

**FILED**

January 8, 2015

**STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT**

SC ADMIN. LAW COURT

South Carolina Department of Revenue,

Docket No. 13-ALJ-17-0216-CC

Petitioner,

vs.

Meenaxi, Inc., d/b/a Corner Mart,

Respondent.

ORDER

**RECEIVED**

FEB 19 2015

**SC Court of Appeals**

**APPEARANCES:** For Petitioner: Lauren Acquaviva, Esquire  
For Respondent: S. Jahue Moore, Esquire

**STATEMENT OF THE CASE**

This matter comes before the South Carolina Administrative Law Court (ALC or Court) pursuant to S.C. Code Ann. § 12-60-2540(A) for a contested case hearing requested by Meenaxi, Inc., d/b/a Corner Mart (Respondent) against the South Carolina Department of Revenue (Department) contesting the revocation of the Respondent's beer and wine permit due to the presence of illegal gambling machines on the licensed premises. The Respondent exhausted all prehearing remedies with the Department and filed a timely request for a contested case hearing before the ALC.

**ISSUES**

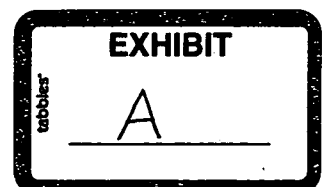
1. Did the Respondent violate S.C. Code Ann. § 61-4-580(5) (2009) by knowingly permitting an act on its premises that constituted a crime?
2. If so, is the revocation of the Respondent's off-premises beer and wine permit an appropriate penalty?

**FINDINGS OF FACT**

Based upon the evidence presented, I make the following findings of fact, taking into consideration the burden on the parties to establish their respective cases by a preponderance of the evidence and taking into account the credibility of the witnesses.

This Court has personal and subject matter jurisdiction. Notice of the date, time and place of the hearing was timely given to all parties. A hearing of this matter was held on December 4, 2014.

During the hearing, Malkesh Patel testified that he is the sole owner of Meenaxi, Inc. He had notice of this proceeding and was invited by the Court to intervene.



The Department issued an off-premises beer and wine permit to Meenaxi, Inc., which does business as Corner Mart. Corner Mart is located at 1010 East Shockley Ferry Road, Anderson, South Carolina. The alcohol permit at issue in this proceeding is number 32057436-6. The Respondent held this permit on February 26, 2013.

On February 26, 2013, at approximately 1:10 p.m., South Carolina Law Enforcement Division (SLED) agents and deputies from the Anderson County Sheriff's Office entered the licensed premises to conduct an Alcohol Beverage License inspection. During the inspection, the officers found two video gaming machines--one Products Direct Sweepstakes machine and one Gift Surplus machine--on the licensed premises.

The officers spoke with Ursula Dean, who was the clerk on duty at the time of the inspection. Dean told the officers that Patel was aware that the officers were in the area. She went on to state that Patel had emptied money from the machines, turned off the power switches, and unplugged them from the wall. Dean was an employee and an agent of Patel and Meenaxi Inc., d/b/a Corner Mart. The answers she gave during the inspection were within the scope of her employment.

During his inspection of the premises, SLED Agent Thomas Bielawski found a number of discarded sweepstakes coupons and redemption instructions. The coupons were found in the trash, on the floor, and behind both machines.

Agent Bielawski plugged the machines in and turned on the power switches. Agent Bielawski was then able to see the type of games that were on the machines. I find, based on the testimony of Agent Bielawski and the related magistrate order, the two machines contained games of chance: poker, blackjack and keno on the Products Direct Sweepstakes machine; and poker and spinning reel style games on the Gift Surplus machine.

Both machines were seized pursuant to the officers' statutory authority. The officers opened the machines with keys provided by Dean. No money was found in either machine. After issuing a citation to Patel, the officers brought the two machines before Anderson County Magistrate Samuel Matthew Lollis. The Respondent requested a post-seizure hearing to contest the illegality of the machines. Magistrate Lollis examined the machines and determined that each machine was an illegal gambling device that violated South Carolina law. On March 1, 2013, Magistrate Loftis ordered the machines' destruction.

Corner Mart was originally named as a party in the related in rem action in magistrate's court to determine the legality of the machines at issue. Upon the motion of the counsel for Meenaxi, Inc., doing business as Corner Mart, Corner Mart was dismissed as the defendant. Meexnaxi, Inc., d/b/a Corner Mart, had notice of the in rem action as well as an opportunity to be heard and was represented by counsel. Ultimately, the magistrate in the in rem action found the two machines were illegal and ordered their destruction.

