

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

BERGEN ROCKLAND ERUV ASSOCIATION,
YISROEL FRIEDMAN, S. MOSHE
PINKASOVITS, SARAH BERGER, MOSES
BERGER, CHAIM BREUER, YOSEF ROSEN, and
TZVI SCHONFELD

Plaintiffs,

-against-

THE BOROUGH OF UPPER SADDLE RIVER
Defendant.

**REPLY DECLARATION OF RABBI CHAIM STEINMETZ IN FURTHER SUPPORT
OF PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION**

I, Chaim Steinmetz, hereby declare under penalty of perjury:

1. I am a rabbi with over seventeen years of experience advising on the establishment and maintenance of eruvim (the plural of "eruv"). A brief summary of my background as it relates to the planning, organization, and construction of eruvim generally and specifically with respect to the expansion of an existing eruv into parts of the Borough of Upper Saddle River, New Jersey ("USR") is set forth in the declaration I previously submitted in this matter. Declaration of Rabbi Chaim Steinmetz in Support of Plaintiffs' Motion for a Preliminary Injunction, October 4, 2017 ("Steinmetz Decl.").

2. I have reviewed Upper Saddle River's Memorandum of Law in Support of its Notice of Motion to Dismiss Plaintiffs' Amended Complaint Pursuant to Fed.R.Civ.P. (12)(b)(1) and in Opposition to Plaintiffs' Request for Injunctive Relief ("USR Brief") as well as the accompanying declarations of Thomas Dougherty ("Dougherty Decl."),

Steven Forbes (“Forbes Decl.”), Theodore Preusch (“Preusch Decl.”), and Robert Hyman (“Hyman Decl.”) (collectively, the “USR Declarations”).

3. I respectfully submit this Reply Declaration to respond to certain of the statements made in the USR Brief and the USR Declarations. All of the facts set forth herein are based on my personal knowledge.

June 15, 2017 Meeting with Mr. Forbes and Mr. Dougherty

4. In both the Dougherty and Forbes Declarations, Mr. Dougherty and Mr. Forbes chronicle some of what was discussed at our June 15, 2017 meeting. While, in certain respects, we are in agreement as to what transpired at that meeting, there are inaccuracies in the Dougherty and Forbes Declarations that warrant clarification.

5. According to Mr. Dougherty, I made the claim at our June 15, 2017 meeting that “lechis were placed on poles as a directional sign that communicated to the observer the direction of the outer limits of the eruv.” Dougherty Decl. ¶ 22. This is simply not true.

6. Lechis are never used as directional signs and are certainly not used to “communicate to the observer the direction of the outer limits” of an eruv – it is the overhead wires and other natural and man-made boundaries that delineate the perimeter of an eruv. Indeed, is because the lechis *do not* communicate the direction of the outer limits of an eruv that eruv associations (and many other organizations) provide maps detailing precisely what areas are inside and what areas are outside eruv.¹

¹ Examples of such maps can be found at the following URLs: <https://hperuv.org/> (Highland Park Eruv covering Rutgers University); http://www.rocklanderuv.org/images/complete_ervu_map-4.pdf (Rockland Eruv); <http://www.jewishcenter.org/manhattan-ervu.html> (New York City Eruv); <http://ervumonsey.com/displayMapsAll.html#> (Vaad HaEruv website); https://facilities.princeton.edu/sites/facilities/files/Princeton_ERUV_0.pdf (Princeton University Eruv).

7. In fact, the primary reason for the June 15, 2017 meeting with Mr. Dougherty and Mr. Forbes was to explain the purpose of the eruv and to explain precisely what lechis are and what they are not. If anything, Mr. Dougherty has it backwards – as Mr. Pinkasovits and I explained at the June 15 meeting, lechis are absolutely not “directional signs” and no one who relies on an eruv would ever view them as such.

