

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS

Case No. 2020 CP 10

Charleston Area Public Beach)
Access and Parking Group,)
)
Plaintiff,)
)
vs.)
)
City of Isle of Palms)
)
Defendant.)
_____)

SUMMONS

TO THE DEFENDANT ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you; and to serve a copy of your Answer to the said Complaint upon the subscribers at their offices at 2344 Cosgrove Avenue, Post Office Box 71121, Charleston, South Carolina, 29415-1121 within thirty (30) days after the service hereof, exclusive of the day of such service.

YOU ARE HEREBY GIVEN FURTHER NOTICE that if you fail to appear and defend and fail to answer the Complaint as required by this Summons within thirty (30) days after the service hereof, exclusive of the day of such service, judgment by default will be entered against you for the relief demanded in the Complaint.

August 4, 2020

/s/Thomas R. Goldstein
Thomas R. Goldstein, #2186
BELK, COBB, INFINGER & GOLDSTEIN, P.A.
Post Office Box 71121
Charleston, South Carolina 29415-1121
(843) 554-4291; (843) 554-5566 fax
ATTORNEYS FOR PLAINTIFF

STATE OF SOUTH CAROLINA)
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COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS

Case No. 2020 CP 10

Charleston Area Public Beach)
Access and Parking Group,)

Plaintiff,)

vs.)

City of Isle of Palms)

Defendant.)
_____)

COMPLAINT
(Injunction and F.O.I.A. violation)
Non-Jury

The plaintiff complaining of the defendant shows unto the Honorable Court:

1. The plaintiff is an unincorporated association of approximately three hundred (300) members formed to demand access to public property. Its members included residents of the Isle of Palms and of surrounding counties and municipalities.
2. The Isle of Palms is a municipality organized and existing pursuant to the laws of the State of South Carolina, located entirely within Charleston County.
3. The subject matter of this lawsuit involves the public’s access to the beaches located on the Isle of Palms, which are owned in trust by the State of South Carolina for members of the public, including the members of the unincorporated association bringing this suit. All the members are taxpayers and support the maintenance of both the beach and public access to it under the *South Carolina Beachfront Management Act*, which requires, among other things, that the municipality provide, maintain, and improve public access to the beach. Every citizen of the State has standing to bring an action under the *South Carolina Freedom of Information Act* for violations of the Act.
4. The Court has jurisdiction over the parties to this action and over the subject matter.

FOR A FIRST CAUSE OF ACTION
Temporary and Permanent Injunction

5. The plaintiff repeats the above allegations as if set forth here verbatim.

6. On July 15, 2020, the Isle of Palms' City Council conveyed an emergency meeting (in violation of *F.O.I.A.* as set forth more particularly below) and voted to eliminate all public parking on the island except as to residents of Isle of Palms. (See Ordinance 2020-11, attached hereto and incorporated by this reference as Exhibit 1.)

7. This action was void *ab initio* because the Isle of Palms neither owns nor maintains the public parking along state highway rights-of-ways, and is required under its agreement with the State of South Carolina to preserve, maintain, and increase public access to the public beach as a condition of receiving state support under the *Coastal Tidelands and Wetlands Act*, § 48-39-320, *et. seq.*:

The department's responsibilities include the creation of a long range and comprehensive beach management plan for the Atlantic Ocean shoreline in South Carolina. The plan must include the following: . . .

(b) development of a beach access program to preserve the existing public access and enhance public access to assure full enjoyment of the beach by all residents of the State;

In addition, the State provides the City of Isle of Palms additional tax money specifically earmarked to assist the municipality in acquiring, expanding, and protecting beach access for the public.

8. The defendant's elimination of public access is a violation of the City's enumerated powers under § 5-7-30, S. C. Code, ann., which grants to municipalities the right to regulate parking in a manner "not inconsistent with the Constitution and the general law of this State." The municipalities' duties under the Beachfront Management Act require the municipality to protect and expand the right of public access. The City does not have authority to treat non-residents

differently from residents under the South Carolina Constitution's guarantees of participation in open meetings and of equal protection under Article I §§ 2 and 3 because the City precluded citizens from participation in the decision and restricted parking on state owned roads to non-residents but not to residents. In addition, the City's restrictions of public parking exceed the City's authority to regulate parking under § 5-7-30, S. C. Code, ann.

9. The City's elimination of public access is an irreparable harm that cannot be remedied by the award of a money judgment.

