No. 08-4167

IN THE
UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

WORLD OUTREACH CONFERENCE CENTER, an Illinois Not-for-Profit Corporation, and PAMELA BLOSSOM,

Plaintiffs-Appellants,

v.

CITY OF CHICAGO,

Defendant-Appellee.

Appeal from the United States District Court
For the Northern District of Illinois, Eastern Division.
No. 06 C 2891
The Honorable Wayne R. Anderson, Judge

APPELLANTS' REPLY BRIEF

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Oral Argument Requested

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World Outreach's Substantial Burden Claims Under RLUIPA, Free Exercise and IRFRA

To prevail on its claims under the Religious Land Use and Institutionalized Persons Act ("RLUIPA") substantial burden section, the Free Exercise Clause, and the Illinois Religious Freedom Restoration Act ("IRFRA"), World Outreach must show that the actions of the City of Chicago "substantially burdened" its religious exercise. 42 U.S.C. § 2000cc (a)(1); Koger v. Bryan, 523 F.3d 789, 802-803 (7th Cir. 2008); Vision Church v. Village of Long Grove, 468 F.3d 975, 996 (7th Cir. 2007); 775 ILCS 35/15.

The following actions by the City substantially burdened the religious exercise of World Outreach, making its religious uses of the former YMCA building impossible: (1) the hostile re-zoning of World Outreach's property to M1-1 manufacturing district; (2) the insistence by Chicago that World Outreach obtain a Special Use Permit when none was ever required by law; (3) the demand for over a year and a half that World Outreach obtain a Special Use Permit to use its property when it was legally impossible to do so.

The Defendant's argument is based upon the misleading assumption that World Outreach could have at any time merely gone through the City's "painless" Special Use Permit application process. Def.Br. 19. The Defendant fails to address the actions of various city officials, city attorneys and city employees who threw up multiple roadblocks at the entrance to this legally unnecessary process. Pls.Br. 5-15. Instead, Defendant focuses on the fact that World Outreach initially refused to

apply for a Special Use Permit, claiming that this defeats World Outreach's substantial burden claims. Def.Br. 19.

Defendant fails to mention, however, World Outreach's various reasons for this refusal: (1) the Special Use Permit was legally unnecessary because there was no change in the use of the subject property after World Outreach bought it from the YMCA (SA-29)[1]; (2) World Outreach was entitled to use its property as a matter of right (i.e., no Special Use Permit required) as a lawful, nonconforming use under the Chicago Zoning Ordinance ("CZO") (SA-8); (3) the City, through Alderman Beale, was intent upon shutting down World Outreach (SA-8); (4) the Illinois Special Use Permit statute (65 ILCS 5/11-13-1.1) allows a municipality to impose restrictions (SA-8); thus, even if a Special Use Permit was approved, the political opposition of the Alderman signaled that the use would be crippled by restrictions (SA-8).

Defendant also makes the outrageous allegation that World Outreach is claiming that the Special Use Permit requirement alone is a substantial burden. Def.Br. 21. This is incorrect as World Outreach alleges that all of the City's actions, taken as a whole, substantially burdened its activities, rendering its proposed use of the property "effectively impracticable." Pls.Br. 17-20; *see* Vision Church, 468 F.3d at 997 (citing Civil Liberties for Urban Believers [CLUB] v. City of Chicago, 342 F.3d 752, 761 (7th Cir. 2003)).

[1] All references to Appellants' required Appendix in Appellants' Brief are made as "A-[no.]"; all references to Separate Appendix are made as "SA-[no.]."

Moreover, the City's actions created considerable "delay, uncertainty, and expense" on World Outreach, constituting a substantial burden upon World Outreach's religious exercise under Sts. Constantine & Helen Greek Orthodox Church v. City of New Berlin, 396 F.3d 895, 901 (7th Cir. 2005). The Defendant attempts to distinguish this case from New Berlin by pointing out that World Outreach never applied for a Special Use Permit. Def.Br. 22. Fact is, a Special Use Permit was never required for the use World Outreach was requesting, either before or after the hostile re-zoning to Manufacturing. Before the hostile re-zoning, a Special Use Permit was legally unnecessary (see CZO § 17-15-0301, 0103, 0106 (SA-4)); afterwards, it was legally impossible. SA-7, 8.