Patel had knowledge that the machines were illegal. I find his testimony to the contrary to not be credible.

On March 28, 2013, the Department mailed the Respondent written notice of its intent to revoke the Respondent's off-premises beer and wine permit for violating the law by having the illegal gambling machines on his premises. On April 3, 2013, the Respondent timely protested the revocation of its off-premises beer and wine permit.

#### **CONCLUSIONS OF LAW**

Based upon the foregoing Findings of Fact, I conclude, as a matter of law, the following:

The ALC has jurisdiction over this matter pursuant to S.C. Code Ann. §§ 1-23-600 (Supp. 2014), 1-23-301 et seq. (2005 & Supp. 2014), and 12-60-2540(A) (2000).

#### **The Respondent Knowingly Permitted an Act on Its Premises that Constitutes a Crime**

The Respondent contends he did not know that he had committed a crime by allowing the machines on his premises. In South Carolina, a holder of a permit for off-premises beer and wine is prohibited from knowingly allowing any criminal act to occur on the licensed premises. S.C. Code Ann. § 61-4-580(5) (Supp. 2014). It is unlawful for any person to keep on his premises any video game machine in which "is deposited a coin or thing of value...for the play of poker, blackjack, keno, lotto, bingo, or craps...." S.C. Code Ann. § 12-21-2710. The presence of such a machine is a misdemeanor and, therefore, the Department can revoke the licensee's permit for off-premises beer and wine. *Id.* and S.C. Code Ann. § 61-4-580(5). The record contains sufficient evidence to meet the Department's burden of showing the two machines in question: contained games of chance in violation of § 12-21-2710; were located on the Respondent's premises; and that the Respondent knowingly permitted the machines to be placed on its premises. Agent Bielawski testified that the two machines contained illegal games of chance and that he found the two machines on the

Respondent's premises. Dean told Agent Bielawski that Patel had turned off, unplugged, and emptied the machines of money because he knew the officers were in the area. From this behavior, one can reasonably infer that Patel knew the machines were illegal.

#### **Change in Law**

The Respondent argued that the two machines were legal on the dates they were seized. S.C. Code Ann. § 61-4-580 was amended in 1999 to allow "certain legitimate promotions and sweepstakes where specific requirements were met which did not otherwise violate South Carolina law." Op. S.C. Atty. Gen., 2013 WL 3243060 (June 14, 2013). The amendment was meant to make an "exemption from the previous absolute prohibition on all 'gambling or games of chance'...[and] not [create] a broad exception to all of the laws pertaining to gambling or games of chance in South Carolina and certainly not an exemption to specific prohibitions of § 12-21-2710." Id. The statute was amended again in 2013, but only to clarify the legislature's intent that it was not meant to create an exemption to the State's ban on gaming machines found in § 12-21-2710. Id.

The Respondent argues that the two machines fit the exception outlined in § 61-4-580(3), which was created in the 1999 amendment. Among other requirements, the machine in question must have "no purchase payment, entry fee, or proof of purchase...as a condition of entering the game promotion or receiving a prize." S.C. Code Ann. § 61-4-580(3)(b). The Respondent argued the machines required payment for coupons, which could be redeemed online for a variety of merchandise. The Respondent went on to explain that, after the coupons were purchased, the games on the machines were free to play. However, the two machines in this case clearly required payment in order to play the games. Agent Bielawski testified that both machines had bill acceptors on the front of the machine. After the machines were turned on, Agent Bielawski saw the logos for the various games, but was unable to play the games without putting money into the machine. Furthermore, Agent Bielawski found discarded coupons on the floor by the machines. Based on his investigation, he discovered the coupons could only be redeemed on a website that featured incredibly overpriced merchandise. I find that these coupons have no value. Many coupons were discarded on the floor by patrons. Payments put into the machines were to play the games and were not related to a patron's bona fide intention to acquire the coupons. The coupon scheme was a thinly veiled artifice designed to conceal the fact that payment was made solely to play the games.

### **Due Process**

The Respondent argues that due process was violated when Patel was not personally named as a party by the Petitioner in this action. Due process is "flexible and calls for such procedural protections as the particular situation demands." Ogburn-Matthews v. Loblolly Partners, 332 S.C. 551, 561, 505 S.E.2d 598, 603 (Ct. App. 1998) (quoting Stono River Envtl. Protection Assn v. South Carolina Dept of Health and Envtl. Control, 305 S.C. 90, 94, 406 S.E.2d 340, 341 (1991)). Due process requires "notice, an opportunity to be heard in a meaningful way, and judicial review." *Id* at 562, 505 S.E.2d at 603. As the sole owner of Meenaxi, Inc., Patel was aware of this proceeding and, in fact, was present in the courtroom. The Court invited Patel to formally intervene in the proceeding and he declined. Because Patel had the opportunity to meaningfully participate in this case, but declined to do so, the Petitioner did not violate his due process rights.

