

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

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MIDDLE DISTRICT OF FLORIDA
ORLANDO, FLORIDA

MICHAEL STRATER, et
al.,
Plaintiffs

-vs-

CASE NO. 97-634-CIV-ORL-22

SEMINOLE COMMUNITY
MENTAL HEALTH CENTER,
INC., et al.,
Defendants

ORDER

This cause comes before the Court for consideration of Defendants Alliance for the Mentally Ill of Greater Orlando, Inc., d/b/a The Hacienda and The Hacienda, Inc.'s Motion to Dismiss (Doc. 6), Plaintiffs' Response (Doc. 12), Defendant Seminole Community Mental Health Center, Inc.'s Motion to Dismiss (Doc. 4), and Plaintiffs' Response (Doc. 16). Plaintiffs seek injunctive relief and damages related to an alleged private nuisance created by Defendants.

I. Standard for Motion to Dismiss

The accepted rule is that "a complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957). A trial court, in ruling on a motion to dismiss, must accept the allegations of the complaint as true

and must construe the facts alleged in the light most favorable to the plaintiff. *Hunnings v. Texaco, Inc.*, 29 F.3d 1480, 1484 (11th Cir. 1994). Therefore, the material allegations of the complaint are taken as true for the purpose of deciding a motion to dismiss. *St. Joseph's Hosp. v. Hospital Corp. of Am.*, 795 F.2d 948 (11th Cir. 1986).

II. Background Information

Plaintiffs are residents of Seminole County, Florida. (Complaint (Doc. 2) at 2). Defendants have proposed to build a psychiatric facility, called Hacienda House, in Plaintiffs' neighborhood. (*Id.*). The facility will consist of 11 one-bedroom units and two two-bedroom units that will house individuals who have psychiatric disabilities and are medically dependent. (*Id.* at 3-4). The goal of the Hacienda House is to provide supportive housing to candidate residents who have demonstrated the potential to live independently. (*Id.* at 4).

When the residents have moved in, Defendants will provide a resident manager who will be available forty hours per week. (*Id.* at 6). In addition, all residents of the proposed facility will be monitored by a doctor, and each resident will have a case manager for continuous support services. (*Id.* at 7).

Furthermore, Plaintiffs note that: Defendants will not perform background checks on the individuals; Defendants will not enforce a curfew; Defendants have "no security measures to assure medication is taken;" and "[s]ome of the proposed residents of the psychiatric facility will remain on-site during the day when

most parents of neighborhood children will be at work." (*Id.* at 5-7).

Plaintiffs allege that the proposed site creates a private nuisance because it "will clearly disturb the use and enjoyment of Plaintiffs as concerns their property rights. . . . Said site does interfere with the comfort, repose and enjoyment of Plaintiffs as concerns their homes." (*Id.* at 11). In addition, Plaintiffs contend that because the patients have conditions related to schizophrenia and manic depression, if they fail to take their medication, they "present a danger to the Plaintiffs herein, their families, their children, their neighbors, and their neighborhood." (*Id.* at 11-12). As a result, Plaintiffs assert that they have experienced and will experience mental pain and suffering from having to live near potentially dangerous people. (*Id.* at 12). Plaintiffs also allege that their property values will diminish as "a direct and proximate result of the conduct of Defendants in opening the psychiatric facility . . ." (*Id.* at 13). Therefore, in Count I, Plaintiffs seek compensatory damages related to the private nuisance, and in Count II, Plaintiffs seek compensation for the diminution in value of their property.

Defendants counterclaimed against Plaintiffs for alleged violations of the Federal Fair Housing Act, 42 U.S.C. §§ 3604, 3617. (Doc. 5). Defendants claim that by filing the complaint, Plaintiffs have made unavailable or denied housing based on the handicap of a person. (Doc. 5 at 9). In addition, Defendants

contend that Plaintiffs have engaged in coercive, intimidating, and threatening conduct. (Doc. 5 at 10).

III. Analysis

In their Motions to Dismiss, Defendants argue that Plaintiffs' complaint fails to state a cause of action because to maintain a nuisance claim, Defendants' conduct must be unreasonable, unwarranted, or unlawful and Defendants' use of the property does not meet this standard; Plaintiffs failed to allege facts showing that Defendants had an interest in the land; Plaintiffs' allegations are based on speculation and conjecture; and Plaintiffs have failed to identify their interest in the affected land.

