

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
GALVESTON DIVISION**

TORCH (TORAH OUTREACH
RESOURCE CENTER OF HOUSTON)
d/b/a HEIMISH OF HOUSTON and
MICHAEL WINKLER

Plaintiffs,

vs.

CITY OF HOUSTON, TEXAS

Defendants.

§
§
§
§
§
§
§
§
§
§
§

CIVIL ACTION NO. _____

COMPLAINT

COMPLAINT

Plaintiffs **TORCH (Torah Outreach Resource Center of Houston) d/b/a Heimish of Houston** (“Heimish”) and **Michael Winkler** (“Winkler” and together with Heimish as “Plaintiffs”) bring the following causes of action against Defendant City of Houston, Texas (the “City”) as follows.

INTRODUCTORY STATEMENT

1. Heimish is an Orthodox Jewish synagogue. Its members’ religious beliefs require them to worship at a location (i) within feasible walking distance of their homes and (ii) within a small geographic region called an eruv. After an extensive search, Heimish found a location to practice their Orthodox Jewish faith and worship together, [REDACTED], Houston, Texas [REDACTED] (the “Property”), that meets both requirements. If Heimish were forced to leave the Property, it is very unlikely it would be able to find another location within walking distance of its members’ homes and within the eruv.

2. The City is threatening to use its purported power to enforce a residential-use deed restriction to force Heimish to cease all activities on the Property. The City has made no

such demands on other secular businesses located on properties burdened with the same restriction.

3. The Texas Religious Freedom Restoration Act, TEX. CIV. PRAC. & REM. CODE § 110.001 *et seq.* (“TRFRA”), and the Religious Land Use and Institutionalized Persons Act, 42 U.S.C. § 2000cc *et seq.* (“RLUIPA”), proscribe local governments from applying land-use regulations in a manner substantially burdening a religious institution or assembly’s free exercise of religion.

4. In addition, RLUIPA prohibits local governments from treating religious entities less favorably than similarly situated secular entities in the application of land-use regulations, from discriminating against religious entities on the basis of religion, and from imposing or implementing land use regulations that unreasonably limit religious entities.

5. The Fair Housing Act, 42 U.S.C. § 3601 *et seq.* (“FHA”), prohibits discrimination “in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race, color, religion, sex, familial status, or national origin.”

6. The FHA also prohibits interference with the enjoyment or exercise of fair housing rights.

7. The City’s attempt to selectively enforce a residential-use deed restriction against Heimish is a violation of TRFRA, RLUIPA, and the FHA, entitling Heimish to injunctive and declaratory relief, damages, attorney’s fees, costs, and such other relief as the Court may deem appropriate.

JURISDICTION AND VENUE

8. The jurisdiction of this Court to adjudicate Plaintiffs’ federal claims is premised on 28 U.S.C. §§ 1331 and 1343, which give federal district courts jurisdiction to

adjudicate federal questions, as well as authority to award appropriate relief from the violation under color of state law of any constitutional right or federal statute providing for the protection of civil rights. Additionally, the Court has jurisdiction to declare the rights of the parties to this action pursuant to 28 U.S.C. §§ 2201 and 2202.

9. This Court is also vested with jurisdiction to adjudicate Plaintiffs' RLUIPA claims by virtue of 42 U.S.C. § 2000cc, *et seq.*

10. The Court has jurisdiction over Plaintiffs' state-law claims pursuant to 28 U.S.C. § 1367.

11. The Court has jurisdiction over Plaintiffs' FHA claims pursuant to 42 U.S.C. § 3613.

12. Pursuant to 28 U.S.C. § 1391(b), venue is proper as all claims set forth herein arose in the Southern District of Texas and the Defendant resides or exists in the Southern District of Texas, and because a substantial part of the events or omissions giving rise to the claims occurred, and a substantial part of the property that is the subject of the action is situated, in the Southern District of Texas.

PARTIES

13. Plaintiff TORCH (Torah Outreach Resource Center of Houston) d/b/a Heimish of Houston is a Texas nonprofit corporation located at [REDACTED], Houston, Texas 77071. It is an Orthodox Jewish synagogue.

14. Plaintiff Michael Winkler is a Texas citizen and is the owner of the Property.

15. Defendant City of Houston, Texas, is a Texas home-rule municipality and may be served with process by serving the City Secretary, Anna Russell, at the City Secretary Department, 900 Bagby St., Rm. P101, Houston, TX 77002 or wherever found.

FACTUAL BACKGROUND

A. Heimish of Houston

1. Heimish has served the Orthodox Jewish community in the Fondren Southwest Northfield Subdivision (the “Neighborhood”) for over two years, with the full knowledge of the relevant homeowners association, the West Belfort Property Owners’ Association (the “HOA”).

