

STATE OF NORTH CAROLINA
COUNTY OF MOORE

FILED

2018 NOV 15 P 7:13

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NO. 18 CVS 915

MOORE CO., C.S.C.

GIFT SURPLUS, LLC, and
SANDHILL AMUSEMENTS, INC. BY BR

Plaintiffs,

v.

NEIL GODFREY, in his official capacity as)
Sheriff of Moore County; and BOB)
SCHURMEIER, in his official capacity as)
Director of the North Carolina State Bureau)
of Investigation; and TERRENCE)
MERRIWEATHER, in his official capacity)
as Branch Head of the Alcohol Law)
Enforcement Branch of the North Carolina)
State Bureau of Investigation,)

Defendants.)

ORDER

THIS CAUSE coming on to be heard on Plaintiffs, Gift Surplus, LLC and Sandhill Amusements, Inc., Motion for Preliminary Injunction before the undersigned Judge presiding at the regularly scheduled session of Superior Court in Moore County, North Carolina, on the 7th day of September, 2018 and on the 25th day of October, 2018, and the Court, after hearing arguments of counsel and reviewing the evidence presented in open Court, makes the following:

FINDINGS OF FACT

1. That the Plaintiff, Gift Surplus, L.L.C., appeared by and through counsel, George B. Hyler, Jr. of Hyler & Lopez, P.A.
2. That the Plaintiff, Sandhill Amusements, Inc., appeared by through counsel, William C. Gore, Jr. of William C. Gore, Jr. PLLC.
3. That Defendant, Neil Godfrey, in his official capacity as Sheriff of Moore County, appeared by and through counsel, Misty R. Leland, Moore County Attorney and R. Ward Medlin, Deputy Moore County Attorney.

4. That Defendant Bob Schurmeier and Defendant Terrance Merriweather appeared by and through counsel, Jason P. Caccamo, Assistance Attorney General.
5. That this Court has subject matter jurisdiction over the parties and Moore County is the proper venue for this action.
6. That this matter came on for hearing, upon proper notice, on September 7th, 2018 in front of the undersigned Judge presiding in Moore County Superior Court. On that date, the Court received documentary evidence and heard arguments of counsel. Defendants contended that the Plaintiffs should have petitioned the Moore County District Attorney for the return of their property pursuant N.C.G.S. 15-11.1. Out of an abundance of caution, the Court, on its own Motion, continued the hearing on September 7th, 2018 to October 25th, 2018 to give the Moore County District Attorney the opportunity to be heard as to the disposition of the seized property.
7. That on September 27th, 2013, the Plaintiffs commenced a civil action in Onslow County Superior Court, *Gift Surplus, LLC and Sandhill Amusements, Inc. vs. State of North Carolina, et al* (13 CVS 3705) (hereinafter the “Onslow County Action”) seeking a declaratory judgment that the Gift Surplus Sweepstakes system and kiosks are lawful, and requested temporary and permanent injunctive relief.
8. That on December 4th, 2017, the Plaintiffs appeared for trial of their claims for declaratory judgment and injunctive relief in Superior Court in Onslow County. That the State of North Carolina was a Defendant in that action and was represented by the North Carolina Attorney General. That the Court heard three days of evidence and rendered judgment in favor of the Plaintiffs at the conclusion of trial.
9. That on February 2, 2018, Superior Court Judge Ebern T. Watson III entered a Judgment in the Onslow County Action in favor of Plaintiffs, based on findings of fact and conclusions of law, that:
 - a. The Gift Surplus sweepstakes system, and Plaintiff Sandhill Amusements’ use and operation of the Gift Surplus sweepstakes system, do not violate any of the provisions of N.C.G.S. §14-306.4.
 - b. The Gift Surplus sweepstakes system is lawful and comports with all other federal and state regulations governing the operation of a legitimate promotional sweepstakes.
 - c. As long as the Gift Surplus sweepstakes operates in compliance with N.C.G.S. §14-306.4 and other applicable federal rules and regulations governing the operation of sweepstakes, the Gift Surplus sweepstakes system does not violate any of the provisions of N.C.G.S. §14-292, N.C.G.S. §14-293, N.C.G.S. §14-297,

N.C.G.S. §14-301, N.C.G.S. §14-304, N.C.G.S. §14-306, N.C.G.S. §14-306.1A, N.C.G.S. §14-306.3, or N.C.G.S. §14-306.4.”

