

IN THE CIRCUIT COURT OF THE SECOND
JUDICIAL CIRCUIT IN AND FOR LEON
COUNTY, FLORIDA.

FLORIDA QUARTER HORSE TRACK
ASSOCIATION, INC.,

Plaintiff,

vs.

CASE NO. _____

STATE OF FLORIDA, DEPARTMENT OF
BUSINESS AND PROFESSIONAL REGULATION,
DIVISION OF PARI-MUTUEL WAGERING;
CALDER RACE COURSE, INC. and TROPICAL
PARK, INC.,

Defendants.

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

The plaintiff, Florida Quarter Horse Track Association, Inc., sues the defendants, State of Florida, Department of Business and Professional Regulation, Division of Pari-Mutuel Wagering, Calder Race Course, Inc. and Tropical Park, Inc., and alleges:

1. This is an action for declaratory and injunctive relief pursuant to chapter 86, Florida Statutes.
2. The plaintiff, Florida Quarter Horse Track Association, Inc. (the "Association"), is a Florida not for profit corporation authorized to conduct business in the State of Florida.
3. The organizational purposes of the Association are contained in Article III of the Articles of Incorporation filed with the Department of State and include the following purposes relevant to the Association's initiation and participation in this proceeding:

III (A). The corporation is organized to serve public interests; specifically the interests of quarter horse racing, quarter horse race tracks, and quarter horse owners in the hopes of returning economically viable quarter horse racing back to Florida which the membership views as critical to achieve the public purposes expressed in s. 550.26165 and 550.2625, Florida Statutes. Accordingly, it shall not be operated for the benefit of private interests.

* * *

III (E). The corporation shall represent and advocate the interests of its members before public bodies, executive and legislative, administrative tribunals and courts of law in which the interests of the membership are affected.

4. All of the members of the Association hold pari-mutuel permits and/or licenses and one of the members, South Florida Racing Association, LLC, holds a quarter horse racing permit and operates a quarter horse race meet under its permit at a location in Miami-Dade County less than 15 miles of the location where the defendants, Calder Race Course, Inc. and Tropical Park, Inc., carry on a competing pari-mutuel wagering business.

5. The interests that the Association seeks to protect through the initiation of this action are germane to the Association's organizational purposes set forth in paragraph 3 above and therefore are within the Association's general scope of interests and activity.

6. Although the individual members of the Association would have standing to initiate this action as competing pari-mutuel permitholders as provided in *West Flagler Kennel Club, Inc. v. Florida State Racing Association*, 153 So.2d 5 (Fla. 1963) and *Miami Beach Kennel Club, Inc. v. Board of Business Regulation*, 265 So.2d 373 (Fla. 3d DCA 1972), neither the claims asserted nor the relief sought through this complaint are of such a nature as to preclude the Association from fully and adequately representing the interests of its membership herein. *Florida Home Builders Association v. Department of Labor and Employment Security*, 412 So.

2d 351 (Fla. 1982).

7. The Association has previously been determined to possess the requisite standing to file constitutional challenges on behalf of its members in this circuit. See *Florida Quarter Horse Track Association, Inc. v. Department of Business and Professional Regulation, Jefferson County Kennel Club, Washington County Kennel Club and Pensacola Greyhound Track*, Leon County Circuit Court Case No. 2009CA2088 (Francis).

8. The defendant, State of Florida, Department of Business and Professional Regulation, Division of Pari-Mutuel Wagering (the "Division"), is an agency of the executive branch of the government of the State of Florida and is the agency responsible for the regulation of Florida's pari-mutuel wagering industry and the enforcement of chapter 550, Florida Statutes.

9. The defendant, Calder Race Course, Inc. ("Calder"), is a Florida corporation authorized to conduct business in the State of Florida and is the holder of a pari-mutuel wagering permit issued by the State of Florida (the "Calder Permit") and an operating license issued by the Division that collectively authorize Calder to conduct pari-mutuel wagering on thoroughbred horse racing in Miami-Dade County, Florida.