8. In addition to this mischaracterization, Mr. Dougherty (as well as Mr. Forbes) also claimed that I was told that the Vaad HaEruv could proceed “temporarily” while USR further considered whether the attachment of lechis to utility poles violated any ordinances or laws. Dougherty Decl. ¶ 23; *see also* Forbes Decl. ¶ 11. This, too, is inaccurate. Mr. Dougherty and Mr. Forbes gave us the unqualified go ahead to begin our work. They only asked that we meet with the USR police to ensure that we are complying with their traffic safety requests. As I discussed in the Steinmetz Declaration, we did just that. Steinmetz Decl. ¶ 14. Had we been given “temporary” permission to proceed from Mr. Dougherty and Mr. Forbes, we likely would not have moved forward with putting the lechis up at that time. Instead, we would have continued to work with USR until we had secured the unqualified go-ahead to put up the needed lechis. It would make no sense for us to go to the trouble and incur the thousands of dollars in expenses of putting up the lechis if we thought there was a chance that USR would then turn around and tell us we had to take them down.

9. Moreover, the declarations of Mr. Dougherty and Mr. Forbes are directly at odds with that of Mr. Preusch. According to Mr. Preusch, the Vaad HaEruv was given permission to proceed with the installation of lechis in USR, so long as we agreed to “participate[] in a pre-construction meeting with the USR PD” and comply with the applicable traffic safety requirements – which we did (and no one from USR has made any suggestion to

the contrary). Preusch Decl. ¶ 56. Unlike the Dougherty and Forbes Declarations, the Preusch Declaration does not characterize this permission as being “temporary” in any way.

10. Although notably absent from the Dougherty Declaration, the Forbes Declaration makes the additional claim that, at the June 15 meeting, Mr. Forbes told me that lechis “would likely be considered a device.” Forbes Decl. ¶ 10.² This, too, is not correct. What Mr. Forbes told me was that he was still studying the lechis and researching whether they might be considered a “device.” As noted above, the primary purpose of the June 15 meeting was to explain that lechis are not “signs” or “devices” and that they are not analogous in any way to things like political signs, garage sale signs, or lost animal signs. Indeed, after Mr. Pinkasovits and I explained the purpose of the eruv and what lechis are (and what they are not), we were given no indication by either Mr. Dougherty or Mr. Forbes that there was any reason to believe that USR had any remaining concerns with the attachment of lechis to utility poles within the borough. Had we been told that lechis “would likely be considered a device,” we likely would not have moved forward with the attachment of the lechis to the utility poles at that time, an undertaking that cost thousands of dollars.

June 12, 2017 Phone Conversation with Dispatcher Robert Hyman

11. In its brief, USR also asserts that its consent to the installation of the lechis was based on a misrepresentation I made during my June 12, 2017 phone conversation

² In its brief, USR cites to the same paragraph of the Forbes Declaration in support of another claim – that I told Mr. Forbes that the lechis are “religious signals to believers.” USR Brief at 26. I never made such a statement. In fact, the statement in USR’s brief is not even supported by the Forbes Declaration that it cites. Mr. Forbes, in his declaration, never claimed that I made such a statement. And that is for good reason – I did not, and would not, make such a statement as it is completely false. Lechis are unquestionably not “religious signals to believers.”

with Dispatcher Robert Hyman – one that led USR to believe that I was simply a “contractor working for a utility company.” USR Brief at 23-24; Hyman Declaration, ¶¶ 3-11.

12. As noted in the Steinmetz Declaration, I called the USR Police Department to give advance notice that I would be working on utility poles in USR. As I now understand it, Dispatcher Hyman took from this call that I was a contractor for Orange and Rockland Utilities, Inc. (“O&R”) working on the utility poles. That is accurate: as is made clear in the June 12, 2017 email from O&R to USR Police Chief Rotella, a document attached to the Preusch Declaration, the Vaad HaEruv “is a *contractor* that is installing ERUV on utility poles within the Borough of Upper Saddle River.” Preusch Decl., Exhibit F (emphasis added).

13. Even were there some confusion or misunderstanding as to exactly what work I was going to be performing, any such confusion was laid to rest at the June 15, 2017 meeting – a meeting that took place after this call with Dispatcher Hyman and before the vast majority of the work on the Eruv was done – in which Mr. Pinkasovits and I detailed exactly what we were intending to do and why. As Mr. Dougherty attests, the nature of our work was discussed “at length” during our June 15, 2017 meeting.

