United States District Court
for the
Southern District of Florida

Maryeli's Lovely Pets, Inc., Plaintiff	)	
	)	
v.	)	Civil Action No. 14-61391-Civ-Scola
	)	
City of Sunrise, Defendant	)	

Order On Defendant's Motion for Summary Judgment

Maryeli's Lovely Pets challenges the validity of Ordinance No. 577, enacted by the City of Sunrise to combat the ills of excessive pet breeding. "Puppy mills" and "kitten factories," the Ordinance states, are more likely to breed animals with genetic disorders and to subject animals to inhumane housing conditions and indiscriminate disposal when they reach the end of their profitable breeding cycle. (*See* Sunrise, Fla. Code § 4-7, ECF No. 58-1–58-3.) The ready availability of mill and factory animals leads to impulse purchasing by consumers and, after the animals outgrow their "initial puppy or kitten appeal," can result in their abandonment or mistreatment. (*See id.*) But the Ordinance is discriminatory, Lovely Pets argues, because it requires Lovely Pets "to purchase its puppies only from Sunrise-based Hobby Breeders[.]" (Opp. to Mot. for Summ. J., 10, ECF No. 68.) The Court disagrees and grants the City's Motion for Summary Judgment as it relates to Lovely Pets's Commerce Clause and Equal Protection claims. The remaining claims—distinctly issues of state law—should be decided in state court.

1. Background.

On April 22, 2014, the City of Sunrise enacted Ordinance No. 577, which added a new section to the City Code of Ordinances entitled "Retail Sale of Dogs and Cats." (*See* Sunrise, Fla. Code § 4-7, ECF No. 58-1–58-3.) Among other things, the Ordinance bans the sale of dogs and cats that are not bred by their seller or purchased from a "Hobby Breeder," which the Ordinance defines as "a person or entity that causes or allows the breeding or studding of a dog or cat resulting in no more than a total of one litter per calendar year whether or not the animals in such litter are offered for sale or other transfer." (*See* Sunrise, Fla. Code § 4-7(1)).

Since December 2013—nearly five months before the Ordinance was enacted—Lovely Pets has sold puppies in the City of Sunrise. (*See* Compl. ¶ 24.) The new Ordinance, Lovely Pets claims, will put it out of business because

the Ordinance "prevents [Lovely Pets] from making any purchases in interstate commerce." (Opp. to Mot. to Dismiss, 9, ECF No. 68.) Seeking to invalidate the Ordinance, Lovely Pets filed a lawsuit in Broward County Circuit Court. The case was removed, (*see* Notice of Removal, ECF No. 1), and, following removal, Lovely Pets amended its Complaint. In its operative pleading—the Amended Complaint (the "Complaint")—Lovely Pets brings five causes of action. Count I seeks a declaration that the Ordinance is unconstitutional because it violates the Commerce Clause. Count II also seeks a declaration that the Ordinance is unconstitutional, but, this time, based on violations of the Equal Protection Clause. Count III is a claim for equitable estoppel and Count IV seeks a temporary injunction. The final claim, Count V, raises a claim for state law preemption.

The Court agrees with the City that the Ordinance is valid and enforceable and thus grants summary judgment on Count I and Count II of Lovely Pets's Amended Complaint. Count IV does not need to be addressed because the parties previously agreed that "preliminary injunctive relief is no longer necessary because [the City] has extended the exemption period for enforcement of the municipal ordinance at issue in this case to July 31, 2015." (*See* Order, ECF No. 55.) Counts III (equitable estoppel) and V (preemption) present issues uniquely positioned for disposition in state court—from where this action was removed—and the Court thus remands those claims for adjudication in that forum.

2. Legal Standard.

Under Federal Rule of Civil Procedure 56, "summary judgment is appropriate where there 'is no genuine issue as to any material fact' and the moving party is 'entitled to a judgment as a matter of law.'" *Alabama v. North Carolina*, 560 U.S. 330, 344 (2010) (quoting Fed. R. Civ. P. 56(c)). The Court must view the evidence in the light most favorable to the nonmoving party, and summary judgment is inappropriate where a genuine issue material fact remains. *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 158–59 (1970). "An issue of fact is 'material' if, under the applicable substantive law, it might affect the outcome of the case." *Hickson Corp. v. Northern Crossarm Co., Inc.*, 357 F.3d 1256, 1259–60 (11th Cir. 2004). "An issue of fact is 'genuine' if the record taken as a whole could lead a rational trier of fact to find for the nonmoving party." *Id.* at 1260. A court may not weigh conflicting evidence to resolve disputed factual issues; if a genuine dispute is found, summary judgment must be denied. *Skop v. City of Atlanta, Ga.*, 485 F.3d 1130, 1140 (11th Cir. 2007).

