

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

STANLEY HAMBRICK,)
)
 Plaintiff,)
)
 vs.)
) **CIVIL ACTION NO. _____**
 MUHAMMAD KASIM REED, MAYOR OF)
 THE CITY OF ATLANTA, AND GEORGE N.)
 TURNER, CHIEF OF THE ATLANTA)
 POLICE DEPARTMENT, SUED IN)
 THEIR OFFICIAL CAPACITIES,)
)
 Defendants.)
 _____)

PETITION FOR A WRIT OF MANDAMUS

Plaintiff seeks this Court’s immediate help. Defendants Kasim Reed and George Turner have already unjustly and illegally prevented Plaintiff Stanley Hambrick from working as a vendor for five months—almost the entire baseball season. If this Court issues a mandamus, Mr. Hambrick will be able to work as a vendor for at least 15 days this year. Otherwise, he will not work at all.

On December 21, 2012, this Court declared that Atlanta’s vending monopoly and Atlanta, Georgia Code of Ordinances (“Atlanta City Code”) Ordinance No. 08-O-1220, which authorized the monopoly, were “void and without effect.” Because Ordinance No. 08-O-1220 had repealed Atlanta’s pre-existing vending law, its invalidation resurrected that earlier law, and Plaintiff believed he could renew his permit under the pre-existing vending law as he had done for years. Coupled with the fact that Defendants let people continue to vend for months following the ruling, Mr. Hambrick prepared for the baseball season beginning April 1, 2013.

Four days before the season opener, though, Defendants cracked down on Atlanta's street vendors, threatening them with fines and arrest if they set up their stands. This included Larry Miller, a colleague of Mr. Hambrick's, who had just begun to set up his vending stand for the Braves' opening day when two Atlanta police officers told him to close down or face arrest. After negotiations with the City proved fruitless, Messrs. Hambrick and Miller asked this Court to clarify its December order. On July 2, 2013, this Court did just that, making clear for a second time that the ordinance that had repealed the pre-existing vending law should be "treated as if it had never been passed." But despite this, Defendants continue to refuse to renew Mr. Hambrick's vending permit or let him return to work.

Blocked at every turn, Mr. Hambrick now asks for this Court's help. Defendants' refusal to renew Mr. Hambrick's vending permit, a non-discretionary duty they are obliged to perform under the law, has prevented him from working for the entire Major League Baseball season. As of August 30, 2013, there will only be 15 home games left for the regular season along with the possibility of a playoff run. These will be the only opportunities for Mr. Hambrick to recoup at least some of the investments that he has incurred to purchase inventory, etc. Accordingly, Plaintiff now respectfully requests that this Court issue an order of mandamus nisi immediately and set this matter for a hearing on Monday, September 9, 2013, ten days after the filing of this Petition. He furthermore requests that, upon that hearing, this Court immediately issue a mandamus absolute requiring Defendants to issue public-property vending permits as required by Atlanta City Code Sections 30-1426 et seq.

Jurisdiction and Venue

1. This Court has jurisdiction over this mandamus action as it concerns the failure of Defendants to perform a ministerial duty that the Atlanta City Code requires city officials to perform. Ga. Const. art. VI, § I, ¶ IV; Ga. Const. art. VI, § IV, ¶ I; Ga. Code § 9-6-20.

2. Venue is proper because Defendants, in their official capacities, all reside in Fulton County, Georgia. Ga. Const. art. VI, § II, ¶ VI.

The Parties

3. Plaintiff Stanley Hambrick is a U.S. citizen and a taxpayer and resident of the City of Atlanta.

4. Mr. Hambrick operated a vending stand that was located on the eastern side of Hank Aaron Drive S.E. in the area designated as District 6, which surrounds Turner Field.

5. Mr. Hambrick is qualified for a public-property vending permit and is not disqualified from renewing his permit pursuant to Section 30-1434 of the Atlanta City Code.

6. Mr. Hambrick is unable to vend at the location he historically worked at because of Defendants' refusal to issue him a public-property vending permit as required by Atlanta law.

7. As a resident and taxpayer interested in having the City of Atlanta follow the law, Mr. Hambrick has standing to bring this action. He is interested in enforcing Defendants' duty to issue public-property vending permits pursuant to Atlanta law.

8. As a result of inaction by Atlanta officials, Mr. Hambrick has suffered and continues to suffer irreparable injury; i.e., the complete cessation of his vending business.

Bankers Life & Cas. Co. v. Cravey, 208 Ga. 682, 689 (1952) (holding that failure to issue permit to conduct an insurance business constitutes irreparable injury).

