

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	No. 15 C 8628
v.)	
)	Judge Kennelly
CITY OF DES PLAINES, ILLINOIS,)	
)	
Defendants.)	

**UNITED STATES’ MEMORANDUM IN SUPPORT
OF ITS MOTION TO CONSOLIDATE, STAY BRIEFING
IN THE CONSOLIDATED ACTION, AND SET DISCOVERY SCHEDULE**

Introduction

This is an action filed by the United States under the Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA), 42 U.S.C. §§ 2000cc–2000cc-5, that seeks injunctive relief against defendant City of Des Plaines. It arises out of Des Plaines denying a rezoning request submitted by the American Islamic Center (AIC) in 2013. AIC filed its own lawsuit against Des Plaines under RLUIPA that arose out of the same facts as the United States’ suit: *American Islamic Center v. City of Des Plaines, et al.*, 13-C-6594 (AIC Action).¹ Both actions assert common claims against Des Plaines for violations of RLUIPA, 42 U.S.C. §§ 2000cc-(a)(1), (b)(1), and (b)(2). As the two suits involve common fact and legal issues, the United States seeks consolidation of the matters for purposes of dispositive motions and trial. AIC does not object to consolidation. If the court is willing to consolidate, then the United States requests that it stay the pending summary judgment schedule set in the AIC Action until

¹ The United States’ action was assigned to the same judicial calendar as the AIC Action. Had the cases been assigned to different judges, the United States would have sought reassignment on relatedness grounds.

the United States completes limited and targeted discovery. Further, the United States seeks entry of an order imposing a compressed discovery timetable.

Background

AIC sought and was denied a request for rezoning from Des Plaines. The rezoning was to allow a property zoned for manufacturing to be used as a place of worship by AIC, a non-profit religious organization of Bosnian Muslims that practices a Sufi approach to Islam. Shortly after the rezoning application was denied, AIC filed suit under RLUIPA against Des Plaines. AIC Action, Dkt. 1. Discovery has been completed in that case. *See* Dkt. 63. Cross motions for summary judgment are due to be filed on October 12, 2015, and neither party has yet filed such a motion. Dkt. 79.

Meanwhile, the United States commenced an investigation on AIC's claim that the denial of the rezoning violated RLUIPA. Promptly after that investigation completed and suit was authorized—which occurred shortly after this court imposed deadlines for dispositive motions in the AIC Action—the United States reached out to Des Plaines to initiate settlement discussions. It became clear that settlement would not be reached in the short time between the initiation of settlement discussions and the date set for the filing of dispositive motions in the AIC Action. The United States believes that filing its case and seeking consolidation before dispositive motions were to be filed in the AIC Action would be less disruptive to the AIC Action than the alternative.

The United States filed this lawsuit on September 30, 2015. The following day, it requested that Des Plaines—through its counsel—waive service of summons and that it consent to the consolidation of the two lawsuits. Des Plaines has indicated that it will respond to those requests next week. AIC does not object to the consolidation of the two actions.

Argument

I. Consolidation Under Federal Rule 42(a) Is Appropriate.

Rule 42 of the Federal Rules of Civil Procedure allows a court to consolidate “actions involving a common question of law or fact that are pending before the court.” *United States for Use of Owens-Corning Fiberglas Corp. v. Brandt Const. Co.*, 826 F.2d 643, 647 (7th Cir. 1987). “Consolidation is permitted as a matter of convenience and economy in administration.” *Robbins v. Pepsi-Cola Met. Bottling Co.*, No. 84-C-170, 1985 WL 5130, at *2 (N.D. Ill. Dec. 26, 1985). In determining whether to consolidate, courts weigh the benefits of consolidation “against any inconvenience, delay or expense it may cause.” *Id.* “Actions involving the same parties are usually appropriate candidates for consolidation.” *Id.* at *3.

