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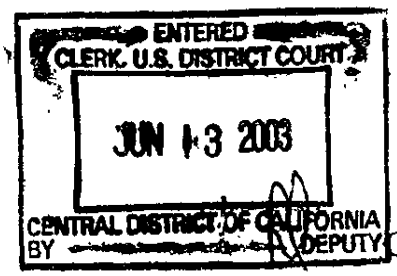

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES -- GENERAL

Case No. SACV 03-566-JVS(CWx) Dated and Filed: June 12, 2003

Title: VENTURA CHRISTIAN, et al. v. CITY OF SAN BUENAVENTURA, et al.

PRESENT: HONORABLE JAMES V. SELNA, UNITED STATES DISTRICT JUDGE

Karla J. Tunis Courtroom Deputy	Not Present Court Reporter
ATTORNEYS PRESENT FOR PLAINTIFFS:	ATTORNEYS PRESENT FOR DEFENDANTS:
Not Present	Not Present

PROCEEDINGS:(IN CHAMBERS) DEFENDANT'S MOTION FOR SUMMARY JUDGMENT (Filed 3-31-03)

THIS CONSTITUTES NOTICE OF ENTRY AS REQUIRED BY FRCP, RULE 77(d).

Plaintiffs Ventura County Christian High School ("Ventura Christian"), Dan Misenheimer, William Bays, Bret Bays, and Lisa Darby (collectively "Plaintiffs") claim that on account of plaintiffs' religion, the City of San Buenaventura ("City"), the City of San Buenaventura Planning Division, and the City of San Buenaventura City Council (collectively "Defendants") have wrongfully interfered with the school property currently leased to Ventura Christian. The complaint asserts claims under the Religious Land Use and Institutionalized Persons Act ("RLUIPA"), the Equal Protection Clause of the Fourteenth Amendment, Due Process Clause, Free Exercise Clause, and California Constitution. Defendants move for summary judgment on the grounds that plaintiffs' claims are not ripe.[1] Defendants' motion is granted.

I. Defendant's Ripeness Challenges

Summary judgement is properly granted when a party fails to make a showing sufficient to establish the existence of an genuinely disputed issue of material fact. It is the burden of the non-moving party to go beyond the pleadings, admissions, declarations, and other evidence on file and designate specific facts showing a genuine disputed issue of material fact. Celotex v. Catrett, 477 U.S. 317, 323-34 (1986).

[1]Defendants also move for summary judgment on the First Amendment claims as a matter of law, and the Equal Protection claims on the grounds that plaintiffs have not satisfied their burden to produce evidence of unequal application of the Conditional Use Permit requirement ("CUP"). In view of the Court's ruling on ripeness, these issues need not be addressed.

Defendants challenge the ripeness of Plaintiffs' claims. An inquiry into the ripeness of a claim must address two factors: (1) the fitness of the issues for judicial decision and (2) the hardship to the parties of withholding court consideration. Plaintiffs first argue that the ripeness issue was determined at the preliminary injunction stage of this case. Plaintiffs also contend that both factors support the ripeness of their claim.[2]

A. Plaintiffs Claim that a Binding Determination on Ripeness Was Made at the Preliminary Injunction Stage

First, Plaintiffs argue that because the ripeness argument was heard and disregarded at the preliminary injunction stage, it is "law of the case" that the claim is ripe. Plaintiffs' Memo of P & A in Opposition to Defendant's Motion for Summary Judgment ("Opposition"), at 4. This argument is without merit. Challenges to ripeness are equivalent to challenges for lack of subject matter jurisdiction. St. Clair v. City of Chico, 880 F. 2d 199, 201 (9th Cir. 1989). The Federal Rules of Civil Procedure expressly state the defense of lack of subject matter jurisdiction is never waived. FED. R. CIV. P. 12 (h)(3).

B. The Fitness of Issues for Judicial Decision

A constitutional challenge to a land use regulation is not ripe for judicial decision until the administrative body has issued a final decision. Kawaoka v. City of Arroyo Grande, 17 F.3d 1227, 1231-32 (9th Cir. 1994); Kinzli v. City of Santa Cruz, 818 F. 2d 1449, 1453-56 (9th Cir. 1987). The Ninth Circuit has articulated that a claim becomes ripe in this context only when there is a "final, definitive position regarding how it will apply the regulations at issue to the particular land in question." Kawaoka, 17 F.3d at 1232 (citing MacDonald, Sommer & Frates v. Yolo County, 477 U.S. 340, 351 (1986)).

The City argues that because Ventura Christian has not applied for a conditional use permit, and therefore not received a final administrative decision, Plaintiffs' claims are not ripe for adjudication. Defendants' Motion for Summary Judgment ("Motion"), at 13; Mackay Decl., at ¶¶ 4-15. The motion asserts that the requirement of final administrative action requires that all of Plaintiffs' equal protection and due process claims be dismissed for lack of ripeness. Motion, at 13. Additionally, the City claims that Plaintiffs' unequal treatment claim under the RLUIPA, as well as the free exercise claim, are both subject to this final decision requirement. Id. at 14.

Ventura Christian was ordered to cease and desist installation of the modular units on January 28, 2002. See 233 F. Supp. 2d at 1241. Plaintiffs claim that "the decision to order Ventura Christian to stop from construction upon, and refrain from using, the Washington School Property, when it has allowed such activity by other private entities, is a final administrative decision that can be challenged in court." Opposition, at 5.

