

IN THE CIRCUIT COURT OF LINN COUNTY, STATE OF MISSOURI

FILED

03/22/2024

Amber Boley
CLERK, CIRCUIT COURT
LINN COUNTY

**TRITIUM INTERNATIONAL
CONSULTANTS, INC.
d/b/a MISSOURIE-RAFFLE**

Plaintiff,

Vs.

Case No. 19LI-CC00033

LINN COUNTY, MISSOURI, et al.,

Defendants.

JUDGMENT

On this 22nd day of March, 2024, Court takes up Plaintiff's Motion for Summary

Judgment and Plaintiff's Petition for Declaratory Judgment and Preliminary and Permanent

Injunctions. Court hereby makes findings and conclusions of law as set forth herein on this matter.

PROCEDURAL HISTORY

Plaintiff's Petition for Declaratory Judgment and Preliminary and Permanent Injunctions was filed on September 26, 2019. Plaintiff named Defendants as Linn County, Missouri and Shiante McMahon, in her official capacity as Prosecuting Attorney for Linn County, Missouri.

Motions to Dismiss were filed by Linn County, Missouri and Linn County Prosecuting Attorney followed by a Motion for Preliminary Injunction filed by Plaintiff. On March 9, 2020, Court entered an Order dismissing Linn County, Missouri as a party to the action, denying Linn County Prosecuting Attorney's Motion to Dismiss and denying Plaintiff's Motion for Preliminary Injunction.

After the filing of Plaintiff's Petition in this matter, criminal cases 20LI-CR00009, 20LI-CR00410, and 20LI-CR00410-01 were filed which named Plaintiff as Defendant. Linn County Prosecuting Attorney Shiante McMahon subsequently dismissed case number 20LI-CR00009, and proceeded to preliminary hearing on case number 20LI-CR00410, which was bound over to Division I for trial on the charge of Promoting Gambling in the 1st degree, a class E felony. On August 16, 2021, this Court was assigned to this criminal case number in Division I as 20LI-CR00410-01.

Court ultimately set the current Petition for Declaratory Judgment and Preliminary and Permanent Injunctions for bench trial in September, 2021. Shortly before the trial was to commence, both parties requested Court to cancel trial and allow them to submit a stipulation of facts and briefs for Court to rule on the matter. Court granted request and a Stipulation of Facts, Memorandums and Reply were filed by the parties and oral argument was heard. Court took this matter under advisement on January 7, 2022 to await the outcome of the pending criminal case with no objection by parties.

Attorney Tracy Carlson took office as the Linn County Prosecuting Attorney on January 1, 2023 after a contested election. Case number 20LI-CR00410-01 was set for jury trial in February, 2023. Attorney Carlson requested continuance of the jury trial to enable him time to review the file as he was new to the case. Subsequently, Attorney Carlson dismissed the criminal case on January 22, 2023. Court was presented with a disposition order by Attorney Carlson to release the seized machines, that are the subject of this matter, back to Plaintiff, which the Court signed.

This case was continued numerous times since February, 2023 at the request of the parties to attempt to settle or file a dismissal in this matter. Plaintiff filed a motion for summary

judgment on September 18, 2023 to which no response was filed by Defendant. Oral argument was heard on the motion in which Plaintiff's attorney indicated on the record that the machines, which are the subject of these actions, have been released and returned to Plaintiff.

After consideration of Plaintiff's Motion for Summary Judgment, Statement of Uncontroverted Material Facts and Memorandum in Support of Motion for Summary Judgment, the Court hereby denies the motion as it does not strictly comply with Supreme Court Rule 74.04 and even if the Court does not require strict compliance with the rule, Plaintiff is not entitled to judgment as a matter of law.

Court has received a stipulation of facts, exhibits and memorandums/reply, along with a consent by parties to forgo bench trial back in September, 2021. There have been no motions or requests filed by either party to reopen the evidence. Court now takes up the matter on the merits and issues the following findings of fact and conclusions of law, which are relevant to Court's judgment as follows:

FINDINGS OF FACT

1. Plaintiff (hereinafter, referred to as "Tritium") is a Florida corporation duly organized and existing according to law. It is registered to do business in the State of Missouri.
2. Attorney Shiante McMahon was the duly elected prosecutor for Linn County, Missouri prior to January 1, 2023. She was sued in her official capacity when this matter was initiated.
3. Attorney Tracy Carlson is the duly elected prosecutor for Linn County, Missouri, as of January 1, 2023, and has been substituted as the party Defendant in this matter.
4. Tritium is the distributor of a machine which contains a proprietary method and software called the Missouri E-Raffle System.

