STATE OF INDIANA
INDIANA CIVIL RIGHTS COMMISSION

LINDA J. WILLIAMS, Complainant, vs. GOLF VIEW APARTMENTS, INC., and ANGELA M. LAZO, Respondent.	)	Docket No.: HOrt13011688

DATE FILED

MAY 18 2020

ICRC
COMMISSION

FINAL ORDER

On December 13,2019, Hon. Caroline Stephens Ryker, Administrative Law Judge ("ALJ") for the Indiana Civil Rights Commission ("ICRC") issued her Initial Findings of Fact, Conclusions of Law, and Order ("Order"). The parties had opportunity to object to the Order; Complainant objected. The Commission considered briefs and oral arguments from the parties on Complainant's objections and took this matter under advisement. After consideration of the record in this matter and the Order, **THE COMMISSION HEREBY ORDERS:**

1. By the majority vote of 5 Commissioners, the Commission DENIES Complainant's March 18, 2020 Motion to Submit Additional Evidence.
2. The findings of fact and conclusions of law as stated in the Order, a copy of which is attached hereto, are incorporated herein by reference. IC 4-21.5-3-28.
3. The Order is AFFIRMED under IC 4-21.5-3-29 and hereby becomes the Final Order disposing of the proceedings. IC 4-21.5-3-27(a).

Either party to a dispute filed under IC 22-9 may, not more than thirty (30) days after the date of receipt of the Commission's final appealable order, appeal to the court of appeals under the same terms, conditions, and standards that govern appeals in ordinary civil actions. IC 22-9-8-1.

SO ORDERED by the majority vote of _5_Commissioners on May 15, 2020.
Signed this May 15, 2020

Adrianne L Slash
Chair Adrianne SlasH

Certificate of Service

Served this _18th_ day of _May_ in _2020_by United States Mail on the following:

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STATE OF INDIANA
INDIANA CIVIL RIGHTS COMMISSION

LINDA J. WILLIAMS, Complainant, vs. GOLF VIEW APARTMENTS, INC., and ANGELA M. LAZO, Respondent.	Docket No.: HOrt13011688 DATE FILED DEC 13 2019 OFFICE OF THE ADMINISTRATIVE JUDGE

INITIAL FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

The presiding Administrative Law Judge ("ALJ") for the Indiana Civil Rights Commission ("ICRC"), Caroline A. Stephens Ryker, held a public hearing in this matter on April 15th and August 14th of 2019. Complainant Linda Williams ("Complainant") appeared personally along with Staff Attorney for the ICRC, Attorney Michael C. Healy, in support of Complainant's complaint and on behalf of the public interest. Respondent Golf View Apartments, Inc. ("Respondent Golf View") and Respondent Angela M. Lazo ("Respondent Lazo") (collectively "Respondents") appeared by counsel, Attorney Rick C. Gikas.

The hearing was conducted because on June 3, 2013, the ICRC, after conducting a neutral investigation, issued a probable cause Notice of Finding on Complainant's January 10, 2013 complaint in which Complainant alleged that Respondents retaliated against her for engaging in a protected activity in violation of the Indiana Civil Rights Law, Indiana Code 22-9, *et. seq.* ("ICRL").[1] The parties submitted a Joint Pre-Hearing Statement ("JS") on December 17, 2018, which was supplemented by the April 12, 2019 Supplement to Joint Pre-Hearing Statement ("ALJ Ex. 1") that summarized the parties' allegations and defenses as well as provided stipulations concerning facts and evidence.

At the beginning of the proceeding, the parties waived opening arguments. Complainant's witnesses included Complainant and Bernice Gasper ("Gasper"), and

[1] See Stip. 10 for resolution of conflicting filing dates.

Complainant's admitted exhibits included: Exhibits 1 through 4 and 6 through 47.[2] Complainant's Exhibit 48 was not admitted. Complainant served as Complainant's rebuttal witness. Respondents' witnesses included Chad Nally ("Nally") and Respondent Lazo, and Respondents' admitted exhibits included Exhibits A through V.[3] Respondents did not call any rebuttal witnesses. Additionally, ALJ Ex. 1 and ALJ Ex. 2 were admitted.[4]

During the hearing, Respondents moved for the ALJ to take judicial notice of ALJ Ex. 2. Both parties were provided with the opportunity to brief the issue, and on September 13, 2019, Complainant waived her objection to the ALJ taking official notice of ALJ Ex. 2. (Tr. 359-361.) The undersigned ALJ hereby takes official notice of ALJ Ex. 2. IND. CODE § 4-21.5-3-26.

Additionally, the ALJ set a November 2, 2019 deadline for submitting suggested decisions under 910 IAC 1-11-3, and both parties timely filed suggested decisions. Accordingly, the ALJ took the matter under advisement. Having carefully considered the parties' evidence and arguments and being duly advised in the premises, the presiding ALJ for the ICRC proposes that the Commission enter the following findings of fact, conclusions of law, and order.

FINDINGS OF FACT

The Parties

1. Respondent Golf View Apartments, Inc.'s ("Respondent Golf View") property is composed of four (4) units, located at 502 N. Washington St., Hobart, Indiana 46342 ("the property"). (Stip. 1; Tr. 44, 264.)
2. Complainant first moved to the property in November of 1996 after she acquired a 25% ownership interest in the property, which she still owns. (Ex. 37; Ex. 38; Tr. 44, 51, 172-173.)
3. At that time, Respondent Lazo and her spouse, Mike Lazo ("President Lazo"), owned two (2) units and had a 50% ownership interest in the property; another resident, Shelley Bradford ("Bradford"), owned the last unit and the remaining 25% of the property. (Stip. 20; Stip. 21; Ex. 37; Ex. 38; Ex. 46 at 4-8; Tr. 46, 51-52, 172-174, 263-267.)

[2] The following exhibits are duplicative: Exhibit 9 and Exhibit 25. Accordingly, this Order cites only to Exhibit 25. All exhibits were admitted without objection.
[3] All exhibits were admitted without objection.
[4] Both exhibits were admitted without objection. Stipulations as to fact included in ALJ Ex. 1 will be cited as "Stip. #."

