IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT
IN AND FOR MANATEE COUNTY, FLORIDA
CIVIL DIVISION

KAYA NYATI VENTURES, LLC,
a Florida Limited Liability Corporation; and
ELEGANT PET, INC., a Florida Corporation
Plaintiff(s),

and

Case No.: 2021 CA 004858

MANATEE COUNTY, a Political
Subdivision of the State of Florida,
Defendant.
_____/

ORDER ON MOTION FOR TEMPORARY INJUNCTION

THIS CAUSE having come on for hearing pursuant to the Plaintiffs' Motion for Temporary Injunction, said motion having been filed on May 2, 2022, and the Court having reviewed and considered said motion, having reviewed and considered, as well, the Defendant's Memorandum of Law in Opposition to Plaintiffs' Motion for Temporary Injunction, said memorandum having been filed on July 15, 2022, having reviewed and considered the Plaintiff's Reply in Opposition to Motion for Temporary Injunction, said reply having been filed on August 1, 2022, having reviewed and considered the Declarations of Stephen Benecke, Perin Sutaria, and Brad Parker, having reviewed and considered various paperwork and documents, including but not limited to, the original Kaya lease, dated October 19, 2000, and accompanying documentation, the original BKG lease, dated November 1, 2018, and accompanying documentation, the BKG Assignment and First Amendment, dated June 30, 2020, the Assignment of the BKG lease to Elegant Pet, from March 2021, a document entitled Standard Terms of Sales Agreement, a brochure entitled Puppy for Lifetime, an Elegant Pet Closing Statement and other accompanying paperwork, a Sarasota

County Attorney Interoffice Memorandum dated April 2, 2014, various orders both affirming and denying purportedly similar motions for temporary injunction, including a Circuit Court order out of Orange County, Florida, two orders wherein trial courts granted the Plaintiff's Motion for Temporary Injunction, Puppies in Love versus City of Phoenix and Six Kingdoms Enterprises, LLC vs. City of El Paso, having reviewed the relevant pleadings and, of course, the ordinance in question, having considered the testimony of Bradley Parker, Ayaz Sutaria, and Neil Benecke, having considered the argument of counsel and the case law provided, and being otherwise fully advised in the premises, the Court finds as follows:

Standard of Review

Borrowing from Orange County Judge Vincent S. Chiu's thorough analysis, "A temporary injunction is extraordinary relief that should be granted only when the party seeking the injunction has established four elements: (1) a substantial likelihood of success on the merits; (2) the unavailability of an adequate remedy at law; (3) irreparable harm absent entry of an injunction; and (4) that the injunction would serve the public interest." *Florida Department of Health v. Florigrown, LLC,* 317 So.3d 1101 (Fla. 2021). Plaintiffs, as the party seeking the injunction, carry the burden of producing substantial competent evidence to satisfy each of the conditions necessary to obtain a temporary injunction. *Zupnik v. All Fla. Paper, Inc.* 997 So.2d 1234, 1238 (Fla. 3d DCA 2008). The failure to show any one of the relevant factors requires denial of the motion for temporary injunction. *Genchi v. Lower Fla. Keys Hosp. Dist.,* 45 So.3d 915, 919 (Fla. 3d DCA 2010). See also Glenn vs. 1050 Corp., 445 So.2d 625 (Fla. 3d DCA 1984). Additional case law holds that "[T]he primary purpose of entering a temporary injunction is to preserve the status quo pending the final outcome of the cause." See Yardly vs Albu, 826 So.2d 467,470 (Fla 5th DCA 2002).

Analysis

The Court will address each element in turn, although not necessarily in the order as outlined in the case law.

I. Likelihood of Irreparable Harm

Plaintiffs argue that "[T]he Petland Stores are certain to suffer injury during litigation if the pet sales ban is not enjoined. Either Manatee County will enforce the ordinance, in which case the Petland Stores will suffer enforcement action and possible fines and closure, and these issues will need to be litigated in any event, or Manatee County will not enforce the ordinance, in which case, the Petland Stores will be unnecessarily chilled by an ordinance the County does not even intend to enforce." (See Motion)

Plaintiffs further argued at the hearing that they will be forced to close upon implementation of the instant ordinance, with both Mr. Sutaria and Mr. Benecke testifying that they "will have to shut our doors down" if the ordinance takes effect.

