

IN THE SUPREME COURT OF PENNSYLVANIA

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No. 179 E.M. 2007

FEB 11 2009

SUPREME COURT
EASTERN DISTRICT

HSP GAMING, L.P.,
Petitioner,

v.

THE CITY OF PHILADELPHIA AND
CITY COUNCIL FOR THE CITY OF PHILADELPHIA,
Respondents.

CITY OF PHILADELPHIA'S APPLICATION FOR LEAVE
TO FILE A SUPPLEMENTAL RESPONSE TO
HSP GAMING'S APPLICATION FOR RELIEF
SEEKING ENFORCEMENT OF THIS COURT'S 12/3/07 ORDER
AND APPOINTMENT OF A SPECIAL MASTER

CITY OF PHILADELPHIA
LAW DEPARTMENT
Shelley R. Smith, City Solicitor

BY: Andrew S. Ross
Chief Deputy City Solicitor (ID No. 26929)
1515 Arch Street
Philadelphia, PA 19102
(215) 683-5118 (ph); (215) 683-5097 (fax)
andrew.ross@phila.gov

February 11, 2009

Attorneys for Respondents

AND NOW, comes Respondent, City of Philadelphia, and applies to this Court for leave to file a Supplemental Response to HSP Gaming's Application for Relief, and in support thereof avers as follows:

1. On January 8, 2009, Applicant HSP Gaming, L.P. ("HSP") filed an Application for Relief Seeking Enforcement of This Court's December 3, 2007 Order and the Appointment of a Special Master ("Application").
2. On January 22, 2009, Respondent City of Philadelphia (the "City") filed a Response to HSP's Application for Relief ("Response").
3. HSP's Application averred, in pertinent part, that the City was engaged in "improperly obstructing" development of its slots casino. See Application, ¶ 32.
4. The only claim of an actual and current dispute with the City, however, was the City's alleged refusal to issue HSP's foundation permit, for which HSP asserted it had completed the prerequisite approvals in September 2008. See Application, ¶¶ 65, 68.
5. Based on the alleged refusal to issue the foundation permit, and other generalized allegations of delay, HSP sought relief: 1) ordering the City to issue the permit, and 2) appointment of a Special Master with broad authority encompassing permits, a separate agreement between the parties, and the imposition of sanctions and attorneys' fees. See Application, Sec. V., at 41-42.

6. The city's Response denied the existence of an ongoing dispute regarding the foundation permit, acknowledged that HSP had secured prerequisite approvals, and asserted the City was prepared to issue the permit whenever HSP wanted it and, more particularly, that all HSP need do was obtain the Water Department's signature approval and present that signed application to the Department of Licenses and Inspections ("L&I") for issuance of the permit. See, e.g., Response at 11.

7. HSP's Application, therefore, relies on the purported refusal to issue the foundation permit, not only for the first requested relief directing the City to issue the permit but, more importantly, to claim an underlying violation of the Court's December 3, 2007, Order as a basis for HSP's request for a Special Master.

8. The City thus seeks leave to submit a brief Supplemental Response to HSP's Application for Relief ("Supplement"), bearing new and additional evidence that emerged within the last several days and confirms by HSP's own words and actions the City's account regarding the foundation permit. The proposed five-page Supplement is attached hereto as Exhibit 1.

9. The new evidence emerged on February 6, 2009, when Mayor Michael Nutter and two top City economic development officials met in the Mayor's office with several principals of HSP, including Chairman Neil Bluhm and Chief Operating Officer Greg Carlin.

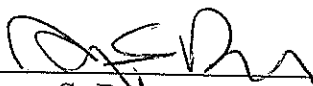
10. As set forth in the proposed Supplement and an Affidavit attached thereto, the Mayor advised Bluhm and the other HSP representatives in the meeting that the City was prepared to issue the foundation permit, and that it could be picked up as early as that afternoon if HSP wanted to do so. HSP acknowledged the Mayor's offer but did not accept it. Almost three weeks after the City's Response informed HSP that the permit was available for the asking, and four days after the Mayor's express reiteration of that availability, HSP still (as of close of business February 10, 2009) has not presented at L&I or otherwise attempted to obtain the permit that purportedly forms the basis of HSP's Application to this Court.