4. When Complainant first moved into the property, Respondent Lazo lived in unit #3, Respondent Lazo owned unit #1, Bradford lived in unit #4, and Complainant lived in unit #2. (Ex. 47 at 9-10; Tr. 44, 211, 287, 311.)
5. Beginning in 2006, Respondent Lazo was Respondent Golf View's Secretary, and President Lazo was Respondent Golf View's President. (Ex. 37; Ex. 38; Ex. 46; Tr. 265-266.)
6. Although Complainant initially challenged the legitimacy of President Lazo's and Respondent Lazo's officer status, they acted in that capacity for over twelve (12) years.(Ex. 27; Ex 37; Ex. 38; Ex. 39; Tr. 158-159, 266-268, 281.)
7. In 2008, Respondent Lazo and President Lazo moved out of the property, but they retained their ownership in it. (Ex. 39; Tr. 128, 263.) Around that time, they began renting their units out to tenants, including Mia Fluharty ("Fluharty") and Janet Gallow ("Gallow"). (Stip. 23; Ex. 39; Ex. 47 at 13-14.)
8. After Bradford's unit went into foreclosure in 2012 due to nonpayment, Respondent Lazo and President Lazo purchased her unit and became owners of 75% of the property. (Stip. 1; Stip. 22; Ex. 37; Ex. 38; Ex. 46 at 4-8, 23-25; Tr. 113, 182-184, 267-268, 284, 293-294.)
9. Respondent Lazo and Complainant have a long history of disputes that began as early as 2007 when Complainant, Respondent Lazo, and President Lazo were clashing over an elder abuse complaint, an intimidation charge, and multiple requests for protective orders. (Stip. 3; Stip. 4; Stip. 5; Stip. 6; Stip. 7; Stip. 18; Ex. 25; Ex. 46; Ex. 47; Ex. C; Ex. D; Ex. E; Ex. F; Ex. G; Ex. H; Ex. I; Tr. 171-174, 272-274, 341.)

Relevant Condominium Procedures

10. Respondent Golf View is a condominium governed by the Declaration of Condominium of Golf View Apartments and the Bylaws of the Golf View Apartments, Inc. (collectively "the founding documents"). (Stip. 2; Ex. 37; Ex. 38.)
11. As officers, Respondent Lazo and President Lazo were authorized conduct business on behalf of Respondent Golf View as directed by the founding documents. (Ex. 27; Ex 37; Ex. 38; Ex. 39; Tr. 158-159, 266-268, 281.)
12. At all times relevant to this matter, ownership of a single unit equated to the ownership of 25% of the property, a 25% say in the voting process, and an obligation to pay 25% of all property costs, including special assessments. (Ex. 37; Ex. 38; Tr. 52, 182, 264.)

13. At all times relevant to this matter, each unit of the property paid a monthly fee to Respondent Golf View that was used to maintain the property and pay for general, shared expenses. (Ex. 37; Ex. 38; Ex. 46; Tr. 52, 115-116, 181-182, 277-291.)
14. Alternatively, special assessments were additional fees paid to Respondent Golf View to cover atypical expenses that could not be covered by the monthly fees. (Ex. 37; Ex. 38; Ex. 46; Tr. 195-196, 277-291, 300-301.)
15. At all times relevant to this matter, a special assessment could only be raised if approved by at least three (3) of the four (4) voting units. (Stip. 24; Ex. 37; Ex. 38; Tr. 52-53, 267-269.)

Respondent Golf View Apartment Inc.'s Finances

16. Respondent Golf View suffered periods of financial distress between 2006 and 2018, which are highlighted in the below table.

Table 1: Respondent Golf View's Account Balances[5]			
Year	**Closing Annual Balance**	**Lowest Dollar Amount**	**Highest Dollar Amount**
2006	$1,555	$398	$2,205
2007	$1,129	$679	$5,715
2008	$760	$277	$1,728
2009	$991	$266	$2,318
2010	$726	$509	$1,780
2011	$441	$-132	$3,594
2012	$296	$232	$1,148
2013	$296	$79	$866
2014	$46	$-94	$814
2015	$858	$-73	$1,765
2016	$990	$823	$1,629
2017	$426	$293	$3,591
2018	$472	$-110	$997

(Ex. A.)

17. In 2008, Respondent Golf View saw a decline in its account balances, from which Respondent Golf View made a small and temporary recovery in 2009. (Ex. A.)
18. In August of 2010, unit #4, then owned by Bradford, stopped making its monthly payments and did not resume making its monthly payments until February of 2012. (Tr. 284.) The missed payments were never made. (Ex. A; Tr. 250, 311.)
19. In 2011, Respondent Golf View's account balances declined again to such a great extent that in 2011, 2014, and 2015, Respondent Golf View's account balances sank to negative numbers at least once during the year. (Ex. A; Tr. 290-291.)

[5] Dollar amounts rounded to the nearest whole number.

20. In July of 2012, Complainant stopped paying her monthly fees, and she refused to pay for any levied special assessments. (Ex. A; Ex. B; Tr. 283, 297-298.)
21. Respondent Golf View began to make a small recovery in 2016 and in 2017, but again, it saw a decline in 2018 that included the reappearance of a negative account balance. (Ex. A.)
22. In 2009, 2014, 2017, and 2018, Respondent Golf View's financial distress became so severe that Respondent Lazo assumed responsibility for some of Respondent Golf View's costs and began making extra, unrequired payments totaling approximately $3,400.00. (Ex. 4; Ex. 26; Ex. 44; Ex. A at 30, 31, 39, 41, 42, 43; Ex. M.)
23. Between 2009 and 2019, Respondent Golf View routinely notified owners that it was taking steps to reduce its financial obligations because it was in financial distress. (Ex. 26; Ex 44; Ex. 47; Ex. M.) For example, Respondent Golf View's October 2010 Statement included the following advisory:

> The Association will be running out of money shortly. Drastic action may occur such as no insurance, washer and dryer will be removed no maintenance, cannot seal the drive way, no dusk to dawn lighting plus other cost cutting measures. Winter is upon us and snow plowing and shoveling was not included and if Condo #2 and Condo #4 pay there liabilities none of the cost cutting will occur. (Ex. 44 at 10-12.)

24. Respondent Lazo credibly testified that the actions taken by herself and Respondent Golf View about which Complainant complains were strongly motivated by Respondent Golf View's financial distress. (Tr. 277:17-291:12.) Her testimony is supported by and is consistent with Respondent Golf View's own records as well as by the deposition testimony of Fluharty and President Lazo. (Ex. 44; Ex. 46; Ex 47; Ex. A; Ex. B.)

Complainant's Indiana Civil Rights Commission Complaints

25. On July 16, 2009, Complainant filed her first discrimination complaint with the ICRC against Respondent Golf View and Respondent Lazo ("2009 ICRC complaint") in which she alleged that Respondents discriminated against her on the basis of race. (Ex. 10; Ex. 25, Ex. J.)
26. After conducting a neutral investigation in which Respondents participated, the ICRC issued a finding of no probable cause under the ICRL with respect to Complainant's 2009 ICRC complaint on December 18, 2009. (Stip. 8; Ex. 10; Ex. 25.)

27. On January 10, 2013, Complainant filed her retaliation complaint ("2013 ICRC complaint") against Respondent Lazo and President Lazo, which Complainant amended to include Respondent Golf View on July 1, 2013, alleging:

> On October 16, 2012 and continuing, Respondent continues to retaliate against me…I received a judgment for a case the Lazo's filed against me for filing my Civil Rights Complaint. The Judgment was in my favor and since that time the Lazo's continues [sic] to harass me regarding money/fees I do not owe…[6]

(Complaint, HOra13011688; Stip. 15; Stip. 16.)

28. Complainant amended the 2013 ICRC complaint again on March 12, 2019 to remove President Lazo as a Respondent after he passed away. (March 12, 2019 Amendment, Hora13011688.)

29. On June 3, 2013, the ICRC issued a finding of probable cause under the ICRL with respect to Complainant's 2013 ICRC complaint. (Ex. 17.)