### **Res Judicata**

The Respondent claims that the in rem magistrate order has no res judicata or collateral estoppel effect in this case. While this argument is an accurate statement of the principles of res judicata and collateral estoppel, it is beside the point. The Department did not argue that the magistrate's order has preclusive effect nor does this Court consider it a binding conclusion. The underlying magistrate order is evidence that the two machines seized during the search were illegal.

### **Admissibility of Statements by Dean**

The Respondent argues that any statements Dean made to the officer during their inspection of the machines constitute hearsay and, therefore, should not be admissible. The statements that Dean made to Agent Bielawski at the time the two machines were seized were recorded in his investigative report. Agent Bielawski's report is admissible as an exception to the hearsay rule because the report is a record of a regularly conducted activity. SCRE 803(6). In addition, Dean's statements were an admission of a party in this case. SCRE 1007. As mentioned above, her statements were made as an employee and an agent of Patel and Meenaxi, Inc. and were within the scope of her employment. Therefore, by virtue of the rules of agency, her statements can be attributed to Meenaxi, Inc.

### **Unlawful Search**

The Respondent argued that the officers did not have a warrant when they inspected the

Respondent's premises and, therefore, the search was unlawful. Under S.C. Code Ann. §§ 61-4-230 and 61-6-4190, SLED has the right to inspect the licensed premises. In addition, any gaming machine that contains games of chance as prohibited under S.C. Code Ann. § 12-21-2710 must "be seized by any law enforcement officer and at once taken before any magistrate of the county...who shall immediately examine it, and if satisfied that it is in violation [of the law]...direct that it be immediately destroyed." S.C. Code Ann. § 12-21-2712. The officers' inspection of the two machines was made pursuant to that authority.

### **Estoppel**

The Respondent argued that the Department had issued licenses for both machines to be used in South Carolina and, therefore, should be prevented from now finding they were illegal. The argument in essence is an argument that the Department should be estopped from revoking the Respondent's off-premises beer and wine permit. Under South Carolina law, "[t]he party asserting estoppel bears the burden of establishing all its elements." Estes v. Roper Temp. Servs., 304 S.C. 120, 122, 403 S.E.2d 157, 158 (Ct. App. 1991). A party asserting estoppel against the government must prove "(1) lack of knowledge and of the means of knowledge of the truth as to the facts in question, (2) justifiable reliance upon the government's conduct, and (3) a prejudicial change in position." Grant v. City of Folly Beach, 346 S.C. 74, 80, 551 S.E.2d 229, 232 (2001), see also Abbeville Arms v. City of Abbeville, 273 S.C. 491, 257 S.E.2d 716 (1979). Citizens are presumed to know the law and are charged with exercising "reasonable care to protect [their] interest[s]." Smothers v. U.S. Fidelity and Guar. Co., 322 S.C. 207, 210-11, 470 S.E.2d 858, 860 (Ct. App. 1996). Absent even one element, estoppel will not lie against a government entity. Grant v. City of Folly Beach, 346 S.C. 74, 551 S.E.2d 229. The Respondent has not shown that any of the three essential elements were present. In particular, the Respondent was not able to show that it was reasonable for him to rely on the license from the Department that was affixed to the outside of the machine to conclude the machines were legal. During his testimony, the Respondent admitted that he knew the machines were illegal on the date they were seized. The Respondent also admitted that he never investigated whether these two machines in particular were legal at the time he placed them in his store. As the Respondent has not met his burden, the Department is not estopped from taking the position that the gaming machines on the licensed premises were illegal.

**Proper Penalty**

According to the Department's penalty guidelines, revocation of the Respondent's permit is appropriate in these circumstances. Based on my finding of fact that the Respondent knew or should have known that the machines were illegal and the lack of mitigating evidence, I find no reason to deviate from the penalty provided for in the guidelines and imposed by the Department.

**ORDER**

**IT IS THEREFORE ORDERED** that, for the reasons set forth above the Respondent's off-premises beer and wine permit is hereby revoked.

**IT IS SO ORDERED.**



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Deborah Brooks Durden  
Administrative Law Judge

January 8, 2015  
Columbia, South Carolina