The Supreme Court of Florida adopted the language of *Antonik v. Chamberlain*, 78 N.E.2d 752, 758 (Ohio Ct. App. 1947), in explaining the tort of nuisance:

'Nuisance, in law, for the most part consists in so using one's property as to injure the land or some incorporeal right of one's neighbor. . . .'

'The necessities of a social state, especially in a great industrial community, compel the rule that no one has absolute freedom in the use of his property, because he must be restrained in his use by the existence of equal rights in his neighbor to the use of his property. This rule has sometimes been erroneously interpreted as a prohibition of all use of one's property which annoys or disturbs his neighbor in the enjoyment of his property. The question for decision is not simply whether the neighbor is annoyed or disturbed, but is whether there is an injury to a legal right of the neighbor. The law of private nuisance is a law of degree; it generally turns on the factual question whether the use to which the property is put is a reasonable use under the circumstances, and whether there is 'an appreciable, substantial, tangible injury resulting in actual, material, physical discomfort, and not

merely a tendency to injure. It must be real and not fanciful or imaginary, or such as results merely in a trifling annoyance, inconvenience, or discomfort. . . .'

"It is not everything in the nature of a nuisance which is prohibited. There are many acts which the owner of land may lawfully do, although it brings annoyance, discomfort, or injury to his neighbor, which are *damnum absque injuria*. . . .

"The test of the permissible use of one's own land is not whether the use or the act causes injury to his neighbor's property, or that the injury was the natural consequence, or that the act is in the nature of a nuisance, but the inquiry is, Was the act or use a reasonable exercise of the dominion which the owner of property has by virtue of his ownership over his property? Having regard to all interests affected, his own and those of his neighbors, and having in view, also, public policy. . . .'

'All systems of jurisprudence recognize the requirement of compromises in the social state. Members of society must submit to annoyances consequent upon the reasonable use of property. '*Sic Utere tuo ut alienum non laedas*' is an old maxim which has a broad application. If such rule were held to mean that one must never use his own property in such a way as to do any injury to his neighbor or his property, it could not be enforced in civilized society. People who live in organized communities must of necessity suffer some damage, inconvenience and annoyance from their neighbors. For these annoyances, inconveniences and damages, they are generally compensated by the advantages incident to living in a civilized state.'

Beckman v. Marshall, 85 So. 2d 552, 554-55 (Fla. 1956) (quoting *Antonik*, 78 N.E.2d at 758).

In the instant case, the psychiatric facility that the Plaintiffs seek to enjoin has not yet been built. Therefore, the issue is whether the construction of a psychiatric facility, which is not a nuisance per se, may be enjoined on the ground that the facility has the potential of becoming a nuisance under

particular scenarios or circumstances. In analyzing what constitutes a threatened nuisance, the Supreme Court of Florida stated:

In using the language 'threatened nuisance' herein we do not mean a mere threat to do a thing which may result in the creation of something which may be a nuisance, but we contemplate by this language the beginning of construction or the proceeding with the plans, which, if consummated, will necessarily result in the creation of a public nuisance.

Id. (quoting *National Container Corp. v. State*, 189 So. 4 (1939)). In addition, the harm resulting from a potential nuisance must be more than a tendency to harm. See *Beckman*, 85 So. 2d at 555 (citing *Antonik*, 78 N.E.2d at 758). The harm must be "'real and not fanciful or imaginary.'" *Id.* The Court finds that Plaintiffs' allegations have failed to meet this standard.

In their complaint, Plaintiffs assert the following: (1) "candidate residents of said proposed facility allegedly have shown a potential to live independently, however, only time will tell whether this is true;" (2) "The proposed residents of Defendants' facility . . . if not treated with medication, can be extremely unpredictable and dangerous and thus clearly pose a potential danger to the surrounding . . . neighborhood;" (3) "A known schizophrenic or manic depressant, or other mentally ill individual can clearly pose a danger to himself . . . if medication is not monitored and taken;" and (4) "Defendants cannot affirmatively state that any of the proposed residents of Defendants psychiatric facility have previously lived independently, as said proposed residents have not, yet

Defendants' plan to use the proposed psychiatric facility as a 'testing ground' to wait and see whether said residents will successfully be able to live independently while in the interim again posing a danger or potential danger."

