

**IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL
CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA**

CASE NO: 2020-021883-CA-01

SECTION: CA22

JUDGE: Beatrice Butchko

MIAMI GARDENS SQUARE ONE, INC. et al

Plaintiff(s)

vs.

MIAMI-DADE COUNTY

Defendant(s)

_____ /

TEMPORARY INJUNCTION ORDER

THIS CAUSE came before the Court on October 15, 2020, for a hearing on Plaintiffs' Verified Complaint and their Motion for Temporary Injunction Without Notice and Alternative Motion for Temporary Injunction, and the Court having reviewed the Complaint, the Motion and the parties' Memoranda of Law, having heard argument of counsel and being otherwise advised in the premises, it

FINDS as follows:

1. At the commencement of the hearing, the parties announced that the Plaintiffs' Fourth Amendment challenge to warrantless inspections is moot due to the enactment of Amendment 1 to Miami-Dade County Emergency Order 30-20, which deleted the requirement that restaurants submit to such inspections.

2. Also, at the commencement of the hearing, the County stipulated that enforcement of Citation 2309714, issued against Plaintiff HAL BELL, III is suspended consistent with Section 4 of Executive Order 20-244.

3. The legal claims presented to the Court were all facial challenges. The individual facts of this case, and Tootsie's particular factual circumstances, are therefore largely irrelevant to the Court's determination. *See, generally, Sentinel Communications Co. v. Watts*, 936 F.2d 1189, 1197 (11th Cir. 1991) ("In a facial challenge such as this, the facts of the challenging party's case are irrelevant.").

4. In response to the COVID-19 pandemic, Miami-Dade adopted a curfew on an emergency basis which is presently reflected in Amendment 1 to Miami-Dade County Emergency Order 30-20 and Amendment No. 3 to Miami-Dade County Emergency Order 27-20 (hereinafter the "curfew orders").

5. Emergency Order 27-20, as amended, applies to all manner of businesses, with specified exceptions. The curfew provisions of Emergency Order 30-20 apply specifically to restaurants.

6. The curfew orders require all persons to vacate the streets between the hours of 12:00 midnight and 6:00 A.M. with exceptions for police, fire rescue, first responders, medical, health care, media, and utility repair service persons and persons traveling to or from essential establishments, making deliveries, walking their dogs within 250 feet of their residences, traveling to or from any sporting event sponsored by a national professional sports league or organization, or traveling to or from any religious service.

7. Plaintiffs operate a restaurant known as "Tootsies" located at 150 N.W. 183rd Street, Miami Gardens, which is within the jurisdictional boundaries of Miami-Dade County, Florida. Tootsies also provides live entertainment in the form of exotic dance.

8. Plaintiffs' normal hours of operation are from 12:00 P.M. (noon) until 6:00 A.M. the next day.

9. Plaintiffs are subject to the curfew orders and are presently required to close between 12:00 midnight and 6:00 A.M.

10. When Tootsies refused to close under the predecessor curfew order on October 7, 2020, its owners and operators were threatened with arrest. Thereafter, Tootsie's closed involuntarily at midnight.

11. Plaintiff BELL was previously cited for violating the curfew order on October 7, 2020 and received a citation for \$510.00.

12. On September 25, 2020, Governor Ron DeSantis enacted Executive Order 20-244 which addresses the economic harm associated with the on-going COVID-19 pandemic. In particular, the Governor observed that:

[T]he State of Florida has suffered economic harm as a result of COVID-19 related closures, exacerbating the impacts of the State of Emergency, and Floridians should not be prohibited by local governments from working or operating a business.

13. Executive Order 20-244 addresses that economic distress by directing that all businesses be allowed to open and that all workers be allowed to work. That intention was coupled with a direct preemption of all local COVID-19 emergency ordinances that prevent a business from opening. The relevant language appears in Section 2 of the Order and reads as follows:

Section 2. Right to Work and Operate a Business.

No COVID-19 emergency ordinance may prevent an individual from working or from operating a business. This preemption is consistent with Executive Order 20-92

14. Executive Order 20-92, which is referenced in Order 20-244 and described as being “consistent” with the preemption language of the latter Order, reads as follows:

Section 1.

Section 4 of Executive Order 20-91 should read as follows: This Order shall supersede any conflicting official action or order issued by local officials in response to COVID-19.