10. The defendant, Tropical Park, Inc. ("Tropical"), is a Florida corporation authorized to conduct business in the State of Florida and is the holder of a pari-mutuel wagering permit issued by the State of Florida (the "Tropical Permit") and an operating license issued by the Division that collectively authorize Tropical to conduct pari-mutuel wagering on thoroughbred horse racing in Miami-Dade County, Florida.

COUNT I--SPECIAL ACT

11. The Association reasserts the allegations of paragraph 1 through 10 above.

12. Calder conducts pari-mutuel wagering activities under the Calder Permit at a racetrack facility in Miami-Dade County that Calder owns.

13. The creation of the Calder Permit was purportedly authorized by the legislature in Chapter 69-14, Laws of Florida (the "Act"). Section 2 of the Act created section 550.41 of the Florida Statutes entitled "Summer thoroughbred horse racing period authorized", and subsection (1) thereof provides as follows:

(1) Where there are three (3) or more thoroughbred horse race tracks operating under valid outstanding permits issued by the State Racing Commission located within a radius of one hundred (100) miles of each other, the State Racing Commission may issue a new permit for summer thoroughbred horse racing only. Such new permit holder *within the area* shall be permitted during the period beginning on May 6th and ending on or before November 12th of each year to conduct an additional one hundred and twenty (120) days between the hours of noon and 6:00 P.M. Eastern Standard or Daylight Saving Time, upon dates allocated to it by the commission, which additional period of racing shall be known as the "summer thoroughbred horse racing period."

14. The Act had an effective date of May 14, 1969. On the effective date of the Act, there were only four (4) other thoroughbred permits issued and outstanding in the State of Florida, one permit that operated in Hillsborough County at a facility known as Tampa Bay Downs and three permits that operated in the area comprised of Miami-Dade and Broward Counties. The three thoroughbred permits that operated in Miami-Dade and Broward Counties included the permit held by the defendant Tropical that operated at a location in Miami-Dade County, the permit held by Hialeah Race Course, Inc. ("Hialeah") that operated at a location in Miami-Dade County and the permit held by Gulfstream Park Racing Association, Inc. ("Gulfstream") that operated at a location in Broward County.

15. On the effective date of the Act, the conditions required by the Act for the issuance of a new thoroughbred permit were met by the area where the three thoroughbred permits held by Tropical, Hialeah and Gulfstream were located in that: (i) all three of the permits were thoroughbred permits; (ii) all three of the permits were valid and outstanding permits; (iii)

all three of the permits had been issued by the State Racing Commission or its predecessor(s); and (iv) all three were operated at locations within a radius of one hundred (100) miles of each other.

16. On the effective date of the Act, there were no other geographical areas within the State of Florida, other than the geographical area in which Tropical, Hialeah and Gulfstream were then located, that met the geographic classification requirements set forth in the Act.

17. Furthermore, there was in full force and effect on the effective date of the Act another section of Chapter 550, namely section 550.05(2), Fla. Stat. (1967), that prohibited the issuance of any new thoroughbred permits at any location within 100 miles of any existing pari-mutuel wagering facility. Because of this pre-existing statutory prohibition against the issuance of a new thoroughbred permit at the location where the Calder Permit has been located and has operated since the enactment of Chapter 69-14, the classification set forth in the Act under which the Calder Permit was issued was constitutionally closed at the time of the enactment of the Act and will forever remain constitutionally closed because the classification is impossible of replicated or duplicated in any other area of the State. *Florida Department of Business and Professional Regulation v. Gulfstream Park Racing Association, Inc.*, 967 So.2d 802 (Fla. 2007). Because the eligibility classification created by the Act is, was and will forever be constitutionally closed, the Act is an unconstitutional special law.

18. Article III, Section 10, Fla. Const. (1968) entitled "Special laws" provides as follows:

Special laws. -- No special law shall be passed unless notice of intention to seek enactment thereof has been published in the manner provided by general law. Such notice shall not be necessary when the law, except the provision for referendum, is conditioned to become effective only upon approval by vote of the electors of the area affected.