The circumstances of this case counsel in favor of consolidation for both dispositive motions and trial. This action and the AIC Action arise from the same set of facts—Des Plaines’ denial of AIC’s request for a rezoning in 2013—and will rely on the testimony of common witnesses and the presentation of common evidence. Both actions assert common legal theories and arise under common legal claims: that Des Plaines’ denial of the rezoning request violated RLUIPA by imposing a substantial burden on AIC’s religious exercise, treated AIC on less than equal terms with nonreligious assemblies or institutions, and discriminated against AIC on the basis of religion or religious denomination. *Compare* Dkt. 1 with AIC Action Dkt. 1. Given the common questions of law and fact that will be before the court, consolidating the two actions for trial and for the determination of triable issues will conserve substantial judicial time and effort, and will avoid unnecessary costs and inconvenience imposed on witnesses and parties.²

² While the United States’ action stems from the same facts as the AIC Action, and involves common witnesses, it is not duplicative. The United States has an interest in ensuring that its laws, including RLUIPA, are followed, which goes beyond the issue of Des Plaines’ denial of the AIC rezoning request. As such, the injunctive relief that it seeks by this action—the

As no dispositive orders have been entered, no dispositive motions filed, and no trial has been set, the United States submits that consolidation will not unduly disrupt the already-pending AIC Action. While the timing of commencing this action—which was driven by the thorough, independent, and objective pre-suit investigation the United States conducts before filing suits of this nature—is not ideal as discovery has closed in the AIC Action, it will be minimally disruptive because no dispositive motions have been filed.

Accordingly, if the court agrees to consolidate the actions, the United States further requests a stay of dispositive briefing until the United States completes discovery, as allowing dispositive briefing to go forward in the AIC Action would undermine the goal of consolidation: maximizing judicial efficiencies. *See Browning v. GCA Service Group*, No. 12-C-2258, 2014 WL 65798, at *3 (C.D. Ill. Jan. 8, 2014) (concluding that “it may be most efficient and expeditious to consolidate the cases prior to ruling on any motions for summary judgment”). Indeed allowing briefing to go forward in the AIC Action leaves the door open to the two actions generating conflicting results, and one “of the primary objectives of consolidation is to prevent separate actions from producing conflicting results.” *Bank of Montreal v. Eagle Associates*, 117 F.R.D. 530, 533 (S.D.N.Y. 1987); *Unified Messaging Solutions, LLC v. United Online, Inc.*, No. 13-C-00343, MDL No. 2371, 2013 WL 1874211, at *4 (N.D. Ill. May 3, 2013) (“Consolidation is proper where no undue prejudice exists as to any party and it will promote judicial efficiency and prevent inconsistent rulings”). Given the United States’ extensive pre-suit investigation, the United States should be able to complete discovery in short order, mitigating any delay, which would be the primary downside to consolidation in this case.

United States is not seeking damages—will vary in scope from that sought by AIC, as will the facts the United States will seek to discover to support its injunctive relief request. Nonetheless, given the overlapping fact and legal matters, consolidation is appropriate.

II. The Court Should Enter a Discovery Order to Allow the United States to Take Limited Additional Discovery Before It Files a Dispositive Motion.

The United States will only require limited, targeted written and oral discovery, and a short period of expert discovery, to prepare for dispositive motions and trial. Therefore, the United States asks this court for four months to complete all written and oral discovery, followed by two months in which to disclose expert opinions and complete depositions of expert witnesses.

Conclusion

For the foregoing reasons, the court should consolidate this action with the AIC Action, stay dispositive briefing until after the United States completes discovery, and impose a discovery schedule that grants the United States four months to complete written and oral discovery, followed by two months to complete expert discovery.

Respectfully submitted,

ZACHARY T. FARDON
United States Attorney
Northern District of Illinois

s/ Michael J. Kelly

MICHAEL J. KELLY

PATRICK W. JOHNSON

Assistant United States Attorneys
Northern District of Illinois
219 South Dearborn Street, 5th Floor
Chicago, Illinois 60604
Phone: (312) 353-4220/(312) 353-5327
michael.kelly@usdoj.gov
patrick.johnson2@usdoj.gov

LORETTA E. LYNCH
Attorney General

s/ Vanita Gupta

VANITA GUPTA

Principal Deputy Assistant Attorney General
Civil Rights Division

s/ Steven H. Rosenbaum

STEVEN H. ROSENBAUM

Chief

s/ Ryan G. Lee

TIMOTHY J. MORAN

Deputy Chief

ERIC W. TREENE

Special Counsel

RYAN G. LEE

Trial Attorney

Housing and Civil Enforcement Section

Civil Rights Division

U.S. Department of Justice

950 Pennsylvania Avenue, NW

Northwestern Building, 7th Floor

Washington, D.C. 20530

Phone: (202) 305-3109

ryan.lee@usdoj.gov