The Defendant counters that the Plaintiffs have "failed to sufficiently plead or show that irreparable harm will result if the temporary injunction is not entered." (See Memorandum in Opposition). Arguing that "[M]ere general allegations of irreparable injury are not sufficient" (See *Stoner vs. South Peninsular Zoning Commission*, 75So.2d 831, 832 (Fla. 1954), Manatee County argued that the Plaintiffs fell far short of their burden as to this element.

Ultimately, although there was some cross-examination, the largely uncontroverted testimony of Mr. Sutaria and Mr. Benecke, with corroboration from Mr. Parker, established unequivocally that irreparable harm will result to the Plaintiffs' businesses as a result of the new ordinance. Both owners testified that the pet sales ban would put them in breach of their lease,

would make honoring the Puppy for a Lifetime contracts impossible, would result in a violation of the Petland franchise licensing agreements and will ultimately force them to close. Mr. Benecke testified that sales of puppies generate over 70% of his business income, with over 80% generated from the sale of puppies and puppy-related items. Mr. Sutaria testified that roughly 93% of his income comes from the sale of dogs and from products involving the sale of dogs. The Courts accepts this testimony as true. Indeed, there simply is no mistaking the impact on the Plaintiffs' businesses as a result of the newly enacted ordinance. There is simply no mistaking that the Plaintiffs have established the necessary element of the likelihood of irreparable harm. As indicated, it is clear that as a result of the pet sales ban ordinance, the stores will very likely close. The Plaintiffs have established this element.

II. Adequate Remedy at Law

The Plaintiffs argue that because "the Manatee ordinance completely prohibits sales other than by animal shelters and animal welfare organizations", because "nothing in the ordinance adequately compensates Plaintiffs for the total loss of their businesses", because the "Petland business model is untenable without the ability to sell puppies and kittens", and because "it would be difficult to determine the sales lost by Petland in the event the Manatee Ordinance is not enjoined", particularly "given the dynamic fluctuations in the economy over the last several years" (See Motion), they are entitled to injunctive relief.

The Defendant counters that there "are no facts plead to show either an irreparable injury or an injury that cannot be cured by money or damages" and that the relief sought here "is <u>not</u> warranted where there is an adequate remedy at law available to Plaintiffs". (See Defendant's Memorandum).

While this Court recognizes that case law holds that the test of the adequacy of a remedy at law is whether the party seeking relief can obtain a judgment, not whether it will be able to collect on the judgment they have obtained (See *Stewart vs. Manget*, 181 So.370, 374 (Fla. 1938), the recovery of a monetary judgment here, given the sovereign immunity defense of the county, seems very unlikely. Said another way, given that Manatee County's only affirmative defense is sovereign immunity, the Court is not at all confident that even if the Plaintiffs are able to obtain a monetary judgment, that is likely to be recoverable and, therefore, "adequate" to compensate them for their significant loss. And while said damages are probably readily ascertainable, given that, evidently, no Petland has actually recovered any damages as a result of similar ordinances, the likelihood of recovery seems, in this Court's estimation, remote. The Plaintiffs have established this element.

III. Substantial Likelihood of Success on the Merits

The Plaintiffs argue that their "likelihood of success is extremely high because they assert five well-pled causes of action" and that "Manatee County has not identified any legitimate defenses, nor meaningfully contested the allegations of the complaint, beyond mere denials". (See Motion).

The Defendant counters that the Plaintiffs' evidence falls short, that "[I]t is not enough that a merely colorable claim is advanced" (See *City of Jacksonville vs. Naegle Outdoor Advertising Company*, 634 So.2d 750, 753 (Fla. 1st DCA 1994), and that "a conflict between an ordinance and statute will not be found where the ordinance and the statute can coexist such that compliance with one does not require violation of the other". (See Memorandum).

Initially, the fact that there is a requirement that the movant's likelihood of success be "substantial" is telling. To that end, a trial court "must be certain that the petition or other pleadings

demonstrate a prima facie, clear right to the relief requested" (See *Mid-Florida at Eustis, Inc. vs. Griffin*, 521 So2d. 357 (Fla. 5th DCA 1988). While it is certainly difficult at this point to fully assess the ultimate legal merit of the Plaintiffs' claims, they have not clearly demonstrated that their likelihood of success is "substantial". Possible, even probable, but not, at this time, "substantial".

