

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

TENTATIVE CIVIL MINUTES - GENERAL

Case No. CV 10-1587 CAS (Ex) Date November 15, 2010

Title CONGREGATION ETZ CHAIM; ET AL. v. CITY OF LOS ANGELES

Present: The Honorable CHRISTINA A. SNYDER

CATHERINE JEANG

N/A

N/A

Deputy Clerk

Court Reporter / Recorder

Tape No.

Attorneys Present for Plaintiffs:

Attorneys Present for Defendants:

N/A

N/A

Proceedings: DEFENDANT'S MOTION FOR JUDGMENT ON THE
PLEADINGS (filed 10/18/10)

I. INTRODUCTION & BACKGROUND

This action arises out of a decade-old dispute between Congregation Etz Chaim ("the Congregation") and its neighborhood home-owners in the Hancock Park area of the City of Los Angeles. It has spawned numerous administrative, state, and federal court proceedings directed to the question of whether members of the Congregation may conduct religious services at a house located at 303 South Highland Avenue (the "Highland property") in Los Angeles, California (the "City"). The facts and procedural history of the dispute are known to the parties and summarized in this Court's May 5, 2009 order dismissing without prejudice the related matter of Congregation Etz Chaim, et al. v. City of Los Angeles, No. CV 97-5042 CAS (Ex) ("Congregation I"), on the ground that the Congregation's claim under the Religious Land Use and Institutionalized Persons Act of 2000, 42 U.S.C. §§ 2000cc et seq. ("RLUIPA"), was not prudentially ripe for judicial decision. Specifically, the Court dismissed the related action, "so as to permit the Congregation to refile its RLUIPA claim if the City [denied] the Congregation's second [conditional use permit ("CUP")] application, or upon a more definite showing of hardship to the Congregation due to enforcement of the denial of the first CUP application." May 5, 2009 Order at 16.

On October 9, 2009, the Zoning Administrator ("ZA"), on behalf of the City, issued its decision denying the Congregation's second CUP application. The Central Area Planning Commission ("CAPC") denied the Congregation's appeal from this decision on February 24, 2010. Thereafter, on March 3, 2010, plaintiffs Congregation Etz Chaim, including the individual members thereof, and Congregation Etz Chaim of Hancock Park, a California non-profit corporation, filed the instant suit against the City

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alleging that the City's denial of their second CUP application violates RLUIPA. The Congregation seeks a declaration that the City's application of Municipal Code § 12.24(V)(9), which requires houses of worship to obtain a CUP, is invalid because it violates RLUIPA. Further, the Congregation requests an injunction prohibiting the City from enforcing the zoning ordinance against it and setting aside the City's denial of the second CUP application as null and void under RLUIPA; and requests that damages be awarded. Compl. ¶ 14. Further, the Congregation alleges that the action is ripe for judicial review, pursuant to this Court's May 5, 2009 order, given that the City's administrative appeal process is final. *Id.* ¶ 13.

On April 26, 2010, the Court granted defendants's motion to stay the instant action pending resolution of the state judicial review process of the administrative proceeding pursuant to the Pullman abstention doctrine. Under Cal. Civ. Proc. Code § 1094.5 *et seq.*, the Congregation had until May 26, 2010 to file a Petition for Writ of Mandate seeking judicial review of the City's administrative action in state court. Plaintiffs did not file such a petition. Upon receipt of the parties' status reports to this effect, the Court lifted the stay. On October 18, 2010, defendant filed a motion for judgment on the pleadings. On October 25, 2010, plaintiff filed an opposition to plaintiff's motion. On November 1, 2010, defendant filed a reply in support of its motion. On November 1, 2010, Objector United States of America filed a statement of interest in opposition to defendant's motion. Defendant's motion for judgment on the pleadings is currently before the Court.

II. LEGAL STANDARD

A motion for judgment on the pleadings brought pursuant to Fed. R. Civ. P. 12(c) provides a means of disposing of cases when all material allegations of fact are admitted in the pleadings and only questions of law remain. See McGann v. Ernst & Young, 102 F.3d 390, 392 (9th Cir. 1996). In considering a Rule 12(c) motion, the district court must view the facts presented in the pleadings and the inferences to be drawn from them in the light most favorable to the nonmoving party. NL Indus. v. Kaplan, 792 F.2d 896, 898 (9th Cir. 1986); In re Century 21-Re/Max Real Estate Adver. Claims Litig., 882 F. Supp. 915, 921 (C.D. Cal. 1994). For purposes of the motion, the moving party concedes the accuracy of the factual allegations of the complaint, but does not admit other assertions that constitute conclusions of law or matters that would not be admissible in evidence at trial. 5C Charles Alan Wright, Arthur R. Miller & Edward H. Cooper, FEDERAL PRACTICE AND PROCEDURE § 1368 (3d ed. 2004).