Defendant's attempt to distinguish this case from New Berlin also fails because World Outreach twice applied for a license to use its 168 single room occupancy ("SRO") units and was twice denied for the single reason that a Special Use Permit was allegedly required, even though it was legally unnecessary. SA-6, 9. The City's denial for this reason was ultimately admitted to be an error made by the City – a very lengthy and costly error to World Outreach. SA-12. Indeed, this "error", upon information and belief, was not innocent. From the animosity toward World Outreach at the outset (SA-8), to the conspicuous and hostile re-zoning of World Outreach's property to Manufacturing (SA-31-39), and through the continued unreasonable demands of a Special Use Permit when it was legally prohibited (SA-8, 9), it is clear that the City's actions substantially burdened World Outreach's religious exercise as condemned by this Court in New Berlin.

Defendant claims that World Outreach's failure to appeal to the ZBA the determination that a Special Use Permit was required also distinguishes it from New Berlin. Def.Br. 22. However, the record is clear that World Outreach was told by Alderman Banks, the city council zoning committee chairman, to either get a Special Use Permit or sue the City in circuit court. SA-37, 38. Two sets of City attorneys affirmed Chicago's legal position that a Special Use Permit was required. SA-10, 11. So, the City cannot now say that World Outreach had the legal option to appeal to the ZBA, when the record shows that the City's legal position was totally different until January 31, 2007. SA-12.

On January 31, 2007, City attorney Andrew Mine sent an email to World Outreach attorney John Mauck. SA-12, R. 63, Exh. F. In the email, Mr. Mine stated that "zoning has signed off on the SRO."Id. With this statement[2], the City, under pressure of a pending emergency motion (SA-11 at ¶43), admitted that some official in the City's zoning department apparently confirmed that no Special Use Permit was required for continuation of an 80-year standing use. The City does not deny that this was an admission that the City had taken a wrong legal position by demanding a Special Use Permit from World Outreach before issuing a SRO license.

Defendant's avoidance of facts in its response is most obvious when it fails to address the fact that Alderman Beale submitted his proposal to change the zoning of the subject property to Manufacturing after World Outreach initially made plans to purchase the property, but before World Outreach even had time to close on the

[2] This statement was also confirmed at the March 16, 2007 status hearing in the district court when Mr. Mine stated that "this SRO thing is going through the pipeline." R. 50 at pg. 7.

property (SA-31, 40). Additionally, Defendant fails to address the fact that Chicago's Corporation Counsel, through two different sets of attorneys, continued to demand a Special Use Permit from World Outreach for a year and a half, even after the hostile re-zoning that legally prohibited World Outreach from obtaining one. SA-7-9. These unchallenged, well-pleaded allegations of fact therefore move World Outreach's claims under RLUIPA substantial burden, free exercise and IRFRA "'across the line from conceivable to plausible.'" Ashcroft v. Iqbal, 129 S.Ct. 1937, 1951 (2009) (quoting Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 570 (2007)).

Defendant briefly discusses the City's hostile re-zoning of World Outreach's property to Manufacturing, stating that "[t]he re-zoning had no effect on World Outreach's asserted nonconforming use or its right to appeal the special use requirement to the ZBA." Def.Br. 23. This misleading statement blithely ignores the blatant contradiction brought by the hostile re-zoning and the City's continued demands that World Outreach get a Special Use Permit when it was legally prohibited in the new Manufacturing district.

