

STATE OF FLORIDA
FIRST DISTRICT COURT OF APPEAL

DCA CASE NO.: 1D12-1654

DEBARY REAL ESTATE HOLDINGS, LLC,
and STEVEN COSTA,

Appellants,

v.

STATE OF FLORIDA, DEPARTMENT OF
BUSINESS AND PROFESSIONAL REGULATION,
DIVISION OF PARI-MUTUEL WAGERING,
WEST VOLUSIA RACING, INC. F/K/A as
VOLUSIA JAI-ALAI, INC., and LICENSE
ACQUISITIONS, LLC,

Appellees.

MOTION FOR CLARIFICATION

Pursuant to Florida Rule of Appellate Procedure 9.330(a), the Appellants file this Motion for Clarification. As explained below, the opinion issued by this Court on January 24, 2013 appears to declare all of Chapter 2009-170 to be a special law enacted in violation of the procedural requirements of Article III, Section 10, of the Florida Constitution. However, only Section 6 of Chapter 2009-170—which section added subsection (14) to section 550.054 of the Florida Statutes—was at issue during the proceedings below and on appeal. Accordingly, the Appellants

request clarification because the Appellants believe that it is unlikely that this Court intended to invalidate all of Chapter 2009-170.

I. Background

1. On August 20, 2010, the Appellant, Debary Real Estate Holdings, LLC (“Debary”) filed in the Circuit Court of Leon County a complaint seeking declaratory and injunctive, which complaint asserted that a specific statutory subsection relating to pari-mutuel wagering was an unconstitutional special law. (R: 11-14).¹

2. Debary noted in its complaint that the statutory provision in question originated as Section 6 of Chapter 2009-170, Laws of Florida, and that the statutory provision in question became effective on July 1, 2010. Debary also stated that Section 6 of Chapter 2009-170 had been codified as section 550.054(14) of the Florida Statutes.

3. Debary’s prayer for relief asked the Circuit Court to declare “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).” (R: 13).

¹ References to the Record on Appeal will be referred to as “R” or “(R)” followed by the appropriate page number.

4. The Appellants' amended complaint (R: 28-34) added the Appellant, Steven Costa, as an additional plaintiff, but otherwise the operative allegations and prayer for relief were unchanged from the initial complaint filed solely by Debary.

5. In the Appellants' motion for summary judgment filed on January 25, 2011 (R: 121-924), the Appellants again asked the Circuit Court to declare "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)." (R: 124).

6. At the hearing on the Appellants' motion for summary motion held on February 14, 2011, the argument made by counsel for the Appellants and by counsel for the Appellee, License Acquisitions, LLC, was limited to whether the classes of pari-mutuel permits affected by section 550.054(14) were open classes. (R: 1625-1663).

7. In the Appellants' second amended complaint filed on June 22, 2011, the Appellants again asked the Circuit Court to declare Section 6 of Chapter 2009-170 to be an unconstitutional special law. (R: 1033-1058).

8. The only provision of Chapter 2009-170 addressed in the initial, answer and reply briefs filed with this Court was Section 6 of Chapter 2009-170 as codified as section 550.054(14).

9. Consistent with the allegations and prayers for relief contained within the various complaints and the arguments contained in all of the briefs, the only provision of Chapter 2009-170 discussed by this Court in its opinion was Section 6 of Chapter 2009-170 as codified as section 550.054(14). However, in both the introductory and concluding paragraphs of the opinion, this Court referred to Chapter 2009-170 *in toto*, thereby deeming all of Chapter 2009-170 to be a special law instead limiting the declaration of unconstitutionality only to Section 6 of Chapter 2009-170 as codified as section 550.054(14).

II. Request for Clarification Regarding the Scope of this Court's Opinion

10. Because the Appellants only sought to invalidate Section 6 of Chapter 2009-170 as codified as section 550.054(14), the Appellants respectfully suggest that this Court's ruling was broader than intended.

11. A review of Chapter 2009-170, a copy of which is included in the attached Appendix, shows that the chapter did far more than enact Section 6 that ultimately became section 550.054. Chapter 2009-170 was enacted in conjunction with the first attempt by the legislature to fashion a compact with the Seminole Tribe of Florida; and while it is true that the provisions that attempted to establish the parameters of a compact never became effective, the remaining provisions of Chapter 2009-170 amended significant parts of the pari-mutuel code found in Chapters 550 and 551 and section 849.086, authorized the State of Florida to use

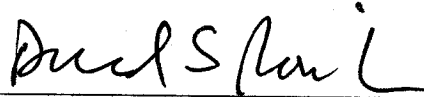
revenue from gaming activities to repay certain revenue bonds and amended certain criminal statutes related to unlicensed gaming activities. The non-compact provisions of Chapter 2009-170 include 23 separate sections that amended 23 separate sections of the Florida Statutes that address the myriad of subjects more fully described in the title to Chapter 2009-170 set forth on pages 1 through 3.

12. Because the Appellants only sought to invalidate that part of Chapter 2009-170 that ultimately became section 550.054(14) (i.e., Section 6 of Chapter 2009-170), the Appellants believe that this Court intended to invalidate only Section 6 of Chapter 2009-170 instead of all of Chapter 2009-170.

13. Counsel for the Appellee, License Acquisitions, LLC, has indicated that his client consents to the granting of this Motion for Clarification. Counsel for the Appellee, West Volusia Racing, Inc., has indicated that his client consents to the granting of this Motion for Clarification, but that said appellee will file a motion for rehearing. Counsel for the Appellee, Division of Pari-Mutuel Wagering, has indicated that his client may file a separate motion seeking clarification of this Court's opinion.

WHEREFORE, the Appellants request that this Court clarify its opinion rendered on January 24, 2013 by specifying that only Section 6 of Chapter 2009-170 is an unconstitutional special law.

Respectfully submitted this 7th day of February, 2013.



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 7th day of February, 2013 a true copy of the foregoing Motion for Clarification was served by electronic mail upon:

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