

IN THE CIRCUIT COURT OF DUNKLIN COUNTY, MISSOURI

STATE OF MISSOURI, ex rel.)	
ANDREW T. BAILEY, in his official)	
capacity as Missouri Attorney General,)	
)	
Plaintiff,)	
)	
vs.)	Cause No.
)	
T.J. ENTERTAINMENT,)	
)	Division No.
TRACI ROGERS,)	
d/b/a T.J. ENTERTAINMENT,)	
)	
and)	
)	
CHARLES LONG,)	
)	
Defendants.)	

MOTION FOR PRELIMINARY INJUNCTION

Pursuant to Missouri Supreme Court Rule 92.02(c), Plaintiff, moves this Honorable Court to issue a preliminary injunction enjoining Defendants from occupying and operating T.J. Entertainment, an illegal gambling house, which is a public nuisance. T.J. Entertainment has been the location of at least two armed robberies, several weapons offenses, and an assault wherein armed suspects fled the scene of the crimes prior to law enforcement arrival. T.J. Entertainment’s operations are illegal and present a risk of injury to consumers. Its continued operation places the public at substantial risk of irreparable harm, including physical injury and loss of liberty.

FACTS

Defendant Traci Rogers owns T.J. Entertainment, L.L.C., which was organized on February 13, 2023. Exhibit 1. Defendant Charles Long owns the real property on and in which T.J. Entertainment operates without a business license. It is located at 1061 Jones Road, Kennett,

Missouri 63857 and is surrounded by homes and businesses. Charles Long resides less than 4 miles away from T.J. Entertainment. T.J. Entertainment was established to “provide a space for adults to gather and play games.” Exhibit 1. However, the only games available for play are illegal video gambling machines, including slot machines and fishing games. For both types of games, players insert their money into the machine and, if they win, receive credits that can be used to continue playing the machine or a ticket that can be redeemed for cash at a window within the building. In addition, T.J. Entertainment offers a progressive jackpot for which one drawing is conducted each evening. If no one wins the drawing, the jackpot increases until the next drawing the following night. T.J. Entertainment does not provide any goods or services other than illegal gambling and constitutes a public nuisance.

On November 1, 2023, a shooting occurred in the parking lot of T.J. Entertainment. Exhibit 4. Officers responded to the location, but the suspects had already fled the scene. Police were able to locate one 1 live round of ammunition, 2 spent shell casings, and what appeared to be bullet holes and bullet fragments. Exhibit 4. As a result, one defendant is currently charged with assault in the first degree, armed criminal action, unlawful use of a weapon, and unlawful possession of a firearm by a dangerous felon. Exhibit 5. The defendant is a persistent felony offender and was on supervised probation for two separate robberies at the time of the shooting. Exhibit 6.

On January 12, 2024, an armed robbery occurred inside T.J. Entertainment. Exhibit 7. Again, the police responded, but the armed suspects fled the scene prior to law enforcement’s arrival. Exhibit 7. One suspect was identified and is currently charged with robbery in the first degree for his participation in the crime. Exhibit 8. The defendant is a persistent felony offender

and was on supervised probation for unlawful possession of a firearm at the time of the robbery. Exhibit 9.

On January 21, 2024, a second armed robbery occurred inside T.J. Entertainment. Officers observed video surveillance, which showed three suspects enter T.J. Entertainment. At least two of the suspects were armed with guns. All three suspects fled the scene prior to the police arriving.

Additionally, because T.J. Entertainment engages in practices that are in violation of state law and present a risk of injury to consumers, it is engaging in an unfair practice in violation of the Missouri Merchandising Practices Act (MMPA). Chapter 407, RSMo.

LEGAL STANDARD

When considering whether to grant a TRO or preliminary injunction, the Court weighs, “[1] the movant’s probability of success on the merits, [2] the threat of irreparable harm to the movant absent the injunction, [3] the balance between this harm and the injury that the injunction’s issuance would inflict on other interested parties, and [4] the public interest. *State ex rel. Director of Revenue v. Gabbert*, 925 S.W.2d 838, 839 (Mo. banc 1996) (quotation omitted).