However, Plaintiffs have not alleged that the building of the psychiatric facility will necessarily result in the creation of a nuisance. There are no claims that harm will definitely occur, that Plaintiffs' families will actually be in danger, or that their property values will in fact diminish. The Plaintiffs' allegations are no more than speculation and conjecture. They have only asserted what they perceive to be potential threats that are not certain to occur. See *Rackleff v. Texaco Trading and Transp., Inc.*, 611 So. 2d 95, 97 (1st DCA 1992) (concluding that injunctive relief may not be given in situations where an activity has the potential of becoming a nuisance under certain circumstances). Moreover, it is clear from the complaint that Plaintiffs are not objecting to the construction of the facility, but rather the type of individuals who are going to live there.

In their Opposition to Defendants' Motions to Dismiss, Plaintiffs focus on the "failure of the various representatives of Defendants to provide adequate and accurate information and appropriate guidelines, procedures, and monitoring as to alleviate legitimate concerns of Plaintiffs." (Doc. 12 at 3). In addition, Plaintiffs state that their objection is not to the "handicapped individuals themselves, but to the representatives

of these handicapped individuals who by their own conduct have failed to substantiate that adequate guidelines, procedures, and monitoring will be in place and thus have created the prospective nuisance for which Plaintiffs are seeking relief." (*Id.*).

However, these arguments do not substantiate a claim of private nuisance.

Plaintiffs rely on only one case, *Jones v. Trawick*, 75 So. 2d 785 (Fla. 1954), in support of their arguments. In *Jones*, the issue was whether a cemetery proposed to be located in a predominantly residential area may be enjoined as a private nuisance by the adjacent home owners. *Id.* at 786. The Florida Supreme Court found that the cemetery was a private nuisance. *Id.* at 787-88. The court reasoned that "[t]he constant reminders of death, the depression of mind, would, in our opinion, deprive the home of that comfort and repose to which its owner is entitled by law. . . ." *Id.* at 788.

Jones can be distinguished from the instant case. In *Jones*, the court focused on the gloom and depression and funeral services that necessarily accompanied the building of a cemetery. By contrast, in the instant case, there are no allegations that any harm or discomfort will necessarily accompany the building of a psychiatric facility. Plaintiffs have only speculated as to what might happen if a certain scenario or circumstance were to occur. As a result, Defendants' Motions to Dismiss Count I are due to be granted.

In Count II of Plaintiffs' complaint, Plaintiffs request damages for diminishing property values as a result of the claimed nuisance. Because Count II necessarily depends on the success of Count I, Count II is due to be dismissed as well. In light of this conclusion, the Court need not address Defendants' other dismissal arguments.

IV. Conclusion

Based on the foregoing, it is ordered as follows:

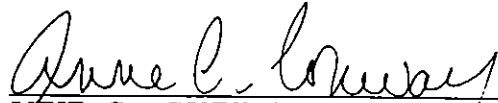
1. Defendants Alliance for the Mentally Ill of Greater Orlando, Inc., d/b/a The Hacienda and The Hacienda, Inc.'s Motion to Dismiss (Doc. 6), filed May 20, 1997, is GRANTED.

2. Defendant Seminole Community Mental Health Center, Inc.'s Motion to Dismiss (Doc. 4), filed May 20, 1997, is GRANTED.

3. Plaintiffs' Complaint (Doc. 2) is DISMISSED WITH PREJUDICE. It is clear that Plaintiffs are unable to allege harm arising from the construction of the psychiatric facility that is not speculative and uncertain.

4. The Court, upon review of the file, questions whether Defendants' counterclaims (Doc. 5) state a claim upon which relief can be granted. Therefore, within 20 days of this Order, Defendants shall file a brief explaining how the facts as alleged support a claim under the Fair Housing Act. Plaintiffs shall file a response within 20 days thereafter.

DONE AND ORDERED in Chambers, Orlando, Florida, this
13th day of November, 1997.


ANNE C. CONWAY
United States District Judge

Copies to: Counsel of Record
 Unrepresented Parties