In this appeal and well after Chicago's January 31, 2007 *mea culpa* (SA-12, R. 63, Exh. F.), Ms. Georges, Chicago's Corporate Counsel, adopted a new legal position blaming World Outreach for not appealing to the ZBA to contest the City's continued Special Use Permit demand (Def.Br. 20), despite the fact that its two sets of attorneys attempted to enforce the law otherwise and zoning committee chairman Banks had already issued his edict: get a Special Use Permit or take the City to

court. SA-37, 38. Further, discovery[3] would undoubtedly show (assuming the City would even deny) that the ZBA has a fixed policy of not ruling on any Special Use Permit application or code interpretation appeal whenever an aldermanic re-zoning application was pending. But even if the ZBA lacked such a practice, the official Chicago policy as announced by Corporation Counsel Georges and as determined by Monell, *infra*, was unequivocal at all times before January 31, 2007: a Special Use Permit is required. How can Defendant argue that World Outreach's "futility claim" is therefore unripe? Def.Br. 24.

As a matter of law, this Court should go beyond merely reversing the district court and rule that the official actions of the City substantially burdened World Outreach because the actions are undisputed.

World Outreach's Free Exercise Claim

The Defendant begins its argument here by again understating the claim of World Outreach as "having to obtain a special use permit also violated the Free Exercise Clause." Def.Br. 32. More precisely, World Outreach claims that having to apply for a legally-impossible-to-obtain Special Use Permit, the City's actions taken as a whole violate its religious exercise under, *inter alia*, the free exercise clause, and goes into great detail on pages 16-23 of its opening brief. Community centers (except those that are "grandfathered") are *never* allowed in an M-1 District and no Special Use Permit can change that ordinance.

[3] The district court dismissed World Outreach's amended complaint before discovery.

Defendant alleges that, regardless, World Outreach's claims do not show the level of substantial burden required in free exercise jurisprudence (Def.Br. 33); that is, "'substantial pressure on an adherent to modify his behavior and to violate his beliefs.'" Vision Church, 468 F.3d at 996 (quoting Hobbie v. Unemployment Appeals Commission, 480 U.S. 136, 141 (1987)).[4]

World Outreach has clearly set forth well-pleaded factual allegations that the City's actions totally prohibited the religiously motivated behavior of providing housing in the name of Jesus to those in need in its own community and sharing the love of God with them concomitantly. SA-12, 13. As a matter of law, this Court should go beyond merely reversing the district court and rule that the official actions of the City substantially burdened World Outreach because the actions are undisputed.

Defendant also argues that it is not liable due to the fact that a "municipal policy" was not the culprit in the constitutional violations suffered by World Outreach. Def.Br. 32. The U.S. Supreme Court has held, however, in Monell v. Department of Social Services, 436 U.S. 658, 690-691 (1978), that "customs and practices" of governmental officials can also cause constitutional deprivation that are actionable under section 1983. The Monell court held that "it is when execution of a government's policy or custom, whether made by its lawmakers or by those whose edicts or acts may fairly be said to represent official policy, inflicts the injury

[4] However, RLUIPA is even more explicit in providing that religious exercise, behavior regarding land use for religious purposes, is a civil right: "The use, building, or conversion of real property for the purpose of religious exercise shall be considered to be religious exercise of the person or entity that uses or intends to use the property for that purpose." 42 U.S.C. § 2000cc-5(7)(B).

that the government as an entity is responsible under section 1983." Monell at 694 (emphasis added).

World Outreach's well-pleaded allegations of fact are clear that World Outreach representatives dealt with various city officials, all of whom acted and issued edicts that clearly represented official policy of the City of Chicago, including: (a) the city permit department officials who twice wrongfully denied World Outreach's SRO application for lack of a Special Use Permit when it was legally unnecessary (SA-9, 6); (b) the city council zoning committee, specifically including chairman Banks who instructed World Outreach to get a Special Use Permit or sue the City in circuit court (SA-31-39); and (c) the Chicago Corporation Counsel and two sets of city attorneys under her direction throughout the City's law department who endorsed the illegal and/or heavily burdensome actions of those officials (SA-9-12).

