UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

United States,	)	
	)	
Plaintiff,	)	
	)	No. 05-60687
v.	)	CIV–DIMITROULEAS
	)	Magistrate Judge Torres
City of Hollywood, Florida,	)	
	)	
Defendant.	)	

UNITED STATES' RESPONSE TO
DEFENDANT'S MOTION TO DISMISS

Defendant, City of Hollywood, has moved this Court to dismiss the United States' complaint, filed on April 26, 2005, in which the United States alleges that the Defendant violated Sections 2(b)(1) and 2(b)(2) of the Religious Land Use and Institutionalized Persons Act of 2000 ("RLUIPA"), 42 U.S.C. §§ 2000cc et seq., by its treatment of the Hollywood Community Synagogue ("HCS"). Defendant's arguments, however, are entirely without merit.

I. Introduction

Federal Rule of Civil Procedure 8(a)(2) provides that a complaint need only include a "short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2); see Skierkiewicz v. Sorena N.A., 534 U.S. 506, 511 (2002) (holding that the requirements for establishing a prima facie case of discrimination do not apply to the pleading standard that a plaintiff must satisfy to survive a motion to dismiss). Accordingly, a "motion to dismiss is granted only when the movant demonstrates 'beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.'" Spain v. Brown & Williamson Tobacco Corp., 363 F.3d 1183, 1186 (11th Cir. 2004) (quoting Conley v. Gibson,

355 U.S. 41 (1957)).

In support of its position that the United States has failed to plead facts sufficient to prove that the City of Hollywood violated Section 2(b)(1) and Section 2(b)(2) of RLUIPA, Defendant makes three arguments, namely, (1) that the United States' complaint should be dismissed because the United States did not allege that Defendant's conduct substantially burdened HCS's exercise of religion;[1] (2) that the United States failed to allege facts sufficient to support its claim that Defendant treated HCS on less than equal terms than similarly situated non-religious institutions and assemblies; and (3) that the United States failed to allege facts sufficient to support its claim that Defendant discriminated against HCS on the basis of religion. None of these arguments have merit. The first is foreclosed by the plain terms of the statute; the second and third by the plain language of the United States' complaint.

II. Argument

A. Section 2(a)(2)'s Jurisdictional Test Does Not Apply to Section 2(b) Claims.

The United States has not alleged that the City of Hollywood imposed a substantial burden on HCS's religious exercise for the simple reason that the United States was not required as a matter of law to allege that the City of Hollywood imposed a substantial burden on HCS's

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[1] In fact, Defendant's argument is unclear. In its motion to dismiss, Defendant argues that the United States "failed to [ ] allege that HCS was subject to a substantial burden, as that term is defined under RLUIPA." See Defendant City of Hollywood's Motion to Dismiss at 4. Section 2(a) of RLUIPA provides that no "government shall impose or implement a land use regulation in a manner that imposes a substantial burden on" religious exercise. 42 U.S.C. § 2000cc(a). The United States' complaint, however, does not include a § 2(a) count. The Defendant's argument is not fully developed, but presumably the Defendant has not moved to strike a claim that the United States has not plead. Accordingly, the United States interprets Defendant's motion as raising the argument that the substantial-burden requirement of § 2(a) is a jurisdictional prerequisite to, and necessary element of a cause of action under § 2(b).

religious exercise. Nothing in the text of RLUIPA supports the proposition that the substantial-burden requirement of Section 2(a) of RLUIPA is an element of a claim under Section 2(b). Indeed, the Court of Appeals for the Eleventh Circuit has noted that "[t]he plain terms and structure of RLUIPA indicate that the jurisdictional prerequisites included in [Section 2(a)] . . . do not apply to [Section] b's prohibition on discrimination against and exclusion of religious institutions." Midrash Sephardi, Inc. v. Town of Surfside, 366 F.3d 1214, 1229 (11th Cir. 2004); see also Civil Liberties for Urban Believers v. City of Chicago, 342 F.3d 752, 762 (7th Cir. 2003) (noting that "the substantial burden and nondiscrimination provisions [of RLUIPA] are operatively independent of one another").

Section 2(a) of RLUIPA, which prohibits government from applying a land use regulation in a manner that substantially burdens religious exercise, applies in three situations: (1) where the substantial burden created by the land use regulation "is imposed in a program or activity that receives Federal financial assistance;" (2) where the substantial burden affects interstate commerce; or (3) where the substantial burden results from the "implementation of a land use regulation or system of land use regulations, under which a government makes . . . individualized assessments of the proposed" land use. 42 U.S.C. § 2000cc(a)(2). The common element in all three situations is the requirement that the challenged regulation actually impose a substantial burden on religious exercise. In other words, regardless of which situation is implicated in any given case, in order to state a claim under Section 2(a) a plaintiff must allege that the land use regulation at issue imposes a substantial burden on religious exercise.

