

**IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA**

GEORGIACARRY.ORG, INC.,)	
<i>et. al.</i>)	
Plaintiffs,)	
)	Civil Action No. 2007 CV 138552
v.)	
)	
CITY OF ATLANTA, GEORGIA,)	
Defendant)	

**PLAINTIFFS’ RESPONSE IN OPPOSITION TO ATLANTA’S MOTION FOR
SUMMARY JUDGMENT**

The substance of Atlanta’s “Motion¹” is Atlanta’s Response to Plaintiffs’ Second Motion for Summary Judgment. Because Plaintiffs are contemporaneously replying to that Response, it is not necessary for Plaintiffs to restate their arguments here. Rather, Plaintiffs incorporate by reference Plaintiffs’ Reply in Support of Their Second Motion for Summary Judgment. This Response, therefore, will concentrate on matters not raised in Plaintiffs’ Reply in Support of their own Motion.

There is a genuine issue of material fact

Atlanta incorrectly asserts in their Brief that its web site no longer states that carrying firearms in Atlanta parks is prohibited. Although Atlanta fails to cite this fact in its Statement of Material Facts, Atlanta does rely on this fact in its Brief for the proposition that the case is moot. As shown in the printout from Atlanta’s web site filed by Plaintiffs, Atlanta’s web site *does* continue to state that carrying firearms is prohibited. While Plaintiffs suggest that it should be obvious that Atlanta’s Parks Director is wrong when he claims otherwise, at the very least there

¹ Atlanta’s “Motion” consists of a statement in the last paragraph of its 10-page brief in opposition to Plaintiffs’ Motion. That statement asks the Court to treat Atlanta’s brief as a motion.

is a dispute of fact over this topic. A motion for summary judgment cannot be granted in the presence of a dispute of material fact. O.C.G.A. 9-11-56. The burden is upon the movant to establish lack of a genuine issue of fact, and any doubt as to the existence of such an issue is resolved against the movant. *Holland v. Sanfax Corp.*, 106 Ga. App. 1 (1962). Because Atlanta's asserted fact is directly contradicted by its own web site, there is a genuine issue of fact and Atlanta's motion must be denied.

Moreover, with two exceptions, each of Atlanta's "Facts" in its Statement of Material Facts² is unsupported by a competent citation. Because of the glaring nature of this situation, Plaintiffs will discuss each of the Facts in detail here (in addition to Plaintiffs' filing their Rule 6.5 Statement regarding facts to be tried).

Before addressing each of Atlanta's Facts, it is worth noting that "evidence offered by defendant on motion for summary judgment must unequivocally refute those allegations and must clearly show what is the truth of the matter alleged." *Watkins v. Nationwide Mutual Fire Insurance Company*, 113 Ga. App. 801 (1966). Furthermore, because Atlanta, as a defendant, does not have the burden of proof at trial, all evidence it presents in a motion for summary judgment must be construed against Atlanta. *Pugh v. Frank Jackson Lincoln-Mercury, Inc.*, 165 Ga. App. 292 (1983). Finally, Plaintiffs are under no duty to present counterevidence in opposition to Atlanta's motion for summary judgment until Atlanta has produced evidence demanding that judgment. *Peoples Bank v. Austin*, 159 Ga. App. 223 (1981). Because, as Plaintiffs will show below, Atlanta has not produced such evidence, Plaintiffs have no obligation

² Plaintiffs note that Atlanta's Statement is headed "Disputed Material Facts." While many of them are disputed, as discussed in this Brief, Plaintiffs assume that to be a misstatement on Atlanta's part.

to refute Atlanta's unsupported allegations. With this background in mind, we now turn to Atlanta's alleged "Facts."

Fact 1: From December 31, 2007 to July 7, 2008, Plaintiff Chrencik and other members of the GeorgiaCarry.Org, Inc. were not arrested, nor were they threatened with arrest by the City of Atlanta for violation of Atlanta Municipal Code Section 110-66. See Complaint ¶ 34; Atlanta City Municipal Court Records

Paragraph 34 of the Complaint (which was incorporated by referenced into the Verified Amended Complaint by Paragraph 1 of the Verified Amended Complaint) makes no statement about whether anyone has been arrested for anything. It alleges that certain people are in fear of arrest, but it makes no allegation regarding whether anyone has been arrested. It simply does not support this Fact.

