

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

WINDHOVER, INC. AND)	
JACQUELINE GRAY,)	
)	
Plaintiffs,)	Cause No. 07-cv-881 ERW
)	
v.)	
)	
CITY OF VALLEY PARK, MISSOURI,)	
)	
Defendant.)	

**PLAINTIFFS’ MOTION AND SUPPORTING MEMORANDUM FOR A
DECLARATION THAT VALLEY PARK ORDINANCE NO. 1722 IS INOPERATIVE**

Plaintiffs Windhover, Inc. and Jacqueline Gray respectfully move this Court for a declaration that Valley Park Ordinance No. 1722 (the “Employer Ordinance”) is, under its own terms, not effective unless and until the permanent injunction in force in *Reynolds v. City of Valley Park*, St. Louis County Case No. 06CC-3802 (“*Reynolds I*”) is terminated (*i.e.*, vacated by the Missouri Court of Appeals). In the wake of Valley Park’s repeal of the relevant provisions of Ordinance No. 1721 (the “Landlord Ordinance”), a declaration that the Employer Ordinance is currently ineffective will provide the basis for a stay of this matter pending the result of the appeal in *Reynolds I*.

On August 8, 2007, this Court issued an Order granting the Plaintiffs’ motion to advance and consolidate trial with the preliminary-injunction hearing in this matter, and scheduling a status conference for August 10, 2007. Subsequent to the briefing on the motion to consolidate the hearings, Plaintiffs learned that certain portions of the Landlord Ordinance had been repealed. On August 3, 2007, the court in *Reynolds v. City of Valley Park, Missouri*, Case No.

07CC-1420 (“*Reynolds II*”), entered an order of dismissal, holding that there was no longer a case or controversy. Accordingly, it is expected that the parties in this matter will presently file a stipulation of dismissal without prejudice of the causes of action in the Amended Petition for Declaratory and Injunctive Relief (the “Amended Petition”) relating to the Landlord Ordinance. If the Court grants this Motion, Plaintiffs will seek a stay of their remaining causes of action relating to the Employer Ordinance pending the outcome of the City’s appeal of the trial court’s judgment in *Reynolds I*.

BACKGROUND

On July 17, 2006, the City passed Ordinance No. 1708 (“Ordinance 1708”), entitled “An Ordinance Relating to Illegal Immigration Within the City of Valley Park, Mo.” Ordinance 1708 purported to penalize any landlord or business who leased property to or employed an “illegal alien.” On September 22, 2006, Plaintiff Gray and others filed the *Reynolds I* suit¹ in the Circuit Court for the County of St. Louis alleging that Ordinance 1708 violated Missouri state law as well as federal law. On September 25, 2006, Circuit Court Judge Barbara W. Wallace entered a Temporary Restraining Order enjoining enforcement of Ordinance 1708.

On September 26, 2006, the City enacted Ordinance No. 1715 (“Ordinance 1715”), entitled “An Ordinance Repealing Sections One, Two, Three and Four of Ordinance No. 1708 Relating to Illegal Immigration Within the City of Valley Park, MO, and Enacting a New Ordinance in Lieu Thereof Relating to the Employment of and Harboring of Illegal Aliens Within the City of Valley Park, MO.” Like Ordinance 1708, Ordinance 1715 purported to penalize any landlord or business who leased property to or employed an “illegal alien.” On

¹ In addition to Plaintiff Gray, Stephanie Reynolds, Florence Streeter and the Metropolitan St. Louis Equal Housing Opportunity Council were named plaintiffs in *Reynolds I*.

September 27, 2006, Judge Wallace entered an Amended Temporary Restraining Order enjoining the enforcement of Ordinance 1715.

On February 14, 2007, during the pendency of *Reynolds I*, the City's Mayor signed Ordinance No. 1721 entitled "An Ordinance Repealing Section 510.020 Subsection 103.6.1 Of The Property Maintenance Code Relating To Inspections And Occupancy Permits And Enacting A New Ordinance In Lieu Thereof Relating To The Same Subject Matter" (the "Landlord Ordinance"). In general terms, the Landlord Ordinance: (1) provided that it would be unlawful for a property owner to allow any person to occupy the owner's property without an occupancy permit: (2) required landlords to apply for an occupancy permit prior to renting a dwelling unit to any new tenants: and (3) provided that no occupancy permit would be issued if it were determined that "any alien unlawfully present in the United States is a proposed occupant[.]"

Also on February 14, 2007, the City's Mayor signed Ordinance No. 1722, entitled "An Ordinance Repealing Ordinance No. 1715 and Sections One, Two, Three and Four of Ordinance No. 1708 Relating to Illegal Immigration Within the City of Valley Park, MO, and Enacting a New Ordinance in Lieu Thereof Relating to the Employment of Aliens Within the City of Valley Park, Mo" (the "Employer Ordinance"). (*See* Ex. 1 hereto, Def's Amended Answer to Plfs' Amended Pet. for Declaratory and Injunctive Relief and Exhibits Thereto, Ex. D.)² The Employer Ordinance purports to make it "unlawful for any business entity to recruit, hire for employment, or continue to employ, or to permit, dispatch, or instruct any person who is an unlawful worker to perform work in whole or in part in the City." (*Id.*, Ex. D, Section Four, A.)

