UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
GAINESVILLE DIVISION

SAILAK, LLC and SUMALATHA SATOOR, Plaintiffs, v. FORSYTH COUNTY, GEORGIA, Defendant.	CIVIL ACTION NO. 2:17-CV-52-RWS

ORDER

This case is before the Court on Defendant's Motion for Summary Judgment [134]. After reviewing the record, the Court enters the following Order.

Background

This is a discrimination action following Defendant Forsyth County's denial of Plaintiffs' petition for a Conditional Use Permit (CUP) to build a Hindu Temple on a residential lot. The relevant facts to this Motion are largely undisputed.

Plaintiff Sailak, LLC owns Lot 38 ("Property") of the Bald Ridge on Lanier subdivision in Forsyth County, Georgia. Plaintiff Sumalatha Satoor created Sailak and is an active Hindu priest. (Def.'s SOMF, Dkt. [17-1] ¶ 12.) Before Plaintiff purchased the Property, the subdivision developers recorded restrictive covenants

on it. (Id. ¶ 29.) Plaintiffs now seek to construct a Hindu temple on the 7.27-acre lot, including a residence for the priest and parking spaces. (Id. ¶ 12.)

In compliance with the Forsyth County Unified Development Code (UDC), Plaintiffs applied for a Conditional Use Permit (CUP) to rezone the residential lot for commercial purposes. (Id. ¶ 13). Plaintiffs' CUP application was unanimously denied by the Forsyth County Board of Commissioners following a public hearing. (Id. ¶ 15). At the hearing, the Deputy County Attorney in attendance advised the Board that it could not consider any restrictive covenants in their decision because the covenants were a private matter. (Pls.' Statement of Additional Material Facts ("Pls.' SAMF"), Dkt [139-1] ¶ 15 – 16.) But, Defendant listed private covenants as a reason for denial. (Def.'s SOMF, Dkt [17-1] ¶ 17.)

Plaintiffs subsequently brought this suit for religious discrimination under the Religious Land Use and Institutionalized Persons Act of 2000 ("RLUIPA"), 42 U.S.C. §§ 2000cc-2000cc-5. Throughout the litigation, Defendant has asked the Court to consider isolated legal arguments. First, the Court granted partial summary judgment to Defendant on the restrictive covenants, finding them applicable to the Property and preclusive of the proposed temple construction.

Now, Defendant moves for summary judgment solely on the issue of standing.[1] The Court will consider Defendant's motion after first laying out the applicable legal standard.

Discussion

I. Summary Judgment Legal Standard

The standard for summary judgment is well established. Summary judgment must be granted "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). A fact is material if proof of its existence or nonexistence would affect the outcome of the case under controlling substantive law. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). An issue of fact is genuine when the evidence is such that a reasonable jury could return a verdict in favor of the non-moving party. Id.

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[1] The Court notes the Statement of Interest filed by the United States Department of Justice pursuant to 28 U.S.C. § 517. The Court may consider an amicus brief, and gave Defendant leave to respond to additional arguments raised. Conservancy of Sw. Florida v. U.S. Fish & Wildlife Serv., 2:10-CV-106-FTM-SPC, 2010 WL 3603276, at *1 (M.D. Fla. Sept. 9, 2010) ("Inasmuch as an amicus is not a party and 'does not represent the parties but participates only for the benefit of the court, it is solely within the discretion of the court to determine the fact, extent, and manner of participation by the amicus.") Any authority or arguments drawn from the amicus brief in this Order were in support of issues already presented by Plaintiff in its Reply.

Ordinarily, in conducting its review at summary judgment, the court will "consider the record and draw all reasonable inferences in the light most favorable to the non-moving party." Blue v. Lopez, 901 F.3d 1352, 1357 (11th Cir. 2018). The court may grant summary judgment only when, after viewing all evidence in the light most favorable to the non-moving party, the court determines that no genuine dispute of material fact exists such that the movant is entitled to judgment as a matter of law. Id. at 1360. Summary judgment is improper, however, "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." Anderson, 477 U.S. at 248; Guevara v. NCL (Bahamas) Ltd., 920 F.3d 710, 720 (11th Cir. 2019).

II. Analysis

Defendants move for summary judgment on the issue of standing, arguing Plaintiffs failed to meet their burden on redressability. In response, Plaintiffs contend their requested relief under RLUIPA[2] will redress their injury. The Court agrees.

[2] RLUIPA "prohibits a state or local government from taking any action that substantially burdens the religious exercise of an institutionalized person." Holt v. Hobbs, 574 U.S. 352, 352 (2015).

