UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 19-CIV-61233-RAR

EDGEWATER HOUSE CONDOMINIUM ASSOCIATION, INC.,

Plaintiff,

v.

CITY OF FORT LAUDERDALE,

Defendant.

_____/

ORDER GRANTING MOTION FOR SUMMARY JUDGMENT

THIS CAUSE comes before the Court upon Defendant's Motion to Dismiss [ECF No. 14] ("Motion"), filed on July 15, 2019. Given Defendant's reliance on materials outside the pleadings,[1] the Court converted the Motion into a Motion for Summary Judgment. *See* Fed. R. Civ. P. 56(c); Notice of Converting Motion to Dismiss to Motion for Summary Judgment [ECF No. 23] ("Notice"); *Trustmark Ins. Co. v. ESLU, Inc.*, 299 F.3d 1265, 1267 (11th Cir. 2002) ("Whenever a judge considers matters outside the pleadings in a 12(b)(6) motion, that motion is thereby converted into a Rule 56 Summary Judgment Motion."). Pursuant to the Notice, the parties were given ten days to supplement the record with any "new materials (i.e., affidavits, declarations, or any other documentation) in support of or in opposition to the motion for summary judgment." *See* Notice.

Plaintiff, Edgewater House Condominium Association, Inc., alleges Defendant, City of Fort Lauderdale, Florida ("City"), violated its right to equal protection under the Fourteenth Amendment by treating Plaintiff's application to develop a condominium differently than similarly

[1] *See* Mot. at 6–8 (relying on final state court judgments not cited in the pleadings to collaterally estop Plaintiff from establishing equal protection claim).

situated applications. *See* Compl. [ECF No. 1] ¶¶ 77–84. Defendant claims Plaintiff is collaterally estopped from pursuing this action because the state court, acting in its appellate capacity, denied Plaintiff's petition for review on the merits. Mot. 6-8.

Having carefully considered the Motion, Defendant's Appendix to the Motion [ECF No. 16], Plaintiff's Response in Opposition to Defendant's Motion [ECF No. 21] ("Response"), Defendant's Reply in Support of its Motion [ECF No. 22], Plaintiff's Motion to Deny or Defer Consideration of Summary Judgment Analysis ("Deferral Motion") [ECF No. 24], Plaintiff's Affidavit [ECF No. 25], Defendant's Response to Plaintiff's Deferral Motion [ECF No. 28], and Plaintiff's Reply in Support of its Deferral Motion [ECF No. 30], it is hereby

ORDERED AND ADJUDGED that Defendant's Motion is **GRANTED** and Plaintiff's Deferral Motion is **DENIED** for the reasons stated herein.

BACKGROUND

Plaintiff is a non-profit corporation created to manage a parcel of real property in Fort Lauderdale, Florida. Compl. ¶ 6. In February 2017, Plaintiff applied to the City for approval to develop a residential development—the Alexan Tarpon River ("Alexan"), a 21-story, 181-unit multifamily structure. *Id*. at ¶ 10. The City's Design Review Team and Development Review Committee ("DRC") reviewed Plaintiff's application to determine whether the proposed development complied with the City's Unified Land Development Regulations ("ULDR") and the Downtown Master Plan ("DMP").[2] *Id*. On March 6, 2018, the DRC formally approved Plaintiff's application, concluding it satisfied the ULDR and DMP. *Id*. at ¶ 17.

On April 3, 2018, the City Commission ("Commission") discussed Plaintiff's application at a public meeting. Without determining whether the DRC "misapplied or failed to apply the

[2] The ULDR governs development and land use within the City. *Id.* at ¶ 8. The DMP is the City's non-codified vision of the layout and design of the downtown area. *Id.* at ¶ 9.

ULDR," the Commission decided to hold a *de novo* review of Plaintiff's application. *Id*. at ¶¶ 22, 32. At the *de novo* hearing, Plaintiff's attorney stated that the Alexan complied with the ULDR and DMP's intent and in an attempt to address height concerns, offered to modify the design plan from 21 stories to 14 stories. *Id*. at ¶ 36. Plaintiff's retained expert, Cecelia Ward ("Ward") also addressed several concerns and found that the Alexan complied "with each and every design provision." *Id*. at ¶¶ 37-41. Despite Ward's undisputed testimony, the Commission was unprepared to make a decision and instead, voted to continue the hearing to the next Commission meeting. *Id*. at ¶ 44.

