IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

LEILA MENDEZ, et al.,	
Plaintiffs,	Case No. 2016-CH-15489
v.	Hon. Sanjay T. Tailor
CITY OF CHICAGO, et al.,	Calendar 09
Defendants.	

DEFENDANTS' SECTION 2-619.1 MOTION TO DISMISS PLAINTIFFS' COMPLAINT

Defendants City of Chicago and Samantha Fields, Commissioner of the City's Department of Business Affairs and Consumer Protection ("BACP") (collectively, the "City"), by their attorney, Edward N. Siskel, Corporation Counsel of the City of Chicago, hereby move, pursuant to 735 ILCS 5/2-615, 2-619(a)(9), and 2-619.1, to dismiss the Complaint of Plaintiffs Leila Mendez, Sheila Sasso, Alonso Zaragoza, and Michael Gucci. In support of this motion, the City states as follows:

1. Plaintiffs challenge various provisions of the City's new Shared Housing Ordinance ("Ordinance"), which was enacted on June 22, 2016, and contains various provisions regulating residential properties that are rented out on a short-term basis as vacation rentals or shared housing units. Plaintiffs are individual who own homes or other residential properties in Chicago and rent, or would like to rent, them as shared housing units. Compl. ¶¶ 5-8, 70-71.

2. Section 2-619.1 of the Illinois Code of Civil Procedure permits motions to dismiss pursuant to Sections 2-615 and 2-619 to be filed as a single motion. A Section 2-615 motion challenges the legal sufficiency of the complaint and whether the allegations establish a cause of action upon which relief may be granted. Connick v. Suzuki Motor Co., 174 Ill. 2d 482, 490 (1996). Well-pleaded facts are taken as true and are viewed in the light most favorable to the

plaintiff, but legal conclusions "unsupported by allegations of specific facts" are disregarded. LaSalle Nat'l Bank v. City Suites, Inc., 325 Ill. App. 3d 780, 790 (1st Dist. 2001). Section 2-619(a)(9) calls for dismissal when a claim "is barred by other affirmative matter avoiding the legal effect of or defeating the claim." Standing and mootness challenges may be raised in a Section 2-619(a)(9) motion. See Glisson v. City of Marion, 188 Ill.2d 211, 220 (1999) (standing); ChiCorp, Inc. v. Bower, 336 Ill.App.3d 132, 134 (1st Dist. 2002) (mootness).

Section 2-615 Grounds For Dismissal

3. In Count III, Plaintiffs challenge what they call the "primary residence" rule. This rule states that a single family home, or a dwelling unit that is in a building with four or fewer dwelling units, may not be rented as a short-term rental unless the unit is the licensee's primary place of residence. See Ordinance §§ 4-6-300(h)(8), (9); 4-14-060(d), (e). "Primary residence" is defined as meaning that the owner lives in the unit on a daily basis for at least 245 days a year. Id. §§ 4-6-300(a); 4-14-010. The Ordinance also states that the BACP Commissioner has the authority to "adjust" – i.e., waive – the primary residence rule as to a particular property. Id. §§ 4-6-300(l); 4-14-100(a). Plaintiffs allege that the rule violates substantive due process for two reasons: (1) it lacks proper justification, and (2) the BACP Commissioner has unbridled discretion to grant adjustments. Count III should be dismissed for failure to state a claim because the primary residence rule is rationally related to legitimate City interests in preserving the quality of life and the availability of housing in residential neighborhoods, and because Plaintiffs do not have a protected property interest in receiving a Commissioner's adjustment.

4. In Count IV, Plaintiffs contend that the primary residence rule violates equal protection because it does not apply to owners of units in buildings with five or more dwelling

units. Count VI should be dismissed for failure to state a claim because Plaintiffs' buildings are not similarly situated to buildings with five or more dwelling units. Moreover, even they were, treating the two differently is rationally related to the City's interests in preserving the quality of life in residential neighborhoods, in building maintenance, and in allowing sufficient short-term rental units to be available to tourists.

5. In Count V, Plaintiffs challenge what they call the Ordinance's "rental caps." These provisions restrict the number of units in a building that can be listed or rented as vacation rentals or shared housing units. See Ordinance §§ 4-6-300(h)(9), (10); 4-14-060(e), (f). Plaintiffs contend that the caps violate substantive due process because they are not rationally related to a legitimate governmental interest. Count V should be dismissed for failure to state a claim because the rental caps are rationally related to the City's interests in maintaining the quality of life in residential neighborhoods, and in balancing the impact of short-term rentals on the City's hotel industry.