30. The one hundred eightieth (180th) day before Complainant filed her 2013 ICRC complaint is July 14, 2012. (Complaint, HOra13011688.)

Complainant's Allegations

Carport and Foyer Lighting

31. As early as December of 2008, Respondent Golf View reduced the lighting in the carport. (Ex. 10; Ex. J; Ex. L.)

32. During 2010, Respondent Golf View completely and permanently eliminated the lighting in the carport and permanently reduced the lighting in the front foyer. (Ex. 24; Ex. 28; Ex. 29; Ex. 30; Ex. 35 at 1-2, 7, 40-41, 61-62; Tr. 65-67, 77, 88-92, 143-148.)

33. Respondent Golf View's 2008 and 2010 lighting reductions were done in an attempt to best manage its 2008 and 2010 periods of financial distress by reducing its lighting bill. (Ex. 44; Tr. 198-199, 299, 335-341.)

Respondent Golf View's Shed

34. As early as 2007, Complainant and Respondent Lazo were disputing how to properly use and dispose of the contents of Respondent Golf View's shed. (Ex. 19 at 4-6.)

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[6] Complainant's 2013 ICRC complaint also included the allegation that Respondent "…continues to treat me differently than the other association members who are not African American," but Complainant did not include this allegation in the JS or ALJ Ex. 1, and she presented no evidence on the allegation during the hearing. The Commission considers this allegation waived.

35. In February of 2010, Respondent Golf View provided Complainant with notice that the shed was placed on Respondent Lazo's private property and that Respondent Lazo planned to remove the shed. (Ex. 19 at 2; Ex. V; Tr. 295-297.)
36. In the summer of 2010, Respondent Lazo had Respondent Golf View's shed demolished. (Ex. 19; Tr. 93-96.)
37. At the time, Respondent Lazo's attorney represented that only Complainant would be billed for the costs associated with the demolition. (Ex. 19; Tr. 93-96.) However, Respondent Lazo's attorney, who had the shed removed, was ultimately paid by Respondent Golf View on August 16, 2010. (Ex. 19; Ex. A at 16.)

Access and Amenities

38. In the summer of 2010, Respondent Golf View's garbage caddy was situated on Respondent Lazo's private property, where it has remained. (Ex. 19 at 4-6; Ex. 35 at 3-4, 29, 38-39, 56, 58; Tr. 92-93.)
39. As positioned, the garbage caddy was easily accessible from Respondent Golf View's property, and none of the designated evidence demonstrates that Complainant was not permitted by Respondent Lazo to use the garbage caddy. (Ex. 19 at 4-6; Ex. 35 at 3-4, 29, 38-39, 56, 58.)
40. In July of 2013, a large mound of gravel, which was used to complete property maintenance, was placed in the property's parking lot, and it prevented entry and exit for a day and a half. (Ex. 35 at 9, 32-33, 36-37, 42-48, 73-78, 93-99; Ex. 47 at 43-46; Tr. 77-85, 202-203, 291-291.)
41. Complainant was not notified that she would need to move her car while the maintenance was performed; however, none of the designated evidence demonstrates that Respondents' tenants received notice. (Tr. 77-78.)
42. During 2010, 2014, and 2017, the property's common areas like the laundry room were not routinely maintained. (Ex. 15; Ex. 30; Ex. 34; Ex. 35; Ex. 39; Tr. 58-59, 85-87, 147-149.) Similarly, in 2013, weeds were not routinely eliminated. (Ex 35 at 81; Tr. 110.)
43. During 2014, Complainant's water was shut off for "...more than an hour..." because of a "...major plumbing leak...," and Complainant was only given concurrent, written notice; however, none of the designated evidence suggests that Respondents' tenants received better

notice than Complainant or that the leak did not occur. (Ex. 15 at 12; Ex 35 at 10, 27-28, 67, 69, 80, 111; Tr. 85-87.)

44. No more than nine (9) times between 2009 and 2019, Respondent Lazo parked in front of Complainant's parking space, blocking her exit, while Respondent Lazo and President Lazo performed maintenance on the property. (Ex. 35 at 30, 82-88; Tr. 110-113, 198-200, 293, 303-306; 365-368.)

45. During Respondent Golf View's 2010, 2011, 2012, 2013, 2014, 2015, and 2018 periods of financial distress, Respondent Lazo and President Lazo began performing the regular maintenance of the property on their own at a reduced cost in an attempt to best manage Respondent Golf View's stressed budget, which resulted in the rendering of less professional services, a decline in access to the property, and the decreased availability of the properties' amenities. (Ex. 44; Ex. 46; Ex. 47 at 41-42; Tr. 198-201, 291-293, 303-306.)

Special Assessments

46. Prior to Complainant filing her 2009 ICRC complaint, Respondent Golf View raised three (3) special assessments that were billed to Complainant, as a 25% owner, and to Respondent Lazo and President Lazo, as 50% owners, as shown below:

Table 2: Special Assessments Prior to 2009 ICRC Complaint			
Date	Number	Amount Billed to Complainant	Amount Billed to Respondent and President Lazo
2007	1	$1,000.00	$2,000.00
2008	1	$162.50	$325.00
2009	1	$62.00	$124.00

(Ex. 4; Ex. 26; Ex. 45; Ex. A, Tr. 310.)

47. Respondent Lazo paid all of and Complainant paid most of the special assessments raised prior to Complainant filing her 2009 ICRC complaint. (Ex. A; Tr. 178-181.)

48. After acquiring 75% ownership of the property in 2012, Respondent Lazo and President Lazo could unilaterally approve special assessments consistent with the founding documents. (Ex. 37; Ex. 38; Tr. 113-116, 269.)

49. The parties presented conflicting evidence concerning the total number of and total amount of special assessments raised by Respondent Golf View after Complainant filed her 2009 ICRC complaint.[7] However, Exhibit A, Exhibit B, and Exhibit 41 are given more weight because they are consistent with Respondent Golf View's 2013 and 2015 debt collection attempts and the amounts Respondent Golf View actually billed to owners.

[7] *Compare* Ex. 1, Ex. 45, Tr. 117-127 *with* Ex. 32, Ex. 41, Ex. A, Ex. B, and Tr. 184-193.

50. After Complainant filed her 2009 ICRC complaint, Respondent Golf View raised five (5) special assessments that were billed to Complainant, as a 25% owner; the special assessments were billed to Respondent Lazo and President Lazo as 50% owners between 2009 and 2011, and as 75% owners between 2011 and 2013, as shown in the below table:

Table 3: Special Assessments After 2009 ICRC Complaint			
Date	Number	Amount Billed to Complainant	Amount Billed to Respondent and President Lazo
2009	0	$0.00	$0.00
2010	1	$20.00	$40.00
2011	1	$250.00	$500.00
2012	1	$600.00	$1,800.00
2013	2	$500.00	$1,500.00

(Ex. 3; Ex. 8; Ex. 22; Ex. 41; Ex. 45; Ex. 46; Ex. A; Ex. B; Tr. 300-301, 308.)

