

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA

HERMINE RICKETTS and
LAURENCE CARROLL,
a married couple,

CASE NO.: 13-36012-CA
CIVIL DIVISION: 02

Plaintiffs,

v.

MIAMI SHORES VILLAGE, FLORIDA and
MIAMI SHORES CODE ENFORCEMENT
BOARD,

Defendants.

PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

Pursuant to Florida Rule of Civil Procedure 1.510, Plaintiffs Hermine Ricketts and Laurence Carroll, by and through their undersigned counsel, hereby file this Motion for Summary Judgment as follows:

1. Plaintiffs, Hermine Ricketts and Laurence Carroll ("Plaintiffs"), are a married couple who reside in the Village of Miami Shores, Florida ("the Village"). For approximately 17 years, Plaintiffs grew vegetables in the front yard of their Miami Shores home in order to feed themselves. Because of Miami Shores' ban on front-yard vegetable gardens, however, they were forced to uproot their vegetables in August 2013.
2. Plaintiffs' lawsuit asserts four claims related to the ban on front-yard vegetable gardens enacted and enforced by the Village of Miami Shores. *See* Miami Shores, Fla., Code of Ordinances Part II, app. A, art. V, div. 17, § 536(e) ("Vegetable gardens are permitted in rear yards only.").

3. First, Plaintiffs' lawsuit asserts that the ban on front-yard vegetable gardens enacted and enforced by the Village and the Village Code Enforcement Board ("Defendants") violates Article I, section 2, of the Florida Constitution, which provides that "[a]ll natural persons . . . have inalienable rights, among which are the right . . . to pursue happiness . . . and to acquire, possess and protect property."

4. Second, Plaintiffs' lawsuit asserts that the ban on front-yard vegetable gardens enacted and enforced by Defendants violates Article I, section 23, of the Florida Constitution which provides, in relevant part, that "[e]very natural person has the right to be let alone and free from governmental intrusion into the person's private life."

5. Third, Plaintiffs' lawsuit asserts that the ban on front-yard vegetable gardens enacted and enforced by Defendants violates Article I, section 9, of the Florida Constitution, which provides that "[n]o person shall be deprived of life, liberty or property without due process of law."

6. Fourth, Plaintiffs' lawsuit asserts that the ban on front-yard vegetable gardens enacted and enforced by Defendants violates Article I, section 2, of the Florida Constitution, which provides that "[a]ll natural persons, female and male alike, are equal before the law."

7. The Village's ban on front-yard vegetable gardens is not rationally related to any legitimate government interest; does not bear a reasonable and substantial relation to any such interest; is not reasonably necessary to achieve any such interest; and is unreasonable, arbitrary, and capricious. Moreover, it draws classifications that are not based on rational distinctions that have a just and reasonable relation to a legitimate government interest.

8. The Village's ban on front-yard vegetable gardens is not narrowly tailored to any compelling government interest and is not the least restrictive means of achieving any such interest.

9. The Village's ban on front-yard vegetable gardens infringes Plaintiffs' fundamental property right to make peaceful and productive use of their own property to feed themselves and their family, as well as their fundamental privacy right to produce and consume the foods of their choice. It likewise abridges Plaintiffs' due process and equal protection rights.

10. If the Village's ban on front-yard vegetable gardens is declared unconstitutional, Plaintiffs would resume planting vegetables in their front yard immediately.

11. Plaintiffs previously filed a motion to compel in this action stemming from Defendants' objections to Plaintiffs' discovery requests aimed at obtaining evidence related to, among other things, the purpose of the Village's ban on front-yard vegetable gardens, the Village's interpretation of the term "vegetable," and the Village's enforcement of the ban. Although this Court denied that motion, Plaintiffs continue to preserve their position with respect to Defendants' objections.

12. Notwithstanding, sufficient discovery has taken place to show that there is no genuine issue of material fact as to the unconstitutional nature of the challenged provisions.

13. The summary judgment evidence in this case will include, but is not limited to, deposition testimony from the Defendants' Code Enforcement Supervisor, Anthony Flores; testimony from Plaintiffs' expert, Falon Mihalic; documents obtained from the Village via public records request; and information obtained from the Defendants' responses to interrogatories, requests for production, and requests for admission.

14. Plaintiffs will provide additional information in support of these arguments in their forthcoming memorandum of law.

15. There is no genuine issue of material fact and Plaintiffs are entitled to judgment as a matter of law. Therefore, this Court should grant summary judgment in favor of the Plaintiffs.

WHEREFORE, Plaintiffs hereby respectfully request that this Court grant summary judgment in their favor and grant such further relief as this Court deems just and proper.

Respectfully submitted,

By: /s/ Ari Bargil
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 23rd day of December, 2015, a true and correct copy of the foregoing PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT was served via eservice@myfloridaaccess.com on the following counsel of record:

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