15. The only exception to the Governor’s general and complete preemption of the field concerns the ability of local governments to reduce the capacity of restaurants to not less than 50% if the restriction is supported with evidence concerning the economic impacts and public health needs. ~~See~~, Ex. Order 20-244 at §3. That exception only emphasizes the conclusion that the Governor intended to preempt any local effort to thwart the reopening of businesses on an emergency basis other than as he may specifically direct.

16. Section 4 of Executive Order 20-244 further supports the Court’s findings when it directs that “the collection of fines and penalties associated with COVID-19” are “suspend[ed]”

17. Executive Order 20-244 expressly preempts any local emergency COVID order which would have the effect of preventing a business from operating or prohibiting an individual from working. That preemption necessarily includes curfews which, by their terms prevent businesses from operating and further have the effect of reducing their capacity to zero.

18. The Governor has the authority to issue Emergency Orders, including Orders

tailored to the unique circumstances of the COVID-19 pandemic (in addition to the more typical natural disasters such as hurricanes). That authority was granted by the Legislature in §252.36, Fla. Stat. That statute is intended to grant the Governor extensive powers to protect the public health, safety and welfare during times of emergency. Emergency Orders issued by the Governor “shall have the force and effect of law”. *See*, §252.36(1)(b), Fla.Stat.

19. A number of subsections of §252.36 specifically grant the authority to regulate the movement of persons during times of emergency which relates directly to the issue of curfews. Without limitation, §252.36(g), (k) and (m) all bear on the issue of the Governor’s authority to enact and void curfews and govern the operations of commodity suppliers (including “food”) during times of emergency.

20. In this instance, the Governor’s express preemption and preemption of the field is obvious from the plain language of Executive Order 20-244. *See, generally, Lake Hamilton Lakeshore Owners Ass’n, Inc. v. Neidlinger*, 182 So.3d 738, 742 (Fla. 2d DCA 2015) (“Express preemption of a field by the legislature must be accomplished by clear language stating that intent.”).

21. When a local regulation is preempted by law it is treated as an *ultra vires* act. Preempted laws are void *ab initio* and of no effect. *See, e.g., Nat’l Rifle Ass’n of Am., Inc. v. City of S. Miami*, 812 So.2d 504, 504 (Fla. 3d DCA 2002) (Local ordinance regulate firearms and ammunition invaded a field preempted by the legislature and was therefore *ultra vires*).

22. The Miami-Dade curfew orders conflict with Executive Order 20-244 because they prohibit Tootsies from operating; they prohibit employees and contractors from working; and they reduce capacity to zero for the entire time subject to the curfew.

23. In particular, the Court finds that 3(c) of Amendment 1 to Miami-Dade County

Emergency Order 30-20 is expressly preempted by Executive Order 20-244. The preempted language reads as follows:

c. Restaurants and other food service establishments with seating for more than eight people shall close for on-premises dining between the start of the curfew as determined in Emergency Order 27-20 and 6:00 am the next morning. Notwithstanding the foregoing, such establishments may operate their kitchens for the purpose of providing delivery services, pick up or take out services. Employees, janitorial personnel, contractors and delivery personnel shall be allowed access to such establishments at all times.

24. Section 3(c) of Amendment 1 to Miami-Dade County Emergency Order 30-20 is severable from the remainder of the Order. The other provisions of Emergency Order 30-20 governing such matters as masks, social distancing, sanitization and seating capacity shall not be affected by this Preliminary Injunction.

25. In addition, the midnight to 6:00 a.m. curfew imposed by Amendment No. 3 to Miami-Dade County Emergency Order 27-20 conflicts with and is preempted by Executive Order 20-244. The midnight to 6:00 a.m. curfew is thus *ultra vires* and may not be enforced against Tootsies, its employee and contractors.

26. The Court finds that it need not reach Plaintiffs' remaining constitutional challenges. See, Sullivan v. Sapp, 866 So.2d 28, 34 (Fla. 2004) ("[W]hen a case may be resolved on grounds other than constitutional, the Court will ordinarily refrain from proceeding to decide the constitutional question."). However, the Court acknowledges that Plaintiffs fully briefed and preserved their constitutional claims. Likewise, the Court acknowledges that the County fully briefed its opposition to those constitutional claims and preserved its defenses.

27. The Court finds that the Plaintiffs are substantially likely to prevail on the merits of their claims. The Court has limited its determination to the preemption claims but notes that

the Plaintiffs have asserted constitutional claims as well.