Each of these city officials made "deliberate choice[s] to follow a course of action [that a Special Use Permit was required – period] … from among various alternatives." Pembaur v. Cincinnati, 475 U.S. 469, 483 (1986). This, therefore, is "policy-making," following the Supreme Court's holding in Pembaur that even a one-time decision of a policy-maker could render a local government liable. Id. at 480.

The city council zoning committee's actions in recommending re-zoning of World Outreach's property to M1-1 alone constitute "policy-making" under section 1983. In Hammond v. County of Madera, 859 F.2d 797, 802 (9th Cir. 1988), the

court found the city liable under section 1983, holding that the county board had accepted and approved plaintiff's documents, thus ratifying the challenged misconduct. Here, chairman Banks continued Chicago's demand that World Outreach obtain a Special Use Permit, even when his committee was in the process of changing the zoning of the property to Manufacturing where a Special Use Permit was legally prohibited for World Outreach's uses. SA-43. By taking this stance, the zoning committee ratified the City's Kafkaesque position that World Outreach obtain a legally unnecessary Special Use Permit regardless of whether it was legally prohibited by the zoning ordinance.

Could chairman Banks be assured that no Special Use Permit would be approved once his committee has approved the zoning change to manufacturing for the property? Of course! And since no Special Use Permit would be required for World Outreach to continue the work of the YMCA, it would be an absurd burden to require World Outreach to jump through that imaginary hoop. This "policy-making" removes any claim of no liability by Defendant under section 1983. Hammond, 859 F.2d at 802.

Moreover, the Chicago Corporation Counsel continued to assert the City's unconstitutional conduct by demanding that World Outreach obtain a Special Use Permit for at least another year and a half after it became legally prohibited for World Outreach to do so. SA-11, 12. This "policy-making" by city officials also destroys any argument by Defendant of no liability under Monell. Pembaur, 475 U.S. at 480.

These arguments aside, Defendant alleges that World Outreach has otherwise waived its free exercise and IRFRA claims by not developing its argument and supporting it with judicial authority. Def.Br. 34. This allegation fails because on page 22 of its opening brief, World Outreach referenced its extensive substantial burden argument from pages 16-22 of the same brief, citing Koger v. Bryan, 523 F.3d 789 (7th Cir. 2008), and Hernandez v. Commissioner, 490 U.S. 680 (1989), as judicial authority in support of its argument. While it is improper for an appellant to incorporate only by reference arguments made in the lower court, World Outreach clearly has set forth its arguments within the body of its opening brief (*see*, *e.g.*, Pls.Br. 16-22) as required by Fed. R. App. P. 28(a)(9). DeSilva v. DiLeonardi, 181 F.3d 865, 867 (7th Cir. 1999).

As a matter of law, this Court should go beyond merely reversing the district court and rule that the official actions of the City substantially burdened World Outreach because the actions are undisputed.

World Outreach's IRFRA Claim

Similar to the RLUIPA substantial burden and free exercise claims, World Outreach must show that the Defendant's actions "substantially burdened" its religious exercise in order for its claims to prevail under IRFRA. 775 ILCS 35/15. As described above and in its opening brief, World Outreach has clearly set forth well-pleaded factual allegations regarding the substantial burdens placed on it by the Defendant. Pls.Br. 16-22.

The Defendant maintains that World Outreach does not state an IRFRA claim because all the City did was "insist on a special use permit." Def.Br. 35. The City did more than that, however, by changing the zoning of World Outreach's property to Manufacturing in a clear move to prevent World Outreach from operating, and by demanding a Special Use Permit for over a year and a half even when it was legally prohibited. This prevented World Outreach from ministering to and sharing the love of Jesus with tenants and others in the Roseland community, actions which are integral parts of its mission and sincerely held religious beliefs. SA-5, 13. According to the broader judicial interpretation of substantial burden under IRFRA, this clearly "'prevent[ed] [World Outreach] from engaging in conduct or having a religious experience that [its] faith mandates.'" Diggs v. Snyder, 775 N.E.2d 40, 45 (Ill.App. Ct. 2002).