3. Discussion.

A. The Ordinance does not create a Commerce Clause issue because Congress, through the Animal Welfare Act, authorized the states to regulate animal welfare.

If federal law expressly contemplates supplementation by local law, the local law does not implicate the dormant Commerce Clause. *See e.g., Ne. Bancorp., Inc. v. Bd. Of Governors*, 472 U.S. 159, 174 (1985) ("[S]tate actions which [Congress] plainly authorizes are invulnerable to constitutional attack under the Commerce Clause."). This remains the case even "if it interferes with interstate commerce." *White v. Mass. Council of Constr. Emp'rs, Inc.*, 460 U.S. 204, 213 (1983).

In enacting the Animal Welfare Act, Congress found "that it [was] essential to regulate . . . the transportation, purchase, sale, housing, care, handling, and treatment of animals by carriers or by persons or organizations engaged in . . . holding them for sale as pets[.]" 7 U.S.C. § 2131. The AWA gives power to the Secretary of Agriculture of the United States to "promulgate standards to govern the humane handling, care, treatment, and transportation of animals by dealers, research facilities, and exhibitors." 7 U.S.C. § 2143(a)(1). Significantly, that grant of authority does "not prohibit any State (or political subdivision of such State) from promulgating standards in addition to those standards promulgated by the Secretary[.]" 7 U.S.C. § 2143(a)(8).

Lovely Pets wholly ignores the City's argument that the AWA bars a Commerce Clause challenge to the Ordinance. (*See* Resp. to Mot. for Summ. J., ECF No. 68; Resp. to Amicus Brief, ECF No. 73.) Its silence is telling, and the Court finds this argument unassailable. Here Congress's commerce power is not dormant, but was exercised by that body when it enacted the AWA. Through the AWA, Congress authorized the enactment of the Ordinance that Lovely Pets challenges. And when Congress "so chooses, state actions which it plainly authorized are invulnerable to constitutional attack under the Commerce Clause." *Ne. Bancorp., Inc.*, 472 U.S. at 174. Plaintiff's Commerce Clause challenge to the Ordinance consequently fails as a matter of law.

Lovely Pets claims that the "Ordinance discriminates on its face[.]" (Am. Compl. ¶ 32; *see also* Opp. to Mot. for Summ. J., 9, ECF No. 68 ("The Ordinance is facially discriminatory . . . because its plain language prevents [Lovely Pets] from making any purchases in interstate commerce.")) The "plain terms of the Ordinance require[] [that] local pet stores in Sunrise, Florida are to purchase their inventory solely from Hobby Breeders located in Sunrise, Florida[,]" writes Lovely Pets. (Am. Compl. ¶ 33.) But this is not the case at all.

Rather, the plain language of the Ordinance contains no geographic limitation; pet stores can purchase from any Hobby Breeder, located within or outside of Sunrise, so long as the breeder meets certain requirements. (*See* Sunrise, Fla. Code § 4-7(5).) Lovely Pets then argues that the effect of the Ordinance is discriminatory because it will prevent "out-of-state breeders from accessing [the City's] market." (Opp. to Mot. for Summ J., 12, ECF No. 68.) This is so, Lovely Pets claims, because breeders located within the City "are the only Hobby Breeders subject to [the City's] jurisdiction, and accordingly must strictly comply with the Ordinance[.]" (*Id.* at 13.) However, that the City may not have jurisdiction to enforce its Ordinance against out-of-City breeders is of no consequence. Of course, to continue conducting business with Sunrise-based pet stores, foreign breeders can chose—even without the threat of enforcement—to comply with local ordinances. Lovely Pets's argument that the Ordinance requires it to purchase animals exclusively from Sunrise-based breeders is without merit.

B. The Ordinance does not violate the Equal Protection Clause. Lovely Pets is not treated differently than similarly situated entities and, in any event, the Ordinance is rationally related to a legitimate governmental purpose.

The Equal Protection Clause requires that the government treat similarly situated persons in a similar manner. *See* U.S. Const. amend. XIV, § 1. "When legislation classifies persons in such a way that they receive different treatment under the law, the degree of scrutiny the court applies depends upon the basis for the classification." *Cary v. City of Warner Robins, Ga.*, 311 F.3d 1334, 1337 (11th Cir. 2002) (citations omitted). "If a fundamental right or a suspect class is involved, the court reviews the classification under strict scrutiny." *Id.* (citations omitted). If, however, "an ordinance does not infringe upon a fundamental right or target a protected class, equal protection claims relating to it are judged under the rational basis test; specifically, the ordinance must be rationally related to the achievement of a legitimate government purpose." *Id.* (citation omitted).

