

FILED 05/28/2024 03:26:49 PM

MANDATE

from

Circuit Court of Duval County, Florida

To: CITY OF JACKSONVILLE

16-2019-AP-000119-XXXX-MA
16-2019-AP-000120-XXXX-MA
Case No: 16-2019-AP-000121-XXXX-MA

Division: AP-A

On appeal to the Circuit Court of Duval County, Florida, from the judgment of your Court rendered on November 18, 2019, in the action that in your court is captioned:

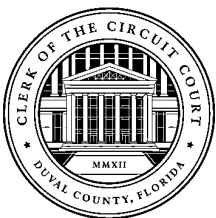
Building Code Adjustment Board Hearing

Lucky Social Center, LLC, Triad Venture Capitalists, LLC, Sweeps Royale, Inc. v. City of Jacksonville

In the Circuit Court of Duval County, Florida, rendered its opinion and judgment, a copy of which is attached and made part hereof on the date recited therein.

You are hereby directed that if any further proceedings in that action in your Court are required by the judgment of the Circuit Court of Duval County, Florida, such requirements be carried out, and that any further proceedings in that action in your court be in accordance with that judgment.

WITNESS the Honorable Charbula, Feltel, and Healey, Judge of the Circuit Court of Duval County, Florida, at Jacksonville, Florida this the 28th day of May, 20 24



JODY PHILLIPS
CLERK OF THE CIRCUIT COURT

By: 
Deputy Clerk

CC: Kelly B. Mathis
Tiffany Douglas Pinkstaff

Filing # 197809224 E-Filed 05/07/2024 03:47:06 PM

IN THE CIRCUIT COURT, FOURTH
JUDICIAL CIRCUIT, IN AND FOR
DUVAL COUNTY, FLORIDA

CASE NOS: 16-2019-AP-119
16-2019-AP-120
16-2019-AP-121

DIVISION: AP-A

LUCKY SOCIAL CENTER, LLC, a
Florida limited liability company,

TRIAD VENTURE CAPITALISTS, LLC, a
North Carolina limited liability company,

SWEEPS ROYALE INC., a
Florida corporation.

Petitioners,

v.

CITY OF JACKSONVILLE,
Respondent.

_____ /

Petitions for Writ of Certiorari from a decision of the Building Code Adjustment Board.

May 7, 2024

In these consolidated cases, Petitioners challenge the City's closure and condemnation of their gaming cafés. The City filed notices alleging violations of the Simulated Gambling Ordinance after an inspection revealed evidence of illegal gaming activity. Five days later, inspectors returned to the businesses and found them still in violation. The City then issued condemnation notices, barring the occupancy or operation of the premises. After a hearing, the Building Code Adjustment Board denied Petitioners' appeals.

In their first argument, Petitioners allege the Board erred because they cured the violations after receiving the notices. Petitioners argue they disconnected and powered off the devices, so

they were compliant. However, Part 13 of the City of Jacksonville Ordinance Code bars the operation *and* possession of simulated gambling devices. See § 250.1301-1309, Jacksonville Ord. Code. Because the City presented competent, substantial evidence that the gambling devices remained and were operational, Petitioners have failed to demonstrate entitlement to relief.

Next, Petitioners allege the City failed to give them proper notice of the violations and failed to provide them with a reasonable time to cure. They reallege their prior argument—that powered off computers do not constitute gambling devices—but also allege they could not comply because they were never informed how they had violated the statute. This Court finds that the notices posted by the City sufficiently apprised Petitioners of the nature of the violations and provided them with sufficient time to cure the violations.

Finally, Petitioners allege the condemnations were illegal because condemnation is not an available remedy for violations of the Simulated Gambling Act. In the posted notices, the City warned Petitioners that their properties would be condemned as a public nuisance pursuant to section 518.202 of the Ordinance Code:

Sec. 518.202. - Conditions prohibited and declared public nuisances; penalty.

The following described conditions occurring or being upon any lot, tract or parcel of land, or contiguous swales, improved or unimproved, within 100 feet of any improved property on which there exists a building, structure or other premises occupied by people within the City, or on any lot or parcel of land irrespective of its distance from any structure when the Chief determines on a case by case basis, to the extent and in the manner that the lot, tract or parcel of land is or may reasonably become infested or inhabited by rodents, vermin or animals, or may furnish a breeding place for mosquitoes, or threatens or endangers the public health, safety or welfare, or may reasonably cause disease, are each hereby prohibited and declared to be a public nuisance:

- (1) Nuisance vegetation which exceeds a height of 15 inches over the majority of the parcel or growth of weeds, grass, underbrush or undergrowth, or other noxious vegetation (but not including trees, plants or other vegetation protected by State law) which fully or partially obstructs the parcel or any public right-of-way, sidewalk or other type of passage.