9. Defendant Muhammad Kasim Reed is sued in his official capacity as the Mayor of Atlanta.

10. Defendant George N. Turner is sued in his official capacity as the Chief of the City of Atlanta Police Department. As the head of the Atlanta Police Department License & Permit Section, he is the proper party in a mandamus action to force his local law enforcement agency to issue public-property vending permits as required by Atlanta law.

The City of Atlanta's Public-Property Vending Code

11. The City of Atlanta allows for vending that takes place on the public right of way. Article XXIII, Section 30-1401 et seq. of the Atlanta Code of Ordinances describes the rights and responsibilities of vendors and delineates how the City of Atlanta should issue public-property vending permits to qualified individuals. A true and accurate copy of Article XXIII, as reflected in the Atlanta Code of Ordinances as of September 1, 2008, is attached as Exhibit 1 to the Affidavit of Robert Frommer in Support of a Writ of Mandamus ("Frommer Aff.").

12. The public-property vending law as it existed as of September 1, 2008 required the City of Atlanta and the Atlanta Police Department to issue vending permits to qualified applicants and persons already permitted to vend. Frommer Aff. Ex. 1 at 12 (Section 30-1427(a) (stating that "[s]ix types of vending permits shall be issued by the city")).

13. Under the vending law as of September 1, 2008, Atlanta officials have a non-discretionary duty to renew the vending permits of Mr. Hambrick and other vendors upon their payment of the annual permit fee and confirmation that they are otherwise eligible for renewal. *See id.* at 13, 16 (Sections 30-1428, 30-1431).

14. On September 8, 2008, Defendant City of Atlanta, through its governing authority, enacted Ordinance No. 08-O-1220. A true and accurate copy of the Ordinance No. 08-

O-1220 is attached as Exhibit 2 to the Affidavit of Robert Frommer in Support of a Writ of Mandamus.

15. Section 1 of Ordinance No. 08-O-1220 repealed Chapter 30, Article XXIII, Division 1 and Division 2 of the Atlanta Code of Ordinances, which had previously governed public-property vending in Atlanta.

16. Section 2 of Ordinance No. 08-O-1220 adopted new language for Article XXIII, Division 1 and Division 2, of Chapter 30.

17. Section 30-1402(b) of Ordinance No. 08-O-1220 stated that “[t]he right to manage vending on public property may be contracted to private persons or entities” and that “[a] public vending management contract may provide that the public vending management company be allowed the exclusive right to vend on public property within a specified area of the city or the entire city.” Frommer Aff. Ex. 2 at 30.

18. On September 2, 2008, the City Council adopted Resolution 08-R-1209 (the “Resolution”), which authorized the mayor to enter into an exclusive vending contract with U.K.–LaSalle LLC, a subsidiary of General Growth Properties, Inc. (GGP).

19. On June 30, 2009, representatives from the City of Atlanta and U.K.–LaSalle LLC signed Contract FC-600700095, Public Vending Management Program (the “Contract”). A true and accurate copy of Contract FC-600700095 is attached as Exhibit 3 to the Affidavit of Robert Frommer in Support of a Writ of Mandamus.

20. In the Contract, the city “grants [GGP] the exclusive right to occupy and use all public property vending sites which meet the requirements of the Atlanta City Code.” Frommer Aff. Ex. 3 at 2 (Contract § 1.3).

21. In the fall of 2009, the City of Atlanta and GGP commenced with the first phase of the public vending management program.

22. As part of Phase I, GGP built approximately 20 kiosks in downtown Atlanta, including the area around Woodruff Park.

23. Existing vendors in the Phase I area either had to apply to GGP to enter the public vending management program or cease operations once GGP began constructing the kiosks.

24. Phase II of the public vending management program encompassed the area surrounding Turner Field, where Mr. Hambrick has vended for more than twenty years.

Hambrick Sues the City of Atlanta

25. On July 28, 2011, Plaintiff Hambrick, along with Larry Miller, another Turner Field vendor, brought suit against the City of Atlanta and its public vending management program in Fulton County Superior Court.

26. Hambrick and Miller contended in part that the City of Atlanta, by issuing an exclusive franchise over all public-property vending in the city, exceeded its charter authority. *See Macon Ambulance Serv., Inc. v. Snow Props., Inc.*, 218 Ga. 262, 266 (1962) (holding that the power to grant exclusive franchises must expressly appear in a city's charter).

27. Because the City of Atlanta did not have charter authority to issue an exclusive franchise, Hambrick and Miller contended that Ordinance No. 08-O-1220 and the contract the city had entered into were ultra vires and void.

