

IN THE SUPERIOR COURT OF FLOYD COUNTY
STATE OF GEORGIA

GEORGIACARRY.ORG, INC., and,
DAN HAITHCOCK,

PLAINTIFFS,

V.

TOM CALDWELL, individually and in,
His official capacity as Chief Deputy of,
The Floyd County, Georgia Sheriff's
Office, and FLOYD COUNTY, GEORGIA,

DEFENDANTS.

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CIVIL ACTION FILE NO.
14CV01823JFL002

CERTIFICATE OF SERVICE

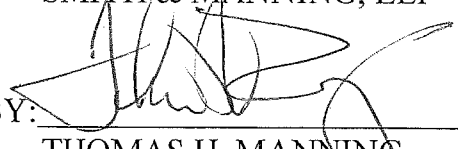
This is to certify that I have this day served counsel for the Plaintiff with a copy of the attached Order on Plaintiffs' Motion for an Interlocutory Injunction, by mailing a copy with proper postage affixed thereto to the following:

Mr. John R. Monroe
John Monroe Law, P.C.
9640 Coleman Road
Roswell, GA 30075

This 10th day of October, 2014.

McRAE, STEGALL, PEEK, HARMAN,
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BY:


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STATE OF GEORGIA

FILED IN OFFICE

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OCT 10 2014
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ORDER ON PLAINTIFFS' MOTION FOR AN INTERLOCUTORY
INJUNCTION

The above-styled case came on for a hearing before the Court on October 8, 2014, on Plaintiffs' Motion for An Interlocutory Injunction. Upon hearing the testimony and reviewing the evidence presented at the hearing, considering the Motion and other pleadings, and after due and careful consideration, the Court enters the following Order.¹

FACTS

Plaintiff GeorgiaCarry.Org, Inc. ("GCO"), is a non-profit corporation whose mission is to foster the rights of its members to keep and bear arms. Compl. at ¶ 2. Plaintiff Haithcock is a member of GCO. Compl. at ¶ 4. Plaintiff GCO did not present at

¹ This Order does not address any of the issues raised in the complaint or the defenses raised in the answer to the complaint. This Order only disposes of Plaintiffs' Motion for an Interlocutory Injunction. All other issues remain pending before this Court.

the hearing the testimony of any of its other members concerning their intention to attend the air show to be presented by Wings Over North Georgia, LLC, (“WONG”) and to be held at the Richard B. Russell Regional Airport (“Airport”) on October 18-19, 2014. Plaintiff Haithcock testified that he has a Georgia weapons carry license, although he did not introduce a copy of same into evidence at the hearing. Plaintiff Haithcock further testified that he “intends” to attend the subject air show, although he did not introduce a copy of his admission ticket into evidence at the hearing. Plaintiff Haithcock alleges in the verified complaint that he “desires to carry a handgun [to the air show] in accordance with state law and in case of confrontation.” Compl. at ¶ 12. No evidence was presented at the hearing as to the likelihood of any confrontation occurring at the air show or that confrontations had occurred at the air show in previous years, and Plaintiff Haithcock testified that if state law prohibited him from bringing a weapon to airshow, he intended to abide by the law.

Wings Over North Georgia, LLC (“WONG”) and Floyd County (“County”) entered into an agreement whereby the County leased to WONG the premises of the Airport for a specified period of time so that WONG could present annual air shows. Under the agreement, WONG was granted “the exclusive right to conduct the [air shows] upon the [Airport] Property and to undertake all actions preparatory and ancillary thereto, subject to the terms and conditions set forth herein.” Agreement at ¶ 1. WONG is not a party to this action.

Mike Matthews, the Airport Manager, testified that it is expected that 35,000 to 45,000 spectators will be attending the air show each day. For purposes of the air show, temporary fencing will be set up by WONG delineating the areas to which spectators will have access. A single security screening checkpoint will be established through which each ticket-holding spectator will be required to pass in order to gain entry to the air show. Airshow ticket-holding spectators will watch the airshow in an area of the airport that is restricted. The County is providing the security for the air show through local law enforcement officers and/or a private security group. Among the security protocols in place for the air show is a prohibition on bringing any form of weapon beyond the security checkpoint. This prohibition is on WONG's website.