As a matter of law, this Court should go beyond merely reversing the district court and rule that the official actions of the City substantially burdened World Outreach because the actions are undisputed.

World Outreach's RLUIPA Equal Terms Claim

Regarding World Outreach's claims under RLUIPA equal terms – 42 U.S.C. §2000cc(b)(1) – World Outreach's well-plead factual allegations, along with all reasonable inferences due to it at the 12(b)(6) stage, clearly allege that the YMCA is a nonreligious institution. SA-15. Without any basis or authority, Defendant's anecdotal arguments to the contrary (Def.Br. 36, 37) should be disregarded.

World Outreach's claims under RLUIPA's nondiscrimination provision – 42 U.S.C. §2000cc (b)(2) – was invoked only after the district court's conclusion of law that found the YMCA to be a religious institution. A-9. World Outreach's claim in count II was brought under RLUIPA's equal terms provision – 42 U.S.C. §2000cc (b)(1) – rather than RLUIPA's nondiscrimination provision – 42 U.S.C. §2000cc (b)(2) – on the basis that the YMCA was not a religious institution. The fact that World Outreach made no mention of RLUIPA's nondiscrimination provision at the lower court level matters not because this Court "review[s] a district court's conclusions of law de novo." Keach v. U.S. Trust Co., 419 F.3d 626, 634 (7th Cir. 2005).

Furthermore, Defendant cites improper authority for its argument that World Outreach has waived this claim by not raising it below. Def.Br. 38. In Smith v. Lamz, 321 F.3d 680, 683 (7th Cir. 2003), this Court dealt solely with the procedures regarding the briefing of a summary judgment motion, specifically the improper statement of material facts; whereas here World Outreach chose to base its claim on one legal theory (RLUIPA equal terms provision) before the district court concluded as a matter of law that the YMCA was a religious institution, which thereby invoked an alternative legal theory (RLUIPA nondiscrimination provision).

As a matter of law, this Court should also go beyond merely reversing the district court and rule that the official actions of the City toward World Outreach violated the nondiscrimination provision of RLUIPA (42 U.S.C. § 2000cc (b)(2)).

World Outreach's Equal Protection Claim

Defendant claims that World Outreach's equal protection claim fails because the City had a reason to treat World Outreach differently from the YMCA: the "change in ownership … was a logical point for the City to determine whether the property owner is engaged in a lawful use." Def.Br. 40. *But the City did not do that.*[5] The City demanded World Outreach get a legally unnecessary Special Use Permit and denied its SRO license – twice – because it lacked a Special Use Permit; then continued that unreasonable demand even after a Special Use Permit became legally prohibited to World Outreach in the new M1-1 district. Accordingly, this distinction fails, and Defendant has not sufficiently shown as implausible World Outreach's well-pleaded factual allegations that the City violated the Equal Protection Clause. Ashcroft, 129 S.Ct. at 1951.

As a matter of law, this Court should also go beyond merely reversing the district court and rule that Chicago's actions violated World Outreach's Fourteenth Amendment rights to Equal Protection.

World Outreach's Establishment Clause Claim

Claiming again that no municipal policy is alleged to have caused a constitutional deprivation, Defendant maintains that World Outreach's Establishment Clause claim fails. Def.Br. 42. Defendant continues to overlook World Outreach's well-pleaded factual allegations describing those actions that the

[5] Certainly the City knew the Roseland YMCA had received an SRO permit for about 80 consecutive years!

City carried out to execute the City's custom and practice of demanding a legally unnecessary Special Use Permit (and continuing to demand it after it was legally prohibited) made by those City officials whose edicts or acts may fairly be said to represent official policy. SA-9-12, 31-39. For the same reasons set out previously under "World Outreach's Free Exercise Claim," this argument is without merit.

