IN THE SUPERIOR COURT OF CHATHAM COUNTY

STATE OF GEORGIA

THE MAYOR AND ALDERMAN OF THE CITY OF SAVANNAH, Plaintiff, vs. ARNOLD M. BELZER and ARLENE BELZER, Defendants.	:	Civil Action No. SPCV17-01275-BA

ORDER ON MOTION FOR INTERLOCUTORY INJUNCTION

The above styled matter came before the Court on the Plaintiff's request for an interlocutory injunction to prevent the Defendants from operating their home as a short-term vacation rental during the pendency of the subject litigation. This Court held a hearing on the City's request on May 18, 2018. Having read and considered the pleadings of the parties, all argument and evidence of record, the proposed orders of the parties, and the applicable law, the Court finds as follows:

FINDINGS OF FACT

Pursuant to Article IX, Section II, Paragraph IV of the Georgia Constitution, "[t]he governing authority of each county and of each municipality may adopt plans and may exercise the power of zoning." The Georgia Legislature in 1985, enacted the Zoning Procedures Law ("ZPL") O.C.G.A. §36-66-1 *et seq.* Among other things, the ZPL sets forth minimum standards required for local municipalities to satisfy due process requirements. The City, in compliance

with the Georgia Constitution and the ZPL, enacted its Zoning Ordinance, which is codified at Part 8, Chapter 3 of the Code of Ordinances of the City of Savannah, Georgia ('Zoning Ordinance").

In January 2015, the Zoning Ordinance for the first time, defined the term "Short Term Vacation Rental" as [a]n accommodation for transient guests where in exchange for compensation, a dwelling is rented for lodging for a period of time not to exceed 30 consecutive days. Such use may or may not include an on-site manager. For the purpose of this definition, a residential dwelling shall include all housing types and shall not include group living or other lodging uses." Section 8-3002, Savannah Code of Ordinances.

"Bed and Breakfast Homestay" is defined as "a]n owner-occupied principal use dwelling where no more than one bedroom within the dwelling is rented to no more than two adult transient guests. The bedroom must contain a sleeping accommodation that includes but is not limited to a bed, sleeper sofa, sofa, futon or other accommodation intended for sleep, and the bedroom must comply with applicable building codes. If breakfast is served, it shall be the only meal provided and can be served only to guests." Id.

"If either a use or class of uses is not specifically indicated as being permitted in a district either as a matter of right or on the approval of the board of appeals, then such use or class of uses shall be prohibited in such district." Section 8-3024 Savannah Code of Ordinances.

Section 8-3025 of the Savannah Code of Ordinances sets forth a "use table," which delineates the districts within which specific land uses are permitted. Short term vacation rentals are a permitted use in Zoning Districts RIP, RIP-A, RIP-A1, RIP-B, RIP-B1, RIP-C, RIP-D, I-P and R-D. Section 8-3025, Use 14a, Savannah Code of Ordinances.

Short term Vacation Rentals are not a permitted use in Zoning Districts CA, CM, CR, R20, R10, R6, R6A, R6B, R6C, R4, RM, RMH, RMH-1 and A1. Id.

The Zoning Ordinance does not prohibit rentals of residential properties for longer than thirty (30) day periods.

In order to regulate Short Term Vacation Rentals in the City, the Short- Term Vacation Rental Code was enacted in January 2015 and is codified at Part 8, Chapter 11 of the Code of Ordinances of Savannah, Georgia ("Short-Term Vacation Rental Ordinance")

Pursuant to the Short-Term Vacation Rental Ordinance "[n]o person shall rent, lease or otherwise exchange for compensation all or any portion of a dwelling unit as short-term vacation rental as defined in section 8-10011, without first obtaining a business tax certificate from the revenue director and complying with the regulations contained in this section. No certificate issued under this chapter may be transferred or assigned or used by any person other than the one to whom it is issued, or any location other than the one for which it is issued." Section 8-11012, Savannah Code of Ordinances.

The requirements for the Application for Short Term Vacation Rental Certificate are set forth in Section 8-11013, Savannah Code of Ordinances.

"Short term vacation rental unit owners are subject to state sales tax, city taxes, including but not limited to the hotel/motel tax, and are liable for payment thereof as established by state law and the city code. The City may seek to enforce payment of all applicable taxes to the extent provided by law, including injunctive relief." Section 8-11018, Savannah Code of Ordinances.