The attorney general alleges in his petition and in this motion that the Defendants’ actions constitute a public nuisance under § 572.090, RSMo. When a room or building is being regularly used to unlawful gambling activity, the attorney general may prosecute a suit to enjoin the nuisance. § 572.090.2, RSMo.

The attorney general also alleges in his petition and in this motion that the Defendants’ actions constitute a common law public nuisance. The attorney general has common law authority to seek equitable relief to abate public nuisances. *State ex rel. Detienne v. City of Vandalia*, 94 S.W. 1009, 1011 (Mo. App. 1906); *Shannon Cty. v. Mertzluff*, 630 S.W.2d 238, 239

(Mo. App. S.D. 1982). “[I]t is the role of the attorney general to protect the public interest.” *State ex rel. Nixon v. Am. Tobacco Co.*, 34 S.W.3d 122, 135 (Mo. banc 2000); “[T]he attorney general serves as an advocate for the State of Missouri and its citizens.” *State ex rel. Am. Family Mut. Ins. Co. v. Clark*, 106 S.W.3d 483, 495 (Mo. banc 2003) (Wolff, J., concurring).

“A public nuisance is an unreasonable interference with a right common to the general public.” *City of St. Louis v. Varahi, Inc.*, 39 S.W.3d 531, 536 (Mo. App. E.D. 2001) (quotation omitted). Rights common to the public include “the public health, the public safety, the public peace, the public comfort [and] the public convenience.” *Id.* (quotation omitted).

Finally, the attorney general alleges in his petition and in this motion that the Defendants’ actions violate the Missouri Merchandising Practices Act. Chapter 407, RSMo. Pursuant to § 407.100.2, RSMo, the attorney general may seek and obtain preliminary injunctions in any action brought pursuant to the MMPA. The State need not establish the inadequacy of legal remedies as a prerequisite to an injunction issued pursuant to § 407.100, RSMo. *State ex rel. Nixon v. Telco Directory Publishing*, 863 S.W.2d 596, 599 (Mo. banc. 1993).

A. The State is likely to succeed on the merits of its case.

The first factor for the Court to consider is whether the State is likely to prevail on the merits. *See Gabbert*, 925 S.W.2d at 839; *Shrink Mo. Gov’t PAC v. Adams*, 151 F.3d 763, 764 (8th Cir. 1998). Here, the State is highly likely to prevail on the merits of its claims against Defendants. As show in the Facts section above, the slot machines and fishing games constitute gambling devices under § 572.010(5), RSMo; and the progressive jackpot offered by T.J. Entertainment constitutes a lottery under § 572.010(7), RSMo. Those who operate T.J. Entertainment as well as those who participate in the games and lottery at the establishment are

engaging in unlawful gambling activity in violation of Chapter 572, RSMo. Therefore, T.J. Entertainment is a public nuisance as defined by § 572.090, RSMo.

Furthermore, T.J. Entertainment is a public nuisance as defined by common law as it poses significant risks to the public safety and peace. Armed robberies were committed within the building on two separate occasions. On a third occasion, a shooting occurred in the parking lot. In each instance, the suspects were armed with guns and fled the scene prior to law enforcement's arrival. The repeated situations in which armed felons are committing dangerous, violent crimes creates a significant risk to the public safety and public peace of anyone who lives near T.J. Entertainment, patronizes the neighboring business, and travels the roadways surrounding the building. It also creates a risk of harm to anyone inside the business and to the first responders called to investigate and apprehend suspects.

T.J. Entertainment is in violation of the MMPA as it is engaged in an unfair practice, which presents an injury to consumers. Patrons of T.J. Entertainment are at risk of physical injury or death each time violent criminal acts occur in and on the property. Additionally, they are at risk of criminal liability for participating in the illegal gambling occurring within the establishment. Although the patrons themselves are engaged in criminal activity, T.J. Entertainment cannot be absolved of liability for enabling the patrons to do so by providing the location and gambling machines. Additionally, if a violation of the MMPA is found to have occurred, harm to the public is presumed. *State ex rel. Nixon v. Beer Nuts, Ltd.*, 29 S.W.3d 828, 837-38 (Mo. App. E.D. 2000).