5. The Missouri E-Raffle System machine (hereinafter, referred to as “machine(s)”) offers multiple displays for entertainment in the playing of any game on the machine. When a participant begins a session on a machine, they select one of the displays and a “buy level” for the price of each electronic ticket.

6. The machine determines winners by the selection of a ticket from a finite pool of tickets. When a participant begins using the machine, it electronically creates a pool of tickets. At the time the pool of tickets is electronically created, winning ticket numbers are also determined.

7. When the pool of tickets is created, a serial number is displayed, listing an identification number for this particular pool of tickets, the time stamp, the price of each ticket to be purchased in the pool, and the current count index (i.e., the number tickets that have been purchased out of the pool).

8. Participants then use funds deposited into the machine to purchase a ticket which is chosen at random from the pool of tickets. After a ticket is purchased, the machine reveals whether the ticket is a winning ticket and the value of any win through an artwork display. The ticket is then removed from the finite pool.

9. After the result, a participant can continue purchasing additional tickets within the finite pool, until all tickets within the pool are purchased.

10. There is no “skill” associated with the use of the machine. All outcomes are predetermined prior to and as soon as each ticket is purchased and revealed.

11. When all tickets in a pool are purchased, the machine will generate a new ticket pool, and then allow the participant to purchase tickets from the new pool.

12. The Fraternal Order of the Eagles Club (hereinafter, referred to as "Eagles Club") is a charitable organization under federal law and is entitled to the protections provided by Article III, Section 39(f) of the Missouri Constitution.

13. These machines were placed in Eagles Club location in Brookfield, Missouri through a contractual agreement between Tritium and Eagles Club, which included an equal 50/50 split of the profits obtained from patrons playing these machines.

14. On or about September 12, 2019, officers of the Brookfield Police Department removed six (6) machines from Eagles Club located in Brookfield, Missouri. Jerry Stone, President of the Eagles Club, signed a Permission to Search Form at the time the machines were removed.

15. On January 6, 2020, Defendant, by Linn County Prosecuting Attorney, Shiante McMahon, filed a complaint in case number 20LI-CR00009 alleging Tritium committed the class E felony of Promoting Gambling in the first degree by the use of its machines, which was subsequently dismissed by Prosecuting Attorney Shiante McMahon on September 25, 2020.

16. On October 27, 2020, Defendant, by Linn County Prosecuting Attorney Shiante McMahon, re-filed a complaint in case number 20LI-CR00410 alleging Plaintiff committed the class E felony of Promoting Gambling in the first degree by the use of its machines.

17. On January 7, 2020, a hearing on Plaintiff's request for preliminary injunction was held in the civil case, which the Court denied.

18. On February 25, 2021, a preliminary hearing was held in Linn County, Missouri in Case No. 20LI-CR000410 and the matter was bound over for trial in Division I of the Circuit Court of Linn County, Missouri, which became case number 20LI-CR000410-01.

19. On January 22, 2023, the new Linn County Prosecuting Attorney Tracy Carlson, dismissed criminal case number 20LI-CR000410-01.

20. Court was presented with a disposition order in the criminal case to return devices to Tritium following the dismissal by Linn County Prosecuting Attorney, Tracy Carlson, which the Court signed and returned on February 28, 2023.

21. Tritium's legal counsel, William Rainey, confirmed to the Court that the machines had been returned to Tritium's possession.

CONCLUSIONS OF LAW

Tritium requests relief in its Petition against Linn County Prosecuting Attorney Tracy Carlson in Count I for declaratory judgment and Count II for replevin.

I. DECLARATORY JUDGMENT

Tritium asserts that it is entitled to relief under Supreme Court Rule 87.02(a) and Mo. Rev. Statute Section 527.120, and is requesting the Court to declare the following: (1) use of the machine by federally recognized charitable or religious organizations falls within the scope of allowable raffles under Article III, Section 39(f) of the Missouri Constitution; (2) this use is not prohibited under Chapter 572 of the Revised Statutes of Missouri; and (3) it is not prohibited by the law of Missouri that a portion of the revenue from the charitable or religious organization sponsoring the machine may go to Tritium for the use, care and maintenance of the machines.