On June 19, 2019, the Commission continued its discussion and heard testimony from its staff and the public. *Id*. at ¶¶ 46–54. Specifically, the Commission heard testimony from Anthony Fajardo ("Fajardo") who worked on Plaintiff's application for over a year. *Id*. at ¶ 47. Fajardo said the project was unanimously approved and the Alexan, as originally proposed, met the DMP guidelines. *Id*. The City's attorney also explained that if the DRC approved the Alexan, the application must be automatically approved unless there was a misapplication of the ULDR or other error. *Id*. at ¶ 49. At the end of the hearing, the City's Mayor and the developer of the Alexan conditionally agreed on the proposed modified plan with fewer units. Thereafter, the Commission denied the original application and continued the hearing to discuss the modified plan. *Id*. at ¶ 59.

At the final hearing, Plaintiff's counsel formally rejected the proposed modified application finding it was not economically feasible. *Id*. at ¶ 64. The Mayor and various Commissioners thereafter discussed general concerns about the project and at least one Commissioner did not think the plan conformed with the DMP. *See id*. at ¶¶ 65–66. The hearing concluded with the Commission voting to deny the modified application. *Id*. It is undisputed that the Commission's resolution denying Plaintiff's application did not cite or reference any specific ordinance, rule,

statute, or other legal authority for the denial of the permit. *See* Final Order Denying Writ of Certiorari [ECF No. 16-2].

After Plaintiff's application was denied, Plaintiff filed a Petition for Writ of Certiorari, No. 18-022278(AW) ("Certiorari Action") [ECF No. 16-1], a Complaint for Writ of Mandamus, Case No. 18-022280 (AW) ("Mandamus Action") [ECF No. 16-4], and a Complaint for a Declaratory Judgment, Case No. 18-022196(13) ("Declaratory Action") [ECF No. 16-6][3] in the Circuit Court of the Seventeenth Judicial Circuit in and for Broward County, Florida ("Circuit Court").

In the Certiorari and Mandamus Actions, Plaintiff argued that (1) the "Commission's decision to hold a *de novo* hearing and second-guess the DRC's approval was invalid as a matter of law," and (2) the Commission violated Florida Statutes section 166.033(2) by failing to articulate the specific "law, rule, ordinance, or other legal provision" Plaintiff's application failed to satisfy. *See* Certiorari Action at 2-3; Mandamus Action at 2. In the Certiorari Action, Plaintiff also argued that its application met all ULDR requirements and the Commission failed to present any evidence to the contrary; rather, Plaintiff claims the Commission acted "arbitrarily and capriciously" and "denied [Plaintiff] due process" by rejecting [its] application without "competent, substantial evidence" to support its decision. Certiorari Action at 3.

In its Final Order in the Certiorari Action, the Circuit Court only discussed the City's undisputed failure to cite specific ordinances, rules, statutes, or other legal authority for the denial of Plaintiff's application. However, the Circuit Court noted that the applicable Florida statute "does not provide any procedure or remedy to address the City's undisputed failure . . . . Instead

[3] In the Declaratory Action, Plaintiff sought a declaratory judgment that the Commission's denial was invalid because it "impose[d] conditions on [Plaintiff] . . . not contained within the [C]ity's own code, constitute[d] improper legislation, and . . . den[ied] Plaintiff equal protection and due process under the law." Decl. Action at 36. Plaintiff also argues in the Declaratory Action that the Commission's denial was invalid because the Mayor and City Commissioners engaged in *ex parte* communications regarding the application prior to voting on it. Decl. Action at 39. The Declaratory Action is still pending. Mot. at 3.

[Plaintiff] may request and the City may issue an amended written notice citing to the specific basis of its denial of [Plaintiff's] site plan application." Despite only mentioning one of three arguments raised by Plaintiff, the Circuit Court, acting in its appellate capacity, denied Plaintiff's Certiorari Action on the merits. *See* Final Order Denying Writ of Certiorari. The Circuit Court also denied Plaintiff's Mandamus Action on the merits. *See* Final Order Denying Writ of Mandamus [ECF No. 16-5].

Here, Plaintiff argues the Commission violated Plaintiff's right to equal protection under the Fourteenth Amendment to the United States Constitution by "intentionally discriminat[ing] against [Plaintiff], with no rational basis for doing so." Compl. ¶ 80. Plaintiff argues it constitutes a "class of one" and the Commission violated its right to equal protection by denying its application while approving "four indistinguishable developments." *Id*. at ¶¶ 79–84. Plaintiff seeks damages under 42 U.S.C. sections 1983 and 1988, as well as declaratory and injunctive relief. *Id*. at ¶ 78.