2. Heimish formed after its members left another Orthodox Jewish synagogue over doctrinal issues. Since its founding, several persons have moved into the Neighborhood to be able to walk to Heimish, as required by their Orthodox Jewish beliefs.

3. In Orthodox Judaism, driving is prohibited on the Sabbath. Accordingly, the members of Heimish must be able to live within feasible walking distance of their synagogue.

4. In addition, Orthodox Judaism prohibits carrying anything—including, for example, religious texts or children—on the Sabbath outside of a particular geographic region known as an eruv. As a practical matter, therefore, people of Orthodox Jewish faith must be able live, walk to synagogue, and worship together within the same eruv.

5. The Property and the Neighborhood are within an eruv.

6. Only a few eruvs exist within the City of Houston, and creation of a new eruv is costly and difficult.

7. Heimish meets at the Property, which is located in the Neighborhood, because it is within feasible walking distance of Heimish’s members and is in the correct eruv. If it were forced to leave the Property, Heimish would likely be unable to find another suitable location meeting these essential criteria.

8. Many of Heimish's members moved to their homes in the Neighborhood specifically to be both within the correct eruv as well as within feasible walking distance of Heimish.

9. There is no other synagogue practicing the Orthodox Jewish faith in accordance with the beliefs of Heimish's members that is both within the eruv and within feasible walking distance of its members who live in the Neighborhood.

10. Prohibiting Heimish from meeting at the Property would effectively ban all persons who seek to attend an Orthodox Jewish synagogue with the particular doctrinal distinctions held by the Heimish congregation from living in the Neighborhood.

B. The Deed Restriction

11. Pursuant to a certain March 28, 1994 Restated and Amended Declaration of Covenants, Conditions and Restrictions, the Neighborhood, including the Property, is restricted by deed to residential use only (the "Deed Restriction").

12. On July 1, 2020, an attorney representing the HOA sent a letter (the "HOA Letter") to the owner of the Property, Winkler.

13. The HOA Letter purported to notify Winkler that the Property's use for worship and fellowship appeared to violate the Deed Restriction. The HOA Letter further invited Winkler to the next meeting of the HOA's board.

14. Rabbi Wohlgelernter from Heimish spoke to the HOA's board, and the HOA ultimately decided to take no action against Heimish or its members.

15. On July 16, 2020, Yolanda Woods ("Woods"), a senior assistant city attorney for the City of Houston, sent a letter (the "City Enforcement Letter") to Heimish, Winkler, and others. In the City Enforcement Letter, the City asserted its right to enforce the

Deed Restriction under Article XV-Sections 10-551 through 10-555 of the City of Houston Code of Ordinances.

16. The City Enforcement Letter further demanded the Heimish cease all activities on the Property within 15 days or “face further legal action” including an injunction, attorney’s fees and costs, and a fine of \$1,000 per day.

17. On August 12, 2020, Counsel for Heimish and Winkler sent a letter (the “Response Letter”) to Woods explaining why Heimish’s location within feasible walking distance of its members’ homes and within the correct eruv is critical to the free exercise of its members’ faith.

18. The Response Letter served as the notice required by TRFRA that the City of Houston’s threatened enforcement of restrictive covenants against the Property so as to prohibit its use as an Orthodox Jewish synagogue would substantially burden the free exercise of religion of the Orthodox Jewish community that attends Heimish.

19. Because of the religious requirements of Orthodox Judaism and the convictions of the members of Heimish, applying a residential use restrictive covenant as the City proposes would end Heimish’s members’ ability to practice their faith within this community and drive them out of the Neighborhood.

C. Selective Enforcement of the Deed Restriction

20. Many non-residential uses within the Neighborhood do not appear to have been subject to similar enforcement actions by the City, but only the one use that, if it is shut down, will require members of the Orthodox Jewish community to be forced to find another neighborhood to be able to worship freely.

21. Furthermore, while the HOA is represented by counsel who is aware that Heimish of Houston meets at the Property, the HOA has taken no legal action to stop the religious exercise at the Property.

LEGAL CLAIMS

COUNT I

TRFRA Substantial Burden Claim

22. Each and every preceding paragraph is fully incorporated by reference herein as if fully set forth herein.

23. TRFRA provides that “a government agency,” which includes “a municipality,” “may not substantially burden a person’s free exercise of religion” unless “the government agency demonstrates that the application of the burden to the person: (1) is in furtherance of a compelling governmental interest; and (2) is the least restrictive means of furthering that interest.” TEX. CIV. PRAC. & REM. CODE §§ 110.001 and 110.003.