Standing in RLUIPA cases is governed by the same "general rules of standing under Article III of the Constitution." Church of Our Savior v. City of Jacksonville Beach, 69 F.Supp.3d 1299, 1312 (M.D. Fl. 2014). Thus, to establish standing, Plaintiffs must demonstrate: 1) an injury in fact or an invasion of a legally protected interest; 2) a direct causal relationship between the injury and the challenged action; and 3) a likelihood of redressability. See Midrash Sephardi, Inc. v. Town of Surfside, 366 F.3d 1214, 1223 (11th Cir. 2004) (citing Lujan v. Defenders of Wildlife, 504 U.S. 555, 560–61(1992)). Standing is a legal issue that would only be precluded at summary judgment if there are material disputed facts. See Bischoff v. Osceola Cty., Fla., 222 F.3d 874, 884 (11th Cir. 2000). "In essence the question of standing is whether the litigant is entitled to have the court decide the merits of the dispute or of particular issues." Midrash, 366 F.3d at 1223.

Defendant argues that Plaintiffs do not have standing to bring their claims because to have a redressable injury they must demonstrate that the Court can fashion relief allowing them to construct a temple on the Property. Plaintiffs fail, Defendant maintains, because the restrictive covenants prevent them from building the temple, regardless of Defendant's CUP approval.

Redressability "is established when a favorable decision would amount to a significant increase in the likelihood that the plaintiff would obtain relief that

directly redresses the injury suffered." Fla. Wildlife Fed'n, Inc. v. S. Fla. Water Mgmt. Dist., 647 F.3d 1296, 1303–04 (11th Cir. 2011). Thus, to establish standing, Plaintiffs must demonstrate that if they are successful in their RLUIPA claims, the Court could fashion relief addressing Plaintiff's injuries.

Plaintiffs bring two RLUIPA claims against Defendant: (1) a discrimination claim, and (2) a substantial burden claim. (Pls.' Compl., Dkt. [1] ¶¶ 36-43.)[3] Their stated injury is Defendant's denial of the CUP, which Plaintiffs allege was discriminatory and substantially burdened their religious exercise. (Id.) Accordingly, Plaintiffs ask the Court to enjoin Defendant from discriminating against the Hindu temple, restore them to the position they would have been in but for the unlawful conduct of Defendant, and take action to prevent the recurrence of such discriminatory conduct in the future. (Id. ¶ 43.) While Plaintiffs make their ultimate desire for a temple on the Property known in the Complaint, that is their greater purpose, not the direct remedy sought from this litigation. (Compl., Dkt. [1] ¶¶ 10, 13, 14.)

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[3] While this issue is before the Court at summary judgment, Plaintiffs' allegations in the Complaint [1] are properly considered in the Court's standing analysis. See Midrash, 366 F.3d at 1214 (Even on a motion for summary judgment, "[i]n evaluating whether a party has standing, we must accept as true all material allegations of the complaint, and must construe the complaint in favor of the complaining party.") (internal quotations omitted). Defendant also relies on Plaintiffs' Complaint as evidence of their requested relief.

All the same, Defendant argues Plaintiffs have not established redressability because the restrictive covenants independently prevent Plaintiffs from achieving their real goal, building the temple on the land at issue. Defendant leads with a case from the Eastern District of Pennsylvania where the District Court found a plaintiff—bringing a similar substantial burden claim under RLUIPA—did not have standing because of restrictive covenants. Adhi Parasakthi Charitable, Med., Edu. And Cultural Soc'y v. Twp. Of West Pikeland, 721 F.Supp.2d 361, 383-84 (E.D. Pa. 2010). At first glance, the case appears dispositive of the issue here, but upon further reflection, it is not. First, Adhi only dismissed the *substantial burden* claim on standing. It considered the RLUIPA *discrimination* claim on the merits and found genuine issues of material fact.

Second, as to the substantial burden claim, the defendant in Adhi, like the other cases cited by Defendant, had the power to enforce the restrictive covenants. See id. ("In the present case, we are not called upon to enforce the restrictive covenant, but, rather, to determine whether the decision of Defendant's Zoning Board (that the restrictive covenant on this property applied to prevent the building of the temple) was sufficient, apart from Defendant's Ordinance, to prevent Plaintiff from building."). It is undisputed that Defendant has never had the power

to enforce the private restrictive covenants. Finally, Adhi is merely persuasive authority.