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III. DISCUSSION

The City argues that it is entitled to judgment on the pleadings because the issues and claims of the Congregation have been determined by state administrative proceedings, the factual and legal findings of which are entitled to preclusive effect. The City cites Miller v. County of Santa Cruz, 29 F. 3d 1030 (9th Cir. 1994) to support its argument that unreviewed state administrative decisions may be entitled to preclusive effect in a subsequent action in federal court. Mot. at 11-12. In order to be entitled to preclusive effect under Miller, the City argues, (1) the state proceedings must “satisf[y] the requirements of fairness outlined in United States v. Utah Construction & Mining Co., 384 U.S. 394 (1966)”; and (2) the claim must “encompass[] the same primary right that was at stake in the [state administrative] proceeding.” Mot. at 12-13, citing Miller, 29 F. 3d at 1032-33, 1034. Where these two conditions are met, preclusive effect is proper under collateral estoppel and res judicata grounds. Mot. at 13, citing Miller, 29 F. 3d at 1034. The City contends that is the case here.

The City argues that the claims and issues in this action encompass the same primary right that was at stake in the administrative proceedings. Mot. at 12. “In this matter, the Congregation seeks declaratory and injunctive relief and damages, alleging in two causes of action that the City’s denial of their CUP application and zone variance violates various provisions RLUIPA. These are exactly the same claims and issues the Congregation presented to the ZA and the CAPC. . . . Therefore, the issue of whether the City’s denial of the Congregation’s CUP application violates various provisions of RLUIPA has been determined in the administrative proceedings.” Id. at 13-14.

The City further argues that the administrative findings are final and entitled to preclusive effect because the Congregation failed to seek judicial review by way of administrative mandamus under Cal. Code Civ. Proc. § 1094.5. Id. at 14-17, citing Briggs v. City of Rolling Hills Estates, 40 Cal. App. 4th 637 (1995); Murray v. Alaska Airlines, Inc., 50 Cal. 4th 860 (2010).

Moreover, the City argues, the administrative proceedings met the Utah Construction fairness standard, which requires “(1) that the administrative agency act in a judicial capacity, (2) that the agency resolve disputed issues of fact properly before it, and (3) that the parties have an adequate opportunity to litigate” before the decision of an administrative agency is given preclusive effect. Mot. at 17, citing Miller, 39 F. 3d at 1033.

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First, the City argues that the agency acted in a judicial capacity, as evidenced by the procedures established by L.A.M.C. 12.24 and followed in the instant case. Mot. at 17-18. This procedure requires a CUP applicant to file an application, which “has to be approved ‘by the Zoning Administrator as the initial decision-maker or the Area Planning Commission as the appellate body.’ L.A.M.C. § 12.24 W.9. The Plan provides that ‘upon receipt of a complete application, the initial decision-maker shall set the matter for public hearing at which evidence shall be taken and may conduct the hearing itself or may designate a hearing officer to conduct the hearing.’ L.A.M.C. § 12.24D. The Plan further provides for publication and written notice to ‘the applicant, the owner or owners of the property involved and to the owners of all property within and outside of the City that is within 500 feet of the exterior boundaries of the property involved.’ L.A.M.C. § 12.24 D.1.2. Finally, the Plan provides for an appellate procedure during which noticed public hearings are also conducted. L.A.M.C. § 12.24 I.” *Id.* at 18. The City goes on to cite several cases in which Courts have concluded that this type of administrative proceeding is “sufficiently judicial in character” to meet the requirement set forth in Utah Construction. *Id.* at 19.

The City also argues that the administrative agency resolved disputed issues of fact properly before it. In support of this argument, the City contends that “[t]he ZA’s report is comprehensive, tracing the long history of the dispute involving the Congregation and its neighbors and the previous administrative proceedings spanning about fifteen years.” *Id.* at 19. The City points specifically to findings made by the ZA that a denial of the CUP would not constitute a substantial burden under RLUIPA, because the site is located in proximity to commercially zoned land “wherein the subject use could be located,” and therefore the denial would require only a “change in walk pattern.” *Id.* at 19 citing the Administrative Record at 771-772.