24. The City’s attempt to enforce the Deed Restriction places a substantial burden on Heimish’s members’ free exercise of religion. In accordance with their Orthodox Jewish faith, Heimish’s members must meet and worship within feasible walking distance of their homes and within the eruv. After a search, the Property was determined to be the only viable location that was available to the congregation. If the congregation cannot meet at [REDACTED], then, because of the restrictions placed upon them by their Orthodox Jewish religious beliefs, they will likely be unable to have communal worship.

25. The City has not identified any government interest furthered by its actions against Heimish.

26. The City’s attempt to enforce the Deed Restriction against Heimish does not further any compelling government interest.

27. In the alternative, the City’s attempt to enforce the Deed Restriction does not represent the least restrictive means of furthering a compelling governmental interest.

COUNT II
RLUIPA Substantial Burden Claim

28. Each and every preceding paragraph is fully incorporated by reference herein as if fully set forth herein.

29. Like TRFRA, RLUIPA prohibits government entities from imposing or implementing “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 regulation is in furtherance of a compelling governmental interest and is the least restrictive means of furthering a compelling governmental interest. 42 U.S.C. § 2000cc(a)(1).

30. RLUIPA defines a “land use regulation” as a “zoning or landmarking law, or the application of such law, that limits or restricts a claimant’s use or development of land...” 42 U.S.C. § 2000cc-5(5).

31. Heimish, an Orthodox Jewish synagogue, is a religious assembly or institution.

32. Heimish is subject to a land-use regulation, including the Deed Restriction and the City’s assertion of a right to enforce the Deed Restriction under Article XV-Sections 10-551 through 10-555 of the City of Houston Code of Ordinances.

33. In determining whether to exercise its discretionary authority to enforce certain deed restrictions pursuant to its Code of Ordinances, the City makes, or has in place formal or informal procedures or practices that permit the City to make, individualized assessments of the proposed uses for the property involved.

34. The City of Houston’s attempt to enforce the Deed Restriction places a substantial burden on Heimish’s members’ free exercise of religion and does not further a compelling government interest or, in the alterative, does not represent the least restrictive means of advancing a compelling governmental interest.

COUNT III
RLUIPA Equal Terms Claim

35. Each and every preceding paragraph is fully incorporated by reference herein as if fully set forth herein.

36. Under the Religious Land Use and Institutionalized Persons Act (RLUIPA), governments are prohibited from issuing a “land use regulation” that treats a religious assembly or institution “on less than equal terms with a nonreligious assembly or institution.” 42 U.S.C. § 2000cc(b)(1).

37. RLUIPA defines a “land use regulation” as a “zoning or landmarking law, or the application of such law, that limits or restricts a claimant’s use or development of land...” 42 U.S.C. § 2000cc-5(5).

38. A RLUIPA equal terms violation consists of five elements: (i) plaintiff is a religious assembly or institution, (ii) subject to a land-use regulation, which regulation (iii) treats the religious assembly or institution on less than equal terms with (iv) a nonreligious assembly or institution (v) that causes no lesser harm to the interests the regulation seeks to advance.

39. Heimish, an Orthodox Jewish synagogue, is a religious assembly or institution.

40. Heimish is subject to a land-use regulation, including the Deed Restriction and the City’ assertion of a right to enforce the Deed Restriction under Article XV-Sections 10-551 through 10-555 of the City of Houston Code of Ordinances.

41. The City’s attempt to enforce the Deed Restriction against Heimish evinces treatment of a religious assembly or institution on less than equal terms than those afforded nonreligious assemblies or institutions causing no lesser harm to the interests the Deed Restriction seeks to advance. There are numerous secular businesses in the Neighborhood, near the Subject Property, and subject to the same Deed Restriction—including a paper shop, a hair salon, law firm, and a wig stylist—yet the City has taken no action to enforce the Deed Restriction against these secular businesses.

COUNT IV
RLUIPA Nondiscrimination Claim

42. Each and every preceding paragraph is fully incorporated by reference herein as if fully set forth herein.

43. RLUIPA makes it unlawful for government entities to enforce land-use regulations in such a way as to discriminate “against any assembly or institution on the basis of religion or religious denomination.” 42 U.S.C. § 2000cc(b)(2).

44. The City’s selective enforcement of the Deed Restriction in a manner that would eliminate certain types of Orthodox Jewish practice and communal worship in the Neighborhood violates this clause.

COUNT V
RLUIPA Unreasonable Limitation Claim

45. Each and every preceding paragraph is fully incorporated by reference herein as if fully set forth herein.

46. RLUIPA makes it unlawful for government entities to “impose or implement a land use regulation that . . . unreasonably limits religious assemblies, institutions, or structures within a jurisdiction.” 42 U.S.C. § 2000cc(b)(3)(B).