11. Because the conversation between the Mayor and HSP occurred a few days ago, and because it bears directly on the critical allegation against the City in HSP's Application, and because that allegation bears critically on an alleged need for a Special Master when, in fact, no such dispute currently exists, the City seeks leave to file this Supplemental Response.

WHEREFORE, the City of Philadelphia hereby requests this Honorable Court grant leave to file the proposed Supplemental Response to HSP's Application for Relief of January 8, 2009.

Respectfully submitted,

CITY OF PHILADELPHIA LAW DEPARTMENT
SHELLEY R. SMITH CITY SOLICITOR



BY: Andrew S. Ross
Chief Deputy City Solicitor (ID No. 26929)
1515 Arch Street
Philadelphia, PA 19102
(215) 683-5118 (ph); (215) 683-5097 (fax)
andrew.ross@phila.gov

Attorneys for the City of Philadelphia

Dated: February 11, 2009

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Attorneys for Respondents

This is a Supplemental Response (“Supplement”) by the City of Philadelphia (the “City”), based on new information and evidence, to the Application for Relief (“Application”) filed by HSP Gaming, L.P. (“HSP”) on January 8, 2009. The City filed its Response to Application for Relief (“Response”) on January 22, 2009.

The purpose of this Supplement is to provide the Court with new evidence that HSP is misstating the City’s actions and misleading the Court as to HSP’s own intentions, and refuses to this day to take the foundation permit requested in its Application and available to it from the City.

The only live dispute identified by HSP in its Application was its purported request for a foundation permit. As explained in its Response, the City is fully prepared to issue that permit, now that HSP seems to have reversed its avowed disinterest in that permit¹ and is actually (in these pleadings) requesting its issuance; and that all HSP need do is obtain the Water Department’s signature approval (to which HSP is entitled) and take that signed application to the Department of Licenses and Inspections (“L&I”) for issuance of the permit (to which HSP is entitled). We submit this Supplemental Response now solely to inform the Court that, notwithstanding the passage of three weeks since our filing, *and notwithstanding an express, in-person offer by the Mayor and other City officials to issue the permit*, HSP, to date, has still not availed itself of the permit.

Curiously, though the permit is available for the taking, HSP refuses to accept that offer. Apparently, HSP is far more interested in creating and stoking disputes, and litigating before this Court, than in actually procuring the permit that it claims the City is withholding. Remarkably, HSP has not withdrawn its request to this Court to *order* the City to do that which we are fully prepared to do.

¹ See Response at 1-2, 9, 12, noting that HSP specifically advised the City in December 2008 that it did not want the permit. See also Affidavit of John Elfrey, attached as Exhibit A to City’s Response, ¶ 27.

Instead, HSP is asserting the City's purported *refusal* to issue that permit as a springboard to request this Court to appoint a Special Master, not only to resolve any future (potential) permit and other construction-related issues, but also proposing wide-ranging authority covering a Development Agreement between HSP and the City and the power to award sanctions and attorneys' fees. See Application, Sec. V., pp. 41-42.

In this Supplement, the City points out that three weeks have elapsed since the City's Response was filed, during which time HSP has not even acknowledged the availability of the foundation permit, much less attempted to procure it.

Further, this Supplement provides the Court with the new fact of a meeting held February 6, 2009, between the Mayor and high-level representatives of HSP, and the intentions of both parties as presented at that meeting as they pertain to the foundation permit. HSP's statements in the meeting confirm the City's prior assertions that HSP does not actually want the foundation permit at this time, despite its Application asking the Court to order it.

