

STATE OF SOUTH CAROLINA

HORRY COUNTY

State of South Carolina on the relation of
Jimmy A. Richardson, II, Solicitor of the
Fifteenth Judicial Circuit,

PETITIONER,

vs.

Vishu Bhambhani and Harkishin Bhambhani
d/b/a Coral Sands Motel and Four Nice
Brothers, LLC,

RESPONDENTS.

IN THE COURT OF COMMON PLEAS
THE FIFTEENTH JUDICIAL CIRCUIT
CASE NO.: 2021-CP-26-04199

**ORDER FOR TEMPORARY
INJUNCTION**

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SC Court of Appeals

This matter comes before the Court pursuant to a Motion for Temporary Injunction filed by the above named Petitioner, seeking an Order of this Court temporarily enjoining and restraining the above named Respondents from using, maintaining, and assisting in the using or maintaining of a motel called the Coral Sands Motel located at 301 N. Ocean Boulevard, Myrtle Beach, South Carolina in Horry County (hereinafter “the Coral Sands”) as a public or common nuisance in violation of S.C. Code §§ 15-43-10 to 130; and to direct and command the Myrtle Beach Police Department (“MBPD”) or its designees summarily to abate this public or common nuisance.

STATEMENT OF THE CASE

A hearing was held on Petitioner’s motion for a temporary injunction on September 15, 2021. Present at the hearing was Petitioner, through his attorney James R. Battle, and attorney Russell Long, appearing on behalf of the Respondents. The Petitioner presented evidence to the Court in the form of affidavits, police reports, and live testimony. Respondents’ attorney presented live testimony and affidavits.

After duly considering the evidence and arguments presented by the Petitioner and Respondents, the Court finds that Petitioner has made a sufficient showing to obtain the temporary injunction against Respondents, and Respondents are hereby temporarily enjoined and restrained from operating, using, maintaining, or assisting in the using and maintaining of the Coral Sands until such time as the matter may be heard fully by this Court on its merits. The Coral Sands must be closed and not be allowed to open until either 1 year has passed or a merits hearing has been held.

EVIDENCE PRESENTED

I. Petitioner's Showing

Petitioner presented evidence showing the Coral Sands is located at 301 N. Ocean Boulevard, Myrtle Beach, South Carolina in Horry County. Petitioner presented a notebook which contained, *inter alia*: (1) affidavits from former employees and tenants of the Coral Sands, who described drug use and sales and prostitution at the Coral Sands; (2) affidavits from surrounding business owners and employees who described the negative impact the Coral Sands had on their business; (3) calls for service and case reports for criminal activity at the Coral Sands; (5) photos of the Coral Sands; and (4) a chart comparing calls for service at the Coral Sands to 6 other similarly situated motels.

Petitioner also presented the testimony of Officer Steph Parran from the Myrtle Beach Police Department's Regulatory Unit; Howard Schultz, a former employee and tenant at the Coral Sands; Jacob Smith, the owner of a motel located across the street from the Coral Sands; and Officer Ron Chambers from the Myrtle Beach Police Department's Waterfront Division. These witnesses testified as to the drug activity and prostitution at the Coral Sands.

II. Respondents' Showing

Respondents presented the testimony of Luke Towery, the property manager at the Coral Sands, and Respondent Hari Bhambhani, the business owner at the Coral Sands. These witnesses denied Petitioner's allegations and testified the Coral Sands' issues were generally caused by the City of Myrtle Beach. Mr. Towery and Respondent Bhambhani's affidavits corresponded with their testimony.

LEGAL STANDARD

The Court may grant a temporary injunction "upon the presentation of a petition therefor alleging that the nuisance complained of exists, allow a temporary writ if injunction, without bond, if the existence of such nuisance shall be made to appear to the satisfaction of the court or judge by evidence in the form of affidavits, depositions, oral testimony or otherwise..." S.C. Code Ann. § 15-43-30.

The requirements for establishing a nuisance are the following:

A person who erects, establishes, continues, maintains, uses, owns, occupies, leases, or releases any building...for the purposes of lewdness, assignation, prostitution, repeated acts of unlawful possession or sale of controlled substances, or continuous breach of the peace in this State is guilty of a nuisance; and the building, place, or the ground itself...are also declared a nuisance and shall be enjoined and abated...

"continuous breach of the peace" means a pattern of repeated acts or conduct which either (1) directly disturbs the public peace or (2) disturbs the public peace by inciting or tending to incite violence.

S.C. Code Ann. § 15-43-10.

The existence of a public nuisance may be proven by the general reputation of the place.

S.C. Code Ann. § 15-43-40. It is not necessary that the public or common nuisance "be open to

public observation...so long as it would be offensive to public sensibilities if its presence in the community were generally known.” 24 Am. Jur. 2d Disorderly Houses § 1.

Cases from this and other jurisdictions, as well as treatises and common law compilations, have established what constitutes a public nuisance for purposes of this action. In *State v. Turner*, 198 S.C. 487, ___, 18 S.E.2d 371, 373-375 (1942) (Turner I), in an appeal from a conviction for “maintaining a public nuisance, in the keeping, management and operation of a disorderly house,” the South Carolina Supreme Court reasoned a place in “which idle, vicious, and dissolute persons are encouraged to assemble, and are permitted to drink, swear, quarrel, fight and make loud and disturbing noises, and engage in lewd and immoral conduct, to the disturbance and annoyance of the neighborhood” would be considered a public nuisance because it “occurs in a public place, or where the public frequently congregate, or where members of the public are likely to come within the range of its influence.” The Court held “whatever shocks the public morals and sense of decency...[is] a public nuisance.” *Id.* (internal quotation omitted).

