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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court Of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

HONORABLE DEBORAH BROOKS DURDEN, ADMINISTATIVE LAW JUDGE

CASE NO. 13-ALJ-17-0216-CC

South Carolina Department of Revenue,.....Respondent,

v.

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

**RESPONDENT’S RETURN TO
APPELLANT’S PETITION FOR STAY AND SUPERSEDEAS**

Pursuant to Rules 240(e) and 241, SCACR, the Respondent, South Carolina Department of Revenue (Department), submits this Return in opposition to the Appellant’s Petition for Stay and Supersedeas, which requests that this Court stay the Administrative Law Court’s (ALC) Final Order and Decision pending an appeal of this matter. The Department respectfully requests that the Court deny the relief sought by Appellant.

In the ALC’s Final Order and Decision dated February 19, 2015, the ALC found that (1) the Appellant violated S.C. Code Ann. § 61-4-580(5) (2009) by knowingly permitting an act on its premises that constitutes a crime – possessing unlawful gaming machines – and (2) revocation of the Appellant’s beer and wine permit is the appropriate

penalty for such violation. In its Petition, Appellant asserts that “a Supersedeas is necessary in order to prevent insolvency of the Appellant’s business, to prevent irreparable harm, and to preserve the status quo.” The Department posits that the risk of public harm and the potential for ineffective enforcement of the alcohol laws, as will be explained more fully below, outweigh any potential financial hardship the Appellant may suffer. Thus, the ALC’s Final Order and Decision should not be stayed during the pendency of any appeal in this matter.

Pursuant to Rule 241(c)(2), SCACR, the “appellate court should consider whether [an order imposing a supersedeas of matters decided in the lower court’s order] is necessary to preserve jurisdiction of the appeal or to prevent a contested issue from becoming moot.” Supersedeas is not necessary in this matter as jurisdiction is not in jeopardy, and the issues in the appeal will not become moot during the course of this appeal. The Appellant has not alleged any facts nor are there any facts to support an assertion that the jurisdiction of this appeal is in jeopardy without supersedeas. To the contrary, jurisdiction remains with the ALC and the Appellate Courts of this State. Furthermore, the Appellant has not alleged any facts nor are there any facts to support an assertion that this matter will become moot during this appeal. The issues in this matter are whether the Appellant permitted an act which constitutes a crime on its licensed premises and whether revocation of the Appellant’s beer and wine permit is the appropriate penalty. These issues do not become moot without a supersedeas.

Furthermore, as explained herein, potential alcohol license or permit holders’ past actions impact their ability to obtain licenses and permits in the future. The Department looks at the licensing history of an applicant to determine whether to grant a license or

permit. South Carolina law prohibits the Department from issuing licenses or permits to applicants with prior revocations. See S.C. Code Ann. §§ 61-2-140, 61-4-520(3), and 61-6-110(4) (2009). Therefore, the issues in the appeal will not become moot but rather remain highly relevant and important going forward, as knowing whether the Appellant has a prior revocation on its record impacts its ability to obtain new licenses and permits in the future. Thus, because the facts in this matter do not support an order imposing a supersedeas as set forth in Rule 241(c)(2), SCACR, this Court should deny the Appellant's Petition.

Additionally, if the Court stays the ALC's Final Order and Decision, a risk to public harm exists as the Appellant will be permitted to keep its beer and wine permit during the pendency of the appeal. It is important to understand that a beer and wine permit is a privilege and not a right. See Feldman v. S.C. Tax Comm'n, 203 S.C. 49, 26 S.E.2d 22 (1943). The Appellant's conduct demonstrates that it cannot be trusted to maintain this privilege any longer. This case involves illegal gaming machines on the Appellant's premises. In the ALC's Findings of Fact, it found that Malkesh Patel (Mr. Patel), the sole owner of Meenaxi, Inc., emptied the money out of the illegal gaming machines and unplugged them once he knew law enforcement was in the area. Mr. Patel chose to put these illegal gaming machines in his store. Moreover, Mr. Patel chose to try and hide his actions in an attempt to avoid being caught. These actions by Mr. Patel demonstrate that he has complete disregard for the laws of this State, and intentionally attempted to hide violations of both criminal and alcohol laws from law enforcement. Permitting a person who blatantly disregards the laws of this State, particularly the alcohol laws, to keep his alcohol license creates an unnecessary risk of public harm.

Thus, because Mr. Patel blatantly disregards the alcohol laws of this State, this Court should deny the Appellant's Petition for Stay.