19. Section 2 of the Act violates Article III, Section 10 because Section 2 of the Act is

and was a special law, the effectiveness of which was not conditioned the publication of the required notice or upon the approval of the voters of the electors in the areas affected---being at the very least Miami-Dade and Broward Counties---as required by Article III, Section 10.

20. The Association is mindful that the constitutionality of the Act was previously challenged, which challenge resulted in a written opinion issued by the 1st District Court of Appeal in *Miami Beach Jockey Club, Inc. v. State ex rel. Wells*, 227 So.2d 96 (Fla. 1st DCA 1969) in which the challenge was rejected. However, a review of the written opinion issued in cited case will reveal that no challenge to the constitutionality of the Act under Article III, Section 10 is mentioned in the written opinion; and accordingly the prior decision cannot be considered as precedent for a point of law not mentioned therein and therefore does not bar this action.

21. The mere passage of time does not render an unconstitutional law constitutional.

WHEREFORE, the Association requests that the Court issue a declaratory judgment that:

(a) Determines and declares the rights of the parties under Chapter 69-14, Laws of Florida;

(b) Declares that Chapter 69-14, Laws of Florida, is a special law enacted under the guise of a general law in violation of Article III, section 10, Fla. Const. (1968); and

(c) Directs the Division to enforce the provisions of Chapter 550 against Calder without regard to the unconstitutional provisions of Chapter 69-14, Laws of Florida, including the immediate revocation of the Calder Permit and all rights flowing from the Calder Permit.

COUNT II---DECLARATION OF RIGHTS UNDER SECTION 550.054(13)

22. The Association reasserts the allegations of paragraph 1 through 21 above.

23. Before the enactment of Chapter 69-14, Laws of Florida, before the issuance of

the Calder Permit and before the construction of the racetrack at Calder's present location, Tropical conducted the wagering activities authorized under the Tropical Permit at a racetrack Tropical owned and operated in southwest Miami-Dade County that was known as Tropical Park (hereafter "Old Tropical Park").

24. Chapter 71-180, Laws of Florida, was enacted in 1971 and this law authorized the holders of thoroughbred and standard-bred horse race permits to lease their racing facilities to other thoroughbred or standard-bred permitholders when located within 35 miles of each other. Chapter 71-180 was codified as section 550.47. Calder's location and Old Tropical Park were located within 35 miles of each other, thereby qualifying under the criteria set forth in Chapter 71-180. Since the enactment of Chapter 71-180, Tropical has operated all or practically all of the subsequent race meets conducted under the Tropical Permit at Calder's location purportedly under a lease as authorized by Chapter 71-180.

25. After commencing the conduct of its race meets at Calder's location, Tropical discontinued conducting race meets at Old Tropical Park. Eventually, Old Tropical Park was sold by Tropical to Miami-Dade County for use as a public park and the improvements required to conduct a race meet at Old Tropical Park were demolished.

26. Although section 550.47 has been repealed, current section 550.475 continues to authorize certain facility leasing between pari-mutuel permitholders of like class when the location of the permitholders is within 35 miles of each other. Tropical appears to be conducting its current race meet at Calder's facility under this provision, although the sale of Old Tropical Park makes it impossible for Tropical and Calder to meet the "within 35 miles of each other" requirement of either sections 550.47 or 550.475 inasmuch as Old Tropical Park no longer exists and therefore it has no location to be within 35 miles of any other location including Calder's.

27. Section 550.054(13), first enacted as part of Chapter 76-179 and initially codified

as section 550.17(2) and then later re-enacted in 1992 as part of Chapter 92-348, Laws of Florida, is specifically applicable only to thoroughbred permits like those held by Tropical and Calder and this section provides:

(13)(a) Notwithstanding any provisions of this chapter, no thoroughbred horse racing permit or license issued under this chapter shall be transferred, or reissued when such reissuance is in the nature of a transfer so as to permit or authorize a licensee to change the location of a thoroughbred horse racetrack except upon proof in such form as the division may prescribe that a referendum election has been held:

1. If the proposed new location is within the same county as the already licensed location, in the county where the licensee desires to conduct the race meeting and that a majority of the electors voting on that question in such election voted in favor of the transfer of such license.