A final decision for the purposes of ripeness occurs when the regulating body has given its ultimate, "definitive position regarding how it will apply the regulations at issue to the particular land in question." Kawaoka, 17 F.3d at 1232. Plaintiffs incorrectly assume that the requirement is satisfied when the regulating

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[2]Plaintiffs also assert that City's ripeness challenge lacks merit because the Plaintiffs are "contending that Ventura's Municipal Code is facially invalid and thus ripeness standards do not apply." Plaintiff's Supplemental Memorandum of P & A in Opposition to Defendant's Motion for Summary Judgment ("Supplemental"), at 2. Plaintiffs state that this motion will be filed on or about Friday, June 6, 2003.

body has determined that the regulations at issue apply, rather than how they will be applied.[3]

Because binding Ninth Circuit precedent requires that plaintiffs' claims not be considered until the plaintiffs have received a final decision under the challenged regulations, Plaintiffs' equal protection and due process claims should be dismissed as not yet ripe. Kawaoka, 17 F.3d 1227, 1231-32; Kinzli, 818 F.2d 1449, 1453-56. Plaintiffs' "unequal treatment" claims under the RLUIPA and its free exercise claim are also subject to the "final decision" requirement. Oblates of St. Joseph, No. CIV. S-01-2349 LKK/DAD, at 12-17. This claim is bolstered by the Ninth Circuit's analysis of "unequal treatment" claims under the RLUIPA as the functional equivalent of an equal protection claim. Motion, at 14; 233 F. Supp. 2d at 1246-47. Free exercise claims depend on equal protection case law as well. Church of Lukumi Babalu Aye v. City of Hialeah, 508 U.S. 520, 540 (1993) (holding that equal protection case law will be used in analysis of free exercise claims). The equal protection, due process, free exercise and RLUIPA claims each require a final decision to be made before a claim is litigated. These claims must be dismissed as unripe.[4]

C. Hardship to the Parties of Withholding Court Consideration

Although the lack of final decision from the government agency is likely a claim not ripe for adjudication, courts consider the hardship to the parties of withholding adjudication. Abbott Laboratories v. Gardner, 387 U.S. 136, 149 (1967).

The hardships claimed by Plaintiffs are essentially identical to those argued at the preliminary injunction stage.[5] 233 F. Supp. at 1252-54. Plaintiffs claims that it is on "the verge of extinction" because it must pay rent at its current location and also continue to pay on the three year contract for the modular units. Opposition, at 7. Plaintiffs also point to the dwindling enrollment and inability to recruit new students without a proper campus. Id. The school claims these rent obligations will force it into bankruptcy by December 2002. Mason Decl., at ¶ 10. This hardship was not considered substantial enough at the preliminary injunction stage when compared to the public interest and is not sufficient to meet the ripeness requirement.

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[3]Plaintiffs cite two Connecticut district court cases for authority on the proposition that "RLUIPA requires only that the 'final decision' made by the governmental agency be to implement or impose a land use regulation against an individual or entity." Murphy v. Zoning Comm'n of the Town of New Milford, 148 F. Supp. 2d 173, 183 (D. Conn. 2001) (Murphy I). The court in Murphy I held that a cease and desist order may be sufficient to constitute a final decision for ripeness purposes. Defendants distinguish this case on the grounds that the Murphy I RLUIPA claim was a "substantial burden" claim as opposed to an "unequal treatment" claim such as the claim before the court. Defendants also argue that Murphy I is not relevant because plaintiffs in that case were individuals, not religious institutions as in the dispute at bar. Additionally, it should be noted that Murphy I's analysis took place in the context of plaintiff's motion for a preliminary injunction. Defendants' Reply to Plaintiff's Opposition to Defendants' Motion, at 10.

[4]To the extent that the California Constitutional equal protection and due process cases also impose a final decision requirement, these claims must be deemed unripe as well. See Long Beach Equities v. County of Ventura, 231 Cal. App. 3d 1016, 1028; 1032; 1040-41 (1991).

[5]The Court found that the public interest in ensuring compliance with the California Environmental Quality Act as well as the fact that Ventura "self-inflicted" much of the hardships, persuasive in determining that the public interest outweighed the hardship imposed on Ventura Christian by not granting the injunction. 233 F. Supp. at 1352-54.

D. Plaintiffs' "Supplemental" Brief

Plaintiffs' belated argument that their challenges are "facial" rather than to the application of the City's ordinances fails. Their Complaint is not so framed.[6] Moreover, Plaintiffs have no right to ignore the Local Rules concerning the orderly briefing of motions. Local Rules 7-9, 7-12.

Plaintiffs claims are dismissed as not ripe.

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[6]Ventura Christian argues that plaintiffs "due process claims can be characterized as a facial challenge, as they are not challenging the application, but the existence of the process as applied to them." Opposition, at 10. Plaintiffs request for relief seeks "a declaration that the application" of the City's zoning ordinances against the Plaintiffs are void. Prayer, ¶ a. Plaintiffs also seek to enjoin defendants from "applying the laws of the City of Ventura and the State of California." Prayer, ¶ b. Ventura Christian contends that "the central factual dispute that exists in this case relates to the question of whether Ventura Christian is 'similarly situated' to the private day-care entities with which if compares itself." Opposition, at 1. Plaintiffs necessarily claim that the application of the process to Ventura Christian, relative to the non-application for non-religious private educational entities, is the basis for their claim. This relative comparison to similarly situated entities is the hallmark of an "as applied" challenge. Plaintiffs come closest to making a facial challenge in Count VII and Count VIII of the complaint. Complaint, at ¶ 58-62. Plaintiffs make mention of the "vague and indefinite" standards in the City's General Ordinance Code, but when one gives effect to the incorporated paragraphs, its clear that plaintiffs ground their due process claims in the Defendants' application of those standards to Plaintiffs. See, e.g., Complaint, Prayers, ¶ ¶ a, b. Plaintiffs have not plead a facial challenge to the General Ordinance Code.