IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN
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PERRY TROTMAN and PRESIDENTIAL TAXI SERVICE, INC. d/b/a PRESIDENTIAL LIMOUSINE, Plaintiffs,	)	CASE NO. ST-16-CV-297
v.	)	
GOVERNMENT OF THE VIRGIN ISLANDS, DEPARTMENT OF LICENSING AND CONSUMER AFFAIRS, Defendants.	)	ACTION FOR TEMPORARY RESTRAINING ORDER; PRELIMINARY AND PERMANENT INJUNCTION, AND DECLARATORY RELIEF

MEMORANDUM OPINION

This case is before the Court[1] on the Amended Motion for Temporary Restraining Order and Preliminary and Permanent Injunction filed by Plaintiffs Perry Trotman and Presidential Taxi Services d/b/a Presidential Limousine. [2] The Plaintiffs seek to enjoin Defendants Government of the Virgin Islands Department of Licensing and Consumer Affairs (DLCA), their officers, employees and agents from interfering with Plaintiffs' business operations. The Court will grant the Plaintiffs' motion for preliminary injunction because there is a clear showing that injunctive relief is warranted when the preliminary injunction factors are considered and weighed.

I. FACTUAL AND PROCEDURAL BACKGROUND.[3]

By memorandum dated October 10, 2013, then Commissioner of DLCA, Wayne Biggs, created a license category for limousine service and set the fee at One Hundred Thirty Dollars ($130.00). The Commissioner exerted his authority which allowed him to create a license category at a fee not to exceed $500 pursuant to Virgin Islands law.[4] Presidential Taxi Service, Inc. d/b/a Presidential Limousine, a corporation, in which Perry Trotman is the president, received its first license to operate as a limousine service on November 5, 2015. During the process, Presidential Limousine was informed that a limousine service license is issued on a per vehicle basis. At the

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1 This Court has jurisdiction to hear this case pursuant to V.I. CODE ANN. tit. 4, § 76(a)(1997).

2 Plaintiffs Perry Trotman and Presidential Taxi Services d/b/a Presidential Limousine were represented by Pedro K. Williams, Esquire. Defendants Government of the Virgin Islands Department of Licensing and Consumer Affairs (DLCA) were represented by Assistant Attorney General Dean Barnes, Esquire.

3 The facts summarized herein are gleaned from the administrative record produced from the administrative hearing held on July 3, 2016 and all testimony and exhibits entered into evidence at the preliminary injunction hearing held on August 5, 2016.

4 V.I. Code Ann. Tit 27, § 302 (b) (2015).

time, Presidential Limousine had two vehicles in its fleet and thus was required to get two licenses at a fee of Two Hundred Sixty Dollars ($260). This payment was made under protest, and Presidential Limousine reserved its objection that DLCA had no authority to require Presidential Limousine to obtain two business licenses.

On January, 27, 2015, Presidential Limousine applied to renew its limousine service license. At that time, Presidential Limousine had six vehicles in its fleet and was informed by DLCA that they were required to obtain a license for each vehicle. Thus DLCA required that Presidential Limousine obtain six licenses at a fee of Seven Hundred Eighty Dollars ($780). Presidential Limousine objected to the extra charges. The license application remained pending until DLCA notified Presidential Limousine of its intent to deny the application by letter dated July 1, 2016.

Sometime in January 2015, Presidential Limousine's drivers began getting cited for operating a business without a business license. Subsequently, there were letters exchanged between the parties and a meeting held on March 10, 2015 aimed at reaching a mutual understanding. The parties agreed to maintain the status quo until DLCA issued rules and regulations pertaining to limousine service businesses. The parties adhered to the status quo until May 12, 2016, when Presidential Limousine's driver was stopped by DLCA officers and given a warning for failure to obtain a business license. On June 3, 2016, Presidential Limousine initiated these proceedings by filing a verified complaint seeking a temporary restraining order, preliminary injunction and permanent injunction against DLCA. The Court denied the motion for temporary restraining order and held a hearing on the motion for preliminary injunction on June 28, 2016. The Court continued the preliminary injunction hearing and ordered an administrative hearing on the matter to create a full administrative record.[5]