51. Respondent Lazo and President Lazo paid for all of the special assessments raised after Complainant filed her 2009 ICRC complaint; Complainant paid for only the special assessments raised in 2010. (Ex. 22; Ex. A; Ex. B; Tr. 120-127, 178-181, 283, 300-301.)

52. The 2010 and 2011 special assessments were raised in response to specific and immediate needs: 1) an increased water bill, 2) damage to the roof, and 3) the replacement of an air conditioning unit. (Ex. 3; Ex. 44 at 5-8; Tr. 195-198.)

53. The post-2011 special assessments were raised by the unilateral vote of Respondent Lazo and President Lazo, consistent with the founding documents, because Respondent Golf View was in a period of financial distress and it could not afford to maintain the property without first raising the special assessments. (Ex. 1; Ex. 7; Ex. 8; Ex. 22; Ex. 45; Ex. 46 at 40-43; Ex. B; Ex. U; Tr. 275-276, 300.) The money raised was used for its intended purpose of property maintenance. (Ex. 1; Ex. 45; Ex. A; Ex. B; Ex. U; Tr. 282-283, 302.)

Good Standing

54. As early as 2007, Respondent Golf View implemented a "good standing" policy that consisted of removing owners from "good standing" status when they failed to make timely monthly payments and then assessing a penalty against owners who were not in "good standing" with Respondent Golf View. (Ex. Q.)

55. In September of 2007, Respondent Golf View successfully instituted a penalty of withholding financial statements from owners who were not in "good standing" to ensure that Bradford and Complainant paid their monthly fees by a specific date. (Ex. Q; Ex. R.)

56. In 2008, Respondent Golf View increased the penalty for not being in "good standing" to include a prohibition on attending meetings. (Ex. U at 3.)

57. As early as May of 2010, Respondent Golf View notified Complainant that she was no longer in "good standing" because she had several unpaid fees. (Ex. 4; Ex. 26; Ex. 39; Ex. 46; Tr. 69-71.) At the time, Respondent Golf View increased its penalty for not being in "good standing" to include a prohibition on voting at meetings. (Ex. 4; Ex. 6; Ex. 26; Ex. 39; Ex. 44 at 5-6, 9-10, 28-30, 33-35; Ex. 46; Tr. 76, 115, 338-341.)
58. In August of 2012, Complainant received meeting minutes with an edited format, and in 2013, Respondent Golf View delivered one (1) set of meeting minutes late. (Ex. 16; Ex. 31; Ex. 40; Ex. 46 at 32-38; Tr. 134-136; 152-156.)
59. Respondent Golf View did not provide Complainant with annual meeting notices before or after she filed her 2009 ICRC complaint because the founding documents contained the annual meetings' details. (Ex. 35 at 53-54; Ex. 37; Ex. U; Tr. 204-206, 263-265, 338-344, 358, 363-365.) However, Complainant was provided with notices for other meetings. (Ex. 8; Ex. P; Ex. U; Tr. 274-277, 338.)
60. Between 2007 and 2019, Respondent Golf View attempted to manage its stressed budget by collecting outstanding fees from Complainant using a previously successful method of withholding "good standing" status and applying the corresponding and increasingly severe penalty. (Ex. 4; Ex. 26; Ex. 39; Ex 44; Ex. A; Ex. B; Ex. Q; Ex. R; Ex. U; Tr. 277-291.)

Prohibition on Work

61. Before Complainant filed her 2009 ICRC complaint, Complainant invoiced Respondent Golf View for maintenance work and related purchases, which Respondent Golf View declined to pay. (Ex. 10; Ex. 20; Ex. 33; Ex. 43; Ex. J; Ex. O; Tr. 131-132.)
62. Beginning in May of 2010, Respondent Golf View notified Complainant that she was "...not authorized to do any work or buy any supplies..." unless she received permission first. (Ex. 4; Ex. 44, Tr. 76, 116-117, 176-177.)
63. However, Complainant has not alleged or designated evidence that she was denied the preapproval to perform work or purchase supplies; instead, she complains that the preapproval requirement itself was retaliatory. (Tr. 177.)
64. Although both Fluharty and President Lazo performed work for Respondent Golf View after Complainant filed her 2009 ICRC complaint, both Fluharty and President Lazo were subject to the same pre-approval policy. (Stip. 31; Ex. 2; Ex. 7; Ex. 46; Ex. 47 at 14-41; Ex. U; Tr.114-115.)

65. No evidence was designated that demonstrated Respondent Lazo, President Lazo, and Fluharty did not receive permission prior to purchasing items on behalf of Respondent Golf View for which they were reimbursed. (Ex. 43; Ex. 47.)

66. Beginning in 2007, Respondent Golf View notified Fluharty that it would not pay her for maintenance work performed, including snow shoveling, and although she still submitted invoices, she continued to perform work with the understanding that she would not be paid. (Ex. 2; Ex. 47 at 14-41; Ex. S; Tr. 283.) Respondent Golf View paid her approximately $695.00 for her work performed between 2009 and 2012, which was much less than she billed. (Ex. 43; Ex. A.) Furthermore, Respondents stipulated that Complainant will never be billed for the snow shoveling performed by Fluharty. (Tr. 331-334.)

67. Similarly, although the founding documents expressly allow for the President to receive payment for his or her work, Respondent Golf View did not pay President Lazo for his work, for which he billed Respondent Golf View $1,700.00. (Ex. 1; Ex. 37 at 7-8; Ex. 43; Ex. A; Tr. 293.)

68. In 2010, 2013, and 2014, Respondent Golf View was in a period of financial distress that necessitated budgeting its funds by not accruing any unexpected and unapproved debts. (Ex. 47 at 14-41; Ex. A; Ex. B; Tr. 277-291.)

Malicious Prosecution Lawsuit and Other Recovery Attempts

69. During 2010, Respondent Golf View attempted to recoup the attorney fees it spent defending against Bradford's April 29, 2010 Indiana Attorney General complaint by charging Bradford directly for the fees incurred. (Stip. 11; Ex. 4; Ex. 18; Ex. 44 at 13, 24-26, 28-30, 33-35.)

70. In November of 2010, Respondent Lazo and President Lazo filed malicious prosecution lawsuits against Complainant and Bradford to recover the attorney fees that they spent defending against six (6) claims filed between 2007 and 2009 by Complainant and Bradford, including Complainant's 2009 ICRC complaint. (Stip. 13; Ex. 25; Ex. 46 at 30-32; Ex. K; Tr. 272-274.)

71. Ultimately, the malicious prosecution lawsuits were dismissed in favor of Complainant and Bradford on October 16, 2012. (Stip. 14; Ex. 25.)

Onsite Washer and Dryer

72. As early as 2007, Complainant requested that Respondent Golf View replace the common area's washer and dryer with a coin operated washer and dryer. (Ex. 36; Ex. 44 at 4; Ex. T.)