The Airport provides commercial services, such as selling fuel, selling airport supplies, renting hangars, and renting cars. The Airport's sources of revenue generated approximately \$1,200,000 in revenue in 2013.

STANDARD OF REVIEW

O.C.G.A. § 9-5-8 provides as follows:

The granting and continuing of injunctions shall always rest in the sound discretion of the judge, according to the circumstances of each case. This power shall be prudently and cautiously exercised and, except in clear and urgent cases, should not be resorted to.

An interlocutory injunction "is a device to keep the parties in order to prevent one from hurting the other whilst their respective rights are under adjudication ... There must be some vital necessity for the injunction so that one of the parties will not be damaged

and left without adequate remedy.” *Outdoor Adver. Ass’n of Ga., Inc. v. Garden Club of Ga., Inc.*, 272 Ga. 146, 147 (2000) (citation omitted) (emphasis added). Moreover, “[t]he superior court may issue an interlocutory injunction to maintain the status quo until a final hearing if, by balancing the relative equities of the parties, it would appear that the equities favor the party seeking the injunction.” *Id.* (citations omitted).

A trial court should not grant an interlocutory injunction unless the movant establishes the following four factors: “(1) there is a substantial threat that the moving party will suffer irreparable injury if the injunction is not granted; (2) the threatened injury to the moving party outweighs the threatened harm that the injunction may do to the party being enjoined; (3) there is a substantial likelihood that the moving party will prevail on the merits of [his] claims at trial; and (4) granting the interlocutory injunction will not disserve the public interest.” *Bishop v. Patton*, 288 Ga. 600, 604 (2011), *disapproved on other grounds of by SRB Inv. Servs., LLLP v. Branch Banking & Trust Co.*, 289 Ga. 1 (2011).

CONCLUSIONS OF LAW

1. The Court concludes that Plaintiffs’ request for an interlocutory injunction does not involve Floyd County Code of Ordinances § 2-3-3(h) as Defendants did not rely on that ordinance in defending the ban on firearms at the air show at the hearing or in their response to Plaintiffs’ Motion. Accordingly, O.C.G.A. § 16-11-173 is not pertinent to the instant Motion.

2. The Court concludes that there does not exist a “vital necessity” justifying injunctive relief or that Plaintiffs will be left without adequate remedy if an injunction is not granted. Plaintiff Haithcock seeks injunctive relief to allow him to carry a firearm if he attends the air show. Whether Plaintiff Haithcock will attend the air show is at this time pure speculation. If Plaintiff Haithcock attends the airshow without a weapon, the Court finds there is no substantial threat that he will become involved in a confrontation with others at the airshow. In addition, even if the prohibition should be in violation of state law and Plaintiff Haithcock attends the air show and is prohibited from carrying his firearm to the air show, he has an adequate remedy at law in the form of a claim for money damages. Plaintiffs have already asserted such a claim in the verified complaint.

3. The Court concludes that Plaintiff GCO does not have standing to seek an interlocutory injunction in this case. It did not present evidence from any of its members about their intentions to attend the air show. That Plaintiff Haithcock is a member of GCO is not sufficient to give GCO standing because Plaintiff Haithcock is seeking injunctive relief in his own right.

4. The Court concludes that the prohibition on bringing firearms to the air show is not contrary to state law. O.C.G.A. § 16-11-130.2(a) provides as follows:

No person shall enter the restricted access area of a commercial service airport, *in or beyond the airport security screening checkpoint*, knowingly possessing or knowingly having under his or her control a weapon or long gun. Such area shall not include an airport drive, general parking area, walkway, or shops and areas of the terminal that are outside the screening checkpoint and that are normally open to unscreened passengers or visitors

to the airport. Any restricted access area shall be clearly indicated by prominent signs indicating that weapons are prohibited in such area (emphasis supplied).

