

FILED

Date: 4-1 20 24
Time: 2:36 P M
APRIL GIBBS
DISTRICT CLERK, FANNIN COUNTY, TEXAS
By CP Deputy

CAUSE NO. CV-24-46706

POM OF TEXAS, LLC; and
REPUBLIC AMUSEMENTS, LLC,

Plaintiffs,

v.

FANNIN COUNTY DISTRICT
ATTORNEY RICHARD E. GLASER,

Defendant.

§
§
§
§
§
§
§
§
§
§
§

IN THE DISTRICT COURT

FANNIN COUNTY, TEXAS

336th JUDICIAL DISTRICT

Plaintiffs' proposed 4-1-24

TEMPORARY INJUNCTION

On this day came before the Court the Application for Temporary Injunction filed by Plaintiffs POM of Texas LLC and Republic Amusements, LLC and verified by the Affidavits of Joseph Brown and Frank Fina (the "TI Application"). Plaintiffs seek to enjoin Fannin County District Attorney, Richard E. Glaser, from acting *ultra vires* in enforcing and threatening to enforce the State's gambling laws in a manner contrary to law.

Based upon the facts set forth in the Verified Application and the evidence and argument presented at the hearing, and in order to preserve the status quo until trial, the Court finds as follows.

Plaintiffs have alleged a viable cause of action for *ultra vires* activity against Defendant Glaser. Texas law recognizes "*ultra vires*" claims seeking prospective injunctive relief against individual government officials in their official capacities. *Texas Dep't of State Health Services v. Sky Marketing Corp.*, 2023 WL 6299115, *8 (Tex. App.—Austin September 28, 2023, pet. filed) (citing *Matzen v. McLane*, 659 S.W.3d 381, 388 (Tex. 2021)). A government officer acts *ultra vires* if he acts without legal authority or fails to perform a ministerial act. *Id.* Plaintiffs have alleged that, if not restrained by this Court, Defendant Glaser will continue attempting to enforce

Texas' gambling laws as if Plaintiffs' Lone Star Skill Games are gambling devices when this Court has already held that they are not. Such action is without legal authority and is, therefore, *ultra vires*.

Plaintiffs have established a probable right to the relief sought. In three related cases (Cause Nos. CV-23-46218, CV-23-46217, and CV-23-46347), this Court determined that (1) a player playing the Lone Star Skill Games has the ability to win on every play at least 105% of the player's consideration; (2) chance, therefore, plays no part in the award of a prize; and (3) the Lone Star Skill Games are not gambling devices under Texas law. These findings are binding in this case under the doctrine of collateral estoppel. Nevertheless, Glaser has indicated his intention to continue enforcing the State's gambling laws against the machines as if they were illegal gaming devices because he considers the games to be gambling devices—regardless of what this Court has held.

Plaintiffs have demonstrated they will suffer a probable, imminent, and irreparable injury prior to final trial in this case without the injunctive relief provided for in this Temporary Injunction. It appears from the facts alleged in the TI Application and the evidence presented at the hearing that the restrictions in this Temporary Injunction are necessary to protect Plaintiffs from immediate and irreparable injury. If Glaser is not restrained from attempting to enforce the gambling statutes against the Lone Star Skill Games in a manner contrary to law, Plaintiffs will suffer immediate and irreparable injury, including but not limited to the loss of their property (the Lone Star Skill Games and currency), the loss of revenue from play of the Lone Star Skill Games, lost economic opportunities because of the threat of prosecution, loss of reputation and goodwill among their contracting locations and customers, and other economic damages. As long as Glaser is taking the position that the Lone Star Skill Games are illegal gambling devices and locations are

at risk of having their property and cash unlawfully seized or their employees prosecuted as a result of operating the Lone Star Skill Games, Plaintiffs will lose revenue and other economic opportunities because they will not be able to operate their legal games in Fannin County.

Plaintiffs lack an adequate remedy at law for the damages that will likely accrue absent the injunctive relief. The full extent of the damages, which includes lost economic opportunities, loss of reputation, and loss of goodwill, are difficult if not impossible to assess fully. It would be extremely difficult, if not impossible, to quantify the damage to Plaintiffs' reputation and goodwill that would result from Glaser continuing to act as if the Plaintiffs' games are illegal gambling devices when they are not. In addition, it would be extremely difficult, if not impossible, to fully capture the loss of revenue and lost economic opportunities that would result from Plaintiffs being wrongfully banned from Fannin County. In addition, Plaintiffs have no adequate remedy at law because the only remedy for *ultra vires* acts is prospective injunctive relief and any future claim against the State for damages would be barred by sovereign immunity.

IT IS THEREFORE ORDERED that Defendant Glaser and all other persons in active concert or participation with him who receive actual notice of the order by personal service or otherwise, are hereby enjoined, until final trial in this case or until further order of this Court, from:

(a) Prosecuting or threatening to prosecute Plaintiffs or any persons or locations operating the Lone Star Skill Games based on alleged violations of the State's gambling laws, including Chapter 47 of the TEXAS PENAL CODE;

(b) Taking any action to shut down, disable, or seize the Lone Star Skill Games or any currency allegedly related to the Lone Star Skill Games;

(c) Purporting to otherwise enforce the gambling statutes, including Chapter 47 of the TEXAS PENAL CODE, against the Lone Star Skill Games; and

(d) Interfering with Plaintiffs' legal business operations concerning the Lone Star Skill Games.

IT IS FURTHER ORDERED that this case is set for final trial in the 336th District Court on the 15th day of October, 2024, at 130 in the ___ in the courtroom assigned to said Court.

This Order shall not be effective unless and until Plaintiffs execute and file with the Clerk of this Court a bond or post a bond in the form of a check, in conformity with the law, in the amount of waived.

The Clerk of the above-titled Court shall forthwith, on the filing or payment by Plaintiffs of the bond herein required and on approving the same according to the law, issue a Temporary Injunction in conformity with the law and terms of this order.

SIGNED this 1 day of April, 2024, at 2:47 o'clock. p.m.

IT IS SO ORDERED.



Judge Presiding