The same is not true where a plaintiff alleges a violation of RLUIPA's equal terms and nondiscrimination provisions. Section 2(b)(1) and Section 2(b)(2), like Section 2(a), contemplate

challenges to land use regulations; these subsections, however, on their face do not require that the challenged regulation impose a substantial burden on religious exercise. See 42 U.S.C. § 2000cc(b). Indeed, to read such a requirement into Section 2(b) would be to take governmental acts that intentionally discriminate on the basis of religion, but that do not *substantially* burden religious exercise, outside the scope of RLUIPA, a construction inconsistent with both Congress's stated intention that RLUIPA be interpreted to provide "broad protection of religious exercise," see 42 U.S.C. § 2000cc–3(e), and with judicial decisions consistently holding that RLUIPA codifies free-exercise jurisprudence, see Cutter v. Wilkinson, No. 03–9877, slip op. at 3 (May 31, 2005) ("RLUIPA is the latest of long-running congressional efforts to accord religious exercise heightened protection from government-imposed burdens consistent with this Court's precedents."), a jurisprudence establishing that the Free Exercise Clause prohibits intentional religious discrimination regardless of whether such discrimination results in a substantial burden on religion. See, e.g., Church of the Lukumi Babalu Aye, Inc. v. City of Hileah, 508 U.S. 520, 532 (1993) (noting that "the protections of the Free Exercise Clause pertain if the law at issue discriminates against some or all religious beliefs or regulates or prohibits conduct because it is undertaken for religious reasons.").

Furthermore, as noted above, the Court of Appeals in Midrash Sephardi, Inc. v. Town of Surfside, set forth three reasons why Sections 2(a) and 2(b) are independent of each other.[2] See 366 F.3d 1214, 1229 (11th Cir. 2004). First, "[Section 2(a)] specifically enumerates three

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[2] Because the Surfside plaintiffs brought both Section 2(a) and Section 2(b) claims, and the court found that they had satisfied the prerequisites of Section 2(a), the court did not ultimately decide whether the jurisdictional prerequisites of Section 2(a), and therefore the substantial-burden element of those jurisdictional prerequisites, apply to a claim under Section 2(b). See Midrash Sephardi, Inc., 366 F.3d at 1230.

jurisdictional tests . . . while [Section 2(b)] is silent as to jurisdictional tests." Id. Second, "[Section 2(a)], by its terms, applies to 'subsection' (a)." Id. And third, "the jurisdiction limits [of Section 2(a)] relate to burdens imposed by a government—language which is consistent with [Section (a)(1)'s] prohibition on imposing a substantial burden without justification." Id.

Finally, nothing in Defendant's motion calls into question the Court of Appeals' analysis in Midrash Sephardi, Inc., or supports the argument that Section 2(b) includes a substantial burden requirement. Indeed, Defendant avoids any discussion of Midrash Sephardi, Inc., omits any citation to that portion of the case discussed above, and eschews any analysis of the language of RLUIPA, relying instead on the bald assertion that the "missing [substantial burden] element is fatal" to the United States' claims. See Defendant City of Hollywood's Motion to Dismiss at 4.[3] The United States was not required to plead that Defendant substantially burdened HCS's religious exercise in order to state a claim under either Section 2(b)(1) or under Section 2(b)(2), and the absence of any reference to a substantial burden in the United States' complaint cannot support a motion to dismiss.

B. The United States Alleges that Defendant Treated HCS on Less then Equal Terms than Nonreligious Assemblies or Institutions.

Defendant also maintains that the United States failed to satisfy the notice pleading

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[3] Defendant does cite two cases to support this statement, namely, Vineyard Chrisitian Fellowship of Evenston v. City of Evenston, 250 F. Supp. 2d 961 (N.D. Ill. 2003), and Guru Nanak Sikh Soc'y of Yuba City v. Sutter County, 326 F. Supp. 2d 1140 (E.D. Cal. 2003). Neither case, however, supports the proposition that a substantial burden on religious exercise is a necessary element of a claim under §§ 2(b)(1) or 2(b)(2). Indeed, both cases involved claims under § 2(a) of RLUIPA, not under § 2(b). See Vineyard Chrisitian Fellowship of Evenston, 250 F.Supp.2d at 990; Guru Nanak Sikh Soc'y of Yuba City, 326 F. Supp. 2d at 1149–1150 (noting that plaintiff's claim is premised on § 2(a)). Thus neither case addresses the necessary elements of a cause of action under § 2(b)(1) or § 2(b)(2).

requirements of the Federal Rules by failing "to allege specifically or generally, that any [non-religious] assembly or institution was similarly situated and treated more favorably than HCS." See Defendant City of Hollywood's Motion to Dismiss at 5. A brief review of the United States' complaint, however, belies this assertion.

First, the United States' complaint, in defining HCS as (1) an assembly or institution, (2) located in a residential district, (3) that regularly has more than 10 individuals in attendance at religious services, sufficiently defined, and placed Defendant on notice of, the range of uses in the City of Hollywood that are to be considered "similarly situated" for purposes of making out a violation of Section 2(b)(1) and Section 2(b)(2). See United States' Complaint at paras. 8–10; see also Midrash Sephardi, Inc., 366 F.3d at 1230 (addressing the "natural perimeter" of RLUIPA's equal terms prong, and defining "assembly or institution" for purposes of identifying uses that are to be considered in determining "whether the governmental authority treats a religious assembly or institution differently than a nonreligious assembly or institution").