Defendant also urges this Court not to "break new ground," but instead hold that Chicago's actions evincing its disapproval of World Outreach's religious exercise does not violate the Establishment Clause. Def.Br. 45. Defendant argues that because this case does not involve "laws that advance religion," this Court should conclude no Establishment Clause violation and decide the case on free exercise grounds instead. Def.Br. 43, 44. Although Defendant discusses some Establishment Clause judicial authority, Defendant's argument still ignores the long line of cases which holds that a government "policy or practice violates the Establishment Clause if (1) it has no secular purpose, (2) its primary effect advances or inhibits religion, or (3) it fosters an excessive entanglement with religion." Vision Church, 468 F.3d at 991(citing Lemon v. Kurtzman, 403 U.S. 602, 612-13 (1971)).

Focusing on the second prong of the Lemon test, Defendant claims that it passes because it "conveys no message about religion whatever" by requiring World Outreach to prove its zoning ordinance compliance. Def.Br. 46. However, in Establishment Clause jurisprudence, "effect" is the issue, not what is "conveyed." When the actions of Chicago are inspected, it is clear that the "effect" of those

actions is that the religious exercise of World Outreach was "inhibited", in violation of the second prong of Lemon, 403 U.S. at 612-13.

Moreover, given the facts that Chicago changed the zoning of only World Outreach's property to Manufacturing when no other manufacturing zone is located nearby (SA-7), and then continued to demand that World Outreach get a Special Use Permit when it was legally prohibited (SA-9-12), the City's actions lose their level of reason and clearly show that the "effect" of these actions "inhibited" the religious activities of World Outreach. Thus, there is no reason why a reasonable person would not view the "primary effect" of these drastic actions of the City as "inhibit[ing]" World Outreach's religion. See Vision Church, 468 F.3d at 993 (citing Lemon, 403 U.S. at 612-13).

Accordingly, since government action violates the Establishment Clause if it fails any of these three prongs, Books v. City of Elkhart, 401 F.3d 857, 862 (7th Cir. 2005), then World Outreach has set forth a well-pleaded factual allegation on this count. SA-17, 18.

As a matter of law, this Court should also go beyond merely reversing the district court and rule that Chicago's actions toward World Outreach violated the Establishment Clause of the First Amendment.

World Outreach's Claims under the Chicago Zoning Ordinance

Alleging immunity for any claims World Outreach raises under the Chicago Zoning Ordinance (CZO), Defendant states that "[i]t is well settled that a violation

of state or local law does not give rise to a claim for damages under federal civil rights law." Def.Br. 48 (citing Thompson v. City of Chicago, 472 F.3d 444, 454 (7th Cir. 2006)). Defendant's statement, while true, is misleading to the application of the facts of this case. World Outreach has not claimed that the City's violation of the CZO has given rise to any federal claims. Rather, World Outreach claims that this Court may award damages for state law violations arising out of the same transactions and occurrences of this action that was removed to federal court. SA-18, 19; Pls.Br. 1.

To be sure, this Court confirmed that state law violations are immaterial as to whether a constitutional violation occurred; however, if the Court chooses to resolve this litigation on the more narrow ground that the City violated World Outreach's rights under the CZO as a matter of state law (and Chicago admitted it did so on January 31, 2007), it may direct the district court to award damages. Thompson, 472 F.3d at 454.

As a matter of law, this Court should also go beyond merely reversing the district court and rule that Chicago's actions toward World Outreach violated the Chicago Zoning Ordinance.

World Outreach's Claims Under Ill. Sup. Ct. R. 137 and Fed. R. Civ. P. 11

Defendant argues that Ill. Sup. Ct. R. 137 does not apply here (Def.Br. 49) through the eisegesis of two cases that actually applied Rule 137 in federal court, Schmitz v. Campbell-Mithun, Inc., 124 F.R.D. 189, 191-93 (N.D.Ill. 1989) and Burda v. M. Ecker Co., 2 F.3d 769 (7th Cir. 1993).