Finally, the City argues that the Congregation had an adequate opportunity to litigate its claims. Mot. at 20. “First, the Congregation was represented at all stages of the proceedings by a capable attorney in Fred Gaines. Next, starting with the application process, the Congregation submitted, almost literally, tons of documents, including legal briefs, support letters, photographs, maps, and other evidence.” *Id.* The Congregation also “presented evidence, including testimonies from its many supporters” at both the hearing before the ZA and in its appeal before the CAPC. *Id.* Moreover, while the Congregation did not appeal the administrative decision to the state court, it had the right to do so, and “it is the opportunity to litigate that is important in these cases, not whether the litigant availed himself or herself of the opportunity.” *Id.* at 21, citing Murray, 50 Cal. 4th at 869. The City notes further that the “Murray court looked to its

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decision in Johnson v. City of Loma Linda, [24 Cal. 4th 61 (2000)] where the court held that ‘unless a party to ‘a quasi-judicial administrative agency proceeding’ exhausts available judicial remedies to challenge the adverse findings made in that proceeding, those findings may be binding in later civil actions.’” Mot. at 21, citing Murray, 50 Cal. 4th at 876. The City argues that the reasoning of Johnson and Murray apply with equal force in the instant action and therefore that the Congregation’s entire action should be dismissed with prejudice because the “factual findings and legal conclusions of the City’s administrative decision with regard to the Congregation’s application for a CUP and zoning variance are final and they are entitled to claim and issue preclusive effects in this action.” Id. at 23.

The Congregation, in opposition, argues that it is improper to grant defendant’s motion because the administrative decision should not be given preclusive effect in this action¹.

First, the Congregation argues that the relevant administrative decision is not entitled to preclusive effect because the underlying administrative proceedings do not meet the Utah Construction fairness requirements. Opp. at 14. “The thrust of the Supreme Court’s fairness factors is to ensure that the ‘administrative proceeding was

¹The United States of America submits a statement of interest in opposition to defendant’s motion that echoes the arguments made by plaintiff. It summarizes its arguments as follows: “the United States asserts that Plaintiff’s RLUIPA claims should not be precluded in this court because: (1) the text of RLUIPA and the statute’s purpose and legislative history make clear that Congress intended there to be a strong presumption against preclusion of Section 2 RLUIPA claims in federal court; (2) RLUIPA was designed to address discriminatory, arbitrary, and unduly burdensome actions by local governments, including actions by local zoning boards and similar bodies, so it would eviscerate the statute to allow those zoning boards and similar bodies, as a general matter, to bar recourse by asserting preclusion; (3) the City’s administrative proceedings were not sufficiently judicial in character to satisfy the fairness standards required for preclusion to apply; (4) the issue litigated in the City’s administrative proceedings and in the instant federal action are necessarily distinct and do not satisfy the ‘identical issue’ requirement of collateral estoppel; and (5) the City’s administrative proceedings do not constitute a full and fair adjudication of Plaintiff’s RLUIPA claims as required by RLUIPA’s Full Faith and Credit provision.” United States of America’s Statement of Interest at 2-3.

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conducted with sufficient safeguards ‘to be equated with a state court judgment.’” *Id.* at 14, citing *Miller*, 39 F. 3d at 1033. “Every case that has applied claim preclusion pursuant to *Utah Construction* involved formal administrative proceedings which provide due process, an impartial decision-maker and the constitutional right to call and cross-examine witnesses.” *Opp.* at 15. “No such rights attached to the City’s informal CUP proceedings, and nothing in the LAMC contemplates anything remotely close to such rights of due process and confrontation.” *Id.* at 16-17.

Furthermore, the Congregation argues, the decision should not be given preclusive effect because “the City’s review is governed exclusively by the four corners of LAMC §12.24, which contains no exception to the exclusive set of mandatory findings even where a denial would violate federal law.” *Id.* at 18. In support of this argument, the Congregation cites several sections of the administrative record in which the CAPC suggested that it “lacked the power to consider or remedy the discriminatory effects of any denial and it viewed the decision before it strictly as a land use issue.”² *Id.* Additionally, the factual findings should not be given preclusive effect because the burdens of proof and persuasion were different in the administrative proceedings than they would be in this Court, citing *Dias v. Elique*, 436 F. 3d 1125, 1129 (9th Cir. 2006). *Id.* “Here, the City’s purely discretionary ‘findings’ were not subject to any standard of proof, and the City was not required to make any affirmative showing whatsoever. In contrast, under RLUIPA, strict scrutiny applies to substantially burdensome permit denials (42 U.S.C. § 2000-cc(a)) and the City bears the burden of persuasion to prove that its substantially burdensome land use decisions are in furtherance of a compelling governmental interest and by the least restrictive means.” *Id.* at 18-19. In relation to this assertion, the Congregation contends that “the ZA used the old balancing test (which RLUIPA expressly dismantled) by focusing on allegedly available alternative locations and refusing to consider, as RLUIPA requires, whether the right to religious exercise at 303 S. Highland was substantially burdened by the City’s denial of two CUPS. . . . Further, the ZA could not have determined that the City established a compelling governmental interest because the City bears the burden of proof on that element and the City put on no proof whatsoever.” *Id.* at 19 n. 3.