Alleged Safety Concerns

14. In its Brief, USR claims that the lechis pose “potential safety hazards” and that some of the lechis “appear to have been installed in a manner that could cause fires or other problems.” This is the first I have heard of any safety concerns with the lechis we put up in USR. In fact, the entity that would likely know best – O&R – has reviewed our work, including with pre- and post-installation walk-throughs covering some of the very lechis that USR now hypothesizes may pose potential safety hazards. To my knowledge, O&R has never raised any safety concerns with these lechis. In fact, when responding to an email from USR’s attorney

demanding that the lechis attached to utility poles in USR be removed, Mr. Carley, the Associate General Counsel of Consolidated Edison Company of New York, Inc., O&R's parent company, specifically noted that "the eruv facilities plainly present no threat to public safety." A copy of this email exchange is attached hereto as Exhibit H. Moreover, Mr. Dougherty himself visited us numerous times while we were attaching lechis to utility poles in USR and he never once mentioned that he had any concerns (safety or otherwise) with the work that we were doing. USR police officers also came to check on us multiple times while we were attaching lechis to utility poles in USR, and they too never voiced any safety concerns.

15. All this being said, and as is this case with all of the work we do, if a lechi has indeed been attached to a utility pole in an unsafe manner, or if there is any legitimate safety concern associated with any of the work we have done, we of course will take immediate action to address the concern so as to ensure that there are no safety hazards created by the eruv. Our goal is to always work cooperatively to ensure that our eruvin pose no safety concerns.

16. In addition to now, for the first time, raising safety concerns with some of our lechis, USR has also raised concern with a single wire that was attached to utility poles in order to complete a portion of the eruv that could not be addressed with the use of vertical lechis alone. According to USR Police Chief Patrick Rotella, "the lechis attached to the utility poles on Hillside Avenue and Castle Hill Court have a large ungrounded metal wire strung from lechi to lechi." Declaration of Patrick Rotella, ¶ 45. What Mr. Rotella leaves out is that this wire is rubber-coated and not live. We have used wires like this elsewhere and I am not aware of this approach ever creating a safety issue.

17. That being said, like with the lechis discussed above, if this wire does in fact pose a legitimate safety concern, the Vaad HaEruv will of course take immediate action to address the concern.

Need to Expand the Eruv into USR

18. In its brief, USR also contends that Plaintiffs' claims must fail as they do not "allege that they cannot build an *eruv*...in Rockland County...that will address their concerns." USR Brief at 43. While I am informed that this argument is legally irrelevant, it is also based on an inaccurate premise. The Vaad HaEruv did make every effort to expand the eruv so that it covered all of the members of the Jewish Community that wish to be within an eruv, while still keeping the eruv entirely within the boundaries of Rockland County. That approach proved to be unfeasible. As a result of there being a lack of contiguous utility poles (or other acceptable natural or man-made boundaries) along the New York-New Jersey border, there was no practical way to enclose the needed area without crossing the border into USR. And while we had no feasible alternative but to include small portions of USR (as well as Montvale and Mahwah) to complete the eruv expansion, we took great efforts to make sure that we were staying as close to the New York border as we could.

19. Relatedly, USR also contends that "the *eruv* [we] seek extends to several municipalities and permission in USR will not achieve what [we] seek: an expansive *eruv* across several communities Without the other portions of the two *eruvim*, the USR portions are incomplete and thereby defective." USR Brief at 46-47. This is also factually inaccurate. By just attaching lechis to utility poles in USR, and even if we do nothing in either Mahwah or Montvale, we will still be able to expand the eruv and cover many members of the observant Jewish community living along the New York-New Jersey border, including Plaintiffs Chaim

Breuer and Tzvi Schonfeld. While the entirety of the eruv expansion project will not be completed without completing the expansion into portions of Montvale and Mahwah, by just attaching lechis to utility poles in USR, many more families will be able to more fully and freely practice their religion on the Sabbath and Yom Kippur.