The Georgia Code does not define the phrase “commercial service airport.” Accordingly, the Court relies on the literal meaning of the terms in the phrase. *See Apollo Travel Services v. Gwinnett Cnty. Bd. of Tax Assessors*, 230 Ga. App. 790, 791-92 (1998). The evidence presented at the hearing was undisputed that the Airport provides commercial services to its patrons. Spectators at the air show will be required to pass through a single security checkpoint at the airport. The area inside the security checkpoint is a restricted area because only ticket-holding persons will be allowed beyond the security checkpoint and because the area is ordinarily restricted. Even during the air show there will be other areas of the Airport that will be restricted to even spectators. Signs will be in place at the security checkpoint indicating that weapons are prohibited beyond the security checkpoint.

The Court concludes that the Airport during the air show falls within the plain language of O.C.G.A. § 16-11-130.2. Accordingly, Plaintiff Haithcock would be barred by that statute from carrying a firearm to the air show at the Airport. The Court rejects Plaintiffs’ argument that “security screening checkpoint” means a security checkpoint established and operated by the federal government. The statute does not define “security screening checkpoint” in that manner and the literal meaning of the phrase does not support such an interpretation. Thus, it is unlikely that Plaintiffs will prevail on the merits

of their claims at trial.

5. The Court concludes that WONG, as the tenant of the Airport premises for the dates of the air show, would have the right to prohibit the carrying of firearms at the air show. The County and WONG entered into an agreement whereby the County leased airport premises to WONG for a specific period of time. Consequently, for the term of the lease, WONG has the rights to the possession and use of the property leased for the term of the lease. O.C.G.A. § 44-7-1(a). “[A] **tenant**, although he has no estate in the land, **is the owner** of its use for the term of his rent contract.” *Waters v. DeKalb Cnty.*, 208 Ga. 741, 745 (1952) (emphasis added). As WONG is the lessee of the airport premises for the dates of the air show, it has the right to possess the premises and control access thereto. In addition, WONG has the right to preclude spectators from bringing firearms into the air show beyond the security check point. *See* O.C.G.A. § 16-11-127(c). Plaintiffs seek from this Court injunctive relief affecting WONG’s property rights, though WONG is not a party to this case. The Court finds that were injunctive relief to be granted, WONG would be denied due process with respect to its property, and therefore the Court declines to order such relief.


Additionally, Plaintiffs’ construction of O.C.G.A. § 16-11-127(c) would lead to absurd consequences. First, it places private tenants of public property on different footing than tenants of private property. Whereas tenants of private property would have the right to exclude or eject a person in possession of a weapon, the tenant of public

property would have no such right. There is no apparent reason for this result. Second, in the circumstances of this case, it would be absurd to read the statute to require that persons possessing firearms be allowed to enter the air show where there will be tens of thousands of spectators, including children, and fuel tanks, fuel trucks and United States aircraft. Moreover, state law also prohibits a person carrying a weapon from being detained for the purpose of investigating whether that person has a weapons carry license. *See* O.C.G.A. § 16-11-137(b) (“A person carrying a weapon shall not be subject to detention for the sole purpose of investigating whether such person has a weapons carry license.”) Thus, if Plaintiffs’ interpretation of the statute were correct, a situation would be created where individuals would be allowed to bring firearms into an event, whether it be an air show like that at issue in this case or a sporting event taking place at a stadium located on government-owned property, where there are several thousand spectators and where security personnel would be prohibited from determining if each individual with a firearm had a valid weapons carry license. Any person carrying a firearm, whether legally or illegally, would be allowed to bring that firearm into the event. Providing adequate security at such events would be impossible. And, it would certainly not be in the public interest to create such a dangerous situation.

Based on the above and foregoing, and balancing the relative equities of the parties, and in the exercise of its sound discretion, the Court concludes that the equities do not favor the Plaintiffs and an interlocutory injunction is not warranted.

IT IS THEREFORE ORDERED AND ADJUDGED that the Plaintiffs' Motion for
An Interlocutory Injunction is DENIED.

SO ORDERED this 10th day of October, 2014.


WALTER J. MATTHEWS, JUDGE
FLOYD COUNTY SUPERIOR COURT