In Burda, the district court relied on Rule 137 as a basis for its decision to sanction the plaintiff. Burda, 2 F.3d at 773. In order to pass the abuse of discretion standard, this Court held that the lower court should "undertake an objective inquiry into whether the party or his counsel 'should have know that his position is groundless'" Id. at 774 (citing Chicago Newspaper Publishers' Ass'n v. Chicago Web Printing Pressmen's Union No. 7, 821 F.2d 390, 397 (7th Cir. 1987). Confirming that the lower court met this standard, this Court held that "the district court explicitly and appropriately found that the legal arguments in [plaintiff's] memorandum were objectively unreasonable and frivolous." Id. at 776. Here, the district court made no such "objective inquiry" into the City's pleadings. A-16. Accordingly, the judgment of the district court should be reversed.

Likewise, this Court in Schmitz found no "obstacle standing in the path of applying [Rule 137's predecessor]" to the plaintiff's complaint which was filed in state court and later removed to federal court. Schmitz, 124 F.R.D. at 192, 193. Accordingly, Rule 137 is an appropriate vehicle to sanction Defendant's in this Court's discretion.

The fact that World Outreach petitioned the lower court to sanction the City for pleadings in its original Cook County Circuit Court complaint, filed December 14, 2005 against World Outreach, also does not doom its claims under Rule 137. This Court has authority to sanction the City's false assertions made in its original pleadings in state court under Rule 137 because: (a) the City's original December 14, 2005 complaint against World Outreach (case No. 05 M1-401284), the City's first

amended complaint filed March 17, 2006, and World Outreach's original April 12, 2006 complaint (No. 06 CH-O7290) are inherently the same action arising out of the same transactions and occurrences and sharing a common nucleus of operative facts; and (b) this action was subsequently removed by the City to the District Court. SA-9-12.

The City's original December 14, 2005 complaint and March 17, 2006 first amended complaint, both filed in state court, violated Rule 137 in that various statements were not well grounded in fact, were erroneous, were not warranted by existing law, and demanded World Outreach to take action that was contrary to existing law (i.e. that a Special Use Permit was a legally mandated prerequisite to the use of their property). World Outreach's well-pleaded allegations of fact include each statement made by the City that is sanctionable. SA-21, 22. The legal positions of the City were the only reasons World Outreach could not obtain a license to rent out its SRO units and thus the cause of World Outreach's extensive loss of income and other damages. SA-13.

The erroneous legal position taken by the City and enforced through the Corporation Counsel and attorneys in the City's law department is the sole and proximate cause of World Outreach's damages. In Toland v. Davis, 295 Ill. App. 3d 652, 658 (3rd Dist. 1998), the court noted that Rule 137 is almost identical to Fed. R. Civ. P. 11 and Illinois courts may seek guidance on Rule 137 from judicial interpretations of Federal Rule 11.

Regarding World Outreach's Rule 11 claims, the City's initial memorandum in support of its motion to dismiss World Outreach's complaint and its reply brief violate Rule 11 in the same ways: various statements were erroneous, not well grounded in fact, not warranted by existing law, and asserted World Outreach must take action that was prohibited by the Chicago Zoning Ordinance (i.e. that a Special Use Permit was a legally mandated prerequisite to World Outreach's use of its property). SA-24-27. World Outreach's well-pleaded allegations of fact include each statement made by the City that is sanctionable. SA-25, 26. Any "post-hoc rationalizations [by the City] will not do the job" to explain away these statements. Diversified Technologies Corp. v. Jerome Technologies, Inc., 118 F.R.D. 445, 451 (N.D. Ill. 1988).