The hearing officer, James W. Kitson, filed his decision and order with the Court on July 18, 2016. The hearing officer found that Virgin Islands law only requires that a business entity receive one business license. He further denied DLCA's action to deny Presidential Limousine a business license and ordered that DLCA issue Presidential Limousine a business license in a manner consistent with the law. On July 22, 2016, the Court resumed the preliminary injunction hearing. The hearing was again continued to allow Commissioner Carrington to render his final decision in writing either following or not following the decision of the hearing officer. On July 27, 2016, DLCA filed a subsequent decision and order of hearing officer James W. Kitson. DLCA implies that this the new filing supersedes the original decision of the hearing officer because it is signed by Commissioner Carrington while the first decision was not signed by the Commisioner. The latter decision affirmed DLCA's action to deny Presidential Limousine a business license on the grounds that Presidential Limousine failed to show good cause why their application for business license should not be denied.

[5] The administrative hearing was ordered by court order entered on June 29, 2016.

II. LEGAL DISCUSSION

a. Standard for analyzing a preliminary injunction.

When determining whether to issue a preliminary injunction, the Court considers the following factors on a sliding-scale basis: 1) whether the movant has shown a reasonable probability of success on the merits, 2) whether the movant will be irreparably harmed by the denial of relief, 3) whether granting preliminary relief will result in even greater harm to the nonmoving party, and 4) whether granting the relief will be in the public interest.[6] In conducting the sliding scale analysis, the Court must make findings on all four factors and determine whether there is a clear showing that injunctive relief is warranted when the factors are considered together and weighed against each other.[7] The burden of proof on all four factors rests on the party seeking injunctive relief.[8]

b. Presidential Limousine has shown a reasonable probability of success on the merits.

"When addressing a reasonable probability of success on the merits, the movant must show that it has "a reasonable chance, or probability, of winning," not that it will actually prevail on the merits at trial."[9] The movant must introduce evidence making out a *prima facie* case.[10] In its opposition to the preliminary injunction, DLCA recites their statutory and regulatory authority under Virgin Islands law.[11] In focusing on its authority under the law, [12] DLCA avers that the statute allows the Commissioner to require that an entity seeking a limousine service license obtain a license for each vehicle at a cost of $130 per vehicle. Presidential Limousine argues that although DLCA does have the authority to create a limousine service license, it does not have the authority to require that a single entity obtain multiple business licenses. Presidential Limousine further argues that to allow DLCA to charge $130 per vehicle supplants the legislature's intent that fees created pursuant to this statutory section not exceed $500.

In reviewing Section 302 (b), the Court is mindful that statutory interpretation begins by examining the literal and plain language of the statute at issue.[13] If the plain language is unambiguous, the inquiry into its meaning comes to an end.[14] Both parties agree that 302 (b) allows the Commissioner to create a limousine service license category. The statute states that any person, or association engaged in a business, occupation, profession or trade not designated shall obtain "an annual license" at a reasonable fee determined by the Commissioner to defray the cost of regulation, but not to exceed $500.[15] By its plain meaning, this language requires that a business

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6 *3RC & Co. v. Boynes Trucking Sys., Inc.*, 63 V.I. 544, 550 (V.I. 2015).

7 *Id* at 557.

8 *Id.* at 544.

9 *SBRMCOA, LLC v. Morehouse Real Estate Invs., LLC*, 62 V.I. 168, 187 (V.I. Super. Ct. 2015).

10 *Punnett v. Carter*, 621 F.2d 578, 583 (3d Cir. 1980).

11 See "Memorandum of Law in Support of Defendant's Position at Hearing and in Opposition to Plaintiff's Motion for a Preliminary Injunction," pp 6-10.

12 27 V.I.C. § 302 (b).