Tritium additionally requests a permanent injunction enjoining Linn County Prosecuting Attorney Tracy Carlson from taking any adverse action against any federally recognized religious or charitable organization based in whole or in part upon that organization's use of the machine and enjoin Linn County Prosecuting Attorney Tracy Carlson from claiming that the

machine is an illegal gambling device when used by recognized religious or charitable organizations.

Article III, Section 39(f) of the Missouri Constitution states as follows:

Any organization recognized as charitable or religious pursuant to federal law may sponsor raffles and sweepstakes in which a person risks something of value for a prize. The general assembly may, by law, provide standards and conditions to regulate or guarantee the awarding of prizes provided for in such raffles or sweepstakes.

RSMo. Section 572.015 falls within the criminal statutes for gambling and expressly states that chapter 572 does not prohibit “constitutionally authorized activities under Article III, Sections 39(a) to 39(f) of the Missouri Constitution”.

Tritium argues that the Court has jurisdiction to enter a declaratory judgment and should declare that the use of its machines by Eagles Club is legal under these provisions because the machines are an electronic raffle and Eagles Club is authorized to sponsor raffles as a charitable organization under the Missouri Constitution.

Supreme Court Rule 87.02(a) states that a person “whose rights, status, or other legal relations are affected by statute,...may have determined any questions of construction or validity arising under...the statute...and obtain a declaration of rights, status or other legal relations thereunder.” See also RSMo. Section 527.020. A “declaratory judgment provides guidance to the parties, declaring their rights and obligations or otherwise governing their relationship and generally may be granted when a court is presented with: (1) a justiciable controversy that presents a real, substantial, presently-existing controversy admitting of specific relief, as distinguished from an advisory decree upon a purely hypothetical situation; (2) a plaintiff with a legally protectable interest at stake, consisting of a pecuniary or personal interest directly at issue and subject to immediate or prospective consequential relief; (3) a controversy ripe for judicial

determination; and (4) an inadequate remedy at law. *City of St. Louis v. State*, 643 S.W.3d 295, 300 (Mo. banc 2022).

Before the Court may consider whether the machines that were located within Eagles Club are raffles that are constitutionally protected, the Court must determine whether it has jurisdiction. Tritium must have standing to bring this action for the Court to be vested with jurisdiction to enter a declaratory judgment. Standing is closely related to the justiciable controversy and legally protectable interest requirements that the Court must find to proceed.

The Court must determine whether a justiciable controversy exists between Tritium and the Linn County Prosecuting Attorney Tracy Carlson and whether Tritium has a legally protectable interest at stake. Tritium must prove facts that show “[a] justiciable controversy exists where the plaintiff has a legally protectable interest at stake, a substantial controversy exists between parties with genuinely adverse interests...” *Missouri Health Care Ass’n v. Attorney Gen. of the State of Mo.*, 953 S.W.2d at 620 (“A declaratory judgment action requires a justiciable controversy.”) (citing *Akin v. Director of Revenue*, 934 S.W.2d 295, 298 (Mo. banc 1996)); *Midwest Freedom Coal., LLC vs. Koster*, 398 S.W.3d 23, 25 (Mo.App. W.D. 2013) (“the justiciable controversy must be between the parties to the action.”) (citing *Missouri Health Care Assoc.*, 953 S.W.2d at 621). The requirement that there be a justiciable controversy between the actual parties to the litigation exists because Missouri courts are not authorized to issue advisory opinions. *Mid-Century Ins. Co. v. Wilburn*, 422 S.W.3d 326, 328 (Mo.App. S.D. 2013) (citations omitted).

The Missouri Supreme Court has held that “a party must have standing to bring an action in a Missouri court. Standing, at its most basic level, simply means that the party or parties seeking relief must have some stake in the litigation. *Lebeau v. Comm’rs of Franklin County*,

422 S.W.3d 284, 288 (Mo. 2014) (citing *Ste. Genevieve Sch. Dist. R-II v. Bd. Of Aldermen of Ste. Genevieve*, 66 S.W.3d 6 at 10 (Mo. banc 2002)). In the context of a declaratory judgment action, the plaintiff must have a legally protectable interest at stake in the outcome of the litigation.” *Id.* at 288, citing *Weber v. St. Louis County*, 342 S.W.3d 318 at 323 (Mo. banc 2011): “A legally protectable interest exists if the plaintiff is directly and adversely affected by the action in question or if the plaintiff’s interest is conferred by statute.” *Id.*

Further and most notably, “Missouri requires that a complainant be within the zone of interests to be protected or regulated by the statute or constitutional guarantee in question to bring an action thereunder. A plaintiff must show a “personal stake in the outcome of the controversy” and allege “some threatened or actual injury resulting from the putatively illegal action.”” *Weber* at 323, citing *Harrison v. Monroe County*, 716 S.W.2d 263, 266 (Mo. banc 1986).

