UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

CHRIST LIBERTY FAMILY LIFE CENTER, Plaintiff, v. CITY OF AVONDALE ESTATES, GEORGIA, Defendant.	CIVIL ACTION NO. 1:10-CV-2326-CAP

O R D E R

This case is not about whether a zoning ordinance enacted by the City of Avondale Estates violated the Religious Land Use and Institutionalized Persons Act (RLUIPA), 42 U.S.C. § 2000cc-1 et seq. The city admits that it did and has repealed the ordinance. Rather, the questions that remain to answer are whether the zoning ordinance caused damages to the plaintiff, Christ Liberty Family Life Center (Christ Liberty), and if so, how much. Before the court are the parties' cross motions for summary judgment [Doc. Nos. 42-43] on these issues.

I. Introduction

The city of Avondale Estates, Georgia (the City) enacted City Zoning Ordinance § 818(1)(A) during the 1970s. The ordinance required religious assemblies to be located on at least three acres of land with one-hundred feet of frontage on a public street. In December 2009, Christ Liberty leased property within the city with the intention of holding religious services there. Christ Liberty

renovated or redecorated the property to prepare it for use. The church did not apply for a business license, obtain fire safety approval, secure the number of parking spaces required by City Zoning Ordinance § 1204, or otherwise inform the city of its presence before it began using the building for worship, some time between December 2009 and March 2010.

Eventually, the City became aware of Christ Liberty's use and occupancy of the property. On March 31, 2010, a code enforcement officer for the City left a notice on the church's door requesting contact, noting: "Code Violation," and "Religious Facilities Sec. 818 Not permitted." Def.'s Resp. to Statement of Material Facts (SOF) ¶ 15 [Doc. No. 52]. On April 7, the City informed the church it had fifteen days to move out of the property. Over the next few weeks, representatives of the church and the City discussed ways to resolve the dispute.

These discussions generally focused on the three-acre requirement of Section 818, but the City also claims Christ Liberty knew about the other ordinance violations as well. In particular, at an April 22 meeting, the City's Public Works Director Bryan Armstead testified that City Manager Clai Brown explained to Christ Liberty "that the parking wasn't sufficient for that type of business and tried to work with [Christ Liberty] as far as getting assistance with whatever he could help them with." Id. ¶ 22.

However, the letters the City sent Christ Liberty only referred to violations Section 818. On April 8, the City warned Christ Liberty that it was "not permitted to operate in the building," citing and explaining the violation of Section 818. Ex. 7 to Pl.'s SOF [Doc. No. 43-10]. As a follow-up and after negotiations between the parties, City Manager Clai Brown repeated this claim on April 29: "The location at 137 Maple Street does not meet . . . these requirements and therefore the use of the property for worship services is in violation of the City Zoning Ordinance as you were previously informed by letter dated April 8, 2010." Ex. 9 to Pl.'s SOF [Doc. No. 43-12]. He also "encourage[d] [Christ Liberty] to find another location that complies with the Zoning Ordinance requirements for a religious facility . . . [or] [i]n the alternative, Mr. Gargiulo, as the property owner, may apply . . . for a text amendment to modify Section 818 of the Zoning Ordinance." Id. The city admits it sent these letters. Def.'s Resp. to SOF ¶¶ 18, 25 [Doc. No. 52].

Faced with the prospect of citation by the City, Christ Liberty vacated the property after it received the April 29 letter. It filed this action on July 23, 2010, seeking injunctive relief, damages, and declaratory judgment for violations of multiple RLUIPA provisions, and the First and Fourteenth Amendments of the U.S. Constitution, and Article I of the Georgia Constitution pursuant to

42 U.S.C. § 1983. Soon after on August 12, the parties entered into a consent order where the City agreed not to enforce the three-acre requirement under Section 818, and Christ Liberty was permitted to use the property "subject to [the City's] fire, life-safety, and building code provisions." [Doc. No. 17]. However, Christ Liberty did not resume use of the building until at least October 6, 2010, after it provided the City with proof it had obtained a parking easement for off-site parking and passed an inspection by the City's Fire Marshall. Pl.'s Resp. to SOF ¶¶ 23-27 [Doc. No. 49]. Between May and September, Christ Liberty held its meetings in various temporary locations, including a location directly across the street from the subject property. On September 27, 2010, the City repealed Zoning Ordinance Section 818(1)(A).