LEGAL STANDARD

Summary judgment is appropriate where "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." FED. R. CIV. P. 56(c). In making this assessment, the Court "must view all the evidence and all factual inferences reasonably drawn from the evidence in the light most favorable to the nonmoving party," *Stewart v. Happy Herman's Cheshire Bridge, Inc.*, 117 F.3d 1278, 1285 (11th Cir. 1997) (citation omitted), and "must resolve all reasonable doubts about the facts in favor of the non-movant," *United of Omaha Life Ins. Co. v. Sun Life Ins. Co. of Am.*, 894 F.2d 1555, 1558 (11th Cir. 1990) (citation omitted). "The mere existence of some factual dispute will not defeat summary judgment unless that factual dispute is material to an issue affecting the outcome of the case." *Chapman v. Al Transport*, 229 F.3d 1012, 1023 (11th Cir. 2000). A genuine issue of

material fact does not exist unless there is sufficient evidence favoring the nonmoving party for a reasonable jury to return a verdict in its favor." *Id*.

The movant's initial burden on a motion for summary judgment "consists of a responsibility to inform the court of the basis for its motion and to identify those portions of the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, which it believes demonstrate the absence of a genuine issue of material fact." *Fitzpatrick v. City of Atlanta*, 2 F.3d 1112, 1115 (11th Cir. 1993) (alterations and internal quotation marks omitted) (citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986)). Once the moving party has shouldered its initial burden, the burden shifts to the non-moving party to "'set forth specific facts showing that there is a genuine issue for trial,' not just to 'rest upon the mere allegations or denials of the adverse party's pleading.'" *United States v. Lawrence*, 276 F.3d 193, 197 (5th Cir. 2001) (quoting *Resolution Trust Corp. v. Camp*, 965 F.2d 25, 29 (5th Cir. 1992)).

ANALYSIS

Defendant maintains that Plaintiff is collaterally estopped from bringing a "class of one" equal protection claim because Plaintiff is essentially relitigating the same issue raised before the Circuit Court. Mot. at 6-8. Specifically, Defendant maintains that by denying the Certiorari and Mandamus Actions on the merits, the Circuit Court determined that the Commission acted with competent substantial evidence—a higher burden than the required rational basis for Plaintiff's equal protection claim. *Id*. In opposition, Plaintiff asserts it is not collaterally estopped because it did not bring an equal protection claim before the Circuit Court. Further, Plaintiff posits a certiorari or mandamus proceeding in Florida state court cannot have estoppel consequences because such proceedings deny the parties an opportunity to fully and fairly litigate. Resp. at 5. As explained herein, the Court finds that Plaintiff is collaterally estopped from establishing its "class of one" equal protection claim.

Florida law governs the preclusive effect of a Florida judgment in a federal court. *See Stephens v. DeGiovanni*, 852 F.3d 1298, 1319 (11th Cir. 2017) (quoting *Migra v. Warren City Sch. Dist. Bd. of Educ.*, 465 U.S. 75, 81 (1984)) ("[I]t is now settled that a federal court must give to a state-court judgment the same preclusive effect as would be given that judgment under the law of the State in which the judgment was rendered."). Under Florida law, a plaintiff is precluded from relitigating an issue under the doctrine of collateral estoppel when "(1) an identical issue, (2) has been fully litigated, (3) by the same parties or their privies, and (4) a final decision has been rendered by a court of competent jurisdiction." *Wingard v. Emerald Venture Florida LLC*, 438 F.3d 1288, 1293 (11th Cir. 2006) (quoting *Quinn v. Monroe County*, 330 F.3d 1320, 1329 (11th Cir. 2003)); *see also Topps v. State*, 865 So. 2d 1253, 1255 (Fla. 2004) ("In Florida, the doctrine of collateral estoppel bars relitigation of the same issues between the same parties in connection with a different cause of action."). The Court will address each of these elements in turn.

i. Identical Issues

In the Certiorari and Mandamus Actions, the Circuit Court was required to determine whether the Commission's findings and judgment were supported by "competent substantial evidence." *Dusseau v. Metropolitan Dade Cnty*, 794 So. 2d 1270, 1274 (Fla. 2001); *Fla. Power & Light v. City of Dania*, 761 So. 2d 1089, 1092 (Fla. 2000); *see also* Pl. Resp. at 7 ("[T]he issue litigated in [Circuit Court] was whether competent substantial evidence supports that the City followed its land use regulations and whether competent substantial evidence supported the Commission's action."). After reviewing the record, the Circuit Court denied the Certiorari and Mandamus Actions on the merits. *See* Final Order Denying Writ of Certiorari; Final Order Denying Writ of Mandamus; *see also Lutheran Servs. Fla., Inc. v. Dep't of Children & Families*, 199 So.3d 286, 288 (Fla. 2d DCA 2015) (finding that an administrative agency's decision will not be overturned if supported by competent substantial evidence).