Atlanta also cites to "Atlanta City Municipal Court Records." Atlanta has not filed such records. Neither has it filed an affidavit from a custodian of such records that such custodian has searched the records and that such search reveals that none of the nearly 5,000 members of GeorgiaCarry.Org, Inc. have been arrested or threatened with arrest. This is not surprising, given that threats of arrest are not something that a court's records would be expected to show, and given that such a search just for arrests would be a daunting task. Atlanta's naked citation to a court's generic records cannot form the basis for a fact.

Fact 2: Plaintiff's firearms licenses were not revoked, impaired, or otherwise damaged from December 31, 2007 to July 7, 2008. See Complaint ¶ 34; Atlanta City Municipal Court Records

The same arguments made for Fact 1 apply here. In addition, however, it cannot escape mention that Atlanta is pushing the credulity of the Court when Atlanta implies that Atlanta's municipal court has records regarding revocation, impairment, and damage done to firearms licenses.

Fact 3: Atlanta Municipal Code Section 110-66 was first enacted in 1977 in the interest of public safety. See Exhibit 1: Atlanta City Municipal Code § 110-66, legis. history; Exhibit 2: Affidavit of Ken Gillett

Astonishingly, the citations provided by Atlanta have nothing to do with the fact asserted. Nowhere in Exhibit 1, which is a certified copy of a new version of the ordinance, is there any information about when the ordinance was enacted originally nor what its purpose was. Atlanta says "legis. history" as though the legislative history of its ordinances is magically attached to the ordinance itself. It is not. Furthermore, nothing in Mr. Gillett's affidavit discusses the legislative history of the ordinance. And, given that Mr. Gillett testifies in Paragraph 2 of his affidavit that he only has been a city employee since 1989 and Director of Parks since 2006, it is not at all clear that Mr. Gillett would be competent to testify about the origins of an ordinance that purportedly was passed in 1977.

Fact 4: Atlanta City Municipal Code § 110-66, enacted in 1977, was approved by the Atlanta City Council after three public readings. See Atlanta City Municipal Code § 110-66, enacted 1977, legis. history

Atlanta gives no indication that the legislative history of the ordinance is in the record. Neither does Atlanta suggest how the legislative history, were it in the record, would indicate how many public readings there were, if any.

Fact 5: Atlanta City Municipal Code § 110-66 was officially preempted on May 14, 2008 when the Georgia General Assembly passed HB 89. See Georgia General Assembly 2008

This asserted Fact makes clear that Atlanta gives no credence to the overwhelming authority cited with Plaintiffs' First Motion for Summary Judgment that Atlanta's ordinance was preempted. Atlanta continues to ignore O.C.G.A. § 16-11-173; *Sturm Ruger v. City of Atlanta*, 253 Ga.App. 713 (2002); *Georgia Carry.Org, Inc. v. Coweta County*, 288 Ga.App. 748 (2007) ; Art. I, Sect. I, Par VIII of the Georgia Constitution; and this Court's own grant of Plaintiff's first Motion. Moreover, it is unclear what kind of citation Atlanta intends when it refers to an entire session of the legislature.

Plaintiffs agree that Facts 6 and 7 are properly supported by record citations (although Plaintiffs note that it appears from Atlanta's filing that the ordinance change did not become law until July 16, 2008 when it was deemed approved by the Mayor without signature by operation of law). Thus, the only facts asserted by Atlanta that are properly supported are that Atlanta changed its ordinance and that Atlanta has removed its park signs stating that firearms are prohibited. As discussed above, however, Atlanta's assertion in its Brief that it has removed

statements on its web site that firearms are prohibited is wrong, or at least a matter of disputed fact.

Conclusion

Plaintiffs have shown that there is a genuine issue of material fact, that Atlanta's Statement of Facts is largely unsupported, and (via their incorporated Reply Brief) that Atlanta's arguments are unpersuasive. For the foregoing reasons, Atlanta's Motion must be denied.

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CERTIFICATE OF SERVICE

I certify that I served the foregoing on September 1, 2009 via U.S. Mail on:

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