Moreover, the Congregation argues, “it can hardly be said that the claims at issue

² The Court finds it can consider the administrative record without judicially noticing it under Fed. R. Of Evid. 201. To the extent necessary, the Court hereby judicially notices the administrative record.

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in this RLIUPA action are identical to the claims decided by the city's own proceeding. The RLUIPA violations arise directly and necessarily from the City's final decision; in other words, it is the decision itself that is illegal under RLUIPA." *Id.* at 17. Therefore, the congregation contends, giving preclusive effect to the allegedly discriminatory decision on the issue of whether the decision was discriminatory would be "counterintuitive, to say the least." *Id.* at 17-18, citing Guru Nanak Sikh Soc'y of Yuba City v. County of Sutter,³ 326 F. Supp. 2d 1128, 1133-1134 (E.D. Cal. 2003).

The Congregation further argues that "the mere prospect of deferential state court writ review cannot cure the procedural and constitutional defects of the City's informal proceedings, nor can it confer preclusive effect," citing Pacific Lumber, 37 Cal. 4th at 945 n. 12 for the proposition that the availability of § 1094.5 writ review does not establish that the underlying administrative proceeding was sufficiently judicial in nature for purposes of preclusion. *Opp.* at 19. The Congregation distinguishes Murray, as cited by the City, arguing that in Murray, the Court considered a scenario in which the "subsequent administrative process provides the complainant the right to a formal adjudicatory hearing to determine the contested issues de novo, as well as subsequent judicial review of that determination," whereas the write review provided under § 1094.5 "provides none of the procedural, due process, and confrontation rights necessary under Utah Construction. By its terms, § 1094.5 review is limited to the same administrative record the City prepared and is subject to the highly deferential substantial evidence test, which requires the trial court to accept all the evidence favorable to the agency as true and disregard all unfavorable evidence." *Id.* at 19, 21.

The Congregation further distinguishes Murray on the grounds that "Murray did

³In reply, defendant argues that this case is distinguishable from the one at bar, because (1) in Guru Nanak, two successive CUP applications were denied as to two different properties, causing the Ninth Circuit to sense "the malodorous whiff of a pattern of discrimination" whereas here the CUP applications were denied as to the same property, such that there would presumably be identical legitimate land use concerns in both applications; (2) RLUIPA was not given significant consideration in the administrative hearings in Guru Nanak whereas in this case they were argued more strenuously and addressed in the ZA's decision; and (3) in Guru Nanak, the court noted that defendants did not make any effort to demonstrate that the Utah Construction fairness requirements were met, whereas in this case, defendants argue that they have demonstrated that these were met. Reply at 14-16.

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not involve a federal civil rights statute which creates an express cause of action and immediate remedy in federal court for violations of federal law by local zoning officials. The Congregation has an absolute statutory right to a de novo hearing before an Article III District Court Judge, with full rights of discovery, subpoena, due process and confrontation, and judicial review in the Ninth Circuit.” Id. at 20.

Lastly, the Congregation argues that giving preclusive effect to the administrative decision in this case would be contrary to federal law because preclusion cannot “bar civil rights claims where Congress did not intend administrative estoppel to apply.” Id. at 22, citing Astoria Fed. Sav. & Loan Ass’n v. Solmina, 501 U.S. 104, 106-114 (1991); Tennessee v. Elliot, 478 U.S. 788, 794-99 (1986). The Congregation argues that Congress did not intend for administrative estoppel to apply to RLUIPA claims, and “according preclusive effect [here] would render RLUIPA dead letter. The whole point of RLUIPA was to provide a federal cause of action and remedy for violations of religious exercise arising from state and local administrative proceedings. Yet ‘such federal proceedings would be strictly pro forma if state administrative findings were given preclusive effect.’” Id. at 23, citing Astoria, 510 U.S. at 111. Plaintiff argues their construction of RLUIPA is supported by the express limitation on the full faith and credit rule in that statute. Id. at 24.

