IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

GEORGIACARRY.ORG, INC., and PHILLIP EVANS, Plaintiffs, v. THE ATLANTA BOTANICAL GARDEN, INC., Defendant.	)	Civil Action No.: 2014CV253810

PLAINTIFFS' BRIEF IN SUPPORT OF THEIR MOTION FOR SUMMARY JUDGMENT

Plaintiffs in the above referenced action file this brief in support of their motion for summary judgment pursuant to O.C.G.A. 9-11-56 (a) and Uniform Superior Court Rule 6.5, showing the court that there is no genuine issue as to any material fact and Plaintiffs are entitled to judgment as a matter of law.

I. Introduction

This is a case about a firearms ban on publically owned, privately controlled property; specifically, Defendant Atlanta Botanical Gardens. Such bans in public spaces are irresponsible and, in general, bad policy. Recent events, such as those in Orlando, demonstrate the potential danger of gun-free zones: at least a considerable majority (if not a vast majority) of mass shootings in recent history occurred in gun-free zones, be they gun-free by statute or private initiative.

If this case merely implicated public policy, this Court would not be bound to act in favor of either party. The General Assembly, however, has already decided the issue of public policy. Prior to 2014, O.C.G.A 16-11-127 (c) provided that "private property owners or persons in

control of property through a lease, rental agreement, licensing agreement, contract, or any other agreement to control access to such property shall have the right to forbid possession of a weapon or long gun on their property." This statute authorized a leaseholder in control of "property" to exclude or eject from his premises anyone in possession of a handgun or long gun with a valid Georgia weapons carry license ("GWL"). This authorization made no distinction between leaseholders of private land and leaseholders of public land. In 2014, however, the General Assembly passed House Bill 60, which became enrolled as Act 604; this act amended O.C.G.A. 16-11-127 (c) to read[1] "private property owners or persons in control of private property through a lease, rental agreement, licensing agreement, contract, or any other agreement to control access to such private property shall have the right to ~~forbid~~ exclude or eject a person who is in possession of a weapon or long gun on their private property." The General Assembly thus limited the right to exclude firearms to leaseholders in control of privately owned land only.

In the instant litigation, Defendant has admitted all facts pled in the Verified Complaint; as the parties do not dispute any of the facts, this Court has but to decide one simple question of law: when the General Assembly amended O.C.G.A. 16-11-127 (c) to include the word "private," did it intend to exclude publically owned property from the authorization in the statute? The Plaintiff's position is that the General Assembly meant exactly what it says; "property" means all property, and "private property" means private property, but not public property.

Despite the plain language of the law, the Atlanta Botanical Gardens ("The Garden") maintains its right to forbid possession of a weapon or long gun on its property. Plaintiffs

[1] Normal font language indicates then-current law that remained unchanged. Underlined font indicates insertions into then-current law, and strikethrough font indicates language that was deleted from then-current law.

commenced this action for declaratory and injunctive relief, seeking a declaration that The Garden may not prohibit people with GWLs from carrying weapons on property they lease from the City of Atlanta. Because O.C.G.A. 16-11-127 (c) denies that right and because The Garden dispute no facts, Plaintiffs are entitled to summary judgement on their Complaint as a matter of law.

II. Statement of Facts

Plaintiff Phillip Evans ("Evans") is a resident of Gwinnett County and a member of The Garden. See Verified Complaint ¶¶ 7 and 11. On August 30, 2014, Evans called The Garden to inquire about its policy regarding weapons and spoke to Jason Diem, a member of The Garden's management team. *Id.* at ¶ 12. Evans also emailed on August 31, 2014 and September 26, 2014. *Id.* at ¶ 14. Diem emailed back on September 30, 2014 and told Evans "The Garden's policy is no weapons except as permitted by law." *Id.* at ¶ 15. Evans construed this statement to mean that The Garden allows possession of weapons permitted by law, including by those with GWLs. *Id.* at ¶ 16.

On October 12, 2014, Evans visited The Garden with his wife and children while openly carrying a firearm at his waist; no employee of The Garden objected to Evans' possession of a firearm during his visit. *Id.* at ¶¶ 17, 18. Evans again visited The Garden with his wife and children on October 19, 2014 while openly carrying a firearm at his waist. This time, after gaining admission, Diem accosted Evans and told him that The Garden does not permit any weapons. *Id.* at ¶¶ 19-22. Although Evans reminded Diem about his earlier communications by email, Diem insisted that The Garden does not permit weapons. *Id.* at ¶¶ 23, 24. Diem summoned a Garden security officer, who detained Evans and called the Atlanta Police Department. *Id.* at ¶ 25. APD Officer P.A. White arrived and escorted Evans off of the premises.

Id. at ¶¶ 26, 27. After the October 19, 2014 incident, Evans emailed the president and CEO of the Garden, Mary Pat Matheson, to clarify the policy. *Id.* at ¶ 28. Matheson responded that "The Garden prohibits weapons except in the possession of police officers." *Id.* at ¶ 29. Evans intends to continue to visit The Garden and desires to carry a firearm while he does so. *Id.* at 35.