13 *E.g., People v. Baxter*, 49 V.I. 384, 388 (VI. 2008).

14 *Id.*

15 27 V.I.C. 302 (b)

falling under this statutory section obtain one license that is issued to the entity, at an annual fee. Furthermore, in creating the limousine service license, Commissioner Wayne Biggs issued a memorandum. This memorandum set the fee at $130, created a code for the license and defined the category. The memorandum did not state that the fee would be per vehicle. Additionally, allowing DLCA to invoke broad statutory powers to charge a fee above $500 essentially usurps the legislative power, and goes beyond the statutory language in application and scope. Based on the statutory language and the evidence provided in form of memoranda of former Commissioner Biggs, it is likely that Presidential Limousine will succeed on the merits of this case.

c. The threat of irreparable harm to Presidential Limousine is great if the injunction is denied.

A movant suffers irreparable harm where there is "certain and imminent harm for which a monetary award does not adequately compensate."[16] If monetary damages that the movant will suffer are difficult to ascertain, they are considered inadequate.[17] Presidential Limousine presented evidence that most of their business is reserved through third party vendors. They provided letters from Premier Destination Services, LLC. and Carey Licensing, Inc. that show they are likely to lose contracts from these companies if they are not able to secure a business license. Perry Trotman also testified that Presidential Limousine's contract with United Airlines is also in jeopardy. If Presidential Limousine is unable to obtain a business license they will for all intents and purposes be defunct as a business. Thus the monetary damages likely to be suffered by Presidential Limousine if the injunction is denied are difficult to ascertain and would result in irreparable harm.

d. DLCA will not suffer greater harm if the preliminary injunction is granted.

The Court looks at whether the nonmoving party will suffer irreparable harm if this injunction is issued, and if so to what extent.[18] The Court also considers whether the injunction would destroy the status quo, as one of the goals of a preliminary injunction is to maintain the status quo.[19] The possible harm to DLCA is extending the time in which they would collect $780 if successful at trial. The Court is aware of the monetary challenges facing the Government. However, this harm is not irreparable, since it is only a monetary loss of a very small nature. Also, considering that the parties maintained the status quo for approximately a year, from March 2015 to May 2016, without great harm to the Government, the Court determines that this essential goal of a preliminary injunction can be achieved without great harm or any harm to the Government. The Court is also aware of the fact that the Government believes that an adverse ruling would create a bad precedent that could be applied to other licensees to the Government's detriment. This may be true, but that principle could not cause the court to refuse to invoke the clear meaning of the statute in this case. If anything, if an injustice is caused by this granting of a preliminary injunction having an impact on other cases, it is a matter for the legislature to address, and not the Court.

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16 *SBRMCOA, LLC* at 188.
17 *Id.*
18 *Id.*
19 *Id.*

e. The public have significant interests in a functioning DLCA and statutory limitations on government.

When considering the public interest, particular regard should be paid to the public consequences in employing the extraordinary remedy of injunction.[20] This dispute is between a government agency and a private business. The public has an interest in a functioning government. DLCA performs important government functions such as consumer protection and licensing and regulating businesses in the territory. However, the public also has an interest in ensuring that an agency does not go beyond its statutory powers and enforcement of statutory limitations on government. Therefore, granting relief in this case is in the public interest since the public have a right to expect that its Government agencies will follow the law when issuing its regulations.

III. CONCLUSION

When weighing the factors as set forth above, the Court finds that Presidential Limousine is entitled to preliminary relief in the form of a preliminary injunction. Presidential Limousine has made a strong showing on the evidence that there is a reasonable probability that they will succeed on the merits and that they are likely to suffer irreparable harm if the injunction is denied.

Dated: August 22, 2016

Hon. James S. Carroll III
Senior Sitting Judge of the Superior
Court of the Virgin Islands

ATTEST:
Estrella George
Acting Clerk of the Court

By: Donna D. Donovan
Donna D. Donovan
Court Clerk Supervisor 8/23/2016

20 *Id.*