Plaintiff's action before this Court alleges a "class of one" equal protection claim, which requires Plaintiff to show it "has been intentionally treated differently from others similarly situated and that there is no rational basis for the difference in treatment." *Village of Willowbrook v. Olech*, 528 U.S. 562, 564 (2000); *see also Campbell v. Rainbow City, Ala.*, 434 F.3d 1306, 1314 (11th Cir. 2006). Therefore, this case addresses the sufficiency of the Commission's basis for rejecting Plaintiff's application. Notably, the exact same issue was litigated in the Certiorari and Mandamus Actions, which found that the Commission's decision was supported by competent, substantial evidence. Accordingly, a decision by this Court finding that the Commission somehow lacked a rational basis[4]—a significantly lower standard of review—would be wholly inconsistent with the Circuit Court's conclusion. Therefore, the first element of collateral estoppel is satisfied.

ii. Fully Litigated

Plaintiff claims the parties did not have a full and fair opportunity to litigate the sufficiency of the Commission's basis for the denial in the Certiorari Action. *See* Resp. at 5–6. However, under Florida law, appellate petitions seeking review of county commission determinations provide the parties involved a full and fair opportunity to litigate. *See Paresky*, 893 So. 2d at 665–66. Thus, Plaintiff cannot contend it was restricted from litigating the Commission's basis for rejecting Plaintiff's application.

Plaintiff also contends that collateral estoppel does not apply because Plaintiff did not assert an equal protection claim before the Circuit Court. Plaintiff's argument confuses collateral

[4] In a rational basis review, there is a "strong presumption of validity." *F.C.C. v. Beach Commc'ns, Inc.*, 508 U.S. 307, 314 (1993). "The question is simply whether the challenged [act] is rationally related to a legitimate state interest." *Lofton v. Sec'y of Dep't of Children & Family Servs.*, 358 F.3d 804, 818 (11th Cir. 2004). The burden is on the plaintiff to negate "every conceivable basis which might support it, whether or not the basis has a foundation in the record." *Id.* This burden applies "even if the law seems unwise or works to the disadvantage of a particular group, or if the rationale for it seems tenuous." *Id.* (quoting *Romer v. Evans*, 517 U.S. 620, 631 (1996)).

estoppel (issue preclusion) with *res judicata* (claim preclusion). *See, e.g.*, Resp. at 10 ("Because [Plaintiff] has not previously litigated a federal civil rights claim, or even an equal protection claim in state court for that matter, issue preclusion does not affect the section 1983 claim in any way here."). *Res judicata*, also known as claim preclusion, "bars relitigation in a subsequent cause of action not only of claims raised, but also claims that could have been raised." *Topps*, 865 So. 2d. at 1255. Collateral estoppel, also known as issue preclusion, bars "relitigation of the same issues between the same parties in connection with a different cause of action." *Id*. (emphasis added).

Here, Defendant is not asserting that Plaintiff's equal protection claim is precluded because Plaintiff failed to raise an equal protection claim in state court. Rather, Defendant argues (1) the sufficiency of the Commission's decision is an issue fundamental to the equal protection claim before this Court *and* the denied petitions before the Circuit Court; (2) the Circuit Court's final orders preclude Plaintiff from relitigating that issue; and (3) Plaintiff's inability to relitigate the issue prevents Plaintiff from being able to establish, as a matter of law, a necessary element of its equal protection claim. *See* Mot. at 6–8. Plaintiff's argument that collateral estoppel cannot apply because Plaintiff never raised an equal protection claim in state court is misplaced; such an argument fundamentally misunderstands the distinction between *res judicata* and collateral estoppel. Therefore, the second element of collateral estoppel is satisfied as this issue has been fully litigated before the Circuit Court.

iii. Identical Parties & Final Order

It is undisputed that the parties here are the same as those in the Certiorari and Mandamus Actions. Further, the Circuit Court's findings that the Commission's denial was based on competent, substantial evidence is a final decision by a court of competent jurisdiction. *See* Certiorari Action; Final Order Denying Writ of Certiorari; Mandamus Action; Final Order

Denying Writ of Mandamus; Order Denying Motion for Rehearing [ECF No. 16-3]. Therefore, the final two elements of collateral estoppel are satisfied.

CONCLUSION

Because Plaintiff is collaterally estopped from establishing a necessary element of its sole cause of action, it is hereby **ORDERED AND ADJUDGED** as follows:

1. Defendant's Motion to Dismiss/Motion for Summary Judgment [ECF Nos. 14 and 23] is **GRANTED**.

2. Plaintiff's Deferral Motion [ECF No. 24] is **DENIED**, as discovery in this action cannot change the estoppel consequences of the final orders in the Mandamus and Certiorari Actions.

3. Pursuant to Rule 58 of the Federal Rules of Civil Procedure, the Court will enter a final judgment in favor of Defendant in a separate order.

DONE AND ORDERED in Fort Lauderdale, Florida this 30th day of September, 2019.

RODOLFO RUIZ
UNITED STATES DISTRICT JUDGE