The Role of Vaad HaEruv

20. USR also contends that “[t]here is no evidence that Vaad HaEruv was ever acting on Plaintiffs’ behalf, that the License Agreement was ever transferred to Plaintiffs, or that Vaad HaEruv has any relationship to the individual Plaintiffs or the Bergen Rockland Eruv Association.” USR Brief at 10-11. The factual premise that USR seems to be basing its claim on is false. The Vaad HaEruv is working entirely on Plaintiffs’ behalf – it is the entity that is responsible for putting up and maintaining the Eruv, something we have done specifically at the request of members of the Bergen Rockland Eruv Association and the individual named plaintiffs, as well as other members of the observant Jewish community living along the New York-New Jersey border. It is for this reason that all licenses needed to complete the eruv are in the Vaad HaEruv’s name. Simply put, the role of the Vaad HaEruv with respect to the expansion of an eruv into USR is to act entirely on behalf of observant members of the Jewish community living on or near the New York-New Jersey border, including Plaintiffs, that seek, through the presence of an eruv, to more fully and freely practice their religion.

21. Despite the foregoing, to ensure that there is no question whatsoever as to whether the Vaad HaEruv, in fact, acts on Plaintiffs’ behalf, the Vaad HaEruv has entered into a written agreement with the Bergen Rockland Eruv Association, formalizing our arrangement. That agreement is attached hereto as Exhibit I.

Licenses from Orange and Rockland Utilities, Inc.

22. In its brief, USR has asserted that the Vaad HaEruv has only been given approval from O&R to attach lechis to 36 utility poles in USR, while there currently are lechis on approximately 109 utility poles. USR Brief at 13. This is not correct. As is detailed below, and as is confirmed in the declaration of Mr. Sullivan of O&R, Vaad HaEruv has been given permission to attach lechis to all of the utility poles in USR that are needed to complete the eruv expansion project that fall within the USR borough limits.

23. In my initial declaration in support of Plaintiffs' motion for a preliminary injunction, I included the master agreement entered into between Vaad HaEruv and O&R that grants the Vaad HaEruv the right to attach lechis to utility poles in USR and elsewhere. Steinmentz Decl. Ex. A. I also attached pole-specific documentation for utility poles that were required to complete what I refer to as the Upper Saddle River portion of the eruv expansion project. Steinmetz Decl. Ex. G. As USR has correctly noted, of the 40 utility poles listed in this documentation, more than 30 are both located in USR and currently have lechis attached to them. In addition to the Upper Saddle River portion of the eruv expansion project, there are two other portions of the eruv expansion project – one that primarily covers utility poles in Mahwah and one that primarily covers utility poles in Montvale. Because the eruv expansion project is largely driven by the location of utility poles, the boundary of what I refer to as the Upper Saddle River portion of the eruv expansion project does not precisely track the borough boundary. As a result, for example, there are utility poles that are part of what I refer to as the Upper Saddle River portion of the eruv expansion project that are located in Montvale and there are utility poles that are part of what I refer to as the Mahwah portion of the eruv expansion project that are located in USR.

24. After reviewing the USR Brief and the USR Declarations, I went back to review the locations of the utility poles needed for the eruv expansion project to see if there are any poles that are located in USR, but that are part of a different portion of the eruv expansion project. As it turns out, of the 113 utility poles that are included in what I refer to as the Mahwah portion of the eruv expansion project, more than 25 poles that currently have lechis attached to them fall within the USR borough limits. The agreement between Vaad HaEruv and O&R covers these utility poles as well. Steinmetz Decl. Ex. A. Moreover, I previously secured pole-specific documentation from O&R for each of these 113 utility poles, including the more than 25 poles that currently have lechis attached to them that fall within the USR borough limits. The documentation for these utility poles is attached hereto as Exhibit J. O&R has already performed the necessary walk-throughs for each of these poles, including the poles owned by Verizon, and has given us approval to attach lechis to each of these poles.