28. On December 21, 2012, Judge Shawn Ellen LaGrúa of the Fulton County Superior Court granted Hambrick and Miller's motion for summary judgment.

29. In relevant part, the Court held that "[b]ecause the Vending Documents [which included both Ordinance No. 08-O-1220 and the contract] grant the exclusive right to occupy

and use all public property vending sites in the City, the Court finds that, as a matter of law, the City exceeded the powers granted to it in the Charter by creating an unauthorized exclusive franchise.” A true and accurate copy of the Court’s December 21 Order is attached as Exhibit 4 to the Affidavit of Robert Frommer in Support of a Writ of Mandamus.

30. The Court invalidated both Ordinance No. 08-O-1220 and the contract, holding “that the Vending Documents are void and without effect.” *Id.* at 3. This is consistent with the Supreme Court’s decision in *H.G. Brown Family LP v. City of Villa Rica*, 278 Ga. 819, 820 (2005), which held that “if a local government enters a contract in abrogation of its delegated power or in excess of its authority to enter contracts, then the contract is deemed *ultra vires* and void.”

The City of Atlanta’s Crackdown on Street Vending

31. The City of Atlanta did not appeal the Court’s December 21, 2012 ruling, which became final on January 22, 2013.

32. The result of the Court’s decision should have been that Hambrick could have renewed his vending permit pursuant to the procedures laid out in the pre-existing vending law and resume vending around Turner Field. Thus, during late winter and early spring, Hambrick prepared his vending business for the upcoming baseball season, as he had for over two decades. He purchased merchandise and made sure that his assistant vendors would be available to work alongside him.

33. The Atlanta City Code requires City officials to renew public-property vending permits on an annual basis upon payment of the permit fee and verification that the vendor was otherwise eligible for renewal. *See* Frommer Aff. Ex. 1 at 13, 15-16 (Sections 30-1428, 30-1431).

34. As he had done for more than a decade, Hambrick planned to visit the Atlanta Police Department shortly before the Braves' opening day to renew his permit.

35. On March 28, 2013, Mayor Kasim Reed instructed the Atlanta Police Department to clear the streets of all public-property vending. Vendors who refused to close were subject to fines and arrest.

36. On April 1, 2013, Larry Miller attempted to set up at his vending location for opening day, but was told by Atlanta police that he either had to leave or be arrested.

37. One week later, Atlanta Police officials arrested a vendor named Roger Langbecker for operating his hot dog stand on public property, despite the fact that Mr. Langbecker's vending permit was valid until the beginning of May 2013.

38. Mayor Reed's administration claimed that the crackdown on vending was the result of the Court's December 21 Order granting Messrs. Hambrick and Miller's motion for summary judgment. According to a release issued by the Mayor's office, "[t]he APD's action today was necessitated by a decision in Fulton County Superior Court in December 2012 that voided the city's ordinances through which the city had been able to permit vending on public property." Press Release, City of Atlanta, Atlanta Police Department Enforces City Ordinance Prohibiting Vending on Public Property, (March 28, 2013),

<http://www.atlantaga.gov/index.aspx?recordid=1805&page=672>.

39. On June 11, 2013, Hambrick and Miller moved this Court for clarification on whether the Court's December 21, 2012 Order left Atlanta with no public-property vending code, as Defendants Mayor Reed claims, or whether, by declaring Ordinance No. 08-O-1220 invalid, the Order had resurrected the public-property vending law that existed as of September 1, 2008.

40. On June 25, 2013, the City opposed the motion, arguing that, although the Court had declared Ordinance No. 08-O-1220 void and without effect, the portion of that Ordinance that rescinded the pre-existing public-property vending code was somehow still operative.

41. On July 2, 2013, the Court clarified the scope of its December 21, 2012 Order. A true and accurate copy of the Court's July 2 Clarification of December 21, 2012 Order is attached as Exhibit 5 to the Affidavit of Robert Frommer in Support of a Writ of Mandamus. It stated that "Atlanta City Ordinance No. 08-O-1220, Atlanta City Resolution 08-R-1209 and the contract entitled FC-600700095, Public Vending Management Program were all declared void and without effect." *Id.* at 2 (citation omitted). In a footnote attached to that statement, the Court explained that "an unconstitutional statute or ordinance is 'wholly void' and is to be viewed 'as if it had never been passed.'" *Id.* at 2 n.1 (citation omitted).