28. Enforcement of a void law does irreparable harm to the rule of law and would cause irreparable harm to the Plaintiffs as well. In addition to the due process concerns that would attend any attempt to enforce a void (preempted) law, the Court is cognizant of the fact that Plaintiffs have asserted fundamental constitutional rights under the U.S. and Florida Constitutions. *See, Gainesville Woman Care, LLC v. State*, 210 So.3d 1243, 1263–64 (Fla. 2017) (“[T]he United States Supreme Court has stated that the “loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.” *Elrod v. Burns*, 427 U.S. 347, 373, 96 S.Ct. 2673, 49 L.Ed.2d 547 (1976). Additionally, both the federal courts and Florida district courts of appeal have presumed irreparable harm when certain fundamental rights are violated.”).

29. The public interest is harmed by the enforcement of a void or unconstitutional law and is served by Court intervention prohibiting the enforcement of such invalid laws. *Compare, FF Cosmetics FL, Inc. v. City of Miami Beach*, 866 F.3d 1290, 1298 (11th Cir. 2017) (“[E]njoining the ordinances, if they were found to be in violation of the First Amendment, would advance the public’s interest in freedom of speech.”); *See, also, Pac. Frontier v. Pleasant Grove City*, 414 F.3d 1221, 1237 (10th Cir. 2005) (“Vindicating First Amendment freedoms is clearly in the public interest.”).

30. The balance of the harms favors the Plaintiffs and the vindication of the public interest in the rule of law.

31. Given the Court’s finding of a substantial likelihood that Plaintiffs will prevail in showing that the curfew orders are preempted and void, the Plaintiffs shall be required to post only a minimal bond.

WHEREUPON it is ORDERED AND ADJUDGED as follows:

A. Plaintiffs' Motion for Temporary Injunction Without Notice is DENIED as Moot; the Court conducted a hearing with notice at which both parties were present and argued their respective cases.

B. The Defendant, MIAMI-DADE COUNTY, a political subdivision of the State of Florida, is hereby preliminarily ENJOINED from enforcing §3(c) of Amendment 1 to Miami-Dade County Emergency Order 30-20:

c. Restaurants and other food service establishments with seating for more than eight people shall close for on-premises dining between the start of the curfew as determined in Emergency Order 27-20 and 6:00 am the next morning. Notwithstanding the foregoing, such establishments may operate their kitchens for the purpose of providing delivery services, pick up or take out services. Employees, janitorial personnel, contractors and delivery personnel shall be allowed access to such establishments at all times.

B. The Defendant, MIAMI-DADE COUNTY, a political subdivision of the State of Florida, is hereby preliminarily ENJOINED from enforcing Amendment 3 to Miami-Dade County Emergency Order 27-20 against Plaintiffs, including their owners, officers, managers, employees, contractors and performers.

C. The Defendant is directed to observe its stipulation to suspend enforcement of Citation 2309714 issued against Plaintiff HAL BELL, III consistent with Section 4 of Executive Order 20-244.

D. As security for the issuance of this Preliminary Injunction, the Plaintiffs shall post a bond with the Clerk of Court in the amount of \$1,000.00, within five (5) days.

DONE and ORDERED in Chambers at Miami-Dade County, Florida on this 16th day of October, 2020.



2020-021883-CA-01 10-16-2020 10:02 AM

Hon. Beatrice Butchko

CIRCUIT COURT JUDGE

Electronically Signed

No Further Judicial Action Required on **THIS MOTION**

CLERK TO **RECLOSE** CASE IF POST JUDGMENT

Electronically Served:

Angela Benjamin, Angela.Benjamin@miamidade.gov
Angela Benjamin, Jeane.Neal@miamidade.gov
Angela F Benjamin, angela.benjamin@miamidade.gov
Angela F Benjamin, jeane.neal@miamidade.gov
Daniel R Aaronson, Danaaron@Bellsouth.net
Daniel R Aaronson, Debbie@benjaminaaronson.com
Dave Murray, Dave.Murray@miamidade.gov
Dave Murray, Rosa.Martin@miamidade.gov
Gary S Edinger, GSEdinger12@gmail.com
Gary S Edinger, GSEdinger@aol.com
James S Benjamin, Jamie@benjaminaaronson.com
James S Benjamin, Debbie@benjaminaaronson.com
James S Benjamin, sexlaw@bellsouth.net
Lauren E. Morse, laurenm@miamidade.gov
Lauren E. Morse, olga1@miamidade.gov
Lauren E. Morse, hern@miamidade.gov

Physically Served: