

**IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA**

SASS GROUP, LLC, and GREAT VAPE,
LLC,

Plaintiffs,

v.

STATE OF GEORGIA, and PATSY
AUSTIN-GATSON, in her individual
capacity,

Defendants.

CIVIL ACTION FILE NO.: 2022CV362007

JUDGE CHARLES M. EATON, JR.

ORDER ON MOTION FOR INTERLOCUTORY INJUNCTION

On March 14, 2022, Plaintiffs filed a verified complaint bringing actions against the State of Georgia and District Attorney Patsy Austin-Gatson in her individual capacity, requesting declaratory against the State and injunctive relief against District Attorney Austin-Gatson. Plaintiffs also presented a motion for a temporary restraining order and interlocutory injunction pursuant to O.C.G.A. §§ 9-4-2, 9-4-3, and 9-11-65, requesting that the Court enjoin Defendant Austin-Gatson, in her individual capacity, from initiating or continuing any criminal enforcement actions or civil asset forfeiture proceeding against individuals or businesses based on the sale or possession of products containing hemp-derived substances, including, but not limited to, delta-8-tetrahydrocannabinol ("Delta-8-THC"), delta-10-tetrahydrocannabinol ("Delta-10-THC"), cannabidiol ("CBD"), cannabinol ("CBN", and cannabigerol ("CBG").

The Court set a hearing on Plaintiffs' motion for March 18, 2022, and granted

Plaintiffs' request for a temporary restraining order.¹ The Court held a hearing on Respondent's Motion to Dismiss on April 12, 2022 and denied the Motion. Counsel appeared before the Court for a hearing on Plaintiffs' Motion for Interlocutory Injunction on April 14, 2022.

After due consideration of the evidence and arguments presented at the hearing, in the parties' briefs, and after reviewing the record as a whole, the Court hereby makes the following findings of fact and conclusions of law:

The Court finds that Plaintiffs will suffer irreparable harm if District Attorney Austin-Gatson is not so enjoined. It is clear from the evidence and record that assets and cash of a significant value have been seized by the county amounting to more than \$2 million worth of assets and more than \$220,000.00 in cash (it is estimated that at least 15 percent of the assets seized are "edibles" containing delta-8-THC with a value of about \$300,000.00). There is evidence that Plaintiffs' businesses will be unable to remain open if District Attorney Patsy Austin-Gatson is not enjoined from this conduct.

The second factor the Court must consider is whether the harm to Plaintiffs outweighs the harm to Defendant. The assets and products were seized from a distributor and the actions by District Attorney Austin-Gatson have limited and continued to limit the operation of the distributor. While this case is brought only in relation to Plaintiffs, the seizure of these products from a distributor in Gwinnet could have effects on similar retailers and businesses in surrounding counties. Not only could these actions against the distributor affect supplies to businesses in other counties, but business owners selling similar products in those areas will be left with uncertainties about the legality of their products and businesses. Further, consumers will be unsure of whether they may be subject to arrest for

¹ The Temporary Restraining Order was heard and granted by Presiding Judge Craig Schwall.

possession of the same products they have believed to be legally available for at least two years. Defendant provided no actual evidence to indicate that the distribution and sale of these products (edible or otherwise) has led to any direct harm to any individuals or parties in Gwinnett County. In fact, Defendant presented no actual evidence as to harm to anyone in Georgia beyond purely speculative scenarios. As such, the harm to Plaintiffs outweigh the harm to the District Attorney. As Judge Schwall stated during the TRO hearing, he was concerned “that this conduct of this DA could be inappropriate. And I think there’s no rush in these prosecutions and civil asset forfeitures... the declaratory judgement action should be heard before any of this conduct continues”.

For an injunction to be proper, the Court must find that there is a substantial likelihood that the Plaintiffs will succeed on the merits of their case. While it is not within the Court’s authority to create law, it is clear in this matter that there are different interpretations on what is and is not prohibited or excluded under Georgia law and whether or not the sale or possession of products containing hemp-derived substances, including, but not limited to, delta-8-tetrahydrocannabinol ("Delta-8-THC"), delta-10-tetrahydrocannabinol ("Delta-10-THC"), cannabidiol ("CBD"), cannabinol ("CBN", and cannabigerol ("CBG") are controlled substances. Counsel for Defendant argues that these Delta-8-THC and Delta-10-THC products are not specifically excepted from the statute² and are therefore an illegal, controlled substance; however, this argument may also be seen in the opposite: if the state had intended that hemp products containing Delta-8-THC and Delta-10-THC products to remain controlled substance, then it would have

² District Attorney Austin-Gatson and the State of Georgia have conceded that Delta-8-THC and Delta-10-THC products derived from hemp are not a controlled substance without regard to the levels of the cannabinoid in the products unless they are a “food” item.

explicitly limited those legal hemp products to those in its natural state and not included extracted product. While no precedent in Georgia exists at this time, the Court finds the decisions from Texas and Kentucky cited by Plaintiffs to be of some persuasive weight. In Madison County, Georgia, Superior Court Judge Wasserman ruled that gummies containing Delta-8-THC are legal and not a controlled substance under Georgia law.³ The Court further notes, that this law has been in place for more than 2 years, with businesses across the state selling Delta-8-THC and Delta-10 products (including gummies), but there has been little to no action taken against or involving these products until this year. That there is no case law to rely upon, speaks volumes as to the merits of Plaintiffs' position that these substances may be legal under current Georgia law and the status quo will be preserved by an injunction prohibiting Defendant's conduct.

With regard to the fourth factor of analysis, the Court finds that enjoining the District Attorney in this regard will not disserve the public interest as it will preserve the status quo and prevent conflicting application of O.C.G.A. § 2-23-3 between neighboring counties until such time as there can be a ruling on the Motion for Declaratory Judgment.


Plaintiffs have met their burden in proving there is a substantial threat that they will suffer irreparable injury if the injunction is not granted; the threatened injury to the Plaintiffs outweighs the threatened harm that the injunction may do the defendant; there is a substantial likelihood that the Plaintiffs will prevail on the merits of their claims at trial; and granting interlocutory injunction will not disserve the public interest.

Wherefore, the Court hereby **GRANTS** Plaintiffs' Motion for an Interlocutory Injunction and hereby enjoins Defendant Austin-Gatson, in her individual capacity, from

³ State of Georgia v. Mohammad Shafiq, Melanie Dove, et al., Superior Court of Madison County, Warrant Nos.: 21SW00040, 21SW00041, 21SW00042, 21SW00043, 21SW00044

directing her office or agents to initiate or continue any criminal enforcement action or civil asset forfeiture proceeding against any individual or business based on their alleged possession, sale, or distribution of products containing hemp- derived cannabinoids, including but not limited to Delta-8-THC and Delta-10- THC. This injunction will remain in effect while this case is pending.

SO ORDERED THIS 15 DAY OF APRIL, 2022.



The Honorable Charles M. Eaton, Jr.
Superior Court of Fulton County
Atlanta Judicial Circuit