Lovely Pets argues that it is treated differently than similarly situated entities under the Ordinance. The Ordinance "is under-inclusive because [it] specifically exempts both animal shelters and animal rescue organizations from the requirement that any purchases of puppies come solely from locally-licensed Hobby Breeders[,]" claims Lovely Pets. (Opp. to Mot. for Summ. J., 17, ECF No. 68.) These entities, Lovely Pets writes, "'stand on equal footing' with [it] and have 'the potential [to purchase dogs from puppy mills.'" (*Id.* at 18.)

But to compare Lovely Pets with animal shelters and rescues is to compare apples to oranges.

To consider two entities similarly situated, they "must be 'prima facie identical in all relevant respects." *Williams v. City of Tampa, Fla.*, No. 8:04-CV-1011-T-30EAJ, 2006 WL 3734318, at *6 (M.D. Fla. Dec. 15, 2006) (citations omitted). In a similar case, another district court confronted the same comparison of for-profit pet stores and non-profit animal rescues. *See Perfect Puppy, Inc. v. City of E. Providence*, C.A. No. 14-257 S., 2015 WL 1474560, at *5 (D.R.I. Mar. 31, 2015), *appeal docketed*, No. 15-1553 (1st Cir. May 13, 2015). The *Perfect Puppy* court concluded, and this Court agrees, that "on the most basic level, the entities are dissimilar: Plaintiff is a for-profit business that sells dogs, while the entities to which Plaintiff compares itself are not-for-profits that rescue and shelter them." *Id.* "The only similarity would seem to be that both involve dogs." *Id.* "But that is like saying a homeless shelter is similarly situated to a luxury hotel because both provide rooms to sleep in." *Id.* The law of equal protection requires more than superficial similarity and where entities are not similarly situated, there is no equal protection violation. *See Campbell v. Rainbow City, Ala.*, 434 F.3d 1306, 1314 (11th Cir. 2006) ("'[d]ifferent treatment of dissimilarly situated persons does not violate the equal protection clause.'").

After arguing the Ordinance is under-inclusive for exempting animal shelters and rescues, Lovely Pets claims, on the other hand, that the Ordinance is "over-inclusive," "because it limits [Lovely Pets] to purchasing only from local breeders that breed no more than once a year." (Opp. to Mot. to Summ. J., 18, ECF No. 68.) To the extent Lovely Pets argues that the Ordinance discriminates between local and foreign breeders, Lovely Pets imputes a geographic limitation to the Ordinance when there is none. The Ordinance makes no distinction between in-City and out-of-City pet stores or breeders; rather, it is patently apparent that the Ordinance applies irrespective of location. (*See* Sunrise, Fla. Code § 4-7.) Alternatively, if Lovely Pets is arguing that the Ordinance discriminates between entities that breed animals once and year and those that breed more than once a year, the Ordinance passes rational basis review.

Though it argues it is treated differently from other entities, Lovely Pets does not argue that it is part of a suspect class. (*See* Opp. to Mot. for Summ. J., ECF No. 68.) Nor does it identify a fundamental right upon which the Ordinance allegedly infringes. (*Id.*) Thus, the Ordinance will be upheld so long as it is rationally related to a legitimate governmental purpose. See *Kadrmas v. Dickinson Public Schools*, 487 U.S. 450, 457–58 (1988) (citations omitted).

The "rational basis test requires that an 'ordinance . . . be rationally related to the achievement of a legitimate government purpose." *Cary*, 311 F.3d at 1338–39 (citation omitted). "Under this test, a court gives great deference to economic and social legislation." *Id.* (citations omitted).

> The general rule is that legislation is presumed to be valid and will be sustained if the classification drawn by the statute is rationally related to a legitimate state interest. Thus, a court will not overturn the legislation 'unless the varying treatment of different . . . persons is so unrelated to the achievement of any combination of legitimate purposes that [the court] can only conclude that the legislature's actions were irrational.

