

FILED

JUN 15 2017

CHARLES E. POWERS, JR., J.S.C.

PREPARED BY THE COURT

Plaintiff

Township of Mahwah.,

v.

Defendant

Ramapough Mountain Indians, Inc.

**SUPERIOR COURT OF NEW JERSEY
LAW DIVISION – BERGEN COUNTY
DOCKET NO. BER-L-3189-17**

Civil Action

**ORDER DISSOLVING TEMPORARY
RESTRAINTS AND DISMISSING
ORDER TO SHOW CAUSE**

This matter having come before the Court by Thomas W. Williams, Esq., counsel for defendant, to vacate the temporary restraints imposed on defendant pursuant to this Court's order of May 10, 2017, and the Court having heard oral argument, reviewed the moving papers; and for good cause shown:

IT is on this 15th day of June 2017:

ORDERED that the temporary restraints imposed on defendant pursuant to this Court's order of May 10, 2017 are hereby vacated;

IT IS FURTHER ORDERED that the Order to Show Cause previously scheduled for June 23, 2017 is dismissed.



CHARLES E. POWERS, JR., J.S.C.

UNOPPOSED () OPPOSED (X)
SEE RIDER ATTACHED

TOWNSHIP OF MAHWAH v. RAMAPOUGH MOUNTAIN INDIANS, Inc.

Docket No. BER-L-3189-17

RIDER TO ORDER DATED JUNE 15, 2017

I. Introduction and Factual Background

Before the Court is a motion by the Ramapough Mountain Indians (“Tribe”) to vacate the temporary restraints this Court entered on May 10, 2017. The Township of Mahwah (“Township”) opposes the motion. For the reasons that follow, the Court will vacate the temporary restraints and dismiss the Order to Show Cause that was previously scheduled for June 23, 2017.

By way of background, the Tribe owns approximately 14-acres of real property located at 95 Halifax Lane, Mahwah, New Jersey (“Property”). According to a certification from Chief Dwaine Perry, the Tribe has used the Property for religious ceremonies for over twenty-five years. The Property holds special significance due to its proximity to the Mahwah and Ramapo Rivers, both of which are sacred sites to the Tribe.

The Township’s Engineer, Michael J. Kelly (“Kelly”), P.E., certifies that the Property is located in the Township’s (C-200) Zone. Permitted uses in a (C-200) zone include public open space for hiking, horse-back riding, wildlife preserves, aboretums, botanical gardens, historical edifices, woodland areas, and hunting and fishing facilities. (Kelly Cert. ¶ 3). In November 2016, the Township began to receive complaints from surrounding residents regarding the Tribe’s activities on the Property. These complaints included reports that members of the Tribe were permanently living on the Property, that soil was being imported, and that structures were being constructed without the necessary zoning approval. On November 28, 2016, the Township’s Construction Official inspected the Property and issued a Notice of Unsafe Structure (Pl.’s Ex B). On November 29, 2016, Kelly wrote a letter to Chief Perry informing him that various structures

on the Property, including camping tents, popup tents, a canvas cabin, and a wooden structure, were not permitted in a (C-200) Zone and violated the Township Code. Moreover, the Tribe was informed that since the Property is located within the floodway of the Ramapo River, the structures and other materials within the floodway must meet the requirements of the Flood Hazard Area Control Act (“FHACA”), N.J.S.A. 58:16A-50 et seq. Kelly further advised that the Tribe should submit a variance application to the Township’s Board of Adjustment. (Id., Ex. C).

Kelly also notified the New Jersey Department of Environmental Protection (“NJDEP”) of the Tribe’s use of the Property. Representatives from the NJDEP visited the Property in December 2016 and issued a Land Use Enforcement and Inspection Report on January 3, 2017. During their inspection of the Property, the NJDEP found three tepees, 15’ in diameter at the base and 15’ in height, one small tent measuring approximately 10x10, 10 pop-up camping tents, one large army tent, two portable toilets, a cooking pavilion on a wooden platform, and a number of totem poles. The NJDEP’s report advised that the tents and teepees located on the Property were not regulated by the FHACA. The report also stated that while the cooking pavilion and portable toilets constituted “structures” under the FHACA, the NJDEP would not be pursuing an enforcement action due to the temporary nature of these items. (Def.’s Ex A & B).

