IN THE CIRCUIT COURT OF THE NINETEENTH JUDICIAL CIRCUIT
IN AND FOR ST. LUCIE COUNTY, FLORIDA

CASE NO. 2018-CA-2259

BENIGNO DIAZ;
TACO TRAP, LLC;
BRIAN PEFFER; and
CREATIVE CHEF ON WHEELS LLC,

Plaintiffs,

vs.

CITY OF FORT PIERCE, FLORIDA,

Defendant.

ORDER GRANTING PLAINTIFFS' VERIFIED MOTION FOR PRELIMINARY INJUNCTION

Plaintiffs seek to enjoin the City of Fort Pierce from enforcing its 500-foot ban which prohibits food trucks from competing with any "brick and mortar" business that sells food.

The Ban only applies to food trucks wishing to operate within 500 feet of a competitor: The Ban does not prevent food trucks from operating near brick-and-mortar businesses that do not sell food.

Injunctive relief may only be granted when (a) Plaintiffs' claims have a substantial likelihood of success on the merits; (b) Plaintiffs have no adequate remedy at law; (c) irreparable harm will continue to occur unless injunctive relief is granted; and (d) the requested injunctive relief would serve the public interest.

All laws are presumed constitutional.

Plaintiffs have a substantial likelihood of success on the merits

Plaintiffs' claim the Ban is not rationally related to any interest other than protectionism; is

unconstitutionally arbitrary; is facially unconstitutional under the Florida Constitution's Due Process and Equal Protection Clauses; and, even if the Ban were not facially unconstitutional, it would still violate the Florida Constitution's Due Process and Equal Protection Clauses *as applied* to Plaintiffs.

The City's "police powers" are no doubt broad. Any ordinance need not be optimal to achieve a proper objective: namely, public health, safety and welfare; but it must be at least rationally related to such an objective. *Chicago Title Ins. Co. v. Butler,* 770 So. 2d 1210, 1220 (Fla. 2000); *Eskind v. City of Vero Beach*, 159 So. 2d 209, 211 (Fla. 1963)(Ban must have its foundation in reason and general community welfare. It must not impose discriminatory restrictions on the activities of a carefully selected business while permitting others similarly conditioned to engage in the prohibited activity); *Liquor Store v. Continental Distilling Corp*., 40 So. 2d 371 (Fla. 1949)(A statute cannot be the means of leveling unequal fortunes, nor can it favor one segment of the people at the expense of another segment).

The court agrees with Plaintiffs that Fort Pierce already had ordinances addressing legitimate concerns, and the 500-foot Ban was specifically drafted for only one purpose: to favor one type of commerce over another; to prevent competition. The Court cannot read the ban any other way; it clearly does not appear to be rationally related to any legitimate end, such as the promotion of public health, traffic congestion, or safety, which are all within the purview of the City's broad police power. As a matter of law, protectionism, by itself, is not a valid exercise of a police power.

It is significant in that regard to note that the ordinance is not one which, like a zoning ordinance, bans food trucks in specific areas that have been shown to be subject to traffic congestion, or that possess a cultural style sought to be preserved. *Eskind v. City of Vero Beach*, 159 So. 2d 209, 211 (Fla. 1963)(Customarily, community attractiveness is accomplished by

general zoning plans and related regulations which do not segregate selected businesses or activities for confiscatory, discriminatory treatment); *City of New Orleans v. Dukes,* 427 U.S. 297 (1976) (allowing New Orleans to prohibited food-pushcarts in the Vieux Carre, the French Quarter, to further the purpose of preserving the appearance and customs valued by the French Quarter's residents and attractive to tourists). It creates no designated area for Plaintiffs to operate their businesses to avoid or alleviate traffic or street congestion. Also, the distance restriction (500 feet) is much greater than other distance restrictions that have withheld judicial scrutiny across the country. *See LMP Services, Inc. v. City of Chicago*, 95 N.E.3d 1259 (Ill. App. Ct. 2017), appeal allowed, 98 N.E.3d 35 (Ill. 2018) (ban allowed for food trucks within 200 foot of any restaurant's principal customer entrance; unlike this case, ordinance contained numerous accommodations and exceptions, and was arguably created to (1) balance the interests of brick-and-mortar restaurants with food trucks, (2) encourage food trucks to locate in underserved areas, and (3) manage sidewalk congestion).

As the court stated in *Eskind*, at 212, "There are cases which recognize the exercise of the police power to promote the general economic welfare of the community. Those which approve comprehensive zoning plans are typical. However, we have found none which permits discriminatory legislation damaging to one segment of a class of businesses and beneficial to another segment of the same class. Such is the impact of the subject ordinance." Put simply, those words of the Florida Supreme Court apply here. The ban, on its face, without any other accommodations, exceptions or explanation, is simply discriminatory legislation damaging to one segment of a class of businesses and beneficial to another segment of the same class: the food service industry. "When there is no ***reasonably identifiable*** rational relationship between the demands of the public welfare and the restraint upon private business, the latter will not be permitted to stand." *Id.* at 212 (emphasis added). As the Plaintiff has rightly stated, "The city's

commission tailored the 500-foot ban to solely accomplish this illegitimate purpose with breathtaking precision." The Plaintiffs have a substantial likelihood of succeeding on their argument that the ban is facially unconstitutional under Florida's Constitutional Due Process Clause.

Adequate Remedy at Law

The Court agrees with the Plaintiff that potential claims for damages would be barred by sovereign immunity; therefore, there is no adequate remedy at law.

The preliminary injunction would serve the public interest.

The Court agrees that a preliminary injunction would serve the public interest. The public interest is served by upholding constitutional protections and furthering business competition. As the Florida Supreme Court has stated, "If expanded to other fields, such an exercise of power could be destructive of the competitive, free enterprise system." *Eskind* at 212.

A Minimal Bond is Set

The Court finds that a minimal bond is appropriate. One hundred dollars shall be the bond amount.

For the reasons stated herein,

Plaintiff's motion for a temporary injunction is hereby GRANTED. The Defendant is hereby enjoined from enforcing the five hundred foot restriction during the pendency of this litigation. This injunction will go into effect upon the posting of the bond.

DONE AND ORDERED, this 22nd day of February, 2019.

Circuit Judge Lawrence Mirman

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