

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

DEBARY REAL ESTATE HOLDINGS, LLC,

Plaintiff,

vs.

CASE NO. 2010 CA 2918

STATE OF FLORIDA, DEPARTMENT OF  
BUSINESS AND PROFESSIONAL REGULATION,  
DIVISION OF PARI-MUTUEL WAGERING,  
and VOLUSIA JAI-ALAI, INC.,

Defendants.

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**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

The plaintiff, DeBary Real Estate Holdings, LLC, sues the defendants, State of Florida, Department of Business and Professional Regulation, Division of Pari-Mutuel Wagering, and Volusia Jai-Alai, Inc., and alleges:

1. This is an action for declaratory and injunctive relief pursuant to chapter 86, Florida Statutes.
2. The plaintiff, DeBary Real Estate Holdings, LLC. ("DeBary"), is a Florida limited liability company. DeBary holds a quarter horse racing permit that was issued in 2008 by the defendant, State of Florida, Department of Business and Professional Regulation, Division of Pari-Mutuel Wagering (the "Division"), under the provisions of section 550.334, Fla. Stat. (2007) and under which permit DeBary is authorized to conduct quarter horse race meets at a location in Volusia County, Florida.

3. 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.

4. The defendant, Volusia Jai-Alai, Inc. ("Volusia Jai-Alai"), is a Florida corporation and is the holder of a pari-mutuel wagering permit issued by the Division or one of its predecessor agencies that authorizes Volusia Jai-Alai to conduct pari-mutuel wagering activities in Volusia County, Florida.

5. DeBary has standing to bring this action under the authority of *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).

6. Section 6 of Chapter 2009-170 (the "Act") became effective on July 1, 2010. The Act, now codified as section 550.054(14), Fla. Stat. (2010), provides as follows:

"Section 6. Subsection (14) is added to section 550.054, Florida Statutes, to read:

550.054 Application for permit to conduct pari-mutuel wagering. —

550.054(14)(a) Any holder of a permit to conduct jai alai may apply to the division to convert such permit to a permit to conduct greyhound racing in lieu of jai alai if:

- 1. Such permit is located in a county in which the division has issued only two pari-mutuel permits pursuant to this section;**
2. Such permit was not previously converted from any other class of permit; and
3. The holder of the permit has not conducted jai alai games during a period of 10 years immediately preceding his or her application for conversion under this subsection.

(b) The division, upon application from the holder of a jai alai permit meeting all conditions of this section, shall convert the permit and shall issue to the permitholder a permit to conduct greyhound racing. A permitholder of a permit converted under this section shall be required to apply for and conduct a full schedule of live racing each fiscal year to be eligible for any tax credit provided by this chapter. The holder of a permit converted pursuant to this

subsection or any holder of a permit to conduct greyhound racing located in a county in which it is the only permit issued pursuant to this section who operates at a leased facility pursuant to s. 550.475 the location for which the permit has been issued to another location within a 30-mile radius of the location fixed in the permit issued in that county, provided the move does not cross the county boundary and such location is approved under the zoning regulations of the county or municipality in which the permit is located, and upon such relocation may use the permit for the conduct of pari-mutuel wagering and the operation of a cardroom. The provisions of s. 550.6305(9)(d) and (f) shall apply to any permit converted under this subsection and shall continue to apply to any permit which was previously included under and subject to such provisions before a conversion pursuant to this section occurred.”

7. On the effective date of the Act, the geographic condition required by the Act for the conversion of an existing jai-alai permit to a greyhound permit was met only in two (2) counties of this State, Volusia County and Palm Beach Counties, in that only in those two (2) counties had the Division previously issued only two permits pursuant to section 550.054.<sup>1</sup>

8. On the effective date of the Act, there were no other counties within the State of Florida, other Volusia County and Palm Beach Counties, which met the geographic classification requirement set forth in the Act.

9. Furthermore, there was in full force and effect on the effective date of the Act another section of section 550.054, namely section 550.054(2), Fla. Stat. (2009), that prohibited the issuance of any new horse racing or greyhound permits at any location within 100 miles of any existing pari-mutuel wagering facility and that prohibited the issuance of any new jai-alai permit within 50 miles of any existing pari-mutuel wagering facility. Because of this pre-existing statutory mileage restriction against the issuance of new pari-mutuel permits, the classification

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<sup>1</sup> As indicated in paragraph 2 above, DeBary’s permit, because it is a quarter horse permit, was issued pursuant to section 550.334, Fla. Stat. (2007), a section that was only applicable to the issuance of quarter horse permits, and not under section 550.054 which is the operative statutory section to which the Act refers. See the highlighted sentence of the Act in paragraph 6 above. Therefore, under the Act, DeBary’s permit is not considered when determining the number of permits issued by the Division in any particular county *pursuant to section 550.054*.

set forth in the Act that authorizes the conversion of existing jai-alai permits to greyhound permits only in counties in which the Division had previously issued only two pari-mutuel permits pursuant to section 550.054 was constitutionally closed at the time of the enactment of the Act and will forever remained constitutionally closed because the classification is impossible of being replicated or duplicated in any other counties of this State other than Volusia and Palm Beach Counties.

10. Because the eligibility classification created by the Act is, was and will forever be constitutionally closed, the Act is a special law. *Florida Department of Business and Professional Regulation v. Gulfstream Park Racing Association, Inc.*, 967 So.2d 802 (Fla. 2007).

11. 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.

12. The Act violates Article III, Section 10 because the Act is 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 Volusia and Palm Beach Counties---as required by Article III, Section 10.

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

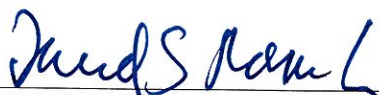
(a) Determines and declares the rights of the parties under Section 6 of Chapter 2009-170, Laws of Florida;

(b) Declares that Section 6 of Chapter 2009-170, 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 Volusia Jai-Alai without regard to the unconstitutional provisions of Section 6 of Chapter 2009-170, Laws of Florida, including the immediate revocation of any authorization heretofore issued to Volusia Jai-Alai under the unconstitutional provisions of Section 6 of Chapter 2009-170.

DATED this 20th day of August, 2010.



David S. Romanik FBN 212199

DAVID S. ROMANIK, P.A.

Attorneys for the Plaintiff/DeBary

P.O. Box 650

Oxford, Fl 34484

Telephone: 954/610-4441

Email: davidromanik@mac.com