

IN THE SUPERIOR COURT OF RICHMOND COUNTY
STATE OF GEORGIA

Elaine C. Johnson
Elaine C. Johnson, Clerk
Richmond County, Georgia

GEORGIACARRY.ORG, INC.)
And)
KEVIN FOX,)
Plaintiffs,)
v.)
RICHARD ROUNDTREE,)
In his official capacity as Sheriff of)
Richmond County, Georgia,)
Defendant)

Civil Action No. 2014RCCV437

PLAINTIFFS' BRIEF IN SUPPORT OF THEIR MOTION FOR RECONSIDERATION

Plaintiffs commenced this action to challenge Defendant Sheriff Roundtree's application of a Richmond County Ordinance to commercial sales of used firearms and other weapons. On July 1, 2016, the Court entered an Order denying the Parties' cross-motions for summary judgment. The sole grounds for the denial stated in the Order is that there is a dispute of material fact. The Order implies that the dispute could be resolved if one of the Parties had filed a certified copy of the Ordinance in question in the case. Plaintiffs will show that there is no dispute of fact at all, and that even if there were a dispute, the dispute is not material. Lastly, Plaintiffs will show that they filed a certified copy of the Ordinance with their Verified Complaint.

Argument

In its Order, the Court focuses on Richmond County Ordinance 7409. As alleged in the Verified Complaint, the Ordinance requires pawnbrokers to wait 10 days to transfer property. Verified Complaint, ¶ 11. The Order states that the Parties are "hotly contesting" the specific language of the Ordinance, and points to a potential discrepancy in the number of days the Ordinance requires for waiting (10 versus 30).

1. There is No Dispute of Fact

In reality, there is no dispute between the Parties on this point. Plaintiffs filed a Statement of Facts with their Motion for Summary judgment, in which they said the Ordinance imposes a waiting period and that the period is 10 days. Statement of Facts, ¶¶ 5-6. When Defendant responded to Plaintiffs' Motion, he did not file a "separate, short and concise statement of each of the material facts as to which it is contended there exists a genuine issue to be tried" as required by Uniform Superior Court Rule 6.5. He did, however, include a section entitled "Facts" in his combined Response/Cross-Motion. In that section, he stated, "The ordinance requires that brokers hold all goods for 10 days before disposing of them in any manner." Defense Motion, p. 1. Whatever position Defendant may have taken earlier in this case, by the time it was in the summary judgment stage, Defendant had conceded that the waiting period is 10 days. With both Parties claiming there is a 10-day waiting period, it cannot be concluded there is a dispute on that point. There is no dispute of fact on this, or any other, point.

2. If there is a Dispute, It is Not Material

Even if the Court somehow affirms that there is a dispute, such a dispute is not material. This case involves Defendant's application of the Ordinance so as to apply to commercial sales of used firearms. That is, Plaintiffs contend that Defendant's actions, whether or not they are consistent with the Ordinance, violate O.C.G.A. § 16-11-173. It would not matter if the Ordinance actually calls for a 30-day waiting period, a 10-day waiting period, or not waiting period at all. Plaintiffs have alleged, and Defendant has not denied, that *he* enforces a 10-day waiting period. It is immaterial that Defendant believes he is enforcing the Ordinance. Plaintiffs' contention is that *no* waiting period may be imposed, and Defendant is violating state law by enforcing one,

regardless of whether the source is the Ordinance or Defendant's own device. Thus it is immaterial what the length of the waiting period is as stated in the Ordinance.

3. Plaintiffs Filed a Certified Copy of the Ordinance

In the Order, the Court says that neither Party filed a certified copy of the Ordinance. Respectfully, that is incorrect. Attached to Plaintiffs' Verified Complaint is a certified copy of the Ordinance. The penultimate page of the Ordinance as filed contains a certification of the Deputy Clerk of the Augusta Commission, in which she "hereby certifies that the following Ordinance was duly adopted by the Augusta, Georgia Commission on May 21, 2013...." The final page is signed by the Mayor and countersigned by the Deputy Clerk, and it contains the city seal. The strike-through to which the Court referred was in the certified copy obtained by Plaintiffs from the Commission Clerk's office.

Conclusion

If this case turned on whether the waiting period is 10 days or 30 days, and the Parties disputed which it was, it might have been necessary to obtain testimony from the Clerk as to the origin of the strike-through. Fortunately, that is the not case in this instance. Plaintiffs' position is that no waiting period may be imposed, period, and both sides agree that the waiting period imposed is 10 days. The outcome would change if the waiting period were 30 days.

For the reasons stated herein, Plaintiffs move the Court to reconsider its Order and grant summary judgment to Plaintiffs.

/s/ John R. Monroe

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