II. Legal Standards

"The court shall grant summary judgment 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(1). Rule 56(c)(1) provides that a party must support its summary judgment position by "citing to particular parts of materials in the record," or by "showing that the materials cited do not establish the absence or presence of a genuine dispute, or that an adverse party cannot produce admissible evidence to support the fact." The party seeking summary judgment bears the burden of

demonstrating that no dispute exists as to any material fact. Adickes v. S. H. Kress & Co., 398 U.S. 144, 157 (1970). This burden is discharged by "'showing'--that is, pointing out to the district court--that there is an absence of evidence to support [an essential element of] the nonmoving party's case." Celotex Corp. v. Catrett, 477 U.S. 317, 325 (1986). In determining whether the moving party has met its burden, a district court must view the evidence and all factual inferences in the light most favorable to the party opposing the motion. Johnson v. Clifton, 74 F.3d 1087, 1090 (11th Cir. 1996).

Once the moving party has adequately supported its motion, the nonmoving party has the burden of showing that summary judgment is improper by coming forward with specific facts showing a genuine dispute. Matsushita Electric Industrial Co. v. Zenith Radio Corp., 475 U.S. 574, 586 (1986). Ultimately, the court's function is not to resolve issues of material fact, but rather to determine whether there are any such issues to be tried. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 251 (1986). Facts that are disputed, but which do not affect the outcome of the case, are not material and thus will not preclude the entry of summary judgment. Id. at 248.

III. Analysis

As the court stated at the outset, this dispute is not really about whether the City's three-acre zoning requirement for

religious facilities was improper–-at least not any longer. The City specifically admits that Section 818 violated RLUIPA and has since repealed the ordinance. Def.'s Resp. to SOF ¶ 28 [Doc. No. 52]; Pl.'s Resp to SOF ¶ 25 [Doc. No. 49]. Thus, as an initial matter, all of the plaintiff's claims for injunctive and declaratory relief are moot. See Covenant Christian Ministries, Inc. v. City of Marietta, 654 F.3d 1231, 1243 (11th Cir. 2011) (holding claims for injunctive relief under RLUIPA moot where a change to the ordinance removes the challenged features and there was no evidence the city was likely to reenact them). Thus, the remaining issues are whether the City is **liable** for this violation, and if so what damages or attorneys' fees might Christ Liberty be able to recover from the City. It is clear to the court this protracted dispute is no longer about violations of statutory or constitutional rights–-those were resolved almost a year and a half ago--but instead it boils down to a fight over dollars.

A. The City is Liable for the RLUIPA Violations

The City argues that Christ Liberty's RLUIPA (and § 1983) claims lack the element of causation because the church's operation violated other city zoning ordinances. Christ Liberty does not dispute that it did not obtain a business license, Fire Marshall inspection and approval, or a parking easement as required by the City. Nor does Christ Liberty dispute that it did not resume using

its property until all these requirements had been met, although the consent order had been entered weeks before. Thus, the City argues, because the plaintiff's injury was "exclusion from the subject property," and the church still could not use the property after Section 818 was repealed, that ordinance cannot be the "proximate cause" of any injury to the plaintiff.

The problem with the City's argument is that it did not threaten Christ Liberty with citation under any of these "other" city ordinances. Viewing the facts in the light most favorable to the City, the only evidence in the record of the other violations is that Mr. Brown "explained to the Christ Liberty representatives at the April 22, 2010 meeting that parking at the subject property was inadequate," that Mr. Brown discussed the inadequate parking with Mr. Gargiulo, the property owner, and the City's statement that the parking and fire ordinances are published in the city code. See Def.'s Resp. to Pl.'s Mot. for Summ. J. 5-6 [Doc. No. 51].

