Little Boxes, Big Disputes – Religious Observance in Condominiums Sparks Debate

> "At the center of this case is a little rectangular box, about six inches tall, one inch wide, and one inch deep, which houses a small scroll of parchment inscribed with passages from the Torah, the holiest of texts in Judaism. The scroll is called a mezuzah (or in the plural form, mezuzot or mezuzoh). Though small in size, the mezuzah is a central aspect of the Jewish religious tradition—many Jews believe they are commanded by God to affix mezuzot on the exterior doorposts of their dwelling."[1]

Mezuzot, literally "door posts" in Hebrew, have been at the heart of three well-publicized disputes between condominium boards and unit owners over the last several years. In two matters, the boards dropped their opposition to mezuzot when the state attorneys general intervened on behalf of the owners. In a third matter, the board strongly defended its rule enforcement action against the display of a mezuzah. The owners' lawsuit in federal court is now proceeding to trial after a remand from the Seventh Circuit Court of Appeals.

Laurie Richter, a condominium resident in Fort Lauderdale, Florida, faced a $1,000 fine in late 2007 under a rule that did not allow occupants to "cause anything to be affixed or attached to, hung, displayed or placed on the exterior walls, doors, balconies, railings or windows of the building."[2] Ms. Richter noted that that the board allowed Christmas wreaths to be displayed. Ms. Richter put her mezuzah up, and the board ordered her to take it down. She accused the board of selective enforcement and religious discrimination. The board eventually changed the rule to allow mezuzot in the condominium after the Florida Attorney General sent the board a letter supporting Ms. Richter's position.[3]

Patty Werner, a condominium resident in Dix Hills, New York, received a $50 fine in early 2009 for refusing to remove the mezuzah from her front door frame.[4] The association's bylaws prohibited residents from "changing or altering the exterior of their home without permission, which includes the affixing of signs, advertisements, or statuary."[5] Residents were told to either remove their mezuzot or to purchase screen doors to conceal them. Ms. Werner sent a complaint to the New York Attorney General, who required the association to pay a $10,000 fine and demanded that it rewrite the bylaws to "not discriminate against residents because of their religion."[6] The association complied.

The Bloch family moved into a Chicago condominium in the 1970s. In 2001, the association's board enacted a rule that prohibited the presence of objects outside units, but it was apparently not enforced against mezuzot at that time.[7] In 2004, the association's board began removing the

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[1] *Bloch v. Frischholz*, 587 F.3d 771 (2009).
[2] MCT News Service, (2009, Oct. 30) *N.Y. upholds homeowner's right to display religious item on door.* http://www.orlandosentinel.com/travel/sns-200910302240mctnewsservbc-relig-mezuzah-nd5995,0,416397.story Retrieved May 13, 2010.
[3] Id.
[4] Jones, Bart, (2009, November 03) *Condo complex fined $10,000 for barring mezuzah,* http://www.northjersey.com/news/ny_metro/long_island/68827367.html (Last accessed May 13, 2010)
[5] Id.
[6] Id.
[7] *Bloch v. Frischholz*, Supra., 587 F.3d at 773.

Bloch family's mezuzah pursuant to this rule. The family asked the board to approve an exception for mezuzot, but this request was denied. Over the course of the next year, the board repeatedly removed the mezuzah from the doorpost and the family repeatedly replaced it. When one of the owners died, the mezuzah was replaced in preparation for the mourning period with the association's consent. The board then removed the mezuzah again while the Bloch family was at the funeral. When the owner came home with friends and her rabbi, she was mortified to find the mezuzah gone.[8] The Bloch family filed a federal lawsuit in 2005 alleging violations of the Fair Housing Act ("FHA") and the Civil Rights Act ("CRA").

Section 3604(b) of the FHA makes it unlawful "[t]o discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling … because of race, color, religion, sex, familial status, or national origin." [9] Section 3617 of the FHA makes it unlawful "to coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of … any right granted or protected by section 3603, 3604, 3605, or 3606 of this title."[10] Section 1982 of the CRA states that "[a]ll citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property."[11]

The Bloch family lost on summary judgment at the district court level, and their initial appeal was denied as well.[12] However, their case was then granted a rehearing in the Seventh Circuit Court of Appeals, and this resulted in the reversal of the lower court's decision with regard to the owners' Section 3604(b), Section 3617, and Section 1982 claims.[13] The Court concluded that the Bloch family might be able to prove at trial that intentional discrimination occurred during the enforcement of the facially neutral rule.

The Court crucially viewed the Bloch family as seeking to address intentional discrimination rather than seeking a religious exemption to a neutral rule of general applicability.[14] It pointed out that plaintiffs can prove discrimination under Section 3604 of the FHA either by showing discriminatory intent or by demonstrating disparate impact. The Bloch family did not argue disparate impact, so they must prove that the board reinterpreted the rule to apply to mezuzot "because of" the Blochs' religion in order to prevail.[15]

The Court highlighted several troubling indications in the evidentiary record that religious discrimination might be present. For example, the board president repeatedly scheduled meetings on Friday night so that the Blochs (who were Sabbath observant) could not attend. The board president also openly dismissed the Blochs' religious beliefs and practices. During the mourning period for Mr. Bloch, the association removed the mezuzah but allowed a table and coat rack to remain nearby.[16]

In 2005, Chicago's housing ordinance was amended to deny residential building authorities the ability to prevent any owner or lessee "from placing or affixing a religious sign, symbol or relic

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[8] Id. At 774.
[9] 42 U.S.C. §§ 3604(b) (2009)
[10] 42 U.S.C. §§ 3617 (2009)
[11] 42 U.S.C. § 1982 (2009)
[12] *Bloch v. Frischholz*, 533 F.3d 562 (2008)
[13] *Bloch v. Frischholz*, Supra., 587 F.3d 771
[14] Id. at 783
[15] Id. at 784
[16] Id. at 787

on the door, door post or entrance of an individual apartment, condominium or cooperative housing unit" unless necessary to "avoid substantial damage to property or an undue hardship to other unit owners." In 2007, Illinois law was amended to require every condominium association to establish a "reasonable accommodation for religious practices, including the attachment of religiously mandated objects to the front-door area of a condominium unit." In 2008, Florida law was amended to prohibit condominium associations from refusing "the request of a unit owner for a reasonable accommodation for the attachment on the mantel or frame of a door of a religious object not to exceed 3 inches wide, 6 inches high, and 1.5 inches deep."

Banning displays linked to religious observances puts community associations at risk of lawsuits alleging discrimination and violation of civil rights. Recent disputes over mezuzot in condominiums demonstrate that such lawsuits can succeed in certain circumstances. This argues in favor of permitting religious items like mezuzot to be displayed by residents subject to size restrictions. Associations can amend their rules to permit mezuzot and other small religious objects while maintaining a broad prohibition of other types of displays.

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