The Court finds against Defendant's position for the following reasons. First, to redress Plaintiffs' alleged injury inflicted by Defendant—the denial of the CUP—the Court does not need to guarantee Plaintiffs' ultimate goal to construct a house of worship. See Nat'l Parks Conservation Ass'n v. U.S. Dep't of Interior, 46 F. Supp. 3d 1254, 1272 (M.D. Fla. 2014), aff'd sub nom. Nat'l Parks Conservation Ass'n v. U.S. Dep't of the Interior, 835 F.3d 1377 (11th Cir. 2016) ("[r]edressability does not require complete victory or full relief.") (citing Massachusetts v. EPA, 549 U.S. 497, 525-26 (2007)). Procurement of the CUP was one step in Plaintiffs' effort to build their desired temple on the Property. Due to its denial, their efforts could not continue.

Second, if Plaintiffs are successful on their RLUIPA claims, they would be entitled to the CUP they were improperly denied. See Primera Inglesia Baustista Hispana of Boca Raton, Inc. v. Broward Cnty., 450 F.3d 1295 (11th Cir. 2009) (finding if plaintiffs were successful on their RLUIPA claim, they would be permitted by the county to use the property for religious services); Williams Island Synagogue, Inc. v. City of Aventura, 2004 WL 1059798, at *3 (S.D. Fla. May 6, 2004) (finding injunctive relief is within the remedies available under RLUIPA and

if granted would redress the injury identified). Injunctive relief is far more than a moral victory. Cf. Steel Co. v. Citizens for a Better Environment, 24 U.S. 83, 107 (1998) (cited by Defendant for the proposition that "relief that would only provide Plaintiffs with a 'moral' victory is inappropriate if it does not also redress the injury."). Plaintiffs would then have one of the pieces necessary to construct their desired temple.

Finally, the covenants do not change this outcome. The Court has found that the Property included covenants that, if enforced, precluded the temple's construction. (Order, Dkt. [14].) All the same, the Court did not and cannot enforce those covenants in this action, and no covenant-holder, the proper enforcer, has been joined in the litigation. (Pls.' SAMF, Dkt [139-1] ¶ 18.) Further, it is uncontested that the covenants' enforcement is outside Defendant's authority. Unlike the cases relied upon in support of their argument, Defendant does not contend it has the power to enforce private covenants. But see K.H. Outdoor, L.L.C., v. Clay Cnty, Fla., 482 F.3d 1299, 1303 (11th Cir. 2007) (finding the proposed billboard denial was not redressable because the county was entitled to block the sign permit based on the billboard's statutory and regulatory violations).

It is undisputed that the covenants did not independently prevent Defendant from granting the CUP. But see Macon Cnty. Investments, Inc. v. Warren, 306

Fed. Appx. 478, 480 (11th Cir. 2009) and Galardi v. City of Forest Park, 449 Fed. Appx. 783, 785 (11th Cir. 2011) (the plaintiffs did not have redressable injuries when other, unchallenged, reasons for denying business licenses prevented the county from granting the same). In fact, it is disputed if Defendant could even consider the covenants in its denial at all. (See Pls. Resp., Dkt. [139] at Section II.)

While the covenants may prevent Plaintiffs from achieving their ultimate goal, they are not self-enforcing. Stuttering Found., Inc. v. Glynn Cty., 801 S.E.2d 793, 803 (Ga. 2017) ("To maintain an action to enforce restrictive covenants, an individual must be the owner of, or have a direct interest in, the premises.") Whether a third party will enforce the covenants is a private issue, outside Defendant's public powers, and not dispositive of Plaintiffs' standing here. But see Maverick Media Grp., Inc. v. Hillsborough Cnty., Fla., 528 F.3d 817, 820 (11th Cir. 2008) (finding no redressability where a county's height and size limitations for permitted signs would have prohibited the requested billboard independently of the county ordinance at issue even though the height and size limitations were not challenged.)

Plaintiffs have established that if successful, there is redressability for their alleged RLUIPA injury that Defendant improperly denied the CUP for their Property. Of course, the Court makes no findings as to the merits of the case.

Whether Defendant's denial was, in fact, improper, including its consideration of the covenants in its denial, is yet to be determined. Plaintiffs, however, have standing to pursue that inquiry. Defendant's Motion [134] is accordingly **DENIED**.

Conclusion

For the foregoing reasons, Defendant's limited Motion for Summary Judgment [134] on standing is **DENIED**. The parties are directed to proceed with discovery as directed in the Consent Scheduling Order [133].

SO ORDERED this 25th day of March, 2020.

RICHARD W. STORY
United States District Judge