



IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

AMAZING TICKETS, ET AL.
Plaintiff

Case No: CV-17-878348

Judge: MICHAEL J RUSSO

CITY OF CLEVELAND, ET AL.
Defendant

JOURNAL ENTRY

85 DISP.PRE-TRL - FINAL

07/09/2018: PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT, FILED 03/19/2018, IS DENIED.
DEFENDANTS' COMBINED MOTION FOR SUMMARY JUDGMENT, FILED 03/19/2018, IS GRANTED. OSJ. FINAL.
COURT COST ASSESSED TO THE PLAINTIFF(S).
PURSUANT TO CIV.R. 58(B), THE CLERK OF COURTS IS DIRECTED TO SERVE THIS JUDGMENT IN A MANNER
PRESCRIBED BY CIV.R. 5(B). THE CLERK MUST INDICATE ON THE DOCKET THE NAMES AND ADDRESSES OF ALL
PARTIES, THE METHOD OF SERVICE, AND THE COSTS ASSOCIATED WITH THIS SERVICE

NO SIGNATURE REQUIRED

Judge Signature

Date

CLERK OF COURTS
CUYAHOGA COUNTY

2019 JAN 15 P 4: 31

FILED

STATE OF OHIO)
) SS:
CUYAHOGA COUNTY)

IN THE COURT OF COMMON PLEAS

CASE NO. CV-17-878348

AMAZING TICKETS, INC.)
)
) Plaintiff,)
)
) Vs.)
)
) THE CITY OF CLEVELAND, ET AL.)
)
) Defendants.)

JUDGMENT ENTRY, WITH OPINION

This cause is before the court on plaintiff Amazing Tickets, Inc.'s ("Amazing Tickets") amended complaint for declaratory judgment, filed October, 20, 2017, against defendants the City of Cleveland ("City") and Dedrick Stephens ("Stephens"), the Commissioner of Assessments and Licenses for the City. Amazing Tickets seeks the following declarations from the court:

- C.O. 195 is unconstitutional as applied to the plaintiff and as written;
- C.O. 195 is not applicable to the plaintiff.

The parties filed cross-motions for summary judgment and briefs in opposition.

The City attached to its motion for summary judgment a document entitled "§ 1 General Powers," which the court interprets to be the first section of the Charter of the City of Cleveland; "Chapter 195—Admissions Tax" of the Cleveland Codified Ordinances; and excerpts from the properly filed January 31, 2018 deposition transcript of Stephens. Amazing Tickets attaches to its motion transcripts from the same deposition; the admissions tax ordinances; a March 22, 2011 subpoena from the City to Amazing Tickets with appendixes entitled, "Deposition Exhibit C"; a May 11, 2015 administrative subpoena from the City to Amazing Tickets with appendixes entitled, "Deposition Exhibit D"; a October 27, 2011 letter from the City to Mark Klang, the shareholder, officer, and director of Amazing Tickets, with attachments entitled, "Deposition Exhibit E"; an admission tax reporting form entitled, "Deposition Exhibit F"; and the City's Application for Certificate of Registration for the Payment of Admission Taxes entitled, "Deposition Exhibit G." Amazing Tickets attached the affidavit of Mark Klang to its brief in opposition. A deposition of Stephens was filed, but no exhibits were attached to it. Neither party filed reply briefs.

Amazing Tickets objected to the evidentiary quality of the City's evidence. Therefore, under *Biskupich v. Westbay Manor Nursing Home*, 33 Ohio App.3d 220, 222-23 (1986) and *Brown v. Casualty Insurance Co.*, 63 Ohio App. 2d 87 (8th Dist. 1978), this court will not consider the exhibits to the City's brief in support of its motion for summary judgment. The court will consider all other evidentiary materials filed in the case in deciding summary judgment for both parties, including the exhibits to Amazing Ticket's brief, to which no objection was made. See *Id.*, *Spagnola v. Spagnola*, 2008-Ohio-3087 (improper summary judgment evidence may be considered by the trial court if no objection is made to it); *Millstone v. 270 Main Street*, 2012-Ohio-2562 ¶61 ("There is no specific requirement that the materials support summary judgment be attached to the motion for summary judgment as long as they have been filed in the case prior to the entry of judgment").

FACTS

The facts are not in dispute. Mark Klang is the sole shareholder, officer, and director of Amazing Tickets, a ticket broker located in Cuyahoga County in Mayfield Village, Ohio. Amazing Tickets purchases and resells tickets to entertainment events, sometimes above face value, and it conducts all business through the internet and telephone. Pursuant to C.C.O. Chapter 195, the City assesses an admission tax on entities charging admission and issuing tickets to enter a venue, typically for sporting and entertainment events.

The parties particularly dispute the applicability to Amazing Tickets of CCO §195.02, which reads:

There is hereby levied and imposed upon every person who pays an admission charge to any one place: . . . (b) A tax of eight percent (8%) on the excess of the amounts paid for tickets or cards of admission to theaters, operas and other places of amusement, sold at newsstands, hotel and places other than the ticket offices of such theaters, operas or other places of amusement, over and above the amounts representing the established price therefore at such ticket offices, such tax to be returned and paid in the manner provided in Section 195.04 by the person selling the ticket;

The City routinely requests compliance with this section from various ticket brokers, including Amazing Tickets, through informal requests and subpoenas. The City is amenable to negotiating agreements with ticket brokers regarding taxes assessed pursuant to these ordinances.