In reply, the City argues that plaintiff misconstrues the requirements under Utah Construction. The City argues that the “trial-like procedures” referred to in the cases cited by the Congregation are indicia of judicial capacity but a proceeding without those procedures can still “attain the requisite judicial capacity for preclusion.” Reply at 3. In support of this argument, the City cites, Miller, 39 F. 3d at 1036, in which the court found that preclusive effect could be accorded to administrative decisions that did not fall under the California APA. Id. at 6. Moreover, the City argues, the Miller court found that procedural defects “such as the absence of provisions for pretrial discovery” did not necessarily negate the preclusive effect of the resulting administrative decision because “such a procedural defect is a common ground for issuance of a writ of mandate invalidating a quasi-judicial decision.” Id., citing Miller, 39 F. 3d at 1036.

The City also argues that the fact that plaintiff had the opportunity to seek judicial review of the administrative decision under § 1094.5 militates in favor of granting the administrative findings preclusive effect, citing Briggs v. Rolling Hills Estate, 40 Cal. App. 4th 637 (1995); Wehrli v. County of Orange, 175 F. 3d 692 (9th Cir. 1999); and Johnson v. City of Loma Linda, 24 Cal. 4th 61 (2000). The City further argues that the cases cited by plaintiff for the contrary proposition are inapposite. The City argues that

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the court in Embury v. Talmadge, 191 F. Supp. 2d 1071 (N.D. Cal. 2001) found only that writ review of an administrative decision in which no administrative hearing was held would not necessarily cure the procedural defect in the underlying proceeding. Id. at 9-10. With respect to North Pacifica, LLC v. City of Pacifica, 366 F. Supp. 2d 927 (N.D. Cal. 2005), cited for the proposition that a “commission’s land use decision [is] not sufficiently judicial in character because the proceeding did not allow for the right to ‘present evidence, to cross-examine witnesses, subpoena document[s],” the City argues that the Court should not rely on this holding because it “is contrary to California law on issue and claim preclusion” and it “has only been followed once and has been criticized by other courts.” Id. at 10.

The City further argues that according preclusive effect to the administrative findings in this case would not contravene the legislative intent of RLUIPA. Defendant points to the Full Faith and Credit provision of RLUIPA which only prohibits preclusion where there was not a full and fair adjudication of RLUIPA in the non-Federal forum. Id. at 11-12. As the administrative proceedings met the fairness requirements of Utah Construction, according to defendant, plaintiff has had a full and fair adjudication of RLUIPA, and the administrative findings should be granted preclusive effect. Id. at 12.

Additionally, the City argues that the Congregation mischaracterizes the judicial review process under § 1094.5 when it suggests that it is insufficient to correct constitutional violations made in the underlying administrative process, citing Miller, F. 3d at 1038 n. 10; Baffert v. California Horse Racing Bd., 332 F. 3d 613, 619 (9th Cir. 2003); San Jose Silicon Valley Chamber of Commerce Political Action Committee v. City of San Jose, 546 F. 3d 1087, 1095 (9th Cir. 2008); and California County Superintendents of Schools Educational Association v. Marzion, 2009 U.S. Dist. LEXIS 20453 *1, *13. Reply at 12-13. Furthermore, the City argues that writ actions under § 1094.5 may permit discovery, which would address some of the procedural issues cited by the Congregation. Id. at 13-14.

Finally, the City argues that “[n]ot giving binding effect to the findings of quasi-judicial bodies would render their respective efforts useless and undermine the discretionary approval process.” Id. at 17.

Upon consideration of the foregoing, the Court concludes that it is improper to give preclusive effect to the factual findings and legal conclusions of the City’s administrative decision with regard to the Congregation’s application for a CUP. Fundamentally, the Court finds that the ZA and the CAPC did not consider the same