Evans is a member of Plaintiff GeorgiaCarry.Org, Inc. ("GCO"). *Id.* at ¶ 10. GCO's mission is to foster the rights of its members to keep and bear arms. *Id.* at 6. GCO has other members that visit The Garden, who have GWLs, and who desire to carry weapons while they are at The Garden. *Id.* at ¶ 33.

III. Procedural History

Plaintiffs commenced an action seeking declaratory and injunctive relief, seeking a declaration that Defendant may not prohibit people with GWLs from carrying weapons on property Defendant leases from the City of Atlanta. Defendant filed a motion to dismiss. The trial court granted Defendant's motion to dismiss, ruling that: 1) Plaintiffs impermissibly asked the trial court to interpret a criminal statute; 2) Plaintiffs impermissibly asked the trial court to declare how The Garden may or should act; and 3) that Plaintiffs impermissibly asked the trial court to restrain or obstruct the enforcement of criminal laws. *See* Order Granting Defendant's Motion to Dismiss for Failure to State a Claim ¶¶ 1-3. On appeal, the Supreme Court ruled that the trial court erroneously dismissed the case, and specifically that a declaratory judgment action is an available remedy to test the validity and enforceability of a statute where an actual controversy exists. *GeorgiaCarry.Org v. Atlanta Botanical Garden, Inc.*, 2016 Ga. LEXIS 356 at 5 (S.Ct.Ga. May 9, 2016).

The Supreme Court further held that a declaration that Evans (or similarly licensed individuals) may carry on The Garden's premises would require no action on the part of The

Garden, as it would simply delineate what the applicable legal authority requires or prohibits. *Id.* at 8-9. Finally, the Supreme Court held that a request by Plaintiffs for an interlocutory injunction does not improperly implicate the administration of criminal law. *Id.* at 8.

IV. Standard of Review

"To prevail at summary judgment under OCGA § 9-11-56, the moving party must demonstrate that there is no genuine issue of material fact and that the undisputed facts, viewed in the light most favorable to the nonmoving party, warrant judgment as a matter of law." *Lau's Corp. v. Haskins*, 261 Ga. 491, 405 S.E.2d 474 (1991). "The movant has the original burden of making this showing. Once the movant has made a prima facie showing that it is entitled to judgment as a matter of law, the burden shifts to the respondent to come forward with rebuttal evidence." *Kelly v. Pierce Roofing Co.*, 220 Ga. App. 391, 392- 393, 469 S.E.2d 469 (1996). "In rebutting this prima facie case, an adverse party may not rest upon the mere allegations or denials of his pleading, but his response, by affidavits or as otherwise provided in O.C.G.A. § 9-11-56 must set forth specific facts showing that there is a genuine issue for trial." *Entertainment Sales Co. v. SNK, Inc.*, 232 Ga. App. 669-670, 502 S.E.2d 263 (1998).

V. Argument and Citation of Authority

(A) The 2014 Amendment to O.C.G.A. 16-11-127 (c) removed the right to forbid firearms from leaseholders of public property

The central issue in this case is whether The Garden may prohibit the legal carrying of weapons upon land leased from the City of Atlanta. Prior to 2014, O.C.G.A 16-11-127(c) did not distinguish between public and private property. In 2014, however, the General Assembly passed House Bill 60, which became enrolled as Act 604. In pertinent part:

> (c) [A GWL] holder … shall be authorized to carry a weapon as provided in Code Section 16-11-135 and in every location in this state [with exceptions not applicable to this case]; provided, however, that private property owners or persons in control of private property through a lease, rental agreement, licensing agreement, contract,

> or any other agreement to control access to such private property shall have the right to ~~forbid~~ exclude or eject a person who is in possession of a weapon or long gun on their private property in accordance with paragraph (3) of subsection (b) of Code Section 16-7-21…

Prior to Act 604, any private property owner or person in legal control of "property" through a lease could forbid weapons. The change in Act 604 restricted that power to lessees of "private" property only, to the exclusion of lessees in control of public property.

The Garden believes that leasing public property makes it private property (citing tax law for that purpose). Under a different legislative history, that could be correct; however, the General Assembly chose to alter the portion of the law pertaining to lessees of property only. Clearly, the legislature intended to restrict the power of lessees in control of any property other than private property. The Garden, as a lessee of public property, fits squarely into the category of a lessee in control of property that is not private. The Garden has provided no reason why the General Assembly did not mean *exactly* what it enacted; we must assume that the General Assembly intended to limit the powers of leaseholders in control of public property because it specifically changed the language of the statute to apply to private property only.

When interpreting statutes, Georgia courts must abide by the "golden rule" of statutory construction, which "requires that we follow the literal language of the statute unless doing so "produces contradiction, absurdity or such an inconvenience as to insure that the legislature meant something else." *GCO v. Coweta County*, 288 Ga. App. 748 (2007). In the instant case, this Court may interpret without contradiction, absurdity, or inconvenience that the General Assembly intended to limit the then-existent right of all leaseholders to forbid firearms or other weapons to leaseholders of public property only. If we accept The Garden's interpretation of the statute, "private property" includes property owned by public entities, which invites an absurd precedent. Plaintiff's interpretation, however, adheres precisely to the plain language of the

statute; specifically, that "private property" means private property, and that public property is not private property and cannot become such via lease.