Even so, the initial notice on the church's door, the warning letter of April 8, and Mr. Brown's final letter of April 29 after the parties negotiations all cite Christ Liberty's violation of only Section 818. The City directed Pastor Rose Ann Thomas to "stop religious services and vacate the building" based on the its violation of Section 818, not any other ordinance. Ex. 7 to Pl.'s

SOF [Doc. No. 43-10]. The City threatened it would issue citations "[i]f worship services continue in violation of" "Avondale Estates' Zoning Ordinance, Section 818(1)(A)," not any other ordinance. Ex. 9 to Pl.'s SOF [Doc. No. 43-12]. Although the City might have been able to cite Christ Liberty for other code violations, it did not. And although Christ Liberty chose not to resume operations after the threat of citation under Section 818 was removed, the fact remains that between April 29 and August 12, 2010, the City's zoning ordinance Section 818 was the reason Christ Liberty had to stop its use of its property.[1]

Accordingly, there is no question of material fact as the City's liability under RLUIPA. The City admits it violated the statute. Its only argument that it was not **liable** for that violation was that the Section 818 was not the proximate cause of the church's injury. The court holds that the undisputed evidence establishes it was.

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[1] The City's scant precedential support for its contention that Section 818 was not the "cause" of Christ Liberty's injury is also unpersuasive. In one of the cases cited, the court, discussing the Article III standing requirements, also stated, "to show causation, a plaintiff must at least plead facts indicating that a defendant's actions had a 'determinative or coercive effect upon the action of someone else' who directly caused the alleged injury." Mosdos Chofetz Chaim, Inc. v. Vill. Of Wesley Hills, 701 F. Supp. 2d 568, 583 (S.D.N.Y. 2010) (quoting Bennett v. Spear, 520 U.S. 154, 169 (1997)). At minimum, the threat of citation under Section 818 had a "determinative or coercive effect" on the church that persuaded its members to vacate the building.

B. Christ Liberty's Damages

Having determined the City is liable for its violation of RLUIPA, the next question is the amount of Christ Liberty's damages. At this point, the court makes two observations regarding the availability of money damages for the plaintiff. First, it appears that money damages from the City are still available for RLUIPA violations under Smith v. Allen, 502 F.3d 1255 (11th Cir. 2007), despite the Supreme Court's recent abrogation of that case in Sossamon v. Texas, 131 S. Ct. 1651 (2011). Sossamon held that **states** cannot be liable for money damages under RLUIPA because they have not waived their Eleventh Amendment sovereign immunity. But this immunity does not extend to municipalities. Abusaid v. Hillsborough Cnty. Bd. of Cnty. Comm'rs, 405 F.3d 1298, 1314 (11th Cir. 2005) (quoting Mt. Healthy City Sch. Dist. Bd. of Educ. v. Doyle, 429 U.S. 274, 280 (1977)); see also Centro Familiar Cristiano Buenas Nuevas v. City of Yuma, 651 F.3d 1163, 1168–69 (9th Cir. 2011) (holding a city may still be liable for money damages after Sossamon).

The second observation is that Christ Liberty's damages do not depend on which theory of liability it prevails on. Christ Liberty asks for summary judgment for each alleged violation of three provisions of RLUIPA and its constitutional claims brought under § 1983 for violating Equal Protection, Free Exercise of Religion,

and Free Speech rights. Both RLUIPA and § 1983 provide for the compensatory damages the plaintiff seeks here. 42 U.S.C. § 2000cc-2(a); Smith, 502 F.3d at 1271; Memphis Cmty. Sch. Dist. v. Stachura, 477 U.S. 299, 310 (1986). Because all the alleged violations of Christ Liberty's rights resulted in the same injury, it may only be compensated once for any damage it may have incurred. Gilmere v. City of Atlanta, Ga., 864 F.2d 734, 740–41 (11th Cir. 1989) (affirming district court's refusal to award additional damages although the plaintiff's "injuries reflected separate constitutional violations").

Accordingly, the City's liability for admitting it violated RLUIPA (under any provision) provides the full measure of damages available to Christ Liberty. The court need not consider (or determine) the City's liability under any of Christ Liberty's constitutional claims. See Konikov v. Orange Cnty., 410 F.3d 1317, 1319 n.1 (11th Cir. 2005) (declining to reach the plaintiff's constitutional claims that "rel[ied] on the same theories" as his RLUIPA claim "because full relief is available under the statute").