Additionally, given the relative novelty of the Plaintiffs' claims, the apparent lack of appellate guidance as to ordinances of this nature, and the fact that the burden, generally, for relief of this nature is a high one (See *Hiles vs. Auto Bahn Federation, Inc.*, 498 So.2d 997 (Fla. 4th DCA 1986), the Court is not persuaded that the Plaintiffs' likelihood of success is "substantial". As such, the Court is not convinced that the Plaintiffs have established this necessary element.

IV. Temporary Injunction Would Serve the Public Interest

The Plaintiff argues that "the public interest actually favors the granting of the injunction", that Manatee County would suffer "no real harm" from the granting of a preliminary injunction, and that "the public has no interest in the enforcement of what is very likely an unconstitutional statute". (See *Odebrecht Construction vs. FDOT*, 715 F.3d. 1268 (11th Circuit 2013).

The Defendant counters that "[P]laintiffs' failed "to address whether a temporary injunction would serve the public interest. In fact, when one reads through Plaintiff's Amended Complaint and Motion for Temporary Injunction, there is no mention of how a temporary injunction would serve the public interest. Rather, as outlined in the County's ordinance, there is the public health, safety and welfare of the citizens who purchase dogs or cats in pet stores as the current federal and state regulations do not adequately address animal welfare and consumer protection problems. Further the Ordinance provided that dogs and cats sold in pet stores come

from large-scale commercial breeding facilities where the health and welfare of the animals is disregarded in order to maximize profits." (see Memorandum in Opposition)

A duly enacted ordinance by a lawful authority that "relates to the public health, safety, morals or general welfare" is "presumptively valid". See *Dragomirecky vs. Town of Ponce Inlet*, 882 So.2d 495, 497 (Fla. 5th DCA 2004). Additionally, "courts should not substitute their judgment as to the reasonableness of a regulation when such reasonableness is fairly debatable". Id.

While this Court certainly appreciates the impact of the implementation of the ordinance – the Plaintiffs have made that impact clear – the Court is simply not convinced that public policy favors them. In other words, while the pet sales ban would definitely serve the Plaintiffs' interest, while the pet sales ban will almost certainly have immediate and significant repercussions on the Plaintiffs' ability to pay their rents, comply with their contracts and, ultimately, remain in business, given the "presumptive validity" of duly enacted ordinances generally, the lack of evidence and persuasive argument that the temporary injunction does not serve the broader public interest is problematic. The debate, or at least the argument for such an ordinance, has existed for some time and, while the injunction would maintain the status quo while the ordinance is under review (and that certainly has merit), there is a woeful lack of evidence that the temporary injunction would serve the greater good. Like the failure of the substantial likelihood of success on the merits element, so, too, does the public policy element come up short for the Plaintiffs.

Based on the foregoing, more specifically that the Plaintiff's have established only two of the requisite four elements necessary to obtain the relief requested, the Court must DENY the Plaintiff's Motion for Temporary Injunction. The Court feels compelled to note that it is concerned that the Manatee County ordinance enactment appears to have been largely driven by emotion,

rather an actual review of the selling practices of the stores in the county. And, while the Court is concerned about the apparent lack of statistical data or specific evidence to suggest that the stores in Manatee County used "puppy mills" and, in fact, whether the ordinance in question will actually have an appreciable effect on the purchase of puppies from such irreputable middlemen, there is not sufficient proof here to allow the requested relief. The proffered evidence simply was not sufficiently "substantial" as to "each of the conditions necessary to obtain a temporary injunction". See Zupnik, supra at 1238.

Though certainly little comfort to the Plaintiffs, this decision is a very close call. Given the impact of the denial of the Plaintiffs' motion on their businesses and the fact that the decision here is, as indicated, "a very close call", the Court will STAY the implementation of the ordinance, set to begin on August 11, 2022, for forty-five (45) days to allow for the opportunity of appellate review.

DONE AND ORDERED in Chambers at Manatee County, Florida on this 8th day of August 2022.

Edward Nicholas
Circuit Court Judge

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