

VERSUS

CITY OF NATCHITOCHEs, ET AL.

JUDGE DEE D. DRELL

MAG. JUDGE PEREZ-MONTES

RULING

Before the court are two motions for summary judgment: one filed by the Historic District Business Association, Inc. (“HDBA”) (Doc. 96) and the second filed by the City of Natchitoches, Mayor Lee Posey, Police Chief Micky Dove, and Samantha Bonnette (Doc. 102). For the reasons set forth herein, we find the motions should and will be GRANTED.

I. BACKGROUND

This lawsuit arises out of the denial of an application submitted by the Louisiana Division Sons of Confederate Veterans (SCV) to march in the Christmas Festival of Lights Parade (Christmas Parade) in Natchitoches, Louisiana in December 2015. The Christmas Parade is one of many events held during the Christmas Festival of Lights (Christmas Festival), an annual event held in Natchitoches along the bank of the Cane River to celebrate the Christmas season. The Christmas Festival, which has been held for nearly a century has evolved over time and seen various organizers. The most recent organization to host the Christmas Festival and Christmas Parade is the HDBA; a not for profit organization whose mission is to generate tourism and commerce for the businesses in Natchitoches historical district. The HDBA volunteered in 2014

the division of responsibilities between the City and the HDBA with respect to the Christmas Festival. The City agreed to provide for the general welfare by affording police and fire protection, and electrical and sanitation services, as well as to erect barricades and ticket booths and provide music equipment. The HDBA coordinated all details of the Christmas Festival and its events, including the Christmas Parade.

In 2015, SCV applied to march in the 89th Christmas Festival of Lights Parade. SCV participated in the Christmas Parade in years prior and anticipated it would continue to do so. However, in a letter dated November 4, 2015, Fred Terasa, the Director of the HDBA Christmas Parade Committee, notified Paul Grambling that SCV's application was denied. Though no explanation for the decision was set forth in the letter, SCV was told by HDBA Christmas Festival Director Lee Waskom that the decision was based upon Mayor Posey's November 2, 2015, letter to the HDBA Christmas Festival Committee.¹

The November 2, 2015, letter provided, in relevant part:

In the past several months there has been considerable discussion regarding the Confederate Flag and what it represents. For many, the flag represents a symbol of patriotism, faith, and family. However, public comments have shown that many members of the general public find the Confederate Flag to be offensive, and the City believes these comments to be reasonable. The City has determined that a significant portion of the public associate the Confederate Flag with organizations advocating expressions of hate, racism, and intolerance directed toward people or groups that is demanding to those people or groups. The City is also concerned that

¹ Several references are made in the motions for summary judgment that the application was also denied because the SCV failed to acknowledge that it would adhere to the HDBA's Parade Standards of Excellence. The Court finds this reasoning to be an afterthought and not the actual basis for the denial. Accordingly, it will not be addressed in detail.

(Doc. 110-8).

The City's belief that "substantial disruption or interference with the parade" was likely resulted from the receipt of complaints regarding the Confederate Flag by Mayor Posey in mid to late 2015. The first complaint received was from the Natchitoches Parish Voters and Civil League, Inc. The League attended the Natchitoches City Council Meeting on August 10, 2015, and presented the Mayor and members of the City Council with a Resolution the League adopted on July 14, 2015. The Resolution provided that they had been the "recipient of numerous contacts regarding the offensive nature of the Civil War battle enactments and prominent display of the Confederate Flag featured consistently for a number of consecutive years in the Annual Christmas Festival Parade." The League resolved to request that the "Natchitoches Christmas Festival Committee ...delete the Civil War re-enactments and display of the Confederate Flag from the Christmas Festival Parade from this time forward." The second was received from a group of African Americans in the community to voice their objection to the display of the Confederate Flag in the Christmas Parade.

Mayor Posey and Chief Dove also heard rumblings that the Black Panthers might protest the Christmas Parade and that sit-ins were likely. Sensing a real possibility of protests and potential violence, Mayor Posey held meetings on October 26 and 28, 2015, to discuss security concerns. Chief Dove attended both meetings and the Director of the Christmas Festival of Lights, Lee Waskom, attended the latter.

a letter to Mayor Posey dated November 3, 2015, acknowledging receipt of the letter and advising the Festival Committee would comply and Mr. Terasa, issued his November 4, 2015, letter advising SCV that its application for participation was denied.

On August 4, 2016, SCV filed this lawsuit alleging the defendants, “CITY OF NATCHITOCHEs, LOUISIANA, LEE POSEY Mayor, City of Natchitoches, JOHN DOES ONE THRU THREE, Members of the Christmas Festival Committee Who are Officially Affiliated With the City of Natchitoches” (Doc. 1) infringed upon the organization’s rights under the First and Fourth Amendments to free speech and due process, in violation of 42 U.S.C. §1983 of the Civil Rights Act.

On April 13, 2017, SCV amended its complaint. Part of that amendment included a paragraph referencing the HDBA but not adding it as a party. (Doc. 30). A few days later, a “Second-Amended Complaint” (Doc. 32) was filed adding City Chief of Police Mickey Dove and City employee, Samantha Bonnette, as defendants. It was not until September 29, 2017, that SCV officially named HDBA as a defendant via SCV’s “Third-Amended Complaint.” (Doc. 73).

II. LEGAL STANDARD

A court “shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed.R.Civ.P. 56(a). A dispute of material fact is genuine if the evidence is such that a reasonable jury could return a verdict for the nonmoving party. See Anderson v. Liberty Lobby, Inc., 477

judgment as a matter of law.

The movant has the burden of pointing to evidence proving there is no genuine dispute as to any material fact, or the absence of evidence supporting the nonmoving party's case. Once done, the burden shifts to the nonmoving party to come forward with evidence which demonstrates the essential elements of his claim. Anderson v. Liberty Lobby, Inc., 477 U.S. at 250. The nonmoving party must establish the existence of a genuine dispute of material fact for trial by showing the evidence, when viewed in the light most favorable to him, is sufficient to enable a reasonable jury to render a verdict in his favor. Celotex Corp. v. Catrett, 477 U.S. 317, 325 (1986); Duffy v. Leading Edge Products, Inc., 44 F.3d 308, 312 (5th Cir.1995). A party whose claims are challenged by a motion for summary judgment may not rest on the allegations of the complaint and must articulate specific factual allegations which meet his burden of proof. Id. "Conclusory allegations unsupported by concrete and particular facts will not prevent an award of summary judgment." Duffy, 44 F.2d at 312, citing Anderson v Liberty Lobby, 477 U.S. at 247.

III. ANALYSIS

The Civil Rights Act of 1871 creates a private right of action to redress the violation of constitutional rights or federal law by those acting under color of state law. 42 U.S.C. §1983. To prevail on a §1983 claim, a plaintiff must prove a person acting under color of state law deprived him/her of a right secured by the Constitution or laws of the United States. In Monell v. City of New York City Dept. of Social Services, 436 U.S. 658 (1978), the Supreme Court held

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