So the plaintiff here is entitled to damages, but what is the measure of those damages? On this point, there remains an issue of material fact such that the court cannot grant complete summary judgment. Christ Liberty claims three types of actual damages in its motion for summary judgment. Two of these categories are

unremarkable: loss of income from tithes and offerings totaling $2,400, and rent and utilities paid for the unusable property during the April 29 to August 12 period totaling $3,350. Pl.'s Mot. for Summ. J. 23-24 [Doc. No. 43-1]. The City disputes the admissibility of the plaintiff's documents supporting its "tithes and offerings" damages, and even if the documents are admissible, the documents themselves contain calculation errors that alone create a fact question on the amount of damages they might show. See Def.'s Resp. to SOF ¶ 32-35 [Doc. No. 52].

This paltry sum of less than $6,000 would probably not be worth fighting over, but the plaintiff's third category of damages sought is more interesting. Christ Liberty seeks $283,400 for what it maintains is a quantifiable "loss of constitutional freedoms and civil rights." To arrive at its figure, Christ Liberty points to the potential fine of $100 per day for violation of the City's zoning ordinance. "Christ Liberty simply asserts that the damages due it for [the City's] violation of federal zoning law as a civil matter is equitably at least $100 per day." Pl.'s Mot. for Summ. J. 21-21 [Doc. No. 43-1] (emphasis omitted). The plaintiff was barred by the zoning ordinance from using the property for 109 days. And the plaintiff claims its undisputed evidence (which the defendant disputes) shows 26 members of the congregation left the church as

a result of the City's actions. Thus, the measure of damages is $100/day x 109 days x 26 people = $283,400.

Although it concedes that the Supreme Court has held "damages based on the abstract 'value' or 'importance' of constitutional rights are not a permissible element of compensatory damages," Stachura, 477 U.S. at 310, Christ Liberty has attempted to do just that: "Even though the damage was real, can it be equitably measured in dollars? Certainly the fact finder can put a number on it . . . ." Pl.'s Mot. for Summ. J. 21 [Doc. No. 43-1]. The answer, the Supreme Court has told us, is no, the fact finder cannot. Stachura, 477 U.S. at 310. This purported measure of damages has no basis in law and the plaintiff's request for it is DENIED.

C. Christ Liberty is Entitled to Reasonable Attorneys' Fees

A district court, "in its discretion, may allow the prevailing party . . . a reasonable attorney's fee as part of the costs" for an action under RLUIPA or § 1983. 42 U.S.C. § 1988(b). Christ Liberty asks for summary judgment that it is a "prevailing party" on the basis of the August 12, 2010 Consent Order [Doc. No. 17], and the City argues in response that the plaintiff should not be awarded such status on the basis of the consent order alone.

Because today the court holds that the City is liable for whatever actual damages Christ Liberty can prove, Christ Liberty is the "prevailing party" for the purposes of § 1988(b). As the

plaintiff noted in its reply brief, some of the defendant's arguments and objections to the amount of attorneys' fees requested by Christ Liberty's counsel may be better suited to a response to a fee petition. The court will welcome such a response at the proper time to aid the court in exercising its discretion to award a **reasonable** fee, given the nature of this action.

IV. Conclusion

For the foregoing reasons, the defendant's motion for summary judgment [Doc. No. 42] is GRANTED IN PART, to the extent it seeks dismissal of all claims for declaratory and injunctive relief, and DENIED IN PART, in all other respects. The plaintiff's motion for summary judgment [Doc. No. 43] is also GRANTED IN PART and DENIED IN PART. It is granted to the extent that the City is liable under Christ's Liberty's RLUIPA claims and Christ Liberty is considered the "prevailing party" under § 1988(b); it is denied to the extent it seeks summary judgment on the issues of damages and Christ Liberty's constitutional claims.

The parties are DIRECTED to file their proposed consolidated pretrial order on the remaining damages issues within thirty days of the docketing of this order. LR 16.4(A), NDGa.

SO ORDERED, this 17th day of February, 2012.

/s/ Charles A. Pannell, Jr.
CHARLES A. PANNELL, JR.
United States District Judge