On December 13, 2016, the Township issued the Tribe two Summonses for (1) the failure to obtain a zoning permit for the structures on the Property; and (2) soil movement without a permit. (Pl.’s, Exhibit G). On December 20, 2016, the Township performed another inspection of the Property resulting in the issuance of a Notice of Violation and Order to Terminate due to the construction of an awning on the Property without the proper permits. (Id., Ex H).

In January 2017, the Tribe met with the Township’s representatives and agreed to submit applications for zoning and site plans. In order to give the Tribe an opportunity to submit these

applications, the Township agreed to hold the summonses in abeyance until March 12, 2017. On April 6, 2017, the Tribe submitted a Zoning Application but not the Site Plan application. On April 13, 2017, the Tribe's Zoning Application was denied as "the activities currently being performed at [the Property] . . . are not permitted as per the Township's List of Permitted uses in this zone. (Id., Ex. M). On April 27, 2017, the Township notified the Tribe's counsel that all unauthorized structures must be removed from the Property before May 1 in order to avoid further summonses.

II. Procedural History

On May 8, 2017, the Township filed a Verified Complaint and an Order to Show Cause, seeking to temporarily restrain the Tribe from (1) using the Property in any manner that violates the Zoning Ordinance; and (2) utilizing the structures on the Property that are in violation of the FHACA. In support of this relief, the Township argued that the Tribe had "blatantly ignored" the FHACA by placing structures within the floodway of the Ramapo River. On May 10, 2017, the Court granted the temporary relief. The Tribe asserts that the Township has issued daily summonses for alleged violations of this Order. On June 2, 2017, the Tribe filed this motion to lift the temporary restraints.

III. Contentions of the Parties

The Tribe argues that the Township has failed to meet the high standard for injunctive relief as set forth in Crowe v. DeGioia, 90 N.J. 126 (1982). First, the Tribe argues that the Township has not demonstrated permanent and irreparable harm through any of the Tribe's activities on the property. Second, the Tribe argues that the Township's right to temporary restraints is unsettled since the Township's enforcement of its zoning laws has imposed a "substantial burden" on the Tribe's religious activities in violation of the Religious Land Use and Institutionalized Persons Act ("RLUIPA"), 42 U.S.C. 2000cc et seq. Third, the material facts underlying the Township's relief

are controverted as the Tribe disputes that their activities actually amount to violations of the FHACA. Finally, the Tribe contends that they are facing undue hardship due to the restrictions placed on their religious practices.

The Township submitted opposition to this motion on June 9, 2017. The Township argues that the Tribe cannot avail itself of RLUIPA as they have not filed the appropriate zoning and site plan applications. Moreover, the Township contends that irreparable harm will occur in the absence of preliminary relief as the assemblies taking place on the Property have the potential to cause parking problems, sanitation issues, fire hazards, and noise concerns. Moreover, the Township argues that its right to enforce its zoning laws is well-settled and that the material facts are uncontroverted.

IV. Legal Analysis

Rule 4:52-1 empowers this Court to grant a preliminary injunction upon the filing of a complaint seeking such relief. However, injunctive relief is an extraordinary equitable remedy administered within the sound discretion of the Court based upon considerations of justice, equity and morality. Suenram v. Society of Valley Hosp., 155 N.J. Super. 593, 596-97 (Law Div. 1977). The standard for evaluating whether to grant interlocutory relief was set forth by our Supreme Court in Crowe v. De Gioia, 90 N.J. 126 (1982). Under Crowe, the movant bears the burden of demonstrating that: (1) imminent, irreparable harm is likely if the relief is denied; (2) the applicable underlying law is well-settled; (3) the material facts are not substantially disputed and there exists a reasonable probability of ultimate success by the movant on the merits; and (4) the balance of the hardship to the parties favors the issuance of the requested relief. Id. at 132-34. The moving party must demonstrate each Crowe factor by clear and convincing evidence. Garden State Equality v. Dow, 216 N.J. 314, 320 (2013).

The first principle for granting preliminary relief—that the harm is both “imminent” and “irreparable”—requires the movant to prove that there is an urgent necessity for the injunction, and the alleged injury will not be adequately redressed by monetary damages. See Crowe, 90 N.J. at 132; see also Subcarrier Commc'ns, Inc. v. Day, 299 N.J. Super. 634, 638, (App. Div. 1997) (finding that a preliminary injunction requires a showing of substantial, immediate, and irreparable harm).