² There are at least four extant versions of Ordinance No. 1722 that purport to have been passed by the City Council and signed by the Mayor on February 14, 2007. (*See* Docket No. 38, Mot. for Order Consolidating Trial on the Merits with Hearing on Plfs' Mot. for Prelim. Inj. at 4-6.) Though it is far from clear which, if any, version of Ordinance No. 1722 was properly enacted by the City, the City clearly contends that the version attached as Exhibit D to its Amended Answer is the version it actually enacted.

Section Seven of the Employer Ordinance provides: “This Ordinance shall become effective from and after its passage and upon approval by the Mayor and upon the termination of any restraining orders or injunctions now in force in Cause No. 06CC-3802 now pending in St. Louis County, MO in Division 13.” (*Id.*, Ex. D, Section Seven.)

On March 12, 2007, Judge Wallace entered her Findings of Fact, Conclusions of Law, Order and Judgment in the *Reynolds I* case, ordering that the temporary restraining orders enjoining enforcement of Ordinance 1708 and Ordinance 1715 “are hereby made permanent.” (*See* Ex. 2, at 8.) Accordingly, the injunctions in *Reynolds I* have been made permanent and currently remain in force. The City subsequently filed a Notice of Appeal in the Missouri Court of Appeals. That appeal remains pending and briefing has not yet begun.

On March 14, 2007, Plaintiff Gray initiated this action in the Circuit Court for the County of St. Louis by filing a Petition for Declaratory and Injunctive Relief seeking an order enjoining the enforcement of the newly enacted Ordinance No. 1721 and Ordinance No. 1722. On April 12, 2007, Plaintiffs filed their Amended Petition to join Windhover, Inc. as a Plaintiff and add additional causes of action.³ On May 1, 2007, the City removed this action to this Court.

Meanwhile, on April 4, 2007, certain of the plaintiffs in the *Reynolds I* matter separately filed suit in the Circuit Court for the County of St. Louis challenging only the newly enacted Landlord Ordinance (No. 1721). *Reynolds v. City of Valley Park, Missouri*, Case No. 07CC-1420 (“*Reynolds II*”). On April 5, 2007 the *Reynolds II* court issued a temporary restraining

³ It has been the Plaintiffs’ position that Ordinance No. 1722 is by its own terms not effective unless and until the permanent injunction in *Reynolds I* is terminated either by the court of appeals or by the trial court after remand. However, the City has consistently refused to state its position in that regard, and so Plaintiffs included a challenge to Ordinance No. 1722 in their Petition and Amended Petition.

order as to the Landlord Ordinance, and on April 25 2007, extended the temporary restraining order pending a resolution on the merits, which was scheduled for September 13, 2007.

On June 14, 2007, Plaintiffs filed a Motion to Consolidate Trial On The Merits With Hearing On Motion for Preliminary Injunction. Briefing on that Motion was completed on July 5, 2007.

On July 19, 2007, while this Court's decision on the Motion to Consolidate was pending, the City filed a motion to dismiss the *Reynolds II* action on the ground that it had amended the Landlord Ordinance to delete "all of the controversial provisions pertaining to citizenship, illegal immigration, and aliens." (Ex. 3, Mot. of Def's to Dismiss Plfs' Petition, ¶ 2.) Attached to the City's motion is Valley Park Ordinance No. 1735, titled "An Ordinance Amending Section 510.020, Subsection 103.6.1 (Ordinance 1721, As Amended), by Deleting Certain Provisions Pertaining to Citizenship and Illegal Aliens Contained Within the Valley Park Property Maintenance Code." (*Id.*, Ex. A.) Ordinance No. 1735 essentially repeals the Landlord Ordinance as it relates to the rental of dwelling units to "illegal aliens." The City contended in its motion to dismiss that "from the effective date of Ordinance 1735, July 16, 2007, all matters before this Court are now mooted, and there remain no issues for this Court to enter a Judgment of Declaratory Relief as there is no longer a case or controversy or justiciable issue before the Court." (*Id.* ¶ 3.) On August 3, 2007, the *Reynolds II* court entered a judgment granting the City's motion to dismiss the case. (Ex. 4.)⁴ It is expected that the parties in this matter will

⁴ The *Reynolds II* plaintiffs opposed dismissal on the ground that, absent a declaration of the Landlord Ordinance's invalidity, nothing will prevent the City from enacting the same or a similar ordinance in the future. While there is force to that argument, particularly in light of the City's history of repeatedly repealing and re-enacting immigration ordinances over the past year, Plaintiffs believe the preferred course in these particular circumstances is dismissal without prejudice to reinstate the claim in the event the City does re-enact the ordinance.

presently be filing a stipulation of dismissal as to the Amended Petition's causes of actions relating to the Landlord Ordinance.