Id. (internal citation omitted). Under this highly deferential standard, the Court concludes that the Ordinance satisfies the rational basis test. The Ordinance seeks to curb the practice of purchasing animals from "puppy mills" and the resulting problems of mistreatment and abandonment. (*See* Sunrise, Fla. Code § 4-7, ECF No. 58-1–58-3.) The City enacted the Ordinance, believing, among other things, that:

> the restriction of the retail sale of dogs and cats in pet stores in the City will reduce impulse purchases of pets, which can lead to abandonment or mistreatment of the animals once they have outgrown their initial puppy or kitten appeal and will also encourage pet consumers to adopt dogs and cats from shelters where proposed owners are screened for their suitability with respect to the animal, thus reducing the likelihood that the animal will be mistreated or abandoned and thereby saving animals' lives and reducing the cost to the public of sheltering animals[.]

(*Id.*) Protecting the health and welfare of domestic animals is a legitimate governmental interest; indeed, courts around the country have so held. *See e.g.*, *Kerr v. Kimmell*, 740 F. Supp. 1525, 1529 (D. Kan. 1990) ("The court finds that a legitimate local public interest is served by the stated purposes of the Act, i.e., quality control and humane treatment of animals."); *Perfect Puppy, Inc.*, 2015 WL 1474560 at *4 ("There can be little dispute that promoting the humane treatment of animals is a legitimate local interest."); *Mo. Pet Breeders Ass'n v. Cnty. of Cook*, No. 14 C 6930, 2015 WL 2448332, at *7 (N.D. Ill. May 21, 2015) ("The ordinance's breeder-size limitations are plausibly designed to reduce the number of animals sold in Cook County that are obtained from mass-breeding facilities. This restriction is rationally related to a legitimate government interest, even if it does not include all animals from mass-breeding facilities.")

The Court finds the City's Ordinance rationally related to a legitimate governmental interest. Again, the City seeks to curb the problems that it believes are created by mass-breeding; specifically, abandonment and mistreatment of animals. The Ordinance's goal is to reduce the supply of mass-bred animals, and the Court finds that this effort to reduce supply is rationally related to the City's interest in reducing the number of mass-bred animals that are abandoned, mistreated, or that end up in animal shelters and rescues. Accordingly, because the Ordinance is rationally related to a legitimate governmental interest, it does not violate the Equal Protection Clause.

C. Having found that Lovely Pets's Commerce Clause and Equal Protection Clause claims fail, the Court declines to continue exercising supplemental jurisdiction over Lovely Pets's state law claims of equitable estoppel and preemption.

"[S]tate courts, not federal courts, should be the final arbiters of state law." *Baggett v. First Nat'l Bank of Gainesville*, 117 F.3d 1342, 1353 (11th Cir. 1997). "In any civil action of which the district courts have original jurisdiction, [they also] shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case of controversy under Article III of the United States Constitution." 28 U.S.C. § 1367(a). District courts, however, "may decline to exercise supplemental jurisdiction over a claim" if "the district court has dismissed all claims over which it has original jurisdiction." 28 U.S.C. § 1367(c).

Having found that Lovely Pets's Commerce Clause and Equal Protection Clause claims fail, its only remaining claims are for equitable estoppel and state law preemption. In its equitable estoppel claim, Lovely Pets argues that it is established Florida law that once a property owner "incurred a substantial investment of time and money on reliance of existing law in order to establish an ongoing business, [the property owner] obtained a vested right to continue in that business." (Am. Compl. ¶ 50, ECF No. 44.) In its preemption claim, Lovely Pets asserts that Florida Statutes, Section 828.29 preempts the City's Ordinance. (*See id.* ¶¶ 62–65.) These issues are state law matters and, again, "state courts, not federal courts, should be the final arbiters of state law." *Baggett*, 117 F.3d at 1353. Because the Court has disposed of Lovely Pets's federal claims, it declines to keep jurisdiction over Lovely Pets's state claims and remands those claims to state court, where they originated. *See Pace v. Peters*, 524 F. App'x 532, 538 (11th Cir. 2013) ("[B]ecause this case was originally filed in state court and removed to federal court under § 1441, the

district court should have remanded Pace's state law tort claims to the state court, rather than dismissing them with prejudice.") (citation omitted).

4. Conclusion.

For the foregoing reasons, the Court **grants** Defendant's Motion for Summary Judgment as to Count I and Count II. The Court remands Count III, Count IV, and Count V to the Circuit Court in which they originated. The Clerk shall **close** this matter and take all necessary steps to ensure the prompt **remand** of this action and transfer this file back to the Circuit Court for the Seventeenth Judicial Circuit in and for Broward County, Florida. All pending motions, if any, are **denied as moot**.

Done and ordered in chambers, at Miami, Florida, on June 24, 2015.

Robert N. Scola, Jr.
United States District Judge