ANALYSIS

The City possesses the power of taxation, as derived from the Ohio Constitution but limited by the General Assembly. *Cincinnati Bell Telephone Co. v. Cincinnati*, 81 Ohio St.3d 591, 602 (1998). A tax

enacted by a municipality is presumed to be valid in the absence of an express statutory prohibition. *Id.* at 601. In order to overcome the presumption of validity, a challenger to a municipal tax must present evidence showing beyond a reasonable doubt the incompatibility of the taxing ordinance with a statute or the Constitution. *Id.* The court must strictly construe any taxing ordinance and resolve any doubt in favor of the taxpayer. *Columbia Gas Transm. Corp. v. Levin*, 2008-Ohio-511.

The state admissions tax act was enacted in 1933 and became effective July 1 of that year. *Estelle Realty, Inc. v. Mayfield Hts.*, 176 Ohio St. 367, 369, 199 N.E.2d 875 (1964). The state admissions tax act was repealed effective on October 1, 1947. *Id.* The right of Ohio municipalities to levy an admission tax following the state's repeal of the admission tax has been long recognized. *Id.*

Amazing Tickets argues that an admission tax is only applicable to the original transaction providing a patron the right to enter an event, and that subsequent sales of the ticket do not involve the host of the event and therefore do not qualify for the admission tax. "Quite simply," Amazing Tickets argues, "ticket brokers/secondary market are not subject to an admission tax" and it characterizes the application of CCO Chpt. 195 to ticket brokers as an "income tax" on brokers. Amazing Tickets presents no binding authority to support its argument. To the contrary, the case law reviewed by this court likens admissions taxes to sales taxes, considering that the tax is for a physical item—a ticket. Some of such statutes place a sales tax on the sale of admissions. *J. Sutter's Mill, Inc. v. Revenue Cabinet, Commonwealth*, 793 S.W.2d 838, 840 (Ky.App.1990). Additionally, the original state admission tax contemplated the resale of tickets and placed the onus of tax collection on the reseller of tickets:

Upon tickets or cards of admission to theaters, operas, and other places of amusement, sold at news stands, hotels, and places other than the ticket offices of such theaters, operas, or other places of amusement, at a price in excess of the sum of the established price therefor at such ticket offices, plus the amount of any tax imposed under paragraph (1) of this section, a tax equivalent to ten per centum of the amount of such excess; such tax to be returned and paid in the manner and subject to the interest provided in section 5 of this act, by the person selling such tickets;

O.R.C. sec 5544-2(2). Further, while the case law on the resale of tickets is scant, every case addressing this issue that was reviewed by this court upholds the constitutionality and validity of admissions taxes to the ticket brokerage industry. *See Mr. B's, Inc. v. City of Chicago*, 302 Ill.App.3d 930, 931, 236 Ill.Dec. 127, 706 N.E.2d 1001 (1998) (The services that the ticket brokers provide are

incidental to the sale of the ticket. The price of tickets is determined solely by market forces. This fact does not transform the transaction from a sale to a service.)

Amazing Tickets takes great issue with the City's ability and authority to issue subpoenas, but provides no support to establish that the City is without subpoena power. In fact, such power was previously adjudicated between these parties and upheld by the Court of Appeals. *City of Cleveland v. Amazing Tickets, Inc.*, 2013-Ohio-4911. This court does not find that the issuance of such subpoenas violates the Fifth Amendment rights of Amazing Tickets. Nor does the court find that the City lacks an appellate process to contest the subpoenas or the tax bills. Relatedly, the court finds no unconstitutional overreach regarding the City's dissimilar treatment of Amazing Tickets and other ticket-selling persons and venues. Amazing Tickets has not established the unconstitutionality of CCO Chap. 195 beyond a reasonable doubt. *Regal Cinemas, Inc. v. Mayfield Heights*, 137 Ohio App.3d 61, 67 (8th Dist. 2000).

3) CONCLUSION

Having reviewed the evidence filed in support of and in opposition to the motions for summary judgment, and having considered arguments and evidence, the court grants the motion for summary judgment filed by the City as there is no genuine issue of material fact and, after construing the undisputed evidence in a light most favorable to the non-moving parties, reasonable minds can come only to the conclusion that defendant the City is entitled to judgment in its favor as a matter of law. Further, the court finds no claims that remain against Stephens, as Amazing Tickets' only remaining claims are for declaratory relief regarding the City's ordinance. For these same reasons, the motion for summary judgment filed by Amazing Tickets is denied.

Accordingly, the Court declares that:

- C.O. 195 is constitutional as applied to the plaintiff and as written;
- C.O. 195 is applicable to the plaintiff.

Judgement is hereby rendered in favor of the City and Stephens and against Amazing Tickets on all claims.

So ordered.



Michael J. Russo, Judge

7-9-2018
Date

CERTIFICATE OF SERVICE

A copy of the foregoing Judgment Entry, with Opinion was sent by e-mail this 9th day of July,

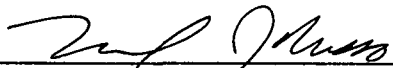
2018 to:

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MICHAEL J. RUSSO, JUDGE