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IN THE SUPERIOR COURT
FOR THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

ISLAND AMUSEMENT
CORPORATION

Plaintiff,

v.

MARIANAS CHAIN MARKETING, INC.
CARLITO ATIENZA, CONRAD SABLAN,
TA BUN KUI, and ANNETTE KUI

Defendants.

Civil Action No. 96-549

**DECISION AND ORDER
GRANTING PRELIMINARY
INJUNCTION**

This matter came before the Court on May 22, 1996 on the Plaintiff Island Amusement Corporation's (IAC) motion for preliminary injunction^{1/} requesting relief from the Defendant Marianas Chain Marketing's (MCM) operation of a bingo game on Saipan without a bingo license from the Office of the Mayor on Saipan. The Mayor of Saipan (Mayor) was present at the hearing. During the hearing, after it became apparent that the Defendant's chief argument in opposition to the Plaintiff's motion concerned the authority of the Mayor of Saipan to issue bingo licenses, the Mayor orally requested intervention into this matter and joined in Plaintiff's prayer for injunctive relief. MCM had no objection to the Mayor's motion to intervene and to join in Plaintiff's motion. The

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^{1/} On May 10, 1996, Associate Judge Miguel Demapan granted the Plaintiff's request for a temporary restraining order and set a preliminary injunction hearing for May 22, 1996.

1 Court granted the Mayor's request and instructed the Mayor to submit a brief addressing the motion
2 for preliminary injunction. On June 6, 1996, the Court received the Mayor's memorandum in support
3 of the Plaintiff's motion for preliminary injunction. Having reviewed the submissions of all the
4 parties, the Court now renders its decision.

6 I. FACTS

7 For the past few years, Plaintiff IAC has operated a bingo game on the Island of Saipan.
8 IAC's authority for this operation has been pursuant to a bidding process whereby the Mayor of
9 Saipan has annually accepted bids for a single bingo license, and awarded the bingo license to the
10 highest bidder. Most recently, IAC's winning bid was \$125,000 for their bingo license which is valid
11 from July 3, 1995 through July 2, 1996. As authority for mayoral power to issue a single Saipan
12 bingo license, IAC and the Mayor have relied on Title 6, Chapter 4, Section 31-37 of the Saipan
13 Municipal Code (6 SMC § 31-37), and more recently, on a decision of this Court in December of
14 1994 which upheld the validity of 6 SMC § 31-37. *See Island Amusement Corp. v. Western Investors*
15 *Inc.*, Civil Action No. 94-166 slip op. at 7-8 (Dec. 15, 1994) (hereinafter "*Island Amusement*").

16 On March 13, 1996, MCM sought and received a \$50.00 business license to engage in the
17 "business of bingo" from the Resident Director of Commerce, Glenn H. Manglona, purportedly
18 pursuant to "section 503.11(d)." By late April of 1996, the Defendant MCM began operating a bingo
19 game in San Antonio, Saipan called Marianas Amusement Rota. According to the IAC, MCM has
20 expanded its Rota-based bingo operations to Saipan by selling MCM bingo tickets on Saipan,
21 announcing MCM winning numbers on Saipan, and distributing monetary awards related to MCM
22 bingo operations on Saipan. MCM has not disputed these allegations.

23 IAC generally contends that 6 SMC § 31-37 is still valid local law on Saipan and that MCM's
24 bingo operation infringes upon their license to operate the sole bingo establishment on Saipan from
25 July 3, 1995 and July 2, 1996. Accordingly, IAC has specifically requested that MCM be enjoined
26 from continuing their bingo operations on Saipan. In response, MCM claims that the Amendment
27 25 of the 1985 Constitutional Convention abolished the charter established for the Island of Saipan

1 and thereby abolished the Mayor's "police power" to regulate bingo pursuant to 6 SMC § 31-37.

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3 **II. ISSUE**

4 Whether preliminary injunctive relief is proper under the circumstances presented in this matter.

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6 **III. ANALYSIS**

7 **A. Standard for Injunctive Relief**

8 In order to qualify for a preliminary injunction, the moving party must show either (1) a
9 combination of probability of success on the merits and the possibility of irreparable harm, or (2) the
10 existence of serious questions going to the merits and the balance of the hardships tipping in its favor.
11 *Vision Sports Inc. v. Melville Corp.*, 888 F.2d 609, 612 (9th Cir. 1989). With respect to either test,
12 the moving party must demonstrate a significant threat of irreparable injury. *Arcamuzi v. Continental*
13 *Air Lines, Inc.*, 819 F.2d 935 (9th Cir. 1987). However, courts must consider the public interest
14 as a factor in balancing the hardships when the public interest may be affected. *Caribbean Marine*
15 *Services Co. V. Baldrige*, 844 F.2d 668, 674 (9th Cir. 1988). Due to the intervention of the Mayor,
16 the Court will address both the IAC's and the Mayor's claims for injunctive relief.