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issue as the one that is currently before the Court and therefore collateral estoppel is inappropriate. The Court is persuaded by the reasoning of Guru Nanak, and finds that the RLUIPA claim raised by this lawsuit “could not have been before the [ZA or CAPC] because it was [their] ultimate decision . . . and the allegedly discriminatory nature of that decision, that gave rise to plaintiff’s claims. . . . It would be counterintuitive, to say the least, for a federal court to shield local government officials from scrutiny under the Constitution and federal civil rights laws by giving preclusive effect to their allegedly discriminatory decisions. Federal common law does not command such an abdication of judicial responsibility.” Guru Nanak, 326 F. Supp. 2d 1128, 1133 (E.D. Cal. 2003). Defendant’s attempt to distinguish this case based on the fact that here, the ZA heard and considered arguments and made findings with respect to RLUIPA is unpersuasive. The court in Guru Nanak itself rejected a similar argument, finding that the effect of the argument “would, in some circumstances, result in a local body shielding itself from federal court review of an allegedly unconstitutional action simply because that body had been informed that its actions were unconstitutional.” Id. As articulated by plaintiff, “[w]hile the City purported to consider the potential effects of RLUIPA on its application of the LAMC to deny the CUP, those same officials could not possibly have decided on the legality of their own decision.” Opp. at 17.

Moreover, the Court finds that according preclusive effect to the administrative findings and conclusions in this case would undercut RLUIPA. The text of RLUIPA itself indicates congressional intent to limit the preclusive effect of a decision of a non-federal forum. 42 U.S.C. § 2000cc-2(c) (“Adjudication of a claim of a violation of section 2000cc of this title in a non-Federal forum shall not be entitled to full faith and credit in a Federal court unless the claimant had a full and fair adjudication of that claim in the non-Federal forum.”). Furthermore, pursuant to 42 U.S. C. § 2000cc-3(g), the Court is obligated to construe RLUIPA “in favor a broad protection of religious exercise, to the maximum extent permitted by the terms of this Act and of the Constitution.” As argued by the United States, “the legislative history demonstrates that Congress enacted RLUIPA to serve as a federal statutory solution to religious discrimination and violation of the free exercise of religion by state and local entities, including zoning boards, planning commissions, and their respective agencies of appeal. This congressional purpose would be thwarted if zoning boards are able to insulate actions that would violate RLUIPA by making a ruling purportedly under RLUIPA and then arguing that a claimant is precluded from challenging the ruling. Therefore, there should be, at a minimum, a strong presumption against finding preclusion, to ensure that Congress’s intent to provide an enforcement mechanism for discrimination and violation

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of the free exercise of religion is not undermined.” United States of America’s Statement of Interest at 10.

The circumstances of the instant dispute make it particularly inappropriate to give preclusive effect to the administrative findings and conclusions. In this case, the administrative process lacked significant procedural protections such as an impartial decisionmaker, and the ability to subpoena, cross-examine witnesses, and conduct discovery such as might ensure that the interests addressed by RLUIPA were properly protected. The record also indicates that the ZA may have used the incorrect test under RLUIPA, and at the very least, that the parties were not held to the same burdens of proof and persuasion as would be required in this Court. Further, while the decision of the ZA addresses RLUIPA, there was at least some ambiguity during the administrative process as to the propriety of the ZA and CAPC making a decision with respect to RLUIPA at all, as such a decision would fall outside of the mandate of LAMC 12.24.⁴ The limitations of the administrative process in this case give further support to the Court’s conclusion, and the Court does not find that the availability of at § 1094.5 writ proceeding alters this analysis. In sum, the Court finds that it is improper to give preclusive effect to the factual findings and legal conclusions of an administrative proceeding in a RLUIPA action, where the alleged discriminatory act arises from the administrative proceeding itself because to do so would undercut the purpose and effectiveness of RLUIPA. This is particularly the case where, as here, the underlying administrative proceeding fails to provide an effective backstop to ensure the protection of the interests articulated in RLUIPA.

⁴ See, e.g. Oct. 8, 2009 Denial of CUP, Exh. 1 to United States of America’s Statement of Interest at 47 (indicating that Renee Weitzer, Council Office Representative speaking in favor of the denial of the CUP argued that “RLUIPA is not important at this point, it is the application that is before you that you should be discussing”); AR 3073-75, comments made by the President and Commissioner Martorell of the CAPC as cited by plaintiffs at Opp. at 12-13 (“I don’t think that this is the mechanism or that we’re the body to reverse injustices of previous discriminatory restrictions. I’m just trying to focus on the land use issues at hand”; “[W]e’re not, like President Acevedo said, the body that makes your decision on whether you’ve been discriminated or whether you’re not being allowed to practice your religious faith.”)

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IV. CONCLUSION

In accordance with the foregoing, the Court hereby DENIES defendant's motion for judgment on the pleadings.

IT IS SO ORDERED.

Initials of
Preparer

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