In this case, the gambling statutes prohibit certain actions and declare them illegal which applies to every person, organization or corporation. Article III, Section 39(f) of the Missouri Constitution exempts from criminal prosecution of the chapter 572 gambling laws “any organization recognized as charitable or religious pursuant to federal law...” as long as it is only sponsoring “raffles and sweepstakes...” Tritium argues that by virtue of the way its machines operate that it would be considered a raffle under the law and be protected by the constitution if used by a charitable organization, such as Eagles Club. By the express and clear language of the constitutional language, Tritium is not a named beneficiary of the constitutional protection afforded in Article III, Section 39(f) of the Missouri Constitution. Tritium is seeking the benefit of a constitutional protection through a third-party standing if these machines are used by charitable organizations.

Tritium relies on the following language in *Lincoln Credit Company v. Peach*, 636 S.W.2d 31 (1982) for support of its standing and legally protected interest to bring this action:

The basic test to determine whether a plaintiff has standing to bring suit for declaratory and injunctive relief is whether he has a legally protectible interest at stake. *Schweig v. City of St. Louis*, 569 S.W.2d 215 (Mo. App. 1978). **Missouri courts have held that whether a party can lawfully engage in its business under a particular statute presents a situation where that party has a legally protectible interest.** *State ex rel. Eagleton v. McQueen*, 378 S.W.2d 449, 452 (Mo. banc 1964). Moreover, such a question constitutes a justiciable controversy under the declaratory judgment act even though no enforcement of that statute has yet been commenced against that party. *Id.*, at 452.

The Court finds that this reliance is improper. In the *Lincoln Credit Company* case, the plaintiff was a corporation whose business was built on contracts to charge fees arranging credit between a borrower and a third-party lender, which was a legal business dealing prior to the statute being enacted. The statute specifically stated, “no person, firm or corporation shall receive or impose any fee or charge....” RSMo. Supp. Section 408.096. This statute specifically named those that were regulated by the statute, Lincoln Credit Company was directly affected by the statute’s provisions, the business practice was legal prior to the statute’s enactment, it was not able to legally continue this type of business practice, and further, some of its contracts were voided by this statute. In this case, no statute within the gambling section chapter 572 gives Eagles Club or Tritium the authority to sponsor raffles legally. The authority for a “charitable or religious” organization to sponsor a raffle comes from the Article III, Section 39(f) of the Missouri Constitution protection.

The Court has not found a Missouri case that indicates a declaratory judgment action is proper when the statute or constitutional provision is not being directly challenged as invalid, vague or unconstitutional. Tritium is not challenging the validity or constitutionality of any statute or constitutional provision. Tritium frames its argument as if it is bringing this action on

behalf of the Eagles Club or other charitable organizations who want to take advantage of the constitutional protection in sponsoring raffles." The Eagles Club is not a party to this action and no other charitable or religious organization has been joined as a Plaintiff. Further, Eagles Club was not a named Defendant in any of the previous criminal actions filed by the Linn County Prosecuting Attorney. Tritium argues that by virtue of contracting with the Eagles Club, it is helping the Eagles Club take advantage of the constitutional protection to raise funds through a raffle, and it should also be protected in this activity.

Tritium relies on written articles attached to its Reply Memorandum of Plaintiff in Support of Judgment filed on November 15, 2021, as evidence that other organizations are being allowed to do the same activities. It also argues that the providing of its machines to the Eagles Club to run raffles to raise funds is analogous to companies selling paper raffle tickets or bingo cards to be used in this fashion. Court does not find these arguments persuasive.

The articles provide limited information regarding fundraising activities of the Missouri Lottery, Royals Charities, Hunt Family Foundation (Kansas City Chiefs 50/50 online raffle), or Cardinals Care, to compare to Tritium's activities. The articles are not evidence submitted to the Court and were merely used for argument. Further, no case law exists that indicates that these practices confer standing on a party to bring a declaratory action.