10. The plaintiff is entitled to a preliminary and permanent injunction and a return to the status quo *ante* existing prior to the enactment of Ordinance 2020-11.

FOR A SECOND CAUSE OF ACTION
F.O.I.A. Violation

11. The plaintiff repeats the above allegations as if set forth here *verbatim*.

12. On July 15, 2020, the City Council published a written Agenda informing the public that it intended to convene an emergency meeting for the single purpose of considering amendments regulating beach chairs and umbrellas and other restrictions related to Covid-19. During the meeting, the Council without notice to the public and without affording interested persons an opportunity to be heard, voted to amend its ordinance to preclude parking that is the subject of this action. Even though the City properly noticed a meeting to consider changes to its ordinance regulating beach chairs and umbrellas, the published Agenda says nothing about a proposed parking ban, and the City identified no "exigent" circumstance that would allow such an amendment after a two-third's vote of Council as required by statute.

13. This meeting violated the *South Carolina Freedom of Information Act*, §§ 30-3-80.

14. The Ordinance adopted at this meeting, Ordinance 2020-11 (Exhibit 1) is void *ab initio* for violations of the *South Carolina Freedom of Information Act*.

15. The Agenda published by the City provided no notice that the City was contemplating restricting parking on state owned right-of-ways to residents only and excluding non-residents as a class, and the Council did not conduct a necessary two-thirds vote to change the agenda to include the parking ban as an “exigent” circumstance. See § 30-4-80, S. C. Code, ann.:

SECTION 30-4-80 Notice of meetings of public bodies

Once an agenda for a regular, called, special, or rescheduled meeting is posted pursuant to this subsection, no items may be added to the agenda without an additional twenty-four hours notice to the public, which must be made in the same manner as the original posting. After the meeting begins, an item upon which action can be taken only may be added to the agenda by a two-thirds vote of the members present and voting; however, if the item is one upon which final action can be taken at the meeting or if the item is one in which there has not been and will not be an opportunity for public comment with prior public notice given in accordance with this section, it only may be added to the agenda by a two-thirds vote of the members present and voting and upon a finding by the body that an emergency or an exigent circumstance exists if the item is not added to the agenda. Nothing herein relieves a public body of any notice requirement with regard to any statutorily required public hearing.

16. The plaintiff prays for an Order of the Court declaring Ordinance 2020-11 void.

FOR A THIRD CAUSE OF ACTION
Claim for Attorney’s fees

17. The plaintiff repeats the above allegations as if set forth here *verbatim*.

18. South Carolina law provides for an award of attorney’s fees for citizens who successfully challenge unlawful government conduct. §§ 15-77-300, 310; 30-4-100, S. C. Code, ann.

19. The defendant’s actions in this case were taken in violation of law and impaired the fundamental rights of access to the plaintiff and its members and were taken in violation of the

City's responsibilities to provide open meetings and allow citizens an avenue of expression to petition the government.

20. The plaintiff is entitled to an award requiring the defendant to reimburse the plaintiff for the fees and costs expended in protecting the plaintiff's fundamental rights.

FOR A FOURTH CAUSE OF ACTION
Excessive Fine

21. The plaintiff repeats the above allegations as if set forth here *verbatim*.

22. The City's imposition of a one hundred (\$100.00) dollar fine is excessive and violates Article § 15 of the *South Carolina Constitution*.

Wherefore, having fully set forth its complaint, the plaintiff prays for an Order of the Court:

- A) Invalidating Ordinance 2020-11 in its entirety for violation of the plaintiff's right to travel upon and access to public property;
- B) Invalidating Ordinance 2020-11 in its entirety for violation of the defendant's responsibility to provide minimally compliant public notice and preventing members of the public, including the plaintiff and its members, from an opportunity to address Council on this important issue;
- C) Requiring the City of Isle of Palms to reimburse the Plaintiff its attorneys fees and costs as provided by South Carolina law, and
- D) Vacating the ordinance for violation of Article I, § 15, *South Carolina Constitution*, and
- E) For such other and further relief as the Court deems just and proper.

August 4, 2020

/s/ Thomas R. Goldstein

Thomas R. Goldstein, S. C. Bar # 2186

BELK, COBB, INFINGER & GOLDSTEIN, P.A.

P. O. Box 71121

N. Charleston, S. C. 29415-1121

(843) 554 4291

(843) 554 5566 (fax)

tgoldstein@cobblaw.net