

IN THE COMMON PLEAS COURT
MONTGOMERY COUNTY, OHIO

MIAMI TOWNSHIP BOARD OF TRUSTEES,	:	CASE NO. 2019 CV 05444
Plaintiff,	:	Judge Richard Skelton
	:	
v.	:	
DARREN POWLETTE <i>et al.</i> ,	:	<u>PLAINTIFF, MIAMI TOWNSHIP</u>
Defendants.	:	<u>BOARD OF TRUSTEES' REPLY IN</u>
	:	<u>SUPPORT OF ITS MOTION FOR</u>
	:	<u>SUMMARY JUDGMENT</u>

Now comes Plaintiff, Miami Township Board of Trustees (“Plaintiff”), by and through counsel, and hereby submits its reply in support of its Motion for Summary Judgment (“Motion”) filed on September 30, 2021. Plaintiff incorporates by reference the facts, law, and argument in its Motion and its Response in Opposition to Defendants’ Motion for Summary Judgment (“Response”) filed on October 28, 2021 as if fully restated herein. Defendants’ Response to Plaintiff’s Motion does not raise any genuine issue as to any material fact whether Defendants, Darren Powlette and Stoney Hill Rustic Weddings, LLC (“Defendants”) are using the wedding barn on the property located at 7757 Upper Miamisburg Road, Miami Township, Montgomery County, Ohio (hereinafter, “the Property”) for an unauthorized purpose under Plaintiff’s Township Zoning Resolution. Therefore, this Court should grant Plaintiff’s Motion and enjoin Defendants from using the wedding barn in violation of the Zoning Resolution.

I. LAW AND ARGUMENT

The primary and advertised purpose of Defendants' wedding barn is for entertainment and the hosting of celebratory events such as weddings, wedding receptions, and graduation parties. (Powlette Dep., pp. 11, 18; see also Am. Compl., ¶¶ 9-10.) There is no evidence that Defendants advertise the wedding barn or the Property for agritourism purposes or for wine making and selling. In order for the wedding barn to be exempt from the Zoning Resolution for its use in viticulture, Defendants must primarily use the barn for vinting and selling wine located on the Property. See R.C. 519.21(A); *see also Litchfield Twp. Bd. of Trustees v. Forever Blueberry Barn, LLC*, 160 Ohio St.3d 70, 2020-Ohio-1508, ¶ 14. Defendants admit that they "have never claimed that they are using the property or the barn primarily for the vinting of wine." (Defendants' Response to Plaintiff's Motion for Summary Judgment, p. 2 at fn. 1.) Indeed, Defendants implicitly acknowledge that their present use of the wedding barn should be enjoined until such time as its primary use becomes vinting wine because they are not claiming it to be "primarily us[ed] [...] for the vinting of wine...yet." (Id.) Therefore, this Court can grant Plaintiff's Motion and issue an injunction against Defendants prohibiting them from using the wedding barn for any purpose other than viticulture.

This Court must reach the same result with respect to Defendants' agritourism claim. First, Defendants miss the point of then-Zoning Inspector Alex Carlson's go-kart analogy. Plaintiff agrees that go-karting is not an agriculturally related educational, entertainment, historical, cultural, or recreational activity. Go-karting is a pleasure-seeking, entertainment endeavor. The same is true of Defendants' use of the wedding barn for its advertised use in entertaining and hosting celebratory events such as weddings, wedding receptions, and graduation parties. Defendants produced 15 rental agreements for the wedding barn, which Plaintiff filed as Exhibit

C to its Motion. The parties who signed those rental agreements were not any of the individuals who signed affidavits in support of Defendants' Motion for Summary Judgment. Nevertheless, Defendants argue that this Court should conclude the agritourism exemption applies to their Property because three renters signed the agreement because they wanted to get married on a farm. The conduct that may constitute agritourism occurs elsewhere on the Property, and there is no evidence that the wedding barn is where agritourism activity occurs.

Indeed, Defendants' dubious argument that they use the barn daily for agricultural purposes is belied by Defendant Powlette's deposition testimony, and the proffered connections of the barn to the Property's agricultural uses.¹ For example, Defendants claim that hay could be stored in the barn. Under that interpretation of the exemption, they could conceivably open a go-kart track on the Property, place hay bales around the track, and claim the use as agritourism. Defendants also try to link the storage of equipment in the wedding barn to agritourism. Again, this is nonsensical because there is no evidence that wedding guests and others attending celebratory events use the wedding barn because they want to observe the storage of equipment. The undisputed facts in this matter admit of no other conclusion, but that this Court should grant Plaintiff's Motion and enjoin Defendants' use of the wedding barn for weddings and celebratory events in violation of the Zoning Resolution.

¹ Despite Defendants' suggestion that Plaintiff does not understand the agritourism activity occurring on the Property because no township official has recently toured, visited, or talked to Mr. Powlette, Plaintiff notes that there is no reason to do so because his deposition testimony confirms such activity does not occur in the wedding barn.

II. CONCLUSION

For the foregoing reasons and those outlined in its Motion for Summary Judgment, Plaintiff, Miami Township Board of Trustees respectfully requests that the Court enter summary judgment in its favor and issue a permanent injunction against Defendants, Darren Powlette and Stoney Hill Rustic Weddings, LLC.

Respectfully submitted,

SURDYK, DOWD & TURNER CO., L.P.A.

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CERTIFICATE OF SERVICE

I hereby certify that on November 4, 2021, I electronically filed the foregoing with the Montgomery County Clerk of Courts, which will send notification of such filing to all counsel of record, and that I mailed and emailed a copy of the foregoing to the following counsel of record:

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