The Township has not demonstrated that the temporary restrains are required to prevent imminent and irreparable harm. While the Township argues that the Tribe has failed to obtain permits for the structures on the Property, the Court is not convinced that the violation of a zoning ordinance rises to the level of “immediate” and “irreparable” harm. See Cherry Hill Tp. v. Oxford House, Inc., 263 N.J. Super. 25, 43 (App. Div. 1993) (finding that the alleged violation of a municipal ordinance did not rise to the level of permanent and irreparable harm). Although the Court is mindful of the Township’s interest in enforcing its zoning laws—seeking injunctive relief in the Law Division is not the appropriate mechanism for doing so.

The Township also asserts that the Tribe’s alleged violations of the FHACA has placed the citizens of Mahwah at risk. However, the NJDEP inspected the Property and decided not to pursue an enforcement action. As such, it would seem that the NJDEP does not share the Township’s fears. Finally, the Township cites concerns from the gatherings being held on the Property such as waste disposal, parking issues, and fire hazards. While the Court is not dismissive of these concerns, the Township is free to enforce its zoning laws and regulations without an injunction. Moreover, it is noteworthy that these gatherings have apparently been occurring since November of 2016 and the Township did not seek injunctive relief until May. As such, this argument is unavailing. For these reasons, the Court concludes that the Township has failed to demonstrate

that they are faced with permanent and irreparable harm. This failure is fatal to the Township's request for injunctive relief.

The Court will now briefly address the First Amendment issues raised by the Tribe. RLUIPA was passed by Congress in 2000 in response to the invalidation of the Religious Freedom and Restoration Act of 1993. See generally Cutter v. Wilkinson, 544 U.S. 709, 714 (2005). RLUIPA provides that:

No government shall impose or implement a land use regulation in a manner that imposes a substantial burden on the religious exercise of a person, including a religious assembly or institution, unless the government demonstrates that imposition of the burden on that person, assembly, or institution--

- (A) is in furtherance of a compelling government interest; and
- (B) is the least restrictive means of furthering that compelling interest.

42 U.S.C.A. § 2000cc(a)(1).

To prevail on a RLUIPA claim, the plaintiff has the initial burden of demonstrating that the land use regulation “actually imposes a ‘substantial burden’ on religious exercise.” Civil Liberties for Urban Believers v. City of Chicago, 342 F.3d 752, 760 (7th Cir. 2003), cert. denied, 541 U.S. 1096 (2004). If the plaintiff makes such a showing, then the burden shifts to the local government to demonstrate that the challenged regulation “is in furtherance of a compelling governmental interest” and “is the least restrictive means of furthering that compelling governmental interest.” 42 U.S.C.A. § 2000cc(a)(1)(A)-(B). In determining what constitutes a “substantial burden,” the Eleventh Circuit has found that:

[A] “substantial burden” must place more than an inconvenience on religious exercise; a “substantial burden” is akin to significant pressure which directly coerces the religious adherent to conform his or her behavior accordingly. Thus, a substantial burden can result from pressure that tends to force adherents to forego religious precepts or from pressure that mandates religious conduct.

Midrash Sephardi, Inc. v. Town of Surfside, 366 F.3d 1214, 1227 (11th Cir.2004), cert. denied, 543 U.S. 1146 (2005). Nevertheless, RLUIPA “does not provide religious institutions with immunity from land use regulation, *nor does it relieve religious institutions from applying for variances, special permits or exceptions, hardship approval, or other relief provisions in land use regulations, where available without discrimination or unfair delay.*” House of Fire Christian Church v. Zoning Bd. Of Adjustment Of City Of Clifton, 379 N.J. Super. 526, 544 (App. Div. 2005) (quoting 146 Cong. Rec. S7774-01 at S7776 (July 27, 2000) (joint statement of Sens. Hatch and Kennedy) (emphasis added).

The Tribe has not filed the necessary applications for relief from the Township’s zoning requirements. The Tribe has represented that they intend to submit an application for a variance from the ordinance on the grounds of religious use. Moreover, they intend to submit a revised zoning application. However, this has yet to occur. As such, the Tribe has not, at least at this juncture, shown that they are entitled to relief under RLUIPA.

The Court concludes that the present record does not support a finding that the Township is faced with immediate and irreparable harm. As such, the temporary restraints are lifted and the Order to Show Cause is dismissed. However, the Court’s holding is a limited one—the Township is free to enforce its zoning laws in Municipal Court. Moreover, the Court does not reach any determination on the ultimate merits of the First Amendment issues raised by the Tribe.

V. Conclusion

For the aforementioned reasons, the temporary restraints are dissolved and the Order to Show Cause is dismissed.