As described in its well-pleaded factual allegations and in its opening brief, World Outreach lost the FEMA contract to house Hurricane Katrina victims and all associated income because of the City's violations of Rule 137 and Rule 11. SA-12, 13; Pls.Br. 10-12. World Outreach is entitled to appropriate sanctions under both of these rules, pursuant to the discretion of this Court.

As a matter of law, this Court should also go beyond merely reversing the district court and rule that Chicago violated Fed. R. Civ. P. 11 and Il. Sup. Ct. R. 137.

Defendant's Challenge to the Constitutionality of RLUIPA

This Court does not need to reach the issue of the constitutionality of RLUIPA because IRFRA is equal to or broader in its application than RLUIPA and provides the same remedies.

Defendant has not challenged the constitutionality of IRFRA.

World Outreach also adopts by reference the arguments of Intervenor the United States.

This Court should therefore not reach (or either reject) Defendant's arguments that RLUIPA unconstitutional and beyond Congress's powers under the Enforcement Clause of the Fourteenth Amendment.

Conclusion

For these reasons, World Outreach respectfully requests that this Court:

(a) reverse the District Court's granting of the City's motion to dismiss each count of World Outreach's amended complaint pursuant to Fed. R. Civ. R. 12(b)(6);

(b) remand this case and direct the District Court to enter a finding as a matter of law that Chicago's actions constituted a substantial burden of World Outreach's religious exercise under RLUIPA, the Free Exercise Clause, and IRFRA, and determine consequential damages to World Outreach and attorneys' fees and costs due World Outreach as a result of such violations;

(c) remand this case and direct the District Court to enter a finding as a matter of law that Chicago's actions toward World Outreach violated the

nondiscrimination provision of RLUIPA (42 U.S.C. § 2000cc (b)(2)), and determine consequential damages to World Outreach and attorneys' fees and costs due World Outreach as a result of such violations;

(d) remand this case and direct the District Court to enter a finding as a matter of law that Chicago's actions violated World Outreach's Fourteenth Amendment rights to Equal Protection, and determine consequential damages to World Outreach and attorneys' fees and costs due World Outreach as a result of such violations;

(e) remand this case and direct the District Court to enter a finding as a matter of law that Chicago's actions toward World Outreach violated the Establishment Clause of the First Amendment, and determine consequential damages to World Outreach and attorneys' fees and costs due World Outreach as a result of such violations;

(f) remand this case and direct the District Court to enter a finding as a matter of law that Chicago's actions toward World Outreach violated the Chicago Zoning Ordinance, determine consequential damages to World Outreach and attorneys' fees and costs due World Outreach as a result of such violations;

(g) remand this case and direct the District Court to enter a finding as a matter of law that Chicago violated Fed. R. Civ. P. 11 and Il. Sup. Ct. R. 137, and determine consequential damages to World Outreach and attorneys' fees and costs due World Outreach as a result of such violations; and

(h) rule that RLUIPA's land use provision is not a violation of the Enforcement Clause of the Fourteenth Amendment.

Respectfully submitted,

_____
John W. Mauck
One of the Attorneys for Appellants

CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the type-volume limitations imposed by Fed. R. App. P.32 and Circuit Rule 32 for a brief produced using the following font:

Century Schoolbook Font: 12 point body text, 11 point for footnotes.

Microsoft Word 2003 was used. The length of this brief is 5,521 words.

Dated this 9th day of October, 2009.

_____
J. Lee McCoy, Jr.
One of the Attorneys for Appellants

CIRCUIT RULE 31(e)(1) CERTIFICATION

I, J. Lee McCoy, Jr., certify that I have filed electronically, pursuant to Circuit Rule 31(e) versions of the brief and all of the appendix items that are available in no-scanned PDF format.

Dated this 9th day of October, 2009.

_____
J. Lee McCoy, Jr.
One of the Attorneys for Appellants

CERTIFICATE OF SERVICE

The undersigned attorney certifies that on October 9, 2009, two copies of the Appellants' Brief were served upon the persons below, in the manner indicated.

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