The Court further concluded:

If one maintains a place where people are allowed to frequent for immoral purposes, such a place would be a common or public nuisance, because it...affects the happiness, the tranquility and the morals of the community. And it is not necessary that such a place for such purposes be conducted openly or notoriously to constitute a nuisance.

Id. at ___, 18 S.E.2d at 376.

Even when a building or place of business is properly maintained for a legitimate business purpose, the use of that building may still constitute a nuisance. *See, e.g., Malouf v. Gully*, 192 So. 2, 4 (Miss. 1939) (holding “the chancery court has authority to suppress as a nuisance the place of business where the liquor is sold...The suppression of the place of business means not only the liquor business, but [also] the mercantile [i.e., the legitimate] business.”);

United States v. Myers, 211 N.Y.S. 465, 467 (1925) (holding the court could enjoin the use of “the building or structure which is thus maintained [as a nuisance], as well as its contents”); *see also* 24 Am. Jur. 2d Disorderly Houses § 1 (stating a “disorderly house is one which is *used* habitually for any illegal or immoral purpose” (emphasis added) (internal footnotes omitted)); and *State v. Sawtooth Men’s Club*, 85 P.2d 695, 697 (Id. 1938) (“The trial judge no doubt arrived at the conclusion that said *hotel* as managed by the defendant *was, in and of itself, a nuisance* which state sought to abate. It was *not* the barroom, it was *not* the drinking of liquor; it was *not* the open and notorious violation of the law; *it was simply the hotel itself*, which from the manner and method of its use became a nuisance within the meaning of [the relevant statutory authority].” (emphasis added))

In determining whether a building or location is a public or common nuisance, “[r]esort must always be had to sound common sense and due regard should be given to the notions of comfort and convenience entertained by persons generally of *ordinary tastes and susceptibilities*.” *See O’Cain v. O’Cain*, 322 S.C. 551, 561, 473 S.E.2d 460, 466 (Ct. App. 1996) (emphasis in original) (internal citation omitted).

The statutory abatement of such a public nuisance is the closing of the building or place for 1 year. S.C. Code Ann. § 15-43-80.

ANALYSIS

The Court carefully considered the filed documents, the witnesses and testimony, and the arguments of the respective parties. Due to the potential for government overreach and the importance of property owners’ rights, the Court gave this matter its full attention.

As to the Petitioner’s witnesses currently awaiting disposition of criminal charges, the Court found their credibility to be zero. The Court also found Luke Towery, the Coral Sands’

property manager and Respondent's witness, lacked credibility in most respects. The Court further found the testimony given by the owner of Coral Sands, Respondent Hari Bhambhani, to be compelling and believable but lacked a sincere effort to remedy the obvious issues that brought this matter before the Court. While the law at issue in this case does not require or make a part the physical appearance of the property in question, the Court found the photographs and images of the Coral Sands corroborated the many calls for service and allegations set forth by Petitioner.

The volume of calls for service related to drugs, drug use, and overdoses was alarming to say the least. The affidavits from surrounding property owners and employees demonstrated that the Coral Sands facilitates, maintains, and establishes buildings and a place for chronic illicit drug sales, use, and overdoses to take place. The incident reports regarding the calls for service in the year 2021 alone established the premise that this property is continually used for a haven for drug traffickers and users alike.

Therefore, Petitioner showed to the satisfaction of the Court that the Coral Sands has been used for lewdness, assignation, prostitution, and repeated acts of unlawful possession or sale of controlled substances, and therefore, Petitioner is entitled to a temporary injunction enjoining the operation of the Coral Sands located at 301 N. Ocean Boulevard, Myrtle Beach, South Carolina in Horry County.

NOW THEREFORE, IT IS HEREBY ORDERED, Petitioner's requested relief is hereby granted, and Petitioner is hereby granted an Order:

- a) Temporarily enjoining and restraining the above-named Respondents, and each of their agents, servants, subordinates, and employees, from leasing to, operating, using, or assisting in

the using of the Coral Sands located at 301 N. Ocean Boulevard, Myrtle Beach, South Carolina in Horry County.

b) On or near the time of this Order's signing, the Myrtle Beach Police Department ("MBPD") will post this Order on the premises of the Coral Sands. The MBPD may photograph the premises to document its current condition.

c) The MBPD are further ordered to secure the entire premises of the Coral Sands by barricades or whatever means the MBPD deems necessary, place police tape across all doorways and entrances, and to close the same and take possession of all the premises.

d) All persons must vacate the Coral Sands within 30 days from the date of this Order. Any unauthorized persons on the Coral Sands' property after 30 days from the date of this Order may be deemed a trespasser. Thereafter, under no circumstances will the Coral Sands be occupied for any purpose until further order of this Court.

e) This Order shall expire 1 year from the date of this Order's signing or when a final order on the merits is entered, whichever comes first.



Horry Common Pleas

Case Caption: South Carolina State Of, plaintiff, et al VS Vishu Bhambhani ,
defendant, et al
Case Number: 2021CP2604199
Type: Order/Temporary Injunction

H. Steven DeBerry, IV

Circuit Court Judge 2771