11. That on February 14th, 2018 Sheriff Neil Godfrey sent a written notice to Moore County business owners informing them that Moore County “deputies have observed electronic machines and devices for sweepstakes” within their businesses that appear to violate the law and encouraging the owners to consult with their legal counsel concerning the legality of the electronic machines and devices for sweepstakes and assuring the business owners that the Moore County Sheriff’s Office intends to “take the appropriate legal action as it applies to these games in Moore County.”

12. That on or about May 5-6, 2016, the North Carolina Alcohol Law Enforcement Branch of the North Carolina State Bureau of Investigation (ALE) with assistance from the Moore County Sheriff’s office executed search warrants on various Moore County businesses and seized a total of 21 Gift Surplus kiosks from the following locations in Moore County:
 - a. Maxie's Grill & Tap Room, 35 McIntyre Road, Pinehurst, NC - 3 kiosks
 - b. Neville's Club, 130 W New Hampshire Ave, Southern Pines, NC - 2 kiosks
 - c. Broad Street Bar & Grill, 715 S West Broad St, Southern Pines, NC - 2 kiosks
 - d. Beefeeders Restaurant, 672 S West Broad St, Southern Pines, NC - 4 kiosks
 - e. Bruce's Tavern, 410 W Pennsylvania Ave, Southern Pines, NC - 4 kiosks
 - f. O'Donnell's Pub, 133 E New Hampshire Ave, Southern Pines, NC - 2 kiosks
 - g. Neighbors Country Store, 2511 Lobelia Rd, Vass NC - 4 kiosks

13. That in addition to the seizure of 21 kiosks, U. S. Currency contained in the kiosks and U.S. Currency on the premises of each business was seized.

14. That the Kiosks are in the exclusive control of and have been maintained by the ALE or the State of North Carolina and none of the Kiosks or money seized has been returned to the Plaintiffs nor any parties listed above as of the date of the hearing.

15. That since May 5-6, 2016, neither the Plaintiffs nor any parties named above has been charged with a violation of any North Carolina Statue due to the operation of any of the Gift Surplus Kiosks that were seized in Moore County on May 5-6, 2016.

16. That more than two (2) years has passed since the seizure and no misdemeanor charges can be brought in the State of North Carolina pursuant to case law.

17. That Assistant District Attorney for Moore County, Warren McSweeny, was called as a witness on October 25th, 2018 and testified that the Moore County District Attorney’s office had received written correspondence from all parties and that as of the date of his testimony, his office had not responded.

18. That the Moore County District Attorney had filed no criminal charges and had no plans to file any misdemeanor charges or take any actions on account of the seizure of the Kiosks and money.
19. That there is a likelihood of success on the merits of the Plaintiffs' claims for declaratory judgment and for the return of their valuable property.
20. That Plaintiffs have no adequate remedy at law in the form of monetary damages against the Defendants due to the defense of sovereign immunity, unless the Defendants acted maliciously or outside the scope of their official duties.
21. That the Court makes no ruling upon the Motions to Dismiss filed by the Defendants in this cause and takes those Motions under advisement.
22. That the ruling herein relates solely to the entry of an Order on Plaintiffs' action for a Preliminary Injunction only.
23. That Counsel for Plaintiffs have advised the Court that they are not making an appearance on behalf of any of the individual owners of the businesses where the seizures took place and were not seeking returns of their funds.