73. In the summer of 2011, the twenty-five (25) year old washer and dryer installed in the property's common area stopped working (Ex. 6; Ex. 23; Ex 35 at 49-50, 66; Ex. 36; Ex. 44; Tr. 58-60, 174-175, 285-286.)
74. Respondent Golf View unsuccessfully attempted to have the washer and dryer repaired, and a new coin operated washer and dryer were installed a year later in 2012. (Ex. 44; Tr. 67, 203-204.)
75. In 2011 and 2012, Respondent Golf View was in a period of financial distress, and it could not afford to replace the washer and dryer immediately. (Ex. A; Ex. 44; Tr. 284-287.)
76. During the time that the washer and dryer were broken, Complainant used a laundromat and deducted the associated costs from her monthly fee. (Stip. 25; Ex. 6; Ex. 23; Ex. 6; Ex. 36; Ex. 44; Tr. 59-60, 67-69, 136-138; 174-176.)
77. To manage its stressed budget, Respondent Golf View's refused to accept Complainant's partial payments in an attempt to force Complainant to make her full monthly payments, to which Respondent Golf View reasonably believed it was entitled. (Stip. 26; Stip. 27; Ex. 6; Ex. 21; Ex. 23; Ex. 36; Ex. 37; Ex. 38; Ex. 44; Tr. 60-65, 137-138, 206-214, 254-255, 289-290.)

Debt Collection

78. In February of 2013, Complainant received a notice from a debt collector seeking payment on behalf of Respondent Golf View for the total amount of her unpaid fees. (Ex. 32; Ex. N; Tr. 129-131, 184-192.)
79. The letter was vacated four (4) days later. (Ex. 32; Ex. N; Tr. 130, 306-307.)
80. In 2015, Respondent Golf View, through President Lazo, placed a lien on Complainant's unit for the amount of Complainant's unpaid fees to Respondent Golf View. (Ex. 41; Tr. 162-163, 313.)
81. In 2013 and 2015, Respondent Golf View made reasonable debt collection attempts against Complainant for money that it believed Complainant owed in an attempt to alleviate its financial distress. (Ex. 38 at 7-8; Ex. A; ALJ Ex. 2; Tr. 248-262, 306-307.)

Totality of Allegations

82. The chart below analyzes each of Complainant's allegations, as described above, based on the year in which the allegedly retaliatory action began or worsened, beginning after the 2009 ICRC complaint was filed.

Table 4: Timeline of Alleged Retaliatory Actions: Number of Events that Interfered with Complainant's Housing			
Year	Actions taken by Respondent Lazo	Actions Taken By Respondent Golf View	Special Assessments
2009	0	1	1 totaling $62.00
2010	3	4	1 totaling $20.00
2011	0	2	1 totaling $250.00
2012	0	2	1 totaling $600.00
2013	0	4	2 totaling $500.00
2014	0	2	0 totaling $0.00
2015	0	1	0 totaling $0.00
2016	0	0	0 totaling $0.00
2017	0	1	0 totaling $0.00
2018	0	0	0 totaling $0.00

(See previous findings of fact.[8])

83. Beginning as early as 2009, Complainant documented and made written complaints about Respondents' behavior. (Ex. 6; Ex. 15; Ex. 16; Ex. 19; Ex. 23; Ex. 24; Ex. 27; Ex. 28; Ex. 29; Ex. 30; Ex. 31; Ex. 34; Ex. 35; Ex. 36; Ex. 39; Ex. 41; Ex. 42; Ex. 44; Ex. L; Ex. P; Ex. R; Ex. S; Tr. 144-158, 164-165.)
84. Any Conclusion of Law that should have been deemed a Finding of Fact is hereby adopted as such.

CONCLUSIONS OF LAW

Jurisdiction

1. ICRC has subject matter jurisdiction over complaints of retaliation. IND. CODE § 22-9-1-6(g); IND. CODE § 22-9-1-6(d). Additionally, ICRC has jurisdiction over the parties because they were involved as a complainant and as respondents in the ICRC's investigation of Complainant's 2009 ICRC complaint. IND. CODE § 22-9-1-3(a); IND. CODE § 22-9-1-3(n); 910 IAC 1-1.5-15.
2. The Commission may only find that Respondent Lazo and Respondent Golf View retaliated against Complainant if Complainant establishes her claims by a preponderance of the

[8] 2009: (1) Access and Amenities;
Respondent Golf View 2010: (1) Carport and Foyer Lighting, (2) Access and Amenities, (3) Good Standing, and (4) Prohibition on Work;
Respondent Lazo 2010: (1) Access and Amenities, (2) Respondent Golf View's Shed, and (3) Malicious Prosecution Lawsuit and Other Recovery Attempts;
2011: (1) Onsite Washer and Dryer and (2) Onsite Washer and Dryer;
2012: (1) Good Standing and (2) Access and Amenities;
2013: (1) Access and Amenities, (2) Access and Amenities, (3) Debt Collection, and (4) Good Standing;
2014: (1) Access and Amenities and (2) Access and Amenities;
2015: (1) Debt Collection; and
2017: (1) Access and Amenities.

evidence through the provision of reliable evidence in support of her allegations. *Filter Specialists, Inc. v. Brooks*, 906 N.E.2d 835, 838-842 (Ind. 2009); IND. CODE § 4-21.5-3-14(c).

3. Indiana courts look to federal precedent to assist in interpreting ICRL. *Filter Specialists, Inc.*, 906 N.E.2d at 838-42.
4. Although Complainant's 2013 ICRC retaliation complaint was based on only Respondents' 1) malicious prosecution lawsuit and 2) post-2009 special assessments, Complainant introduced a number of additional baseis for her retaliation complaint in the JS, in ALJ Ex. 1, and during the hearing.
5. When a new allegation is raised during a hearing and the parties implicitly consent to its litigation, then the Commission shall treat the new allegation as if it had been raised in the pleadings. 910 IAC 1-2-8(d). A party implicitly consents to litigate a new allegation when the party 1) had notice that the new allegation would be raised through the submission of more than merely suggestive evidence or testimony and 2) did not object to the litigation of the new allegation. 910 IAC 1-2-8(d); *Mercantile Nat. Bank of Indiana v. First Builders of Indiana, Inc.*, 774 N.E.2d 488, 492-493 (Ind. 2002); *Elkhart Cty. Farm Bureau Co-op. Ass'n, Inc. v. Hochstetler*, 418 N.E.2d 280, 283-285 (Ind. Ct. App. 1981).
6. Complainant made additional allegations about the following in the JS and in ALJ Ex. 1 that Respondents did not move to exclude: 1) the carport and foyer lighting, 2) access and amenities, 3) prohibition on work, 4) the onsite washer and dryer, and 5) debt collection. Additionally, Complainant clearly articulated through evidence and testimony additional allegations concerning 1) good standing and 2) Respondent Golf View's shed, and Respondents presented evidence on both.[9] (Collectively "additional allegations"). Accordingly, the Commission shall consider Complainant's additional allegations.
7. Any other allegations made by Complainant in the JS, in ALJ Ex. 1, or alluded to by evidence introduced by Complainant were not articulated with a clarity that provided Respondents with the required notice to implicitly consent to their litigation, and accordingly, they are not properly before the Commission for consideration.[10]

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[9] Although Respondents did make objections during the hearing related to these allegations, the objections were made on other grounds. *Mercantile Nat. Bank of Indiana,* 774 N.E.2d at 492-493.