- (2) A building, structure, premises or other place which provides uncontrolled breeding places, protection or shelter for rodents, vermin or other pests.
- (3) A wholly or partially manmade pool, pond or other body of water, which tends to produce disease vectors, biting insects, pests or the like. In addition, in the case of swimming pools, water quality and clarity may be declared a threat to or endangerment of public health and safety when the clarity of the pool water is such that the main drain grate is not completely visible to a person standing on the pool deck, or the recirculation system or disinfection feeding equipment is missing or not functioning.
- (4) An obstruction or diversion of the natural or artificial flow of water, whether by dams, blocks or other means, which tends to produce or results in the stagnation of water, except for the filling or excavation of land located in or bordering on navigable waters of the State, if the activities are then regulated by F.S. Ch. 253, Chapter 654, Ordinance Code or other applicable laws.
- (5) Garbage, trash, rubbish or debris.
- (6) Junk or abandoned vehicles
- (7) A swimming pool where water quality or clarity is a threat to or endangerment to public health and safety due to lack of visibility of main drain grate and/or equipment (recirculation system or disinfection feeding equipment) is missing or not functioning.
- (8) Unsecured vacant building or dwelling.
- (9) Graffiti.
- (10) An unsafe or unsanitary condition not included within the meaning of the other terms as used herein which endangers the public health, welfare or safety of the community.
- (11) Abandoned personal property of dispossessed residents. Any owner who physically retakes possession of property through eviction, foreclosure, or other means and removes personal items of the previous resident from the property shall place such items in the designated trash collection area of the property, or, if there is no such area and the owner must place such items on the curb, all loose items, with the exception of furniture, shall be placed in trash receptacles or in boxes or bags and stacked neatly on the curb in accordance with Chapter 382 of the Ordinance Code.
- (12) Any mobile home or modular building that has been placed on private property without or in violation of a permit for installation from the Building

Department or which has not been or is not properly connected to water, sewer or electric utility service. Utility service for sewer may be through a licensed or permitted septic system, if such sewer service is allowed for that property.

(13) Dead or dying trees, limbs, branches or parts.

(14) Bushes, shrubbery, or other overgrowth shall not exceed the height of the lowest portion of windowsills or window frames on vacant buildings and structures, and shall not cover or impede any entryway of a vacant building or structure.

Because the possession and operation of simulated gambling devices does not explicitly violate section 518.32, condemnation would only be available if the operation of ownership of simulated gambling devices constituted “an unsafe . . . condition . . . which endangers the public health, welfare or safety of the community.”

The City Council enacted the Simulated Gambling Ordinance in response to a constitutional amendment allowing for the possible legalization of gambling and gaming in Florida. Jacksonville Ord. 2019-209-E, Analysis. Between January 1, 2013, and September 26, 2018, the Jacksonville Sheriff’s Office reported 28,315 calls associated with gaming cafés. Id. In the first nine months of 2018, there were four shootings and multiple armed robberies at gaming cafés. Id. Because of the burden on the sheriff’s office, as well as the violent offenses occurring on the premises, the Council found:

that a correlation exists between establishments that utilize simulated gambling devices and crime or disturbances of the peace and good order of the community and those activities are hazardous to the public health, safety and general welfare of the citizens of Jacksonville and constitutes a public nuisance.

Id.

To be entitled to certiorari relief, Petitioners must show “a violation of a clearly established principle of law resulting in a miscarriage of justice.” See Lacaretta Restaurant v. Zepeda, 115 So. 3d 1091, 1093 (Fla. 1st DCA 2013). Because the Council explicitly deemed gaming cafés a public health hazard, this Court finds that the Commission did not violate a clearly established principle

of law by upholding the condemnation. See Abu-Khadier v. City of Fort Myers, 312 So. 3d 975, 980 (Fla. 2d DCA 2020) (holding that criminal activity inextricably intertwined with business warranted closure as a nuisance). Further, there has been no miscarriage of justice, as the Simulated Gambling Ordinance allows for the City to close a business until it has come into compliance with the Act. Accordingly, the Petitions are **DENIED**.

CHARBULA, FELTEL, AND HEALEY, JJ., concur.

Kelly B. Mathis, counsel for Petitioners

Tiffany Douglas Pinkstaff., counsel for Respondent.