Based on the foregoing Findings of Fact, the Court hereby makes the following

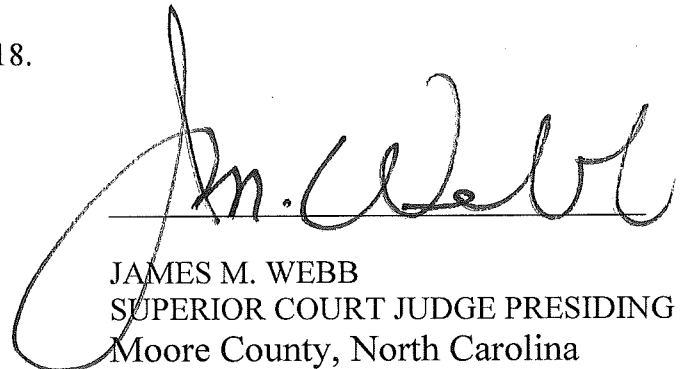
CONCLUSIONS OF LAW:

1. That this matter is properly before the jurisdiction of the Court and the Court has jurisdiction over the parties.
2. That Moore County is the proper venue for this matter.
3. That the Plaintiffs have shown a likelihood that they will prevail on the merits of the Plaintiffs' claims for declaratory judgment and for the return of their valuable property in this action.
4. That pending a trial, the Plaintiffs are entitled to the return of: (1) their Kiosks, (2) all of the monies seized on May 5-6, 2016 in the machines, and (3) any other monies or cash taken by the Defendants from the seized machines in connection with the seizure of the machines.
5. That this Court is not entering an Order of disposition at this time as to any other property seized pursuant to the execution of the search warrants on May 5-6, 2016 in Moore County.

Based on the foregoing FINDINGS OF FACT and CONCLUSIONS OF LAW, it is now hereby **ORDERED, ADJUDGED AND DECREED:**

1. That the Defendants are ordered to return to the Plaintiffs the twenty-one (21) Gift Surplus Kiosks seized on May 5-6, 2016 in Moore County from the businesses described in paragraph 12 of this Order.
2. That the Defendants are ordered to return to the Plaintiffs all U.S. Currency seized from within the machines and any U.S. Currency removed from the machines after the seizures.
3. That the Defendants shall return the machines and the above described U.S. Currency to Sandhill Amusements, Inc. at its address at 1186 SW Broad Street, Southern Pines, North Carolina as soon as possible, but no later than Friday, November 30th, 2018.
4. The Court is making no ruling on the Plaintiffs' action for a Permanent Mandatory Injunction and is taking under advisement the Defendants' Motions to Dismiss.

THIS the 14th day of November, 2018.



JAMES M. WEBB
SUPERIOR COURT JUDGE PRESIDING
Moore County, North Carolina

NORTH CAROLINA
COUNTY OF MOORE

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SANDHILLS AMUSEMENTS, INC.

MOORE CO.,)
C.S.C.

Plaintiffs,

BY *EB*

V.

NEIL GODFREY, in his official capacity as
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Of Investigation; and TERRENCE
MERRIWEATHER, in his official capacity
As Branch Head of the Alcohol Law
Enforcement Branch of the North Carolina
State Bureau of Investigation,

Defendants.

**CERTIFICATE OF
SERVICE**

I, Elizabeth C. Ritter, Deputy Clerk of Superior Court for Moore County, do hereby certify that I have this day served a copy of the Order on the motion for Preliminary Injunction signed by The Honorable James M. Webb on November 14, 2018, and filed thereafter on November 14, 2018, in the above referenced case, to the parties named below by depositing a copy of the Order in a properly addressed envelope with adequate postage thereon for first class mail delivery addressed as follows:

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This the 14th day of November, 2018

 Elizabeth C. Ritter
Elizabeth C. Ritter, Deputy Clerk
Clerk of Superior Court
PO Box 936
Carthage, NC 28327