as to AvalonBay. *Id.* at 2-3.

The Court first addresses the District's argument that AvalonBay's Motion should be deemed a request for reconsideration of the Court's April 7, 2025 Order denying AvalonBay's Motion to Dismiss. Opp. at 5. The District asserts that AvalonBay effectively concedes that judgment on the pleadings is inappropriate here when it states that "the only question on this motion is the proper reading of the Court's April 7 Order," and argues that AvalonBay cannot reargue the same points and ask the Court to reconsider its Order. *Id.* at 6 (citing Mot. at 5).

AvalonBay requests that the Court grant judgment on the pleadings in its favor, asserting that, because the District has represented through its counsel representing Maryland in the Maryland action that it is not pursuing a standalone theory on the COVID-related facts, this Court should grant judgment in AvalonBay's favor. Mot. at 4. In response to the District's argument that AvalonBay essentially requests that the Court reconsider its April 7, 2025 Order, AvalonBay asserts that it is not asking the Court to revisit its Order, and instead argues that the statement made by counsel in the Maryland action makes the issue of whether the COVID theory provides a plausible legal claim against AvalonBay moot. Reply at 1.

Rule 54(b) states that "any order…that adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties does not end the action as to any of the claims or parties and may be revised at any time before the entry of a judgment adjudicating all the claims and all the parties' rights and liabilities." Super. Ct. Civ. R. 54(b). However, "it is well-

established that motions for reconsideration, whatever their procedural basis, cannot be used as an opportunity to reargue facts and theories upon which a court has already ruled, nor as a vehicle for presenting theories or arguments that could have been advanced earlier." *Ali v. Carnegie Inst. of Washington*, 309 F.R.D. 77, 81 (D.D.C. 2015) (citations omitted).

While a party is not barred from asserting a Rule 12(c) motion after previously bringing a Rule 12(b)(6) motion to dismiss, a Rule 12(c) motion is not an opportunity to relitigate issues that have been fully addressed at the Rule 12(b)(6) stage.[6] *See Bone v. Univ. of N.C. Health Care Sys.*, 2021 U.S. Dist. LEXIS 21276, at *15 (M.D.N.C. Feb. 4, 2021) (finding that a motion for judgment on the pleadings "does not provide an opportunity to re-litigate issues raised and decided in a motion to dismiss[.]") (quotation and citation omitted); *Alexander v. City of Greensboro*, 2011 U.S. Dist. LEXIS 85782, at *13 (M.D.N.C. Aug. 3, 2011) ("the court will not reconsider issues that it addressed fully at the Rule 12(b)(6) stage.").

AvalonBay spends much of its Motion arguing that the District's interpretation of the Court's April 7, 2025 Order denying AvalonBay's Motion to Dismiss is incorrect, and sets forth pages of allegations from the First Amended Complaint to support its assertion that AvalonBay's behavior was not parallel to the conduct of the other landlord defendants. Mot. at 8-10. AvalonBay spends significant time arguing that the allegations in the First Amended Complaint do not and could not constitute parallel conduct under antitrust law, and even if they did, the COVID facts do not suffice as a plus factor to make AvalonBay's alleged involvement in the antitrust conspiracy plausible. *Id.* at 11-15. The Court has already made determinations on these facts in its April 7 Order. *See generally* Order (Apr. 7, 2025).

[6] "Because Super. Ct. Civ. R. 12 is identical to its federal counterpart, Fed. R. Civ. P. 12, we may look to court decisions interpreting the federal rule as persuasive authority in interpreting the local rule." *Bible Way Church of Our Lord Jesus Christ of the Apostolic Faith v. Beards*, 680 A.2d 419, 427 n.5 (D.C. 1996) (citation omitted; cleaned up).

The new theory AvalonBay asserts in the Motion interprets the Court's April 7, 2025 Order in conjunction with statements made by the plaintiff in the Maryland action. Mot. at 4. AvalonBay reads the Court's Order as having found that the parallel conduct theory does not stand on its own, but that the COVID theory does. *See* Mot. at 15. Reading this interpretation of the Court's Order with the statement made by counsel in the Maryland action, AvalonBay argues there is no viable claim against AvalonBay remaining in this case. *See id.*; Reply at 1.