2. If the proposed new location is not within the same county as the already licensed location, in the county where the licensee desires to conduct the race meeting and in the county where the licensee is already licensed to conduct the race meeting and that a majority of the electors voting on that question in each such election voted in favor of the transfer of such license.

(b) Each referendum held under the provisions of this subsection shall be held in accordance with the electoral procedures for ratification of permits, as provided in s. 550.0651. The expense of each such referendum shall be borne by the licensee requesting the transfer.

28. The arrangement by which Tropical conducts its race meets at Calder's facility is not a lease as contemplated by section 550.475, but instead the arrangement is in the nature of a change in location of the Tropical Permit from Old Tropical Park to Calder as contemplated and prohibited by section 550.054(13). This is so because the Tropical Permit has permanently changed its location to Calder inasmuch as Tropical no longer has a racetrack of its own to which Tropical can return upon the termination of its lease of Calder's facility. Although current section 550.475 may be interpreted to allow "relocation by lease" for other classes of pari-mutuel permitholders, section 550.054(13) prohibits any form of thoroughbred permit change of location, whether by lease or otherwise, without one or more approving referenda depending upon whether the change of location is within or without the county where the relocating permit

was initially authorized. In the Tropical relocation by lease arrangement with Calder, only a referendum in Miami-Dade County is required by section 550.054(13), but that referendum has not yet been held, scheduled or voted upon favorably.

29. Because the permanent change in location of the Tropical Permit to Calder's facility has not been approved by a majority of the electors in Miami-Dade County as required by section 550.054(13), the change in location of the Tropical Permit from Old Tropical Park to Calder violates section 550.054(13) and this on-going statutory violation must be enjoined.

WHEREFORE, the Association requests that the Court issue a declaratory judgment that:

(a) Determines and declares the rights of the parties under sections 550.054(13) and 550.475;

(b) Declares that the arrangement between Tropical and Calder under which Tropical conducts its race meets at the Calder facility is in the nature of a change in the location of the Tropical Permit that implicates section 550.054(13); and

(c) Directs the Division to enforce the provisions of section 550.054(13) against Tropical and Calder, including the immediate suspension of the Tropical Permit and all rights flowing from the Tropical Permit until the requirements of section 550.054(13) have been satisfied.

COUNT III--ALTERNATIVE RELIEF

30. The Association reasserts the allegations of paragraph 1 through 29 above.

31. In the event that this Court reaches the following two (2) rulings under Counts I and II above:


(a) Under Count I, that the Calder Permit was created under an unconstitutional special law and therefore is void; and

(b) Under Count II, that the change of the location of the Tropical Permit by lease with Calder does not require a referendum as provided in section 550.054(13), then, as an alternative to the relief requested in Count II above, the Court should nevertheless declare the purported lease between Tropical and Calder to be an unauthorized lease under section 550.475 inasmuch as Calder, after its permit is declared invalid under Count I, would no longer meet the “holder of a valid permit” prerequisite under section 550.475 to authorize Calder to lease its facility to Tropical or to any other thoroughbred permitholder.

WHEREFORE, the Association requests that the Court issue a declaratory judgment that:

- (a) Determines and declares the rights of the parties under section 550.475;
- (b) Declares that the arrangement between Tropical and Calder under which Tropical conducts its race meets at the Calder facility does not comply with the requirements of section 550.475; and
- (c) Directs the Division to enforce the provisions of Chapter 550 against Tropical and Calder, including the immediate suspension of the Tropical Permit and all rights flowing from the Tropical Permit and the revocation of any other permits or licenses that may have been issued by the Division to either Tropical or Calder under the provisions of section 550.475.

DATED this 21st day of July, 2010.



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