17
18 **B. Probability of Success on the Merits**

19 **1. IAC's Bingo License**

20 MCM has attacked the validity of the Plaintiff's bingo license by placing the following
21 question before this Court: Whether Saipan's loss of its "chartered municipality" status in Article VI,
22 Section 1 of the original Commonwealth Constitution (hereinafter "1976 Constitution") was either
23 fatal to the existence of the Saipan Municipal Code, or fatal to the Mayor of Saipan's power to
24 enforce 6 SMC § 31-37. In response, IAC has directed the Court to the *Island Amusement* decision.
25 In *Island Amusement*, the court held that 6 SMC § 31-37 was still in full force and effect in the
26 Commonwealth. *Island Amusement* at 6-7. The *Island Amusement* decision was based on the courts
27 finding that 6 SMC § 31-37 was part of the "full functioning body of law in the Commonwealth on

1 January 9, 1978” and thus fell within the exception to the gambling prohibition contained in Article
2 XXI of the Commonwealth Constitution. The Court has reviewed the *Island Amusement* decision in
3 light of MCM’s new “chartered municipality” argument and at this time, sees no reason to depart
4 from the persuasive authority embodied in the *Island Amusement* decision.

5 There is no doubt that the existence of a charter in a municipal form of government is crucial
6 to the municipality it empowers:

7 “A municipal ‘charter’ is not only the measure of corporate powers but it is the
8 beginning and the end of corporate life; and that life is a distinct, indivisible thing.
9 When a charter is completely granted, a distinct corporate entity come into being; and,
10 when the charter is completely surrendered, the corporate entity ceases to exist.”
11 *Malone v. Williams*, 103 S.W. 798, 812 (Tenn. 1907) (quoting *Brinkley v. State*, 67 S.W. 796 (Tenn.
12 1902)). Thus, when the framers of our Commonwealth Constitution adopted Article VI, Section 6(a),
13 abolishing the chartered municipality form of local government, they took away Saipan’s, as well as
14 Rota’s and Tinian’s, power and authority to act as individual “municipalities.” See ANALYSIS OF THE
15 CONSTITUTION at 118 (Dec. 6, 1976).

16 However, when one takes into account the rest of Article VI, Section 1 and the other sections
17 or Article VI relating to local government, it is clear that the framers simultaneously bestowed a new
18 form of empowerment onto the mayors of the formerly chartered islands of Saipan, Tinian and Rota.
19 Despite the termination of the municipal charters, the original Constitution created the elected “office
20 of [the] mayor” for the islands of Saipan, Tinian, and Rota, as agencies of local government and
21 empowered the mayors with several responsibilities. 1976 Constitution, Art. VI, §§1-3; see ANALYSIS
22 OF THE CONSTITUTION at 107-16; see also *Inos v. Tenorio*, Civil Action No. 94-1289, slip op. at 3-4
23 (Super. Ct. June 14, 1995) (hereinafter “*Inos*”). In addition to their roles as local advisors to the
24 governor, the mayors were entitled to “perform other responsibilities provided by law.” 1976
25 Constitution, Art. VI, § 3(h). At the same time, the Constitution proclaimed that “[o]rdinances and
26 other regulations enacted by the municipal councils on Rota, Saipan and Tinian that are consistent
27 with this Constitution shall remain in effect until superseded by Commonwealth law or local
28 ordinances or regulations enacted under the Constitution.” 1976 Constitution, Art. VI, § 6(a). The

1 Court sees no aspect of 6 SMC §§ 31-37 which is inconsistent with the 1976 Constitution.
2 Accordingly, 6 SMC §§ 31-37 constituted an effective law of the Commonwealth as of January 9,
3 1978 which the Mayor of Saipan was responsible for enforcing pursuant to Article VI, Section 3(h)
4 of the 1976 Constitution.

5 Furthermore, Public Law 1-4 superseded 6 SMC §§ 31-37 in 1978, while simultaneously
6 adopting the bingo regulation procedures contained therein. Public Law 1-4 states:

7 The Mayor shall also have the power and duty to be responsible for
8 Commonwealth programs and activities pertaining to [1]local registration and
9 licensing formerly exercised by the chartered municipalities of Saipan, Rota, and
10 Tinian.

11 1 CMC § 5107(f)(3). Currently, Section 5107(f)(3) remains in effect, and thus appears to eliminate
12 any doubt about the Mayor of Saipan's authority to issue IAC's bingo license in 1995.

13 2. MCM's Bingo License

14 In support of its claimed right to operate bingo games on Saipan, MCM has offered a \$50.00
15 business license to engage in the "business of bingo" from the Rota Resident Director of Commerce,
16 purportedly pursuant to "section 503.11(d)." See Declaration of Kuy Bun Ta, Exh. A. MCM has not
17 directed the Court to the source of section 503.11(d). Nor has the Court been able to locate its origins
18 through its own research. The legislative authority creating and empowering the Department of
19 Commerce can be found in Title 1, Division 2, Chapter 9 of the Commonwealth Code. Section
20 2453^{2/} grants the Department of Commerce the power "to license and regulate businesses engaged in
21 the construction trade and to license businesses which are *not otherwise licensed or regulated by any*
22 *other department, agency, or instrumentality of the Commonwealth.*" As the analysis above indicates,
23 the Mayor of Saipan's authority under 6 SMC §§ 31-37 appears to preclude the Department of
24 Commerce from issuing Bingo licenses for the Island of Saipan. In light of the foregoing, the
25 probability of success on the merits lay with the IAC and the Mayor.