On January 21, 2003, the Rabbi and Mrs. Belzer purchased the property commonly known as 34 Washington Ave. in Savannah, Georgia ("Belzer Residence"). Rabbi Belzer

testified that as a devout person of faith, he and his wife have a sincerely-held religious belief in the Jewish practice of hospitality. They consider the practice of hospitality to be a religious obligation found in Jewish scripture and tradition. As a consequence of their faith, Rabbi Belzer testified that over the last fifteen years, and continuing to this day, they have opened their home to guests from all over the world. Specifically, they accept guests in a one room space with a private bath. Since at least 2014, some of those guests have arrived by way of a listing posted to the Airbnb platform. Many of the guests who have been hosted by the Belzers during the past 15 years, whether paying or not paying, having stayed for less than 30 days.

Rabbi Belzer testified that he has not applied for a STVR certificate. He testified that he has not filed any appeals or a mandamus action seeking administrative or judicial review of any zoning challenge. He testified that he could operate a STVR and/or a Bed & Breakfast Homestay "four blocks" from his property without violating the Zoning Ordinance. He testified that the Zoning ordinance treats religious institutions and secular institutions identically within the R-6 zoning district.

In 2014 the City initiated an enforcement action against the Belzers in Recorder's court. The City brought an additional action in 2016 and a contempt action in 2017. Although Defendants argue that no written order was filed, a copy of a written order signed by Judge Tammy Stokes filed on November 29, 2017 was attached as an exhibit to the brief in support of the Plaintiff's request for injunctive relief.

CONCLUSIONS OF LAW

> An interlocutory injunction should not be granted unless the moving party shows that (1) there is a substantial threat that the moving party will suffer irreparable injury if the injunction is not granted; (2) the threatened injury to the moving party outweighs the threatened harm that the injunction may do to the party being enjoined; (3) there is a substantial likelihood that the moving party will prevail on the merits; and (4) granting the interlocutory injunction will not disserve the public interest. The first factor-substantial threat of irreparable injury if an interlocutory injunction is not entered - is the most important one, given that the main purpose of an interlocutory injunction is to preserve the status quo temporarily to allow the parties and the court time to try the case in an orderly manner. [citations omitted]. City of Waycross v. Pierce Cnty Bd. of Commissioners, 300 Ga. 109, 111, 793 S.E. 2d 389 (2016).

Because the test to issue an interlocutory injunction is a balancing test, it is not a requirement that all four factors be shown. Id.

I. City of Savannah Zoning Ordinance

The City's Zoning ordinance was enacted in compliance with the Georgia Constitution and the Zoning Procedures Law and defines Short Term Vacation Rental as follows:

> [a]n accommodation for transient guests where, in exchange for compensation, a residential dwelling is rented for lodging for a period of time not to exceed 30 consecutive days. Such use may or may not include an on-site manager. For the purposes of this definition, a residential dwelling shall include all housing types and shall not include group living or other lodging uses.

Lori Odom testified that in prior Recorder's Court hearings, Defendants had sometimes classified the property as a "Bed and Breakfast Homestay." The Zoning ordinance defines "Bed and Breakfast Homestay" as

> [a]n owner-occupied principal use dwelling where no more than one bedroom within the dwelling is rented to no more than two adult transient guests. The bedroom must contain a sleeping accommodation that includes but is not limited to a bed, sleeper sofa, sofa, futon, or other accommodation intended for sleep, and the bedroom must comply with applicable building code(s). If breakfast is served, it shall be the only meal provided and can be served only to guests.

Pursuant to the Zoning Ordinance, "[i]f either a use or class of uses is not specifically indicated as being permitted in a district, either as a matter of right or on the approval of the board of appeals, then such use or class of uses shall be prohibited in such district." Both Bed and Breakfast Homestay and Short-Term Vacation Rental are permitted uses in various zoning districts within the City of Savannah; however, neither are a permitted use within the R-6 zoning district.

Defendants testified that they did not apply for or receive a variance or conditional use permit to operate. Defendant Arnold Belzer testified that he attempted to file an application but that his application was denied. No other evidence was submitted evidencing the denial of his application for a variance. If in fact Defendant was denied the ability to submit an application, Defendants could have appealed that denial or sought a writ of mandamus against the Metropolitan Planning Commission. No evidence of an appeal or the filing of a writ of mandamus was submitted as evidence.

In addition, in January 2015, the City enacted the Short-Term Vacation Rental code which provides:

> [n]o person shall rent, lease or otherwise exchange for compensation all or any portion of a dwelling unit as short-term vacation rental, as defined in section 8-10011, without first obtaining a business tax certificate frm the revenue director and complying with the regulations contained in this section. No certificate issued under this chapter may be transferred or assigned or used by any person other than the one to whom it is issued, or at any location other than the one for which it is issued.