The Garden is in control of public property because it leases land owned by the City of Atlanta. The Supreme Court of Georgia ruled in *D.O.T. v. Atlanta*, 255 Ga. 124 (1985) that municipal property is not private, saying "We thus find that the term "private property" found in OCGA § 32-3-4 does not include property owned by a government or a governmental entity." (Id. at 132). There, the Georgia Department of Transportation sought to condemn the city's retention of possibility of reverter in parklands transferred to the Department for highway construction. Interpreting the statute granting condemnation authority to the Department, the Supreme Court construed the statute to include private but exclude public property for the simple reason that the statute reads "private property," and not "any property," or merely "property." (Id). In the instant case, the statute reads "private property," which by its clear meaning excludes public property, including property owned by any state, state agency, or municipality.

(B) The City of Atlanta cannot lease a right it does not possess

Even if a person in control of public land could ban weapons under O.C.G.A 16-11-127(c), the City of Atlanta is prohibited from banning weapons under O.C.G.A 16-11-173, and so cannot lease that right. The right to control people in possession of weapons one's property is a property right included in the property owner's bundle, and it follows that a property owner cannot assign a right by contract or otherwise that he does not possess in the first place. Code Section 16-11-173 expressly forbids the City of Atlanta from regulating the carry of weapons in any manner; because that right has been removed from the City, the City cannot lease that right to The Garden.

O.C.G.A. § 16-11-173 (b) (1) provides that "no County or municipal corporation, by zoning or resolution, or by any other means, nor any agency, board, department, commission, political subdivision, school district, or authority of this state, other than the General Assembly, by rule or regulation ***or by any other means*** shall regulate in any manner: (A) Gun Shows; (B) The ***possession***, ownership, transport, ***carrying***, transfer, sale, purchase, licensing, or registration of firearms or other weapons or components of firearms or other weapons." [emphasis added]. Clearly, the City could not ban the carrying of firearms if it maintained possession of the property now occupied by The Garden. It stands to reason then that the City cannot assign, lease, or transfer that right, which the City does not possess to begin with, to The Garden. Further, O.C.G.A. § 16-11-173 (b) (1) prohibits the regulation of the possession and/or carrying of firearms or other weapons "by rule or regulation or by any other means." Clearly, the General Assembly intended that the City of Atlanta may not regulate the possession or carrying of firearms or other weapons, even if doing so by a manner other than by rule or regulation. Regulating the possession or carrying of firearms or other weapons via lease certainly fits the bill of "any other means."

VI. Conclusion

Well established authority on statutory construction requires that courts "follow the literal language of the statute unless doing so "produces contradiction, absurdity or such an inconvenience as to insure that the legislature meant something else." Here, we can only assume that the General Assembly meant what it said, and did not mean to imply concepts that make no sense. On the one hand, Plaintiffs believe that "private property" means private property. On the other, Defendant believes that "private property" includes public property. Such an absurd conclusion cannot stand.

Plaintiffs have a clearly-established right to carry weapons on publically owned land with a GWL without regulation by anyone other than the General Assembly. Plaintiffs will suffer irreparable harm if they are prevented from doing so. There is no way to quantify damages to Plaintiffs for the loss of this right. The loss of an intangible right is similar in nature to the loss of the right of free speech. Once a person has been deprived of the right to speak, the harm is irreparable because the lost opportunity cannot be regained. The 11th Circuit Court of Appeals has repeatedly ruled that harms to speech rights, even for short periods of time, constitute irreparable injury that would support injunctive relief. "The rationale behind these decisions [is] that chilled free speech … because of [its] intangible nature, could not be compensated for by monetary damages; in other words, plaintiffs could not be made whole." *Scott v. Roberts*, 612 F.3d 1279, 1295 (2010), citing *Ne. Fla. Chapter of the Ass'n of Gen. Contractors of Am. V. City of Jacksonville, Fla.*, 896 F.2d 1283, 1285 (1990). In the instant case, Plaintiffs suffered a deprivation of an equally intangible and fundamental right, and so suffered an irreparable injury.

Because of the plain language of O.C.G.A 16-11-127 (c) and because no facts are in dispute, Plaintiffs are entitled to judgment as a matter of law.

Respectfully submitted this 14 day of July, 2016.

/s/John R. Monroe
John R. Monroe
John Monroe Law, P.C.
Attorney for Plaintiffs
9640 Coleman Road
Roswell, GA 30075
678-362-7650
State Bar No. 516193
jrm@johnmonroelaw.com

CERTIFICATE OF SERVICE

I certify that on July 14, 2016, I served a copy of the foregoing via the Court's electronic filing system upon:

David B. Carpenter
Alston & Bird LLP
1201 W. Peachtree Street
Atlanta, GA 30309

/s/John R. Monroe
John R. Monroe
John Monroe Law, P.C.
Attorney for Plaintiffs
9640 Coleman Road
Roswell, GA 30075
678-362-7650
State Bar No. 516193
jrm@johnmonroelaw.com