IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

GEORGIACARRY.ORG, INC., and PHILLIP EVANS,	)	
Plaintiffs,	)	Civil Action No.: 2014CV253810
v.	)	
THE ATLANTA BOTANICAL GARDEN, INC.,	)	
Defendant.	)	

PLAINTIFFS' REPLY BRIEF IN SUPPORT OF THEIR MOTION FOR SUMMARY JUDGMENT

Introduction

Defendant Atlanta Botanical Garden has raised a handful of peripheral issues, but the crux of this case turns on the interpretation of single sentence in a statute: Whether a private lessee of a publicly owned property (the Garden) is prohibited, under O.G.C.A. § 16-11-127(c) from regulating the carrying of firearms on its leased property. Plaintiffs maintain that it is, and they will show how the Garden has failed to refute the arguments supporting Plaintiffs' position.

Argument

The Parties are in agreement that the words of the statute control, so the discussion should begin with those words. First, the general rule in Georgia is that "A license holder … shall be authorized to carry a weapon … in every location in this state…." O.C.G.A. § 16-11-127(c). This general rule includes a list of "off-limits" locations where a license holder may not carry a weapon (none of which apply to this case), and then the exception that is the heart of this case:

> [P]rovided, however, that private property owners or persons in legal control of private property through a lease, rental agreement, licensing agreement, contract, or any other agreement to control access to such private property shall have the right to exclude or eject a person who is in possession of a weapon or long gun on their private property….

Id. The issue in this case is whether the Garden property is "private property," as that term is used in the statute. If it is private property, then the Garden may exclude or eject Plaintiffs from the property while Plaintiffs are in possession of weapons or long guns. If it is not private property, then the Garden has no such power of ejectment and the general rule applies, that Plaintiffs (who are license holders) are authorized to carry weapons on Garden property.

It is undisputed that the fee interest in the Garden property is owned by the City of Atlanta, and that the Garden leases the property from the City. Plaintiffs' position is that Atlanta's ownership of the property makes the property not "private" (i.e., "public"). The Garden maintains that the leasehold interest is "private" despite the underlying public ownership.

The legislature chose to place the word "private" before "property," no doubt intending a particular meaning. Logically, "private" is used to exclude other possibilities (e.g., "public"). The legislature is conclusively presumed to know the law. *Jacobs v. State,* 200 Ga. 440, 444 (1946). Thus, when the legislature enacted the current version of O.C.G.A. § 16-11-127(c) in 2014 (Ga.L. 2014, p. 599, § 1-5, HB 60), the legislature is presumed to have been aware of O.C.G.A. § 16-11-173, which prohibits state and local governments from regulating carrying firearms "in any manner" (with certain exceptions not applicable to the present case).

That is, the City of Atlanta already lacked the power to ban license holders from carrying weapons on city property. That means only two possible classes of property owners remained to which O.C.G.A. § 16-11-127(c) could have applied: Those who owned or leased property

owned privately and those who owned or leased property owned publicly (other than the public property owners themselves, who are regulated by O.C.G.A. § 16-11-173).

The Garden's position is that when the legislature chose to apply § 127(c) to "private property" owners (as opposed to just "property" owners), it meant to include both groups: those who owned or controlled private property ***and*** those (like the Garden) who owned or controlled public property. This position is untenable and defies logic. This is especially clear considering that the statute formerly said just "property" until 2014 when the legislature specifically inserted the word "private" before "property." Arguably, the former statute included both classes of property described above, but the 2014 change can only have been adopted for one reason: to exclude from the exception public property that is privately leased.

The Garden attempts to confuse the Court by referring to proposed legislation from the most recent session ***that was not enacted into law.*** Legislative proposals are just that, proposals. They have no meaning unless and until they are enacted into law. The governor vetoed the bill upon which the Garden primarily relies. The fact that certain proposals come particularly close to becoming law is irrelevant. A bill must pass both houses and not be vetoed in order to become law. What causes a bill to fail to become law is irrelevant. A failed bill is a nullity, and certainly does not constitute "legislative history," despite the Garden's desires to make it so.

A final comment is in order regarding the Garden's concerns about whether this case is a class action. It is not. Plaintiff Evans is suing in his own behalf and Plaintiff GeorgiaCarry.Org, Inc. is suing on behalf of its members. The Garden appears to be concerned that individuals not a party to the action would obtain relief. The relief sought by Plaintiffs is for themselves only (i.e., for Evans and the other members of GCO). So, for example, if this Court were to declare that Evans and GCO's other members (who are license holders) are entitled to carry weapons at

the Garden, then the Garden could, if it chose to do so, limit the relief to those people. The Garden could, in theory, require all others similarly situated to sue the Garden either individually or as a class to obtain the same relief. Plaintiffs are indifferent as to whether the Garden chooses to do so.

The Garden further expresses concern about knowing whether a given person is a member of GCO or a license holder. License holders do, of course, have licenses, and GCO issues membership cards to its members. If the Garden takes the position that it will require all non-GCO members to sue the Garden separately, GCO does not object to the Garden requiring GCO members to show their membership cards to Garden officials upon request.

Conclusion

Plaintiffs have shown that Georgia law prevents the Garden from excluding or ejecting Plaintiffs who are license holders from carrying weapons or long guns on Garden property and Plaintiffs are entitled to judgment as a matter of law.

Respectfully submitted this 30th day of August, 2016.

/s/John R. Monroe
John R. Monroe
John Monroe Law, P.C.
Attorney for Plaintiffs
9640 Coleman Road
Roswell, GA 30075
678-362-7650
State Bar No. 516193
jrm@johnmonroelaw.com

CERTIFICATE OF SERVICE

I certify that on August 30, 2016, I served a copy of the foregoing via the Court's electronic filing system (and via email) upon:

David B. Carpenter
Alston & Bird LLP
1201 W. Peachtree Street
Atlanta, GA 30309

/s/John R. Monroe
John R. Monroe
John Monroe Law, P.C.
Attorney for Plaintiffs
9640 Coleman Road
Roswell, GA 30075
678-362-7650
State Bar No. 516193
jrm@johnmonroelaw.com