25. The remaining utility poles that have lechis (or other PVC pipes) attached to them which are not covered by the documentation found in either Exhibit J attached hereto or Exhibit G to my initial declaration all fall into one of three categories: (i) utility poles with lechis that were attached in 2015; (ii) utility poles for which the Vaad HaEruv was in the process of securing pole-specific documentation from O&R, a process that was never completed as a result of USR's actions; and (iii) utility poles with PVC pipes attached to them that were not put up by Vaad HaEruv and are not needed for the eruv expansion project.

26. The utility poles in the first category – those with lechis that were attached in 2015 – were part of an earlier expansion of the Eruv. There are 16 utility poles that fall into this category. Lechis were attached to these utility poles with the express consent of

O&R. After the lechis were attached to these 16 utility poles, we did a walk-through with O&R.³ I understand that Mr. Sullivan of O&R has confirmed in his declaration that O&R did, in fact, provide the needed approval for Vaad HaEruv to put up lechis on these 16 utility poles in USR.

27. The second category – which includes the utility poles with lechis for which we were in the process of securing pole-specific documentation but, due to the actions of USR, the process was never completed – accounts for lechis on more than 25 utility poles in USR. Lechis were attached to these utility poles pursuant to the agreement entered into between Vaad HaEruv and O&R (Steinmetz Decl., Ex. A). Unfortunately, because USR ordered us to stop working on the eruv expansion project, there was no post-installation walk-through with O&R and, as a result, we have not yet secured final pole-specific documentation covering these poles.

28. The final category consists of utility poles that are outside the confines of the eruv expansion project. There are at least three utility poles located on East Saddle River Road that have PVC pipes attached to them that, to the best of my knowledge, were not attached by Vaad HaEruv. These utility poles are not needed for the eruv expansion project.⁴ Accordingly, we have not attempted to secure permission from O&R (or anyone else) to attach lechis to these utility poles.

³ Because the computer system that is currently in place did not exist in 2015, we were not able to get pole-specific documentation around the time we attached lechis to these poles from O&R that is similar to that found in Exhibit J to this declaration or Exhibit G to my initial declaration.

⁴ There is also a utility pole with a broken PVC pipe attached to it located at the corner of West Saddle River Road and Cherry Lane. This pole is also not needed for the eruv expansion project.

Consent from Verizon

29. In addition to challenging the sufficiency of the authorization to attach lechis to utility poles in USR that we received from O&R, USR also asserts that many of the utility poles to which we have attached lechis are either owned by Verizon or are subject to a Joint Use Agreement between O&R and Verizon. According to USR, Vaad HaEruv is required to, but has not yet, obtained permission from Verizon to attach lechis to the utility poles owned by Verizon and to those that are subject to the Joint Use Agreement between O&R and Verizon. USR Brief at 11-12.

30. As noted in the declaration from Mr. Sullivan, O&R provided us with permission to attach lechis to all of the utility poles located in USR that are needed for the eruv expansion project. Moreover, as a general matter, we tend to work exclusively with O&R when attaching lechis to utility poles, although we do have agreements with other utility pole owners, including, amongst others, Verizon in New York. That being said, to put any question to rest as to whether we need to enter into an agreement with Verizon covering the poles in USR that are either owned by Verizon or that are subject to a joint use agreement with O&R, Vaad HaEruv has been working with Verizon, and has completed extensive paperwork, secured the requested insurance, secured the requested surety bond, paid the non-refundable application fee, and otherwise complied with Verizon's requests in order to secure permission from Verizon to attach lechis to these utility poles in USR.

31. While Verizon has not yet processed our application, Verizon has a policy in place to allow for the attachments of lechis to its utility poles so long as a standard set of terms and conditions are met. Pursuant to this policy, Verizon has allowed for the attachment of lechis to its utility poles in numerous municipalities in New Jersey and elsewhere. As

discussed above, we are complying with the terms and conditions that Verizon has requested.

Indeed, Verizon has previously told me that we have met all of their requirements to attach lechis to their utility poles needed for the Eruv in New York, and we are following the same procedure for the utility poles in New Jersey.

Executed on December 4, 2017


RABBI CHAIM STEINMETZ