

NOTICE

The text of this order may be changed or corrected prior to the time for filing of a Petition for Rehearing or the disposition of the same.

FIFTH DIVISION
January 30, 2008

No. 1-07-3548

IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

ALBERT C. HANNA and CAROL C. MROWKA,

Plaintiffs-Appellants,

v.

CITY OF CHICAGO; COMMISSION ON CHICAGO
LANDMARKS; DAVID MOSENA, Chairman,
Commission on Chicago Landmarks; JOHN W. BAIRD,
Commissioner; LORI T. HEALEY, Commissioner,
Department of Planning and Development and Commission
on Chicago Landmarks; LISA T. WILLIS, Commissioner;
PHYLLIS ELLIN, Commissioner; CITY OF CHICAGO
DEPARTMENT OF PLANNING AND DEVELOPMENT;
and BRIAN GOEKEN, Deputy Commissioner, Landmarks
Division,

Defendants-Appellees.

) Appeal from the
) Circuit Court of
) Cook County
)
) No. 06 CH 19422
)
)
) Honorable
) Sophia H. Hall,
) Judge Presiding.

ORDER

Plaintiffs Albert C. Hanna (Hanna) and Carol C. Mrowka (Mrowka) (collectively, plaintiffs), filed a 20-count complaint against the City of Chicago, the Commission, and several city officials (collectively, the City), alleging that the Chicago Landmarks Ordinance (the Ordinance) was invalid on its face, and as it applied to plaintiffs' respective properties. The City moved to dismiss Counts I, II, II, and V-XX, pursuant to section 2-615 of the Code of Civil Procedure (735 ILCS 5/2-615 (West 2006), alleging that plaintiffs failed to state a cause of

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action. The trial court granted the City's section 2-615 motion to dismiss pursuant to Counts V-XX, and Counts I, II, and III. Plaintiffs now appeal.

I. BACKGROUND

A. Complaint

In their first amended complaint, plaintiffs alleged that Hanna owned property in the Arlington Deming neighborhood in Lincoln Park. On October 5, 2006, the Commission on Chicago Landmarks (Commission), recommended that area as a Landmark District.¹ Mrowka owned property in the East Village neighborhood. Pursuant to the Commission's recommendations, the Chicago City Council designated the East Village as a Landmark District on January 11, 2006.

We will only discuss the counts pertinent to this appeal. In Count I, plaintiffs alleged that the Ordinance was facially vague in violation of Article IV, section 2 of the Illinois Constitution. Count II challenged the delegation of authority to the Landmark Commission. Count III alleged that section 2-120-705 of the Ordinance violates Article IV, section 1 of the Illinois Constitution on its face for allowing the Commission to exercise legislative power. In Counts V-XX, plaintiffs claimed that the Ordinance is facially, and as-applied to their properties, unconstitutional.

B. Ordinance

The Chicago Landmark Ordinance is comprised of section 2-120-580 to 920 (Chicago, Ill., Mun. Code § 2-120-580 to 920 (2007)). It establishes a Commission to engage in various activities to protect and encourage the continued utilization of areas, districts, buildings, and

¹The Arlington-Deming District was subsequently designated a Landmark District.

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structures in Chicago, eligible for designation by the Ordinance as a Chicago Landmark.

Section 600 states that Commission members shall be selected from professionals in the disciplines of history, architecture, historic architecture, planning, archaeology, real estate, historic preservation, or related fields, or shall be persons who have demonstrated special interest, knowledge, or experience in architecture, history, neighborhood preservation, or related disciplines.

Section 610 provides for the powers and duties the Commission shall or may have. Section 610(6) states that the Commission may exercise the power to advise and assist owners of potential or designated landmarks on technical and financial aspects of preservation, renovation, rehabilitation, and to establish standards and guidelines therefore.

Section 620 provides for the seven criteria the Commission should use in considering a designation. Those seven criteria are characterized as a (1) critical part of the city's heritage, (2) significant historic event, (3) significant person, (4) important architecture, (5) important architect, (6) distinctive theme as a district, and (7) unique visual feature.

Section 630 provides that the Commission, in making the preliminary recommendation, must use at least two of the seven criteria, and consider whether there is a significant historic, community, architectural, or aesthetic interest or value. It also provides for notice of preliminary recommendation to the owner of the property and to the alderman of the ward.

Section 640 provides for the Commission to obtain a report for the Commissioner of Planning and Development evaluating the relationship of the proposed designation to the Comprehensive Plan of the City. The section also provides that the Commission may proceed

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without such report.

Section 640 provides for a process for the owner to consent to the designation. It states that notice to the owner shall provide the reasons for and the effects of the designation. If the owner does not consent, a public hearing is to be held, pursuant to the notice procedures delineated in section 670. If a hearing is held, the hearing must comply with the procedures in section 680.

Section 690 governs the Commission's recommendation to the City Council. The Commission must make findings related to at least two of the seven criteria in section 620, and must provide a copy to the owner and others.

Section 700 provides for the City Council's consideration of the Commission's recommendation. The City Council may hold public hearings and by ordinance, make the designation pursuant to the section 620 criteria.

Section 705 sets the timeline for the City Council to consider the Commission's recommendation. If the City Council does not take final action within 365 days from the date of recommendation, the landmark designation will be granted. It further provides that the "Historical Landmark Preservation Committee" of the City Council shall hold timely hearings and report its recommendation to the City Council.

Section 730 provides the process for amendment, rescission, and reconsideration of the designation.

Section 740 provides that, for property subject to a preliminary recommendation for landmark status or which has been designated a Chicago Landmark, no permit for alteration,

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construction, reconstruction, erection, demolition, relocation, or other work shall be issued to any applicant by any department without the written approval of the Commission. Sections 750 to 825 govern the approval process.