The City's original Response to the Application cited the desire of Mayor Michael Nutter to work with HSP toward a casino development that meets HSP's needs and maximizes economic opportunities for the City. The Response referenced a previously scheduled meeting with the Mayor and HSP in January, cancelled by HSP but in the process of being rescheduled. See Response at 5. That meeting was held in the Mayor's office on Friday afternoon, February 6.

Attached to this Supplement is an affidavit from one of the City representatives at the meeting, Andrew Altman, Deputy Mayor for Economic Development and Director of Commerce ("Affidavit"). The HSP delegation was led by Neil Bluhm, a leading investor and Chairman of HSP Gaming. See Affidavit, attached as Exhibit A.

In sum, the Mayor sought to reach out to HSP, based on his stated preference of working with them toward construction rather than against them in litigation.²

The Mayor specifically reminded HSP that the foundation permit was available, upon payment of the standard permit fee, and that he had directed L&I to stand by Friday afternoon should HSP want to obtain the permit immediately. See Affidavit, ¶¶ 7 and 8.

Despite these entreaties, over the course of a meeting lasting more than an hour, Bluhm never accepted or acted upon the opportunity clearly presented by the Mayor to pick up the foundation permit. See Affidavit, ¶ 9.³

Having been directly rebuffed by HSP, therefore, the City turns its plea to this Court, under the jurisdiction not of a City request, but a petition to the authority of this Court *initiated by HSP* for the imposition of broad and punitive measures against the City.

Inasmuch as HSP's Application was premised on repeated allegations that the City obstructed its foundation permit and other such actions,⁴ and the City countered that HSP had specifically declined to pursue the permit, the result of the February 6 meeting is crystal clear: HSP's Application misstates the existence of any real dispute, misstates the City's actions and misleads the Court regarding HSP's own intentions. While invoking the authority of this Court to seek the foundation permit *and* a wide-ranging enforcement order against the City, including the possible imposition of monetary sanctions, HSP is determined *not to request or obtain the very permit it is demanding from the Court*.

² In the parlance of President Obama, the Mayor proffered an open hand, which was met with a clenched fist.

³ The Mayor did not tie the issuance of the permit to any other issue. Though he discussed the pending Application with HSP and his desire to end or resolve the litigation, the Mayor's offer to issue the permit as soon as requested was unconditional and not dependant on any other action. See Affidavit, ¶¶ 6-10.

⁴ See, e.g., Application, ¶ 65.

The Affidavit herewith makes abundantly clear that HSP has petitioned this Court for an order against the City based on the demonstrably untrue assertion that the City has obstructed, and continues to obstruct, the issuance of a permit. As a result, the City reiterates its request that this Court deny all relief requested by HSP, particularly in light of HSP's now transparent effort to manufacture litigation issues.

WHEREFORE, for the foregoing reasons, the City of Philadelphia respectfully requests this Honorable Court deny all claims for relief sought by HSP Gaming, L.P., in its Application for Relief of January 8, 2009.

Respectfully submitted,

CITY OF PHILADELPHIA LAW DEPARTMENT
SHELLEY R. SMITH CITY SOLICITOR



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Chief Deputy City Solicitor (ID No. 26929)
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Attorneys for Respondents

Dated: February 11, 2009

AFFIDAVIT OF ANDREW ALTMAN

I, Andrew Altman, a competent adult duly sworn according to law, hereby depose and say:

1. At the outset of his administration in January 2008, Mayor Michael Nutter appointed me Director of Commerce and Deputy Mayor for Economic Development for the City of Philadelphia ("City"), placing under my responsibility planning and development for all significant projects in the City, including the SugarHouse casino being developed and built by HSP Gaming, L.P. ("HSP").
2. I am knowledgeable and familiar with planning and development issues in the City in general and, in particular, with the status of HSP's development plans and applications for approval with the City as well as with state and federal agencies. I am familiar with the facts set forth herein and my statements are based on my personal knowledge.
3. On Friday, February 6, 2009, I attended a meeting in the Mayor's office in City Hall with representatives of HSP.
4. Also present at the meeting on behalf of the City were the Mayor and Teresa Gillen, Senior Advisor for Economic Development. Present for HSP were Neil Bluhm, an investor and Chairman of HSP Gaming, Robert Potamkin, another investor, Greg Carlin, Chief Operating Officer of HSP, and Melonease Shaw, a public relations consultant.
5. Although the meeting was not open to the public, no requests for or promises of confidentiality were made or given.
6. In the meeting, the Mayor expressed his interest in working with HSP on its casino development and the City approval process for permits and licensing, and mutually resolving any issues that might exist.