[10] Complainant alluded to at least four (4) other possible allegations during the hearing, in the JS, and in ALJ Ex. 1, but the allegations were not pled to completion or with specificity. With respect to Fluharty's snow shoveling bills to

Procedural Arguments

8. Respondents argue that Complainant's claims were not timely filed and that they are additionally barred by the doctrine of *res judicata.*

9. Alternatively, Complainant argues that her claims are timely filed under the continuing violation theory and that the doctrine of *res judicata* does not apply because her 2013 ICRC complaint includes claims that are distinct from her 2009 ICRC complaint.

Statute of Limitations[11]

10. A complaint of retaliation made under the ICRL must be filed within 180 days "...from the date of the occurrence of the alleged discriminatory practice." Ind. Code § 22-9-1-3(p). Importantly, the statute of limitations for filing a complaint does not "...restart with each new day the harm is experienced." *Bass v. Joliet Pub. Sch. Dist. No. 86*, 746 F.3d 835, 839–840 (7th Cir. 2014).

11. The continuing violation theory is properly applied in three different circumstances: 1) when the date of discrimination is difficult to identify, 2) when a discriminatory policy is actively applied, and 3) when an act that falls outside of the statute of limitations is inseparable from an act that falls within the statute of limitations. *Tinner v. United Ins. Co. of Am.*, 308 F.3d 697, 707 (7th Cir. 2002).

12. Although some discrete actions can appear continuing because they compound the harm caused by other discrete acts, the third framework for analyzing a continuing violation only applies to actions that can reasonably be considered a "single course of conduct." *Tinner,* 308

Respondent Golf View, Complainant did not articulate how she was harmed by the existence of a bill that Respondent Golf View and Fluharty agree Respondent Golf View had no intention of paying at the time it was submitted, particularly in light of Respondent Golf View's stipulation that Complainant will never be billed for the amount. *Burlington N. & Santa Fe Ry. Co. v. White*, 548 U.S. 53, 68 (2006). With respect to the lawn mowing checks, Complainant did not identify a nexus to the 2013 ICRC complaint because the behavior about which Complainant complains began before she filed any ICRC complaint and it did not change in nature at any time. *Boumehdi v. Plastag Holdings, LLC,* 489 F.3d at 793; (Ex. 48; Ex. A; Tr. 96-97.) Additionally, Respondents objected to litigating both allegations, and the ALJ sustained the objections. (Ex. 48; Tr. 97-109, 283, 326-327, 346-357, 371.) Similarly, with respect to Complainant's confrontations with Janet Gallow and with respect to the foreclosure of Bradford's unit, Complainant did not designate credible evidence of an agent/principal relationship that could support a nexus between the nonparties' actions and Complainant's 2009 ICRC complaint. *Id;* (Ex. 24; Ex. 46; Tr. 139-143, 183-184, 293-294, 316-319, 328.) The evidence presented by Complainant did not provide Respondents with adequate notice of the allegations such that Respondents could reasonably have been expected to litigate them.

[11] Previous ALJs considered Respondents' statute of limitations argument in prehearing motions and ordered that a hearing was necessary to determine if the continuing violation theory could be applied to Complainant's allegations. As ALJ Burkhardt explained, "[w]hether a particular incident is part of a continuing violation is a fact-specific determination." July 16, 2019 Order Denying Respondents' Motion to Dismiss; February 2, 2016 Order Denying Respondent's Motion for Summary Judgment.

F.3d at 708, *quoting Galloway v. Gen. Motors Serv. Parts Operations*, 78 F.3d 1164, 1166 (7th Cir.1996) *abrogated on other grounds by, Nat'l R.R. Passenger Corp.*, 536 U.S. at 101-127; *Nat'l R.R. Passenger Corp.*, 536 U.S. at 111-121; *Thayer v. Vaughan*, 798 N.E.2d 249, 258-259 (Ind. Ct. App. 2003), *on reh'g in part*, 801 N.E.2d 647 (Ind. Ct. App. 2004).

13. Whether related actions rise to the level of a "single course of conduct" depends on the following factors: 1) similarity of subject matter, 2) frequency of occurrence, and 3) the degree of permanence. *Tinner*, 308 F.3d at 708. The central question to be answered is: should Complainant, through the use of "...reasonable diligence...have known, that each act, once completed, was discriminatory...?" *Id.*
14. Complainant's allegations concern distinct and permanent acts that are distinguished from one another by breaks in time and by ease of identification. Although the allegations all generally touch on her housing, Complainant's allegations span a wide range of actions that were not instigated by Respondents with a frequency that demonstrates an ongoing course of action. Additionally, Complainant's frequent written complaints evidence that Complainant was aware of the permanent, unchanging nature of Respondents' actions as they occurred. Accordingly, the continuing violation theory is not applicable to Complainant's allegations.
15. Complainant's allegations concerning the following are barred by the ICRL's statute of limitations because they were permanent on the date of initiation, the nature of their harm did not change, and they occurred before July 14, 2012: 1) carport and foyer lighting, 2) Respondent Golf View's shed, 3) the garbage caddy, 4) special assessments raised before July 14, 2012, and 5) the 2010 malicious prosecution lawsuit. The nature of the time-barred allegations were such that Complainant could reasonably have been expected to recognize the potential for a retaliation claim and file a complaint at the time each incident initially occurred.
16. However, untimely allegations may be used by Complainant "...as background evidence..." in support of her allegations. *Nat'l R.R. Passenger Corp.*, 536 U.S. at 101.
17. Complainant's allegations concerning the following are not barred by the ICRL's statute of limitations because they occurred after July 14, 2012: 1) onsite washer and dryer, 2) special assessments raised after July 14, 2012, 3) interference with parking, 4) maintenance of the property, 5) the 2014 issue with Complainant's water, and 6) debt collection.

18. Similarly, Complainant's allegations concerning the following are not barred by the ICRL's statute of limitations because they involve an allegedly discriminatory policy that was actively applied to Complainant after July 14, 2012: 1) good standing and 2) prohibition on work.

Res Judicata

19. The doctrine of *res judicata* prevents a party from re-litigating the same facts under a different legal claim. *Nat'l Wine & Spirits, Inc. v. Ernst & Young, LLP*, 976 N.E.2d 699, 704 (Ind. 2012). In this case, the doctrine of *res judicata* would prevent Complainant from re-litigating her 2009 ICRC complaint based on race discrimination by alleging the same set of facts in her 2013 ICRC retaliation complaint.
20. Despite the similarity of the actions that Complainant alleges Respondents took before and after 2009, the key fact alleged in Complainant's 2013 ICRC complaint -- Respondents' motivation for taking allegedly harmful actions after 2009 -- differs from the key fact alleged in Complainant's 2009 ICRC complaint -- Respondents' motivation for taking allegedly harmful actions prior to 2009.
21. Additionally, Complainant alleged that the pre-existing behavior increased in severity after she filed her 2009 ICRC complaint. *Boumehdi v. Plastag Holdings*, LLC, 489 F.3d 781, 793 (7th Cir. 2007).
22. Accordingly, Complainant's allegations are not barred by the doctrine of *res judicata*.