42. Under Georgia law, the fact that the Court declared Ordinance No. 08-O-1220 wholly void means that the Ordinance's repeal of the pre-existing vending code is invalid, thereby leaving the pre-existing law in place. *See, e.g., Fid. & Cas. Co. v. Whitehead*, 114 Ga. App. 630, 634 (1966) ("In cases in which statutes containing repealing clauses have been held to be unconstitutional, the general rule is that the clause containing the repeal is incidental to the rest of the statute, and that if the latter is invalid, ***the clause containing the repeal will likewise be deemed invalid, leaving the prior general law unrepealed.***") (emphasis added & citations omitted).

43. The day after this Court's clarification, Hambrick went to the Atlanta Police Department to renew his vending permit. Although Atlanta officials have a non-discretionary duty under the pre-existing vending code to renew those permits, the Atlanta Police Department License and Permits Unit refused to renew it.

44. Defendant Reed continues to maintain that no public-property vending law is in place and that he therefore cannot allow Atlanta's public-property vendors to renew their permits. Reed administration spokeswoman Melissa Mullinax, for instance, told the Atlanta Journal Constitution that "Judge LaGrua's clarification issued today restated her original ruling that the city's 2008 public vending ordinance was unconstitutional, leaving the city without a public vending program." Katie Leslie, *Judge issues ruling that could mean vendors can return to work; city disagrees*, Atlanta Journal Constitution, July 2, 2013, <http://www.ajc.com/news/news/breaking-news/judge-issues-ruling-that-could-mean-vendors-can-re/nYcHZ/>.

45. Should this Court grant Plaintiff Hambrick's Petition for a Writ of Mandamus, he shall immediately renew his permit so that he may return to work at his assigned vending location.

COUNT I
MANDAMUS ABSOLUTE
(Failure of Defendants to Submit to Local Governing Authorities)

46. The allegations contained in paragraphs 1–49 are incorporated by reference as if fully set forth herein.

47. "Where the question is one of public right and the object is to procure the enforcement of a public duty, no legal or special interest need be shown, but it shall be sufficient that a plaintiff is interested in having the laws executed and the duty in question enforced." Ga. Code § 9-6-24.

48. The issuance of public-property vending permits to qualified applicants pursuant to the Atlanta City Code is a duty that affects the people at large rather than only Mr. Hambrick.

Adams v. Ga. Dep't of Corr., 274 Ga. 461, 462 (2001) (stating that a public duty is “one which affects the general public rather than a private individual”).

49. To the extent that the issuance of a public-property vending permit is deemed to be a private, rather than public right, Mr. Hambrick has suffered and continues to suffer an irreparable injury justifying mandamus. *See* Ga. Code § 9-6-25.

50. Section 30-1427 of the Atlanta City Code (having been unrepealed by virtue of the Court’s December 21, 2012 Order) states that “vending permits *shall* be issued by the city.” *Frommer Aff. Ex. 1* at 12 (emphasis added).

51. The issuance of public-property vending permits as required by Section 30-1427 of the Atlanta City Code is a non-discretionary act that Defendants are required by law to perform.

52. Mr. Hambrick satisfies all the prerequisites for the renewal of his public-property vending permit.

53. Defendant Turner has failed to comply with Section 30-1427. The Atlanta Police Department has refused to renew the public-property vending permits of Mr. Hambrick and others during the calendar year 2013.

54. Defendant Reed has failed to comply with Section 30-1427. As the Mayor of Atlanta, Defendant Reed is the official required by law to perform the specified act, *see City of Lawrenceville v. Humphries*, 229 Ga. 724, 726 (1972), yet he has refused to instruct the Atlanta Police Department to renew the public-property vending permits of Mr. Hambrick and others during the calendar year 2013.

55. Mr. Hambrick has no other specific legal remedy for Defendants’ failure to renew his public-property vending permits and the permits of others during the calendar year 2013.

PRAYER FOR RELIEF

Wherefore, Plaintiff respectfully requests relief as follows:

- A. Grant a mandamus nisi setting this matter for a hearing not less than ten (10) and no more than thirty (30) days after the filing of this Petition (a proposed order is attached);
- B. Upon hearing, issue a mandamus absolute requiring all Defendants to renew the public-property vending permits of Mr. Hambrick and others, and to issue new public-property vending permits to qualified applicants, as required by Atlanta City Code Sections 30-1426 to 30-1434;
- C. Award Plaintiff his reasonable attorneys' fees and costs in this action pursuant to Ga. Code. § 13-6-11; and
- D. Such other and further relief as this Court deems just and proper.

Dated: August 30, 2013

Respectfully submitted,

INSTITUTE FOR JUSTICE

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**Motion for admission pro hac vice concurrently
filed.*