26 ^{2/} Executive Order 94-3 reorganized the Department of Commerce and Labor on June 24, 1994 by
27 moving the Labor Division over to the Department of Immigration, thus forming the Department of
28 Commerce.

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C. Irreparable Harm to the Plaintiffs

1. The Harm to IAC

Where there is a complete and adequate remedy at law through the recovery of calculable money damages, injury is not irreparable and equity will not apply the extraordinary remedy of injunction. *Kowalski v. Chicago Tribune Co.*, 854 F.2d 168, 170 (7th Cir. 1988), *Reuters Ltd. v. United Press Intern., Inc.*, 903 F.2d 904, 907 (2nd Cir. 1990). The irreparable harm alleged by IAC in this matter is entirely monetary in nature. Specifically, IAC's allegations of harm amount to lost profits during the final three months of its 1995-1996 bingo license. A lost profit determination in this case would not be simple. Nevertheless, a determination would be obtainable by basing estimated profit loss on the profit margins of the Plaintiff during the first nine months of its unencumbered bingo operation. Accordingly, the Court finds no showing of possible irreparable harm to IAC, and cannot grant IAC injunctive relief under the first test.

2. The Harm to the Mayor

On the contrary, the bidding process currently in place in Saipan has existed throughout the last four decades. If the Mayor's authority is not upheld in this matter, then the Mayor's opportunity to issue the upcoming bingo license for July 3, 1996 through July 2, 1997 will be placed in jeopardy. Prospective bidders will likely withdraw their bids or otherwise refuse to pursue the bingo license issued by the Mayor out of fear that the license is invalid. The record reflects that the bidding process currently generates a significant source of income for the Island of Saipan. Thus, local taxpayers on Saipan stand to lose a significant amount of income this year. In the event that the Mayor later prevails on the merits in this case, a determination of damages in the form of lost revenue from a poisoned bingo bidding process would be incalculable to any degree of certainty. Further, the denial of the Mayor's request for injunctive relief would immediately call into question his authority to enforce any Saipan Municipal Ordinance, or act in any matter on behalf of the Commonwealth government. Such a loss of credibility in the local community during the pendency of this matter cannot be corrected by a legal remedy, and thus fits squarely within the realm of equity. Thus, the

1 Mayor of Saipan is entitled to injunctive relief due to his likelihood of success on the merits and the
2 possibility that he will incur substantial irreparable harm if MCM is allowed to continue bingo
3 operations on Saipan.

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5 **D. The Second Test and the Public Interest**

6 Under the second test, IAC must demonstrate the existence of serious questions going to the
7 merits and the balance of the hardships tipping in its favor. As the “success on the merits” analysis
8 above indicates, IAC has amply demonstrated the existence of serious questions going to the merits
9 of this case. However, the balance of the hardship is not so one-sided. IAC’s only personal harm
10 is calculable monetary damages. Furthermore, due to the Mayor’s intervention in this matter, the
11 issuance of this decision comes on the eve of the expiration of IAC’s bingo license. IAC has neither
12 alleged ownership of the upcoming 1996-1997 bingo license, nor any interest in an upcoming bid for
13 a bingo license. Therefore, as between IAC and MCM, the facts indicate that MCM will endure more
14 hardship from a continued injunction because MCM’s bingo license alleges eight more months of
15 validity.

16 However, when balancing hardships, the Court must consider the public interest. In this case,
17 the public interest favors a grant of the injunction because the authority of a Commonwealth public
18 official would immediately be called into question if MCM were allowed to continue bingo operations
19 on Saipan in the face of an apparently valid ordinance which prohibits bingo operations not sanctioned
20 by the Mayor of Saipan.

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22 **E. Notification to the Attorney General Under Rule 24: Intervention**

23 Commonwealth Rule of Civil Procedure 24 states:

24 When the constitutionality of a provision of the Constitution of the Northern Mariana
25 Islands or any law of the Northern Mariana Islands affecting the public interest is
26 drawn in question in any action to which the governor of the Northern Mariana Islands
27 or an officer, agency, or employee thereof is not a party, the court shall notify the
28 Attorney General of the Northern Mariana Islands.


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Com. R. Civ. P. Rule 24(c). Accordingly, the Court hereby notifies the Attorney General of this pending matter.

IV. CONCLUSION

For the foregoing reasons, IAC's and the Mayor of Saipan's requests for injunctive relief are GRANTED.

So ORDERED this 15th day of July, 1996.


ALEXANDRO C. CASTRO, Presiding Judge