Owners and operators of Short-Term Vacation Rentals in the City of Savannah are subject to payment of certain taxes.

Short-term vacation rental unit owners are subject to state sales tax, city taxes, including

but not limited to the hotel/motel tax, and are liable for payment thereof as established by state law and the city code. The city may seek to enforce payment of all applicable taxes to the extent provided by law, including injunctive relief.

Defendant Arnold Belzer testified that he had not applied for a Short Term Vacation Rental certificate nor had he paid any taxes on his earnings from the vacation rental. Defendants admitted that they are in violation of zoning ordinance; however, they argue that they are immune from the zoning ordinance because of the ministry of hospitality and their firmly held religious belief. So the question next becomes whether the City has acted in violation of the Religious Use and Institutionalized Persons Act of 2000.

II. Religious Land Use and Institutionalized Persons Act of 2000

The Religious Land Use and Institutionalized Persons Act of 2000 (hereinafter "RLUIPA") provides in pertinent part:

"[n]o 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 governmental interest; and

(B) is the least restrictive means of furthering that compelling governmental interest.

42 U.S.C. §2000 cc (a).

For the purpose of this litigation, the City has presumed that the Defendants' acts are a religious exercise. So the question then becomes whether the zoning regulations impose a "substantial burden" on the Defendants' use of real property for purposes of religious exercise.

"Substantial burden" has not been defined within the text of RLUIPA. However, the

Eleventh Circuit has defined it in the case of Midrash Sephardi, Inc. v. Town of Surfside, 366 F.3d 1214 (11th Cir.) after having reviewed United States case law as well as other circuits analysis in defining "substantial burden" in the context of RLUIPA.

> [w]e agree that "substantial burden" requires something more than an incidental effect on religious exercise.
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> The combined import of these articulations leads us to the conclusion 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. Id. at 1227.

In Midrash Sephardi, the town was requiring the two Jewish congregations to relocate. The congregations claimed the zoning requirement was a substantial burden on their religious exercise because it (1) would require its Orthodox congregants to walk farther on the Sabbath and (2) the decrease in attendance caused by the relocation would lead to the congregations ceasing operations. The Court noted that it is not a substantial burden under RLUIPA where the difficulty in finding suitable alternatives are faced by all land users in the marketplace. With respect to the congregations' arguments that it would require its congregants to walk farther, the Eleventh Circuit noted that there was a readily available alternative "of applying for a permit to operate only a few blocks from their current location" Id. The Eleventh Circuit defined "substantial burden" as a regulation that "completely prevents the individual from engaging in religiously mandated activity. . . ."

Here, Defendant Arnold Belzer testified that he has alternatives to his current operations. He testified that if he moved four blocks he could operate the commercial enterprise that he has been operating without violating the zoning ordinance. Additionally, he could remove his

advertisements from commercial websites like Airbnb.com, cease his for-profit commercial activities and offer to allow travelers to stay free of charge. The Court finds that there are readily available alternatives. Therefore, the Court finds that the zoning regulation is not a substantial burden.

III. Interlocutory Injunction

The City seeks an interlocutory injunction which prevents the Defendants from listing and renting properties as Short-Term Vacation Rentals during the pendency of the action.

> An interlocutory injunction should not be granted unless the moving party shows that:(1) there is a substantial threat that the moving party will suffer irreparable injury if the injunction is not granted; (2) the threatened injury to the moving party outweighs the threatened harm that the injunction may do to the party being enjoined; (3) there is a substantial likelihood that the moving party will prevail on the merits of her claims at trial; and (4) granting the interlocutory injunction will not disserve the public interest. City of Waycross v. Pierce Cnty Bd. of Commissioners, 300 Ga. 109, 111, 793 S.E. 389 (2016).

This is a balancing test and the moving party is not required to prove all four factors in order to prevail on its request for an interlocutory injunction. Id.

a. Irreparable Injury to the Moving Party

The City argues that it will suffer irreparable harm if the injunction is not granted because the Defendants will continue to operate their Short Term Vacation Rental in spite of the City's zoning ordinance which will cause injury to the residents located in this area. The Defendants argue that neither zoning inspector Lorie Odom or the Defendants' neighbor Elizabeth McCullough offered any evidence of an irreparable injury if the Defendants were found to be exempt from enforcement of the Short-Term Vacation Rental ordinance.