C. Trial Court Ruling

Plaintiffs alleged in Count I that the Ordinance was facially vague in that it did not provide sufficient specificity such that a citizen might know how to conform their conduct thereto. The trial court found that the language of the Ordinance was sufficient to guide the Commission in making recommendations as to landmark status and was therefore not unconstitutionally vague. The City's motion to dismiss was granted.

Plaintiffs alleged in Count II that the Ordinance violates Article I, section 2 as an unconstitutional delegation of authority to the Landmark Commission. The City argued that the Ordinance is not a delegation of authority because the City Council, the legislative body, has the final approval of the Commission's recommendation; and if the Commission has been delegated authority, the guidelines are sufficient. The trial court, in granting the City's motion to dismiss, found that the Commission's recommendations of potential landmarks to the City Council are advisory, not declaratory; and that the Ordinance provided intelligible standards for the Commission to apply and was thus not vague.

Plaintiffs alleged in Count III that section 2-120-705 on its face violates Article IV, section I of the Illinois Constitution for allowing the Commission to exercise legislative power. The trial court held that the procedures for granting the Commission's recommendation in section 2-120-705 do not result in an improper delegation of legislative authority to the Commission.

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Plaintiffs alleged in Counts V-XX of their Complaint that the application of the Ordinance to their respective properties violated the equal protection clause and the substantive due process clause of the Illinois Constitution. The plaintiffs urged the court to use a “rational relationship test tailored to zoning” rather than the “garden variety” rational basis test in ruling on the City’s section 2-615 motion to dismiss. The trial court found that the law in Illinois utilizes the rational basis test and therefore granted defendant’s section 2-615 motion to dismiss for failure to state a cause of action.

Plaintiffs now appeal the dismissal of such Counts I, II, III, and V-XX of their Complaint, and asks this court to find that they have properly stated a cause of action as to each count, and to reverse and remand the case to the trial court.

II. ANALYSIS

On appeal, plaintiffs allege that the trial court erred in dismissing certain counts of their complaint because (1) the trial court incorrectly reviewed their claims that the Landmark District designations violated their equal protection and substantive due process rights under the rational basis standard, (2) plaintiffs properly stated a cause of action alleging that certain Landmark Ordinance provisions are unconstitutionally vague, and (3) plaintiffs properly stated a cause of action alleging that certain provisions of the Landmark Ordinance constitute an unconstitutional delegation of legislative authority to an administrative body.

A. Standard of Review

A motion to dismiss brought under section 2-615 of the Code of Civil Procedure (735 ILCS 5/2-615 (West 2006)) tests the legal sufficiency of a complaint. Napleton v. Hinsdale, 229

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Ill. 2d 296, 305 (2008). On review, the inquiry is “whether the allegations of the complaint, when construed in a the light most favorable to the plaintiff, and taking all well-pleaded facts and all reasonable inferences that may be drawn from those facts as true, are sufficient to establish a cause of action upon which relief may be granted. Napleton, 229 Ill. 2d at 305. Illinois is a fact-pleading jurisdiction, and therefore plaintiffs must allege facts, not mere conclusions, to establish their claim as a viable cause of action. Napleton, 229 Ill. 2d at 305. A claim should not be dismissed pursuant to section 2-615 unless “no set of facts can be proved which would entitle the plaintiff to recover.” Napleton, 229 Ill. 2d at 305. We review the trial court’s dismissal of plaintiffs’ action *de novo*. Napleton, 229 Ill. 2d at 305.

B. Count I

In Count I of the Complaint, plaintiffs sought a declaration that the Landmark Ordinance was unconstitutionally vague and ambiguous, in its entirety or in certain parts, in violation of their due process rights under Article 1, section 2 of the Illinois Constitution. Their challenge was a facial challenge.

Plaintiffs are correct that “[a]n ordinance or statute violates due process guarantees when its terms are so incomplete vague, indefinite and uncertain that men and women of ordinary intelligence must necessarily guess at their meaning and differ as to their application.” City of Wheaton v. Sandberg, 215 Ill. App. 3d 220, 227 (1991). “The law is clear that a legislative act which is so vague, indefinite and uncertain that the courts are unable, by accepted rules of construction, to determine with any reasonable degree of certainty, what was intended will be declared void.” Wheaton, 215 Ill. App. 3d at 227.

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Plaintiffs point to numerous provisions within the Ordinance that they claim are vague and arbitrary. They argue that the seven criteria used to guide landmark designation are vague and uncertain due to the Ordinance's use of phrases like "may or may not," "or other," "value," "important," "critical," "historic," and "significant." Plaintiffs allege that the seven criteria are so rife with vague, ambiguous, and overly broad language that they could conceivably describe any property in any city.

The City, however, responds that such provisions are not vague or arbitrary when viewed in the context of the Ordinance as a whole. Specifically, the City points to the fact that the words "important," "critical," and "significant" have their ordinary and popularly understood meanings, and when viewed in the context of the ordinance as a whole, these terms provide sufficient guidance to the Commission. The City further argues that the Commission is made up of "professionals in the discipline of history, architecture, historic architecture, planning, archeology, real estate, historic preservation, or *** persons who have demonstrated special interest, knowledge, or experience in architecture, history, neighborhood preservation, or related disciplines," (see Municipal Code of Chicago, Ill. Section 2-120-600) who are equipped to apply the commonly understood terms that plaintiffs complain of. The City concedes that this provision may not "guarantee" any particular level of expertise of the individual members, the members could nonetheless have valuable experience and knowledge that could benefit the Commission.

The City further maintains that although some of the terms used in the seven criteria set forth in the Ordinance are open to interpretation, the procedures that govern the Commission's recommendations to the City Council offer sufficient guidance. The City cites to several cases in