B. There is a significant threat of irreparable harm to the public if this Court does not enjoin Defendants' activities.

“Irreparable harm is established if monetary remedies cannot provide adequate compensation for improper conduct.” *Glenn v. City of Grant City*, 69 S.W.3d 126, 129 (Mo. App. W.D. 2002) (quoting *Walker v. Hanke*, 992 S.W.2d 925, 933 (Mo. App. W.D. 1999)). The risk of serious physical injury and death constitutes irreparable harm because monetary damages cannot adequately compensate for physical injury or loss of life. *See St. Hilaire v. Arizona Dept. of Corrections*, 934 F.2d 324, 324 (risk of being infected with an invariably fatal disease constitutes irreparable injury); *Smith v. Western Elec. Co.*, 643 S.W.2d 10, 14 (Mo. App. E.D. 1982) (the risk to health caused by exposure to smoke in the work place is irreparable harm for “which money damages cannot adequately compensate”). Defendants maintain and operate a illegal business that regularly has large amounts of cash within the building. This has resulted in several dangerous crimes being committed in and on the property. Anyone inside or near the building is at risk of death or serious physical injury when these crimes are committed, particularly by armed suspects. When the suspects flee the scene of their crimes, the police are put at an additional risk of attempting to locate and apprehend the armed suspects. The patrons of T.J. Entertainment are at risk of incarceration for their participation in illegal gambling, which also constitutes an irreparable harm.

Because Defendants have engaged in, and are likely to continue to engage in, unfair practices, immediate and irreparable injury or damage is likely to result in the absence of relief. Further, once a violation of the MMPA is found to have occurred or is about to occur, irreparable harm is also presumed. *Nixon*, 29 S.W.3d at 837-38.

C. The harm to the public from not issuing the injunction decidedly outweighs any harm to the Defendants by issuing it.

The Court balances the risk of irreparable harm absent an injunction against the burdens that interim injunctive relief would impose on Defendants. *See Gabbert*, 925 S.W.2d at 839-40. Absent a preliminary injunction, additional violent crimes may occur resulting in serious physical injury or death. First responders responding to and investigating the crimes may also be put at risk of injury while expending public time and resources to come to the victim's aid and to apprehend the suspects. Defendants own and operate an illegal business that serves no legitimate or legal purpose. While they would lose revenue if the injunction is granted, their revenue is the result of their own unlawful activity. The risk to the public greatly outweighs a temporary loss of illegal revenue.

D. The public has a great interest in stopping the illegal activity at T.J. Entertainment.

The last factor for the Court to consider is whether injunctive relief would advance the public interest. *See Gabbert*, 925 S.W.2d at 839. Here, the public interest weighs heavily in favor of granting a preliminary injunction. Plaintiff has established above that T.J. Entertainment constitutes a public nuisance pursuant to § 572.090, RSMo, as well as a common law public nuisance. T.J. Entertainment is also operating in violation of the MMPA. A public nuisance, by definition, violates the rights of the public. In this case, Defendants are operating a business that, in its entirety, is illegal and as such are subject to both civil and criminal liability. The business attracts individuals who are committing violent crimes putting anyone in the area of T.J. Entertainment at risk of serious physical injury or death. The required response by local first responders inevitably takes resources away from other public safety and welfare priorities. The

purpose of § 572.090, RSMo, is to prevent establishments such as T.J. Entertainment from existing and operating in the State of Missouri and enjoining Defendants from continuing to violate the law is necessarily in the best interest of the public.

CONCLUSION

For the reasons stated above, the Court should enter a preliminary injunction restraining all Defendants, as well as their agents, servants, employees, representatives and other individuals acting at their direction or on their behalf from offering gambling services, providing a location for gambling to occur, and occupying the building located at 1061 Jones Street, Kennett, Missouri 63857 known as T.J. Entertainment throughout the duration of this litigation. Plaintiff also prays this Court set a hearing on the motion at the earliest practical time.

Respectfully submitted,

ANDREW T. BAILEY
MISSOURI ATTORNEY GENERAL

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