The primary purpose of the ordinance is to regulate the intrusion of transient commercial

tourism into staid residential neighborhoods by restricting short term rentals. Ms. Mc Cullough did testify regarding the various traffic that comes and goes next to her residence. She additionally testified that there is a legitimate concern in the neighborhood that other residents with a free bedroom will get "internet ordained" and rent their available rooms if the Defendant is allowed to operate his Short Term Vacation rental in the R-6 zoning district. The City first initiated an action against the Defendants in 2014 in Recorders Court. This violation has existed for quite some time. Given the length of time this issue has existed, the Court is not persuaded by the City's argument that it will suffer irreparable injury if the Defendant was allowed to continue[1].

b. Threatened injury to the Moving Party Outweighs that of Defendants

Defendants argue that imposition of the zoning ordinance would amount to a "substantial burden" on their religious exercise. This Court has already determined that the Defendants have not shown that the zoning ordinance would amount to a "substantial burden" as that term has been defined in various cases interpreting RLUIPA.

The City argues that Defendant Arnold Belzer testified that he had several alternatives, which included moving four blocks to a zoning district where he could operate a short term vacation rental or removing his advertisements and offering to allow visitors to stay free of charge. The Defendant may also rent his room out for longer than 30 days. The Court finds that this factor weighs in favor of the City since the Defendants have failed to show a threatened injury.

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[1]One bedroom at the Defendants' residence is substantially different than 26 properties operated by Defendants Ardsley Park Properties LLC and Mark Dewitt.

c. Substantial likelihood that Moving Party Will Prevail at Trial

In January 2015 the zoning ordinance was passed which defined short term vacation rentals and provided that they were permitted in certain zoning districts and were not permitted in others. Specifically, the ordinance provided that they were not permitted in the R6 zoning districts. Defendants have admitted that they are in violation of the Zoning ordinance. Their sole argument is that the City has violated RLUIPA and therefore, they are entitled to rent their room out as a Short Term Vacation Rental. However, this Court has found above that the Defendants have failed to show that there is a substantial burden on their free exercise of religion. Since the Defendants have admitted that they are in violation of the zoning ordinance in that they are operating a Short Term Vacation Rental in the R-6 zoning district, there is a substantial likelihood that the City will prevail at trial. This factor weighs in favor of the City.

d. Granting Interlocutory Injunction Will Not Disserve the Public Interest

The City argues that the granting of the interlocutory injunction would not disserve the public interest and instead would benefit the public interest. The Defendants argue that the granting of the interlocutory injunction would disserve the public interest because of the public's interest in religious liberty.

This Court has previously found above that the zoning ordinance is not a substantial burden on the Defendants religious freedom. The zoning ordinance was established to protect the public and specifically with regard to the R-6 zoning district, they were established to protect the integrity of the residential areas. The zoning ordinances were additionally aimed at restricting commercialism in these areas, which increases the amount of foot traffic and destroys the peace and quiet of the neighborhood. The Court finds that granting the interlocutory injunction would

not disserve the public interest but instead would be to the benefit of the public interest.

Having balanced the equities and having considered the four factors required for the grant of an interlocutory injunction, the Court finds that an interlocutory injunction is warranted.

WHEREFORE, IT IS HEREBY ORDERED ADJUDGED AND DECREED that the City's request for interlocutory relief is GRANTED as follows:

a) Defendants are prohibited from operating Short-Term Vacations Rentals and/or Bed and Breakfast Homestay at 34 Washington Avenue, Savannah, Georgia 31405 during the pendency of this action, until the entry of an Order of this Court terminating this Interlocutory Injunction;

b) Defendants are prohibited from listing and renting Property located at 34 Washington Avenue, Savannah, Georgia 31405 on Airbnb.com, VRBO.com, Craiglist.com, or any other website or other public listing for Short-Term Vacation Rentals during the pendency of this action, until the entry of an Order of this Court terminating this Interlocutory Injunction;

c) Defendants are required to comply with the Short-Term Vacation Rental Ordinance by, among other requirements of said Ordinance, applying for a Short-Term Vacation Rental Ordinance Certificate pursuant to Section 8-11013, Savannah Code of Ordinances; and

d) Defendants are required to comply with the Short-Term Vacation Rental Ordinance by, among other requirements of said Ordinance, paying state sales tax and city taxes, including but not limited to the hotel/motel tax pursuant to Section 8-11018, Savannah Code of Ordinances.

SO ORDERED this 3 day of July, 2018.

JAMES F. BASS, JR., Judge
Superior Court of Chatham County
State of Georgia

cc: All parties