6. In Count VI, Plaintiffs challenge Ordinance provisions allowing a vacation rental license or shared housing unit registration to be suspended when the unit has been the site of "excessive loud noise" on three or more occasions while rented to guests. See Ordinance, §§ 4-6-300(j)(2)(ii); 4-14-080(c)(2). Those provisions define "excessive loud noise" as meaning "any noise, generated from within or having a nexus to the rental [of the unit], between 8:00 P.M. and 8:00 A.M., that is louder than average conversational level at a distance of 100 feet or more, measured from the property line of the [unit]." A vacation rental license or shared housing registration may be suspended or revoked after a pre-deprivation hearing. Id. Plaintiffs claim that the definition of "excessive loud noise" violates due process because it is "vague and unintelligible, and allows for arbitrary and discriminatory enforcement." Compl. ¶ 122. Count

VI should be dismissed for failure to state a claim because the terms of the provisions are reasonably clear and Plaintiffs cannot show that they are vague in all of their potential applications.

7. In Count VII, Plaintiffs claim that the restriction on excessive loud noise violates equal protection because it does not apply to hotels and bed and breakfast ("B&B") establishments. Count VII fails to state a claim because vacation rentals and shared housing units are not similarly situated to hotels and B&Bs. Moreover, even if they were similarly situated, treating the two differently is rationally related to the City's interests in maintaining the quality of life in residential neighborhoods.

8. In Count VIII, Plaintiffs challenge the Ordinance's 4% surcharge on people who lease vacation rentals or shared housing units in the City. See Ordinance § 3-24-030(B). This surcharge is in addition to a 4.5% tax on people who lease any sort of hotel accommodation in the City. See id. § 3-24-030(A). Plaintiffs contend that the 4% surcharge violates the uniformity clause, Art. IX, section 2, of the Illinois constitution. Count VIII also brings a uniformity clause challenge to the licensing fees imposed on the various types of hotel accommodation businesses. The challenge to the 4% surcharge should be dismissed for failure to state a claim because Plaintiffs do not establish that there is a separate class who is taxed differently from guests of vacation rentals and shared housing units, and even if Plaintiffs had done so, there is a real and substantial difference between the classes and the 4% surcharge bears a reasonable relationship to public policy. The challenge to the license fees should be dismissed because Plaintiffs fail to specify the particular fees that they are complaining about, and because they allege no basis for believing that they are subject to a discriminatory license fee.

Section 2-619(a)(9) Grounds For Dismissal

9. In Count I, Plaintiffs challenge two Ordinance sections governing inspections of vacation rentals and those shared housing units that are operated by a shared housing operator. See Ordinance §§ 4-6-300(e)(1); 4-16-230(a). Plaintiffs allege that these provisions violate Article I, Section 6 of the Illinois constitution because they authorize the City to conduct unrestricted warrantless searches of their rental property. Count I should be dismissed because Plaintiffs lack standing, as they do not allege that the inspection provisions even apply to them, much less that they are in imminent danger of being inspected under those provisions. Count I should also be dismissed because it is not ripe, as regulations specifying the time and manner of such inspections, as well as any criteria governing such inspections, have not yet been promulgated.

10. Count II challenges sections of the Ordinance that authorize the City to inspect guest registration records kept by vacation rentals and shared housing unit operators. On February 22, 2017, the City Council amended these provisions, rendering Plaintiffs' challenge moot. In light of these amendments, Plaintiffs indicated to the City on February 23, 2017, that they will voluntarily dismiss Count II.

11. Count III's challenge to the Commissioner's authority to grant adjustments to the primary residence rule should be dismissed for lack of standing because Plaintiffs do not allege that they have requested, and been denied, an adjustment.

12. Count V's challenge to the Ordinance's rental cap provisions should be dismissed for lack of standing because Plaintiffs do not allege any facts indicating that they own properties that are subject to the rental cap restrictions.

13. Concurrently with this motion, the City is seeking leave to file a memorandum in support, which explains the bases for dismissal of Plaintiffs' Complaint in more detail, and which is incorporated herein by reference.

WHEREFORE, for the foregoing reasons, Defendants respectfully request that the Court dismiss Plaintiffs' Complaint in its entirety.

Date: February 24, 2017

Respectfully submitted,

EDWARD N. SISKEL

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