Discrimination Complaint

Retaliation

23. The ICRL prohibits "...any person from discharging, expelling, or otherwise discriminating against any other person because the person filed a complaint, testified in any hearing before this commission, or in any way assisted the commission in any matter under its investigation." IND. CODE § 22-9-1-6(g).
24. Complainant engaged in an activity protected from retaliation by the ICRL when she filed her 2009 ICRC complaint, and Respondents were aware the complaint was filed. *Id.*
25. Complainant has not designated direct or circumstantial evidence of intent under the direct method, and accordingly, her claim is analyzed under the indirect method. *Hossack v. Floor Covering Assocs. of Joliet, Inc.*, 492 F.3d 853, 860-62 (7th Cir. 2007).

26. To succeed on a claim of retaliation under the indirect method, Complainant must establish her prima facie case that: 1) she engaged in a statutorily protected activity; 2) she suffered an adverse action; and 3) there was a causal connection between the two events. *Coleman v. Donahoe*, 667 F.3d 835, 859-860 (7th Cir. 2012).
27. As this matter proceeded to a hearing, Complainant's prima facie case is "...no longer relevant...." *Filter Specialists*, 906 N.E.2d at 841-842, 846. Instead, the ultimate "...factual inquiry..." becomes whether Complainant's 2009 ICRC complaint was the "but for" motivating cause of Respondents' actions. *Id.* at 846; *Indiana Civil Rights Comm'n v. Culver Educ. Found. (Culver Military Acad.),* 535 N.E.2d 112, 116 (Ind. 1989).
28. Accordingly, Respondents have the burden of production with respect to identifying legitimate, nondiscriminatory reasons for their allegedly retaliatory actions, and to succeed on her retaliation claim, Complainant must demonstrate that Respondents' identified reasons are pretextual. *Filter Specialists*, 906 N.E.2d at 839-843, 846-847.
29. Nondiscriminatory reasons are not pretextual if Respondents "...honestly believed the reasons [they] gave...even if the reasons were foolish, trivial, or baseless." *Boumehdi*, 489 F.3d at 792.
30. Complainant can prove pretext through evidence "...(1) that the proffered reason[s] ha[ve] no basis in fact, (2) that the proffered reason[s] did not actually motivate the adverse ... action or (3) that the proffered reason[s] w[ere] insufficient to motivate the adverse ...action." *Filter Specialists*, 906 N.E.2d at 846-847.

Respondents' Relationship

31. Although Complainant has named both Respondent Lazo and Respondent Golf View as Respondents, not all of Complainant's allegations are attributable to each of them.
32. As officers and majority owners, Respondent Lazo and President Lazo were Respondent Golf View's agents, and actions taken within the scope of their authority may be attributed to Respondent Golf View. *Winkler v. V.G. Reed & Sons, Inc.*, 638 N.E.2d 1228, 1232 (Ind. 1994); *see generally, Menard, Inc. v. Dage-MTI, Inc.*, 726 N.E.2d 1206 (Ind. 2000).
33. To the extent that the actions were taken within the scope of their authority, Respondent Lazo's and President Lazo's actions with respect to the following are attributable to Respondent Golf View: 1) the carport and foyer lighting, 2) access and amenities, 3) special

assessments, 4) good standing, 5) prohibition on work, 6) the onsite washer and dryer, and 7) the debt collection attempts.

34. With respect to 1) the shed, 2) the garbage caddy, and 3) the malicious prosecution lawsuit, Respondent Lazo acted on her own behalf, and her actions cannot be attributed to Respondent Golf View.

Retaliation and Respondent Golf View

35. Respondent Golf View has met its burden of production by asserting that its actions were motivated by a legitimate, non-retaliatory reason: financial distress.

36. The totality of the evidence in the record demonstrates that Respondent Golf View's actions with respect to the 1) onsite washer and dryer, 2) special assessments raised after July 14, 2012, 3) interference with parking, 4) maintenance of the property, 5) the 2014 issue with Complainant's water, 6) debt collection, 7) good standing, and 8) prohibition on work were all directly motivated by its difficulty in managing the property with a smaller and stressed budget, and Complainant has not met her burden of demonstrating that Respondent Golf View's stated reason is pretextual.

37. Complainant initially points to comparator evidence, which can be used to demonstrate Respondents were motivated by retaliatory intent. *Coleman v. Donahoe*, 667 F.3d 835, 841-842, 857-560 (7th Cir. 2012).

38. First, Complainant argues that owner President Lazo and tenant Fluharty, who did not file ICRC complaints, were treated more favorably than Complainant with respect to performing work without approval. However, both President Lazo and Fluharty were subject to and complied with the same preapproval policy to which Complainant was subjected, and ultimately, President Lazo was not actually paid by Respondent Golf View for his work.

39. Second, Complainant argues that Respondent Lazo and President Lazo, who did not file ICRC complaints, were treated more favorably than Complainant with respect to shouldering the financial burdens Respondent Golf View imposed on owners through special assessments and other fees because they were permitted to recoup some of their costs by working for Respondent Golf View. However, Respondent Golf View did not pay President Lazo for his work, and even assuming that he will be paid in the future, because President Lazo and Respondent Lazo made additional, unrequired payments to Respondent Golf View, they still

shouldered more financial responsibility for Respondent Golf View than Complainant, as demonstrated in the table below.

Table 5: Comparison of Financial Burdens Imposed		
	Complainant	Respondent Lazo & President Lazo
Special Assessments	$1,100.000	$3,300.00
Fees for Work Performed	0	-$1,700
Additional Fees Paid	0	$3,400
Total Financial Burden	$1,100.00	$5,000.00

40. Although Complainant asserts that Respondent Golf View provided Respondent Lazo with an "economic advantage" that Respondent Lazo used to retaliate against her, ultimately, Respondent Lazo and Respondent Golf View faced worse financial consequences than Complainant after Complainant filed her 2009 ICRC complaint, including Respondent Golf View's reliance on nonprofessionals to maintain the property and Respondent Lazo's payment of approximately $3,400.00 in additional, unrequired fees.
41. Additionally, President Lazo was differently situated from Complainant because the founding documents specifically authorized Respondent Golf View to pay him for his work as President. *Boumehdi v. Plastag Holdings, LLC*, 489 F.3d 781, 791 (7th Cir. 2007). Complainant did not have an officer role, and the founding documents did not specifically require Respondent Golf View to pay her for work performed on its behalf.
42. Third, Complainant contends that she was not reimbursed for purchasing supplies like Fluharty, Respondent Lazo, and President Lazo; however, the designated evidence does not demonstrate that Complainant was denied preapproval or that other individuals who did not file a complaint did not seek preapproval prior to successfully being reimbursed.
43. Fourth, Complainant contends that she was offered lesser amenities and access to the property than tenants who did not file an ICRC complaint. However, Complainant and Respondent Golf View's tenants were given the same limited notice and faced the same level of restriction to the property's amenities.
44. Next, Complainant argues that Respondent Golf View's financial distress was not Respondent Golf View's primary motivation for restricting amenities and raising the special assessments by pointing to evidence of "...weaknesses, implausibilities, inconsistencies, or contradictions..." to weaken the credibility of Respondent Golf View's identified rationale. *Boumehdi,* 489 F.3d at 792; *Filter Specialists*, 906 N.E.2d at 846-847.