Additionally, permitting the Appellant to maintain the privilege of keeping its beer and wine permit creates a risk for potential ineffective enforcement of the State's alcohol laws. Specifically, while the appeal is pending, the Appellant can circumvent the effect of having a revoked permit by applying for a new permit at a different location and, thus, completely avoid the consequences of its actions. Pursuant to § 61-4-520(3), the Department must not issue a beer and wine permit unless "[t]he applicant, within two years before the date of application, has not had revoked a beer or a wine permit issued to him." Thus, if the revocation remains in effect during the appeal, the Appellant cannot obtain a new beer and wine permit for two years from the date of the Order. If, however, the revocation is stayed, the Appellant can apply for a new permit and avoid the consequences of the revocation of the permit at issue in this case. By the time this Court, and potentially the Supreme Court, issues a decision in this matter, the Appellant could already have started a new business. If that is allowed to happen, the revocation of the permit at issue would not affect the Appellant as it already would have obtained a new permit.

Furthermore, allowing the Appellant to continue to hold a permit allows the Appellant to avoid the consequences of its actions. This appeal could take several months if not years to resolve. By delaying the hearing in this matter at the ALC and now appealing, the Appellant will be able to operate for several years after being caught with illegal gaming machines. Allowing the Appellant to avoid the consequences of its actions for years further hinders the Department's efforts to enforce the State's alcohol

laws. If permit holders are able to avoid the consequences of their actions so easily, the Department's attempts to enforce the alcohol laws will be ineffective. To that extent, this Court should deny Appellant's Petition to avoid the risk of potential ineffective enforcement of the alcohol laws.

In conclusion, because the facts demonstrate that a supersedeas is not necessary to preserve jurisdiction of the appeal or to prevent a contested issue from becoming moot, this Court should deny the Appellant's request for a stay. Additionally, the risks of staying the ALC's Final Order and Decision outweigh the risks of not staying the Order. Therefore, the Department respectfully requests that the relief sought by Appellant be denied.

Respectfully submitted,



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Columbia, South Carolina
February 27, 2015

THE STATE OF SOUTH CAROLINA
In The Court Of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

HONORABLE DEBORAH BROOKS DURDEN, ADMINISTRATIVE LAW JUDGE

CASE NO. 13-ALJ-17-0216-CC

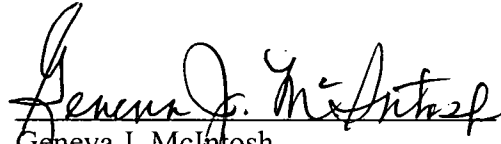
South Carolina Department of Revenue,.....Respondent,

v.

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

PROOF OF SERVICE

I, Geneva J. McIntosh, hereby certify that I have caused to be mailed a copy of the South Carolina Department of Revenue's Return to Appellant's Petition for Stay and Supersedeas regarding the above-referenced case, by depositing the same in the United States Mail, postage prepaid, on February 27, 2015, addressed to the attorney of record, S. Jahue Moore, Esquire, P.O. Box 5709, West Columbia, South Carolina 29171, and to The Honorable Deborah Brooks Durden, Administrative Law Judge, 1205 Pendleton St., Ste. 224, Columbia, SC 29201.


Geneva J. McIntosh

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SC Court of Appeals

State of South Carolina
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Office of General Counsel for Litigation
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February 27, 2015

The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
PO Box 11629
Columbia SC 29211

RE: South Carolina Department of Revenue v. Meenaxi, Inc., d/b/a Corner Mart
Case No. 13-ALJ-17-0216-CC

Dear Ms. Kitchings:

Enclosed for filing is the Department of Revenue's Return to Appellant's Petition for Stay and Supersedeas in the above-referenced case. Also enclosed is a Proof of Service. The same has been mailed to the Honorable John C. Few, Chief Administrative Judge.

Sincerely,

OFFICE OF GENERAL COUNSEL FOR LITIGATION



Lauren Acquaviva
Counsel for Litigation

cc: Honorable Deborah Brooks Durden
S. Jahue Moore, Esquire

LA:gjm
Enclosures

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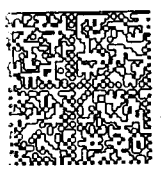
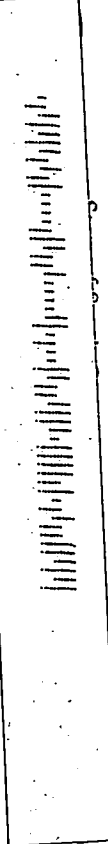
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HONORABLE JENNY ABBOTT KITCHINGS
CLERK OF COURT
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