In light of the repeal of the Landlord Ordinance, Plaintiffs in this matter have sought to clarify what, if anything, remains at issue in this case. On July 24, 2007, Plaintiffs' counsel emailed the City's counsel stating the Plaintiffs' understanding that "Ordinance No. 1722 is not currently effective, and would become effective only upon the termination of the injunction currently in force in connection with Cause No. 06CC-3802 in the St. Louis County Court[.]" and requesting the City's position in that regard. (Ex. 5.) The City's counsel responded only that "the City's position is that the repeal of ordinance 1721 has nothing to do with the enactment or enforcement of ordinance 1722." (Ex. 6.) Plaintiffs' counsel again sought to clarify the City's position: "The repeal of Ordinance No. 1721 raises the question of what remains at issue in the federal proceeding. In any event, it is a fair question whether the City agrees with the position that Ordinance No. 1722 becomes effective only upon the termination of the permanent injunction issued in Cause No. 06CC-3802. I would appreciate a good-faith response." (Ex. 7.) There was no response. As recently as August 8, 2007, after this Court ordered the parties to notify the Court of the status of the ordinances at issue in this case, the City has declined to take a position regarding the status of the Employer Ordinance.

ARGUMENT

Plaintiffs seek to conserve party and judicial resources by having dismissed their claim regarding the now-repealed Landlord Ordinance, and by seeking a declaration that the Employer Ordinance is currently inoperative, thus clearing the way for a stay of this action pending the outcome of the appeal in *Reynolds I*.

Declaratory relief is appropriate where there is a live dispute between parties having adverse legal interests, “of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.” *Caldwell v. Gurley Refining Co.*, 755 F.2d 645, 649-50 (8th Cir. 1985). Here, there appears to be a live dispute regarding the proper interpretation of Section Seven of the Employer Ordinance, and thus whether Plaintiffs are currently subject to the Ordinance’s requirements. If the Court agrees that the Employer Ordinance is currently inoperative and becomes effective only upon the termination of the permanent injunction issued in *Reynolds I*, an event that may never occur, then this case may be stayed pending the result of the appeal in *Reynolds I*.⁵

Section Seven of the Employer Ordinance provides:

This Ordinance shall become effective from and after its passage and upon approval by the Mayor and *upon the termination of any restraining orders or injunctions now in force in Cause No. 06CC-3802* now pending in St. Louis County, MO in Division 13.

(Ex. 1. Ex. A, Section Seven. emphasis added.) At the time the Employer Ordinance was enacted, there were two temporary restraining orders in force in *Reynolds I*, one pertaining to Ordinance 1708 and one pertaining to Ordinance 1715. Neither of those temporary restraining orders has been terminated. To the contrary, they were “made permanent” by the *Reynolds I* court’s March 12, 2007 final judgment. (Ex. 2 at 8.) Accordingly, the Employer Ordinance will not become effective unless and until the permanent injunction in *Reynolds I* is vacated by the Missouri Court of Appeals, or by the state trial court after a reversal and remand by the Court of Appeals. If the *Reynolds I* judgment is affirmed after all available appeals, the Employer

⁵ Plaintiffs seek a stay, as opposed to dismissal, with respect to the Employer Ordinance so that they may have ready access to this Court in the event the Employer Ordinance becomes effective or the City takes some other action, despite the City Council’s June 18, 2007 resolution, regarding an ordinance purporting to address illegal immigration. In the alternative, the Plaintiffs would seek voluntary dismissal of this action without prejudice.

Ordinance will never become effective and will be a dead letter. Briefing on the appeal has not yet begun, and so a decision by the Court of Appeals is not expected to be issued during at least the next year.

The City has nevertheless refused to formally acknowledge that the Employer Ordinance is not currently in effect (and may never take effect). (*See* Exs. 4-6.) Indeed, in opposing remand of this matter, the City's counsel argued to this Court that the Employer Ordinance was immediately enforceable. (Ex. 8, May 16, 2007 Transcript of Mot. Hearing at 32-34.) And, even in arguing against a preliminary injunction, the City argued only that the Employer Ordinance would not be enforceable against the Plaintiffs until they sought to hire a worker who turned out to be an unauthorized alien, not that the Employer Ordinance is currently inoperative. (Docket No. 29-1 at 4.)

Accordingly, there appears to be a dispute between the parties regarding whether the Employer Ordinance is currently in force. That dispute is ripe for adjudication because the resolution will determine whether Plaintiffs are currently subject to the Employer Ordinance's requirements and whether the continued expenditure of party and judicial resources on litigating the matter is warranted.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court enter an order declaring that Valley Park Ordinance No. 1722 is currently inoperative and becomes effective only upon the termination of the permanent injunction now in force in Cause No. 06CC-3802 now pending in St. Louis County, MO in Division 13. Plaintiffs respectfully suggest that the setting of a trial date and a discovery schedule should be deferred pending resolution of this Motion.

Respectfully submitted,

/s/ Daniel J. Hurtado

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was served on Defendant's counsel of record, listed below, by operation of the Court's ECF/CM system or by UPS delivery as indicated, on August 9, 2007.

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