In addition, companies produce raffle tickets and bingo cards to be sold to the public at large to use for whatever purpose chosen by the purchaser. There is no evidence that these companies share in the profits to be earned through the use of the products. Tritium plays a larger role than merely providing the machines at a set fee to the Eagles Club. It is responsible for the maintenance and care of the machines and, most notably, shares in a 50/50 split of the profits obtained by participants playing these machines. The evidence shows that Tritium has

received thousands of dollars in profits. Tritium's activity exceeds the mere providing products or equipment to assist the Eagles Club in raising funds under the constitutional protection found in Article III, Section 39(f) of the Missouri Constitution.

The Court finds that the express wording of the Article III, Section 39(f) of the Missouri Constitution indicates who the intended beneficiaries of this protection are; thus, who would have standing under this provision. Tritium, a for-profit corporation, is not an express beneficiary of this constitutional protection and therefore, a justiciable controversy wherein Tritium has a legally protectable interest does not exist.

Even if Tritium is found to have standing to bring this declaratory action, the Court would find that it fails to show there is an inadequate remedy of law. In *Schaefer v. Koster*, the Supreme Court found that raising a defense at a criminal trial was an adequate alternative remedy to a declaratory judgment action. *Koster*, 342 S.W.3d 299, 300 (Mo. 2011). Further, the court found that a Plaintiff should litigate constitutional issues though the pending criminal matter. *Id.*

At the time of filing this action, the City of Brookfield Police Department had taken possession of six of Tritium's machines for investigatory purposes. By the time the preliminary injunction hearing was held by the Court in this civil case, criminal charges had been filed against Tritium. Tritium had the option of raising a defense in the criminal matter. As the named Defendant, it would have had the standing in that matter to challenge whether the constitutional protection applied to it and as such, it could not be found guilty of violating the statute charged. The Court finds that this would have been an adequate remedy at law.

A declaratory judgment action is proper if each and every element set out in the *City of St. Louis v. State* case is satisfied. If one element fails, then the action is not proper and the

Court does not have jurisdiction over the matter and may not proceed. Tritium is unable to prove the three critical elements, justiciable controversy, legally protectable interest or that there was an inadequate remedy at law; therefore, the Court finds that Tritium is not entitled to a declaratory judgment in this matter.

II. REPLEVIN

Plaintiff asserts that it is entitled to replevin of its machines from Linn County Prosecuting Attorney Tracy Carlson. Supreme Court Rule 99.01 provides that “[a] person claiming the right to personal property may bring an action for replevin for possession of the property.” Supreme Court Rule 99.03 provides that “when a party requests immediate possession of personal property an affidavit shall be filed stating:...(d) [t]he property has not been seized under any legal process...” Tritium must show that it “ha[s] a right to immediate possession” and Linn County Prosecuting Attorney Tracy Carlson has wrongfully detained the property. *Taylor v. McNeal*, 523 S.W.2d 148, 150 (Mo. App. 1975).

Court finds that Tritium is not entitled to replevin of its machines from the Linn County Prosecuting Attorney. The Linn County Prosecuting Attorney did not have actual possession of the machines. The City of Brookfield police department took possession of the machines as possible evidence in a criminal investigation, which is a legal process. Subsequently, the Prosecuting Attorney filed criminal charges against Tritium based on the machines, which made them evidence in an alleged crime charged by the State of Missouri through the Linn County Prosecuting Attorney.

In addition, the action is moot. Linn County Prosecuting Attorney later dismissed the criminal case number 20LI-CR00410-01 and obtained a disposition order signed by the Court to

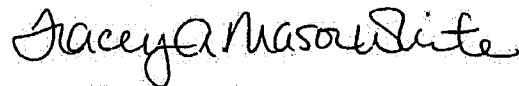
return the machines to Tritium. Tritium has the machines in its possession. The Court finds that Tritium is not entitled to replevin in this matter.

IT IS ORDERED, ADJUDGED AND DECREED that Tritium does not have standing to bring a declaratory action in this matter, fails to show a justiciable controversy with a legally protectable interest, and fails to show an inadequate remedy at law; therefore, the Court lacks jurisdiction and the case is dismissed as to Tritium's petition in regards to count I declaratory judgment.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Tritium is not entitled to replevin in this matter and, therefore, Court denies Tritium's petition in regards to count II replevin.

SO ORDERED.

Dated: 3/22/2024



Tracey A. Mason-White, Judge