45. Specifically, Complainant points to Respondent Lazo's and President Lazo's absence from the property to demonstrate that, as officers of Respondent Golf View, they could allow the property to fall into disrepair without personal consequence. However, Complainant's suggested inference is not supported by the record because they still had a vested interest in maintaining the property as landlords and as 75% owners of Respondent Golf View.
46. Furthermore, Respondent Lazo's and President Lazo's strong commitment to Respondent Golf View is demonstrated by their willingness to independently fund Respondent Golf View after Complainant stopped making her monthly payments in August of 2012.
47. Complainant additionally contends that Respondent Golf View's previous attempt to bill Bradford for the costs of litigating against her Attorney General complaint demonstrates that Respondent Golf View's special assessments were actually an attempt to recover from Complainant the costs of litigating against Complainant's 2009 ICRC complaint, but Complainant's designated evidence again fails to demonstrate pretext. Respondent Golf View raised the special assessments to perform property maintenance, and the money raised was used for its intended purpose. Additionally, the special assessments were billed to all owners, even those who did not file an ICRC complaint.
48. Finally, Complainant argues that the timing of Respondent Golf View's actions are so closely associated with the date she filed her complaint that it creates an inference of retaliation.
49. Whether or not suspicious timing raises an inference of causation is dependent on context. *Coleman v. Donahoe*, 667 F.3d 835, 860 (7th Cir. 2012).
50. However, the timing of events ultimately undermines Complainant's suggested inference of retaliation because many of the behaviors about which Complainant complains began prior to the filing of Complainant's 2009 complaint. Specifically, prior to filing her 2009 complaint, Respondent Golf View 1) did not pay Complainant to perform work, 2) levied special assessments against Complainant, and 3) used its good standing policy to motivate Complainant to pay her monthly fees. While Respondent Golf View's expression of these actions changed after the 2009 ICRC complaint was filed, the changes were directly responsive to changes in Complainant's behavior or in Respondent Golf View's financial situation.

51. Similarly, beginning in 2007, Complainant requested a coin operated washer and dryer, demonstrating both her willingness to pay for laundry services and to replace the original machines, which weakens Complainant's suggested inference of pretext and retaliation.
52. Additionally, Complainant's timing argument is further weakened because of the long, unexplained gap between her 2009 ICRC complaint and the parking incidents, the meeting minute incidents, the water dispute, and the debt collection attempts as well as by the relatively infrequent occurrence of those incidents.
53. Even taking into account Complainant's untimely allegations concerning the carport and foyer lighting and the earlier special assessments, Complainant's timing argument does not support an inference of retaliation because Respondent Golf View's actions are credibly explained by its attempt to best manage its 2008, 2010, and 2011 periods of financial distress.
54. Ultimately, Complainant's designated evidence of pretext does not overcome Respondent Golf View's designated evidence in support of its explanation that its financial distress motivated its actions.
55. Only the 2012 and 2013 meeting minute incidents are not directly explained by Respondent Golf View's financial distress. However, standing alone, the harm caused by these incidents cannot support a finding of retaliation, particularly in light of the long temporal gaps between the 2012 and 2013 incidents and Complainants 2009 ICRC complaint. *Burlington N. & Santa Fe Ry. Co. v. White*, 548 U.S. 53, 68 (2006).

Retaliation and Respondent Lazo

56. Out of all of Complainant's allegations, Respondent Lazo took only three actions in her personal and individual capacity, each of which is barred by the ICRL's statute of limitations: 1) the demolition of the shed in the summer of 2010, 2) the placement of the garbage caddy in the summer of 2010, and 3) the 2010 malicious prosecution lawsuit.
57. However, even if the allegations were timely, Respondent Lazo has articulated non-retaliatory reasons for taking each action that Complainant has not demonstrated are pretextual.
    a. Respondent Lazo removed the shed because it was built on her private property, and the garbage caddy remained in an accessible location. Additionally, she filed the malicious prosecution lawsuit to recoup her attorney fees spent defending against several legal allegations asserted by Complainant and Bradford.

b. Complainant again argues that Respondent Lazo's absence from the property, the proximity between the 2009 ICRC complaint and Respondent Lazo's actions, and Respondent Golf View's attempt to bill Bradford for its attorney fees demonstrates that Respondent Lazo's articulated reasons are pretextual.

c. Although Respondent Lazo's absence from the property might explain her renewed interest in her private property, it does not speak to a retaliatory intent. Similarly, the year-long gap between Respondent Lazo's actions and the 2009 ICRC complaint as well as the wide scope of the malicious prosecution lawsuit substantially weakens the inference of retaliation.

d. Finally, Respondent Lazo's and Complainant's relationship did not recover from the animosity that sparked during the 2007 legal disputes, and Complainant's designated evidence is not persuasive that Respondent Lazo's motivation was retaliation in light of the rocky relationship the parties formed in 2007.

Conclusion

58. Accordingly, Complainant has not met her burden to establish that Respondents retaliated against her for filing her 2009 ICRC Complaint, and the Commission must dismiss Complainant's complaint. IND. CODE § 22-9-1-6(l).

59. Any Finding of Fact that should have been deemed a Conclusion of Law is hereby adopted as such.

ORDER

1. Linda Williams' January 10, 2013 complaint against Golf View Property, Inc. and Angela M. Lazo is DISMISSED, with prejudice.

This order becomes a final order disposing of the proceedings immediately upon affirmation under Indiana Code 4-21.5-3-29. IND. CODE § 4-21.5-3-27(a).

ADMINISTRATIVE REVIEW

This Order is not final until confirmed by the Commission. IND. CODE § 4-21.5-3-29. Administrative review may be obtained by parties not in default by the filing of a writing that identifies with reasonable particularity the basis for each objection **within fifteen (15) days after the service of this Order**. IND. CODE § 4-21.5-3-29(d). Subject to Indiana Code 4-21.5-3-1, the filing of a document in proceedings before the ICRC can be completed by mail, personal service, fax, or electronic mail to:

Docket Clerk
C/o the Indiana Civil Rights Commission
100 North Senate Avenue, Room N300
Indianapolis, IN 46204
Fax: (317) 232-6580
Email: docketclerk@icrc.IN.gov

A party shall serve copies of any filed item on all parties. IND. CODE § 4-21.5-3-17(c).

SO ORDERED this 13th day of December, 2019

Hon. Caroline A. Stephens Ryker
Administrative Law Judge
Indiana Civil Rights Commission
100 North Senate Avenue, Room N300
Indianapolis, IN 46204-2255
Anehita Eromosele, Docket Clerk
317/234-6358

Certificate of Service

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