Second, contrary to Defendant's representation, the United States' complaint specifically contrasted Defendant's treatment of HCS with Defendant's treatment of nonreligious assemblies. Thus, the United States, after describing in detail the enforcement actions that Defendant has taken against HCS for violations of Defendant's land use regulations,[4] stated, "Defendant currently permits other religious and nonreligious assemblies and institutions to operate in residential districts in violation of [City regulations] and without being subject to any enforcement action for such violation." See Complaint at para. 29. This allegation alone, if

[4] See Complaint at paras. 19, 27, and 32.

true,[5] is sufficient to establish differential treatment among religious and nonreligious assemblies, and by extension to establish a prima facie case that Defendant violated Section 2(b)(1). See 42 U.S.C. § 2000cc(b)(1); id. at § 2000cc-2(b) ("If a plaintiff produces prima facie evidence to support a claim alleging a violation of the Free Exercise Clause or a violation of section 2, the [defendant] shall bear the burden of persuasion on any element of the claim . . . . "); Midrash Sephardi, Inc., 366 F.3d at 1232 ("A zoning law is not neutral or generally applicable if it treats similarly situated secular and religious assemblies differently.").

In light of these paragraphs, the United States' complaint alleges a claim upon which relief may be granted that Defendant has violated Section 2(b)(1) of RLUIPA. 42 U.S.C. § 2000cc(b)(1).

C. The United States Alleges that Defendant Discriminated Against HCS on the Basis of Religion.

Finally, Defendant maintains that the United States failed to allege facts establishing that Defendant discriminated against HCS on the basis of religion. Once again, a review of the United States' complaint belies Defendant's unwarranted argument.

As noted above, the United States alleges that HCS is a religious assembly or institution. See Complaint at para. 7 ("[HCS's] members are adherents of a branch of Hasidic Judaism known as the Chabad-Lubavitch movement."). The United States' complaint also described how Defendant first denied HCS's application for a special use exception, see Complaint at paras. 19, 27, and then took steps to prevent HCS from using its property as a place of worship. See Complaint at para. 32 ("During a July 7, 2004 City Commission meeting, the [Defendant] voted to direct the City Attorney to file a lawsuit to stop further organized religious services from

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[5] See Davila v. Delta Air Lines, Inc., 326 F.3d 1183, 1185 (11th Cir. 2003) (noting that plaintiff's factual allegations are to be accepted as true in light of a motion under Rule 12(b)(6)).

taking place at the HCS property."). The United States detailed numerous facts that support the conclusion that the Defendant's treatment of HCS and its decision to prevent HCS from using its property as a place of worship constituted religious discrimination prohibited by Section 2(b)(2) of RLUIPA. See, e.g., Village of Arlington Heights v. Metro. Hous. Dev. Corp., 429 U.S. 252, 266 (1977) (""Sometimes a clear pattern [of discrimination], unexplainable on grounds other than [religion] emerges from the effect of the state action even when the governing legislation appears neutral on its face."); Lukumi, 508 U.S. at 534 ("Official action that targets religious conduct for distinctive treatment cannot be shielded by mere compliance with the requirement of facial neutrality.").

Indeed, the United States' complaint outlines precisely how the City's actions constituted invidious religious discrimination of the kind prohibited by RLUIPA. Thus, at paragraph 20 of its complaint, the United States alleged that prior to imposing a one-year limit on HCS's initial special exception, "Defendant had never previously imposed a time limit on a special exception for a religious use." Similarly, at paragraph 28 of its complaint, the United States alleged that before Defendant denied HCS permission to operate in a residential neighborhood, "Defendant had never previously denied a request by a place of worship to operate in a either a single-family or multiple-family residential zone." Cf. Lukumi, 508 U.S. at 534. Paragraph 29 alleges similar facts. At paragraph 19, the United States stressed that the decision to limit HCS's original special exception to one year came only "after a [City Commission] meeting that lasted through the night." Cf. Arlington Heights, 429 U.S. at 267. Paragraph 32 describes how Defendant, after a highly irregular vote and without giving notice to HCS of that vote, ultimately directed the City

Attorney to take action to enjoin HCS from using its property as a place of worship. See id. at 267 ("Departures from the normal procedural sequence also might afford evidence that improper purposes are playing a role."). Finally, paragraph 34 specifically alleges that Defendant's actions against HCS were motivated by HCS's religion or religious denomination. In short, the United States alleges a claim, upon which relief may be granted, that Defendant discriminated against HCS on the basis of religion or religious denomination in violation of Section 2(b)(2) of RLUIPA. 42 U.S.C. § 2000cc(b)(2).

III. Conclusion

For the reasons stated above, Defendant's motion to dismiss should be denied.

Respectfully submitted,

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Certificate of Service

I, Sean R. Keveney, certify that on this 3rd day of June, 2005, I sent a copy of the *United States' Response to Defendant's Motion to Dismiss* by facsimile and United States first class mail to the following individual:

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