47. The City’s selective enforcement of the Deed Restriction in a manner that would eliminate certain types of Orthodox Jewish practice and communal worship in the Neighborhood unreasonably limits Heimish of Houston, a religious assembly or institution.

COUNT VI

Fair Housing Act Discrimination in Terms or Conditions of Sale

48. Each and every preceding paragraph is fully incorporated by reference herein as if fully set forth herein.

49. The Fair Housing Act makes it unlawful “[t]o discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race, color, religion, sex, familial status, or national origin.” 42 U.S.C. § 3604(b).

50. The Deed Restriction constitutes a “term” or “condition” of sale of a dwelling.

51. The City’s selective enforcement of the Deed Restriction in a manner that discriminates against Heimish of Houston and its members and that would eliminate certain types of Orthodox Jewish practice and communal worship in the Neighborhood violates this clause.

COUNT VII

Fair Housing Act Interference with Enjoyment of Rights

52. Each and every preceding paragraph is fully incorporated by reference herein as if fully set forth herein.

53. The Fair Housing Act makes it unlawful “to coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of his having exercised or enjoyed, or on account of his having aided or encouraged any other person in the

exercise or enjoyment of, any right granted or protected by section 3603, 3604, 3605, or 3606 of this title.” 42 U.S.C. § 3617.

54. The City’s selective enforcement of the Deed Restriction in a manner that discriminates against Heimish of Houston and its members and that would eliminate certain types of Orthodox Jewish practice and communal worship in the Neighborhood interferes with the Plaintiffs’ exercise or enjoyment of rights protected by section 3604 of the Fair Housing Act.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court grant judgment in their favor on all claims above and order the following relief:

(a) Award declaratory relief, finding that the City violated TRFRA, RLUIPA, and the FHA by sending the City Enforcement Letter and threatening to enforce the Deed Restriction against Heimish.

(b) Award injunctive relief, ordering that the City be restrained from its threatened interference with Orthodox Jewish practice and communal worship on the Property.

(c) Award compensatory damages in favor of Plaintiffs and against the City.

(d) Direct the City to pay the attorneys’ fees and costs incurred by Plaintiffs associated with the preparation and the prosecution of this action; and

(e) Grant any other such relief as the Court deems just and equitable.

Dated: March 25, 2021

Respectfully submitted,

K&L GATES LLP

By: /s/ Jamie Lavergne Bryan

Jamie Lavergne Bryan

[REDACTED]

Roderick Paul Hatch

[REDACTED]

301 Commerce St., Suite 3000

Fort Worth, Texas 76102

Telephone: (817) 347-5270

Facsimile: (817) 347-5299

and

Jeffrey C. Mateer

[REDACTED]

David J. Hacker

[REDACTED]

Justin E. Butterfield

[REDACTED]

FIRST LIBERTY INSTITUTE

2001 W. Plano Pkwy., Ste. 1600

Plano, Texas 75075

[REDACTED]

Telephone: (972) 941-4444

Facsimile: (972) 941-4457

ATTORNEYS FOR PLAINTIFFS

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

TORCH (Torah Outreach Resource Center of Houston) d/ b/a Heimish of Houston ("Heimish"); Winkler, Michael

(b) County of Residence of First Listed Plaintiff Harris (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Please see attachment.

DEFENDANTS

City of Houston, Texas

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, PTF DEF, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

Table with columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes codes like 110 Insurance, 310 Airplane, 365 Personal Injury, etc.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District, 6 Multidistrict Litigation - Transfer, 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): Religious Land Use and Institutionalized Persons Act, 42 U.S.C. § 2000cc et seq. Brief description of cause: Selective enforcement of residential-use deed restriction against Orthodox Jewish Synagogue.

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE SIGNATURE OF ATTORNEY OF RECORD

March 25, 2021 /s/ Jamie Lavergne Bryan

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

Attachment to Civil Cover Sheet

TORCH (Torah Outreach Resource Center of Houston) d/b/a Heimish of Houston and Michael Winkler v. City of Houston, Texas

Section 1(c): Plaintiffs' Attorneys (Firm Name, Address, and Telephone Number)

Jamie Lavergne Bryan

Roderick Paul Hatch

K&L GATES LLP

301 Commerce St., Suite 3000

Fort Worth, Texas 76102

Telephone: (817) 347.5270

Jeffrey C. Mateer

David J. Hacker

Justin E. Butterfield

FIRST LIBERTY INSTITUTE

2001 W. Plano Pkwy., Ste. 1600

Plano, Texas 75075

Telephone: (972) 941-4444