AvalonBay argues that the Court can consider matters of public record in a motion for judgment on the pleadings. Mot. at 15 n.5; Reply at 1 n.1 (citing *Konah v. District of Columbia*, 915 F. Supp. 2d 7, 19 (D.D.C. 2013) ("The court is limited to considering facts alleged in the complaint, any documents attached to or incorporated in the complaint, matters of which the court may take judicial notice, and matters of public record.")).

The Court is not persuaded that it should consider a statement made by another party in a filing in another jurisdiction. While, as AvalonBay argues, courts in the District of Columbia have taken judicial notice of Maryland court records, Mot. at 15 n.5 (citing, *inter alia*, *Christopher v. Aguigui*, 841 A.2d 310, 311 n.2 (D.C. 2003)), taking judicial notice of a court order to recognize a judicial act is distinguishable from taking judicial notice of the contents of a sur-reply filed by a non-party to this proceeding in a case outside of this jurisdiction.

AvalonBay then argues that even if the Court does not wish to consider the filing in the Maryland action, it need not do so because the District has adopted the relevant statements in the Opposition to the instant Motion. Reply at 1. In any event, the Court does not find it appropriate to impart a statement made by the District's counsel representing a different party in another case upon the District here, nor does the Court find this statement warrants judgment under Rule 12(c).

Even if the Court were to find it appropriate to reconsider its April 7, 2025 Order under Rule 54(b) or to consider the filing in the Maryland action as a part of the pleadings for a Rule 12(c) motion, the Court does not find that the pleadings warrant a judgment in favor of AvalonBay. When reading the April 7 Order in conjunction with the statement by the District's counsel in the Maryland action, the Court does not find judgment on the pleadings appropriate here. AvalonBay argues that this statement in the Maryland action is adopted by the District in its Opposition to the instant Motion, Reply at 1, when the District states that "Maryland's characterization of the District's complaint and this Court's order happens to be correct," Opp. at 9, which AvalonBay interprets as the District conceding that it is not pursuing a claim against AvalonBay under the COVID theory. Reply at 1.

The Court does not find this statement by the District to be a concession that renders its case theories moot. Instead, the Court understands this statement as the District explains it: that the COVID facts serve as a plus factor alleged in support of the broader "RealPage 'conspiracy' alleged against all Defendants." Opp. at 11 (citing Order at 17 (Apr. 7, 2025)). The statement that AvalonBay contends warrants judgment states "neither the District nor Maryland ever argued the existence of some distinct COVID-specific conspiracy." Mot. Ex. 1, Ex. A at 1. The District in its Opposition argues that under black-letter antitrust law, plaintiffs may plead participation in unlawful agreements through parallel conduct and plus factors, which the Court already found that the District has done. Opp. at 10; Order at 13-17 (Apr. 7, 2025).

The April 7 Order explains that the allegations of parallel conduct alone have not demonstrated a plausible claim against AvalonBay in the First Amended Complaint; however, taking those factual assertions with the addition of the COVID facts, a plausible claim has been pleaded. Order at 16-17 (Apr. 7, 2025). In viewing the pleadings in the light most favorable to

the District as the nonmoving party, AvalonBay is not "clearly entitled to judgment," *Wilson Courts Tenants Ass'n*, 924 A.2d at 292, and the Court denies AvalonBay's Motion.

Conclusion

The Court finds that AvalonBay has not demonstrated that judgment on the pleadings in favor of AvalonBay is appropriate here, and thus the Court denies the Motion.

Accordingly, it is this 23rd day of September 2025, hereby:

ORDERED that Defendant AvalonBay's Motion for Judgment on the Pleadings is **DENIED.**

SO ORDERED.

Judge Shana Frost Matini
Superior Court of the District of Columbia

Copies served electronically upon all counsel of record