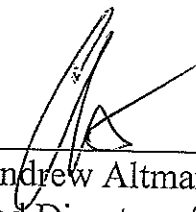
7. The Mayor specifically advised HSP's representatives that there was no ongoing dispute regarding the foundation permit applied for by HSP. The Mayor confirmed that the underlying prerequisites for the permit had been met, and that the City therefore would issue the permit upon payment of the fee applicable to all such permits.

8. The Mayor further informed HSP's representatives that he had alerted the Department of Licenses and Inspections ("L&I") to stand by that afternoon, and he offered that HSP could pick up the permit immediately if it wanted.

9. On behalf of HSP, Bluhm responded that he understood and believed the Mayor's offer but did not specifically address HSP's immediate intention with regard to obtaining the permit from L&I. At no time did Bluhm or anyone else from HSP advise the City representatives it would proceed to L&I for the permit, or even affirm that it wanted to pick up the permit. Toward the conclusion of the meeting the Mayor reiterated to HSP the continuing availability of the permit.

10. The foundation permit remains available to HSP at any time it requests it from L&I and pays the required permit fee.

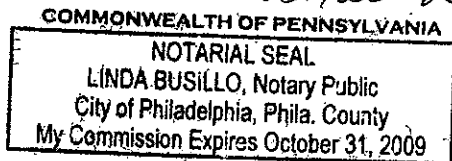
11. As of the close of business February 9, 2009, HSP has not sought to pick up the foundation permit at L&I nor contacted anyone at the City regarding the permit.



Andrew Altman, Deputy Mayor
and Director of Commerce
City of Philadelphia

Sworn to and subscribed
before me this 10th day
of February, 2009.





CERTIFICATE OF SERVICE

I, Andrew Ross, hereby certify that I caused to be served, in the manner indicated below, a true and correct copy of the foregoing **Application for Leave to File a Supplemental Response to HSP Gaming's Application for Enforcement** to the following persons in the manner indicated below:

By hand:

Stephen A. Cozen, Esquire
F. Warren Jacoby, Esquire
Jennifer M. McHugh, Esquire
Cozen O'Connor
1900 Market Street
Philadelphia, PA 19103
Counsel for HSP Gaming, L.P.

By hand:

Richard A. Sprague, Esquire
Thomas A. Sprague, Esquire
Charles J. Hardy, Esquire
Sprague & Sprague
135 S. 19th Street, Suite 400
The Wellington Building
Philadelphia, PA 19103
Counsel for HSP Gaming, L.P.

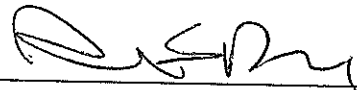
By first class mail:

William H. Lamb, Esquire
Scot R. Withers, Esquire
Lamb McErlane, P.C.
24 East Market Street
P.O. Box 565
West Chester, PA 19381-0565
Counsel for HSP Gaming, L.P.

By hand:

James W. Christie, Esquire
Brian C. Vance, Esquire
Matthew H. Shusterman, Esquire
Christie, Pabarue, Mortensen and Young, P.C.
1880 John F. Kennedy Boulevard, 10th Floor
Philadelphia, PA 19103
Counsel for City Council of the City of Philadelphia

Date: February 11, 2009



Andrew S. Ross
City of Philadelphia Law Department
1515 Arch Street
Philadelphia, PA 19102-1595