UNITED STATES DISTRICT COURT
DISTRICT COURT OF RHODE ISLAND

MARISSA LACOSTE
Plaintiff

v.

RHODE ISLAND STATE POLICE,
LIEUTENANT TIMOTHY ALLEN JR.
individually and in his capacity as
OFFICER IN CHARGE OF THE
GAMING ENFORCEMENT OF THE
RHODE ISLAND STATE POLICE and
CORPORAL LAWENS FEVRIER,
individually and in his capacity as a
OFFICER OF THE RHODE ISLAND
STATE POLICE.
Defendants

C.A. No.

VERIFIED COMPLAINT

INTRODUCTION

This action arises out of the Defendants' order, issued pursuant to Chapter 42-61.3 of the Rhode Island General Laws, permanently excluding Marissa Lacoste from the premises of Twin River Casino, her place of employment, after she declined to assist the State Police in a criminal investigation. The purported basis of the exclusion order was Ms. Lacoste's possession of a non-criminal amount of marijuana for which she was issued and paid a civil traffic citation.

Section 42-61.3-1(g)(5) (the "Statute") of the Rhode Island General Laws empowers the Gaming Enforcement Unit of the Rhode Island State Police to permanently eject or exclude persons from Twin River if they have "allegedly violated any criminal law, or when the division of state lottery or the casino gaming unit determines that the person's conduct or reputation is such that his or her presence within the gaming facility may compromise the honesty and integrity of casino gaming activities or interfere with the orderly conduct of casino gaming

activities." (emphasis added) Chapter 42-61.3 does not provide any means to challenge or appeal such an order and the Rhode Island State Police have failed to adopt via regulation or otherwise a process by which an aggrieved individual can challenge her exclusion. This is an action brought pursuant to 42 U.S.C § 1983 challenging that exclusion order and the constitutionality of Chapter 42-61.3 on its face and as applied by the Rhode Island State Police on the grounds that (i) the order and the Statute under whose authority it was issued violate the Fourteenth Amendment to the United States Constitution by failing to provide Ms. Lacoste with procedural due process, (ii) the statute is unconstitutionally vague.

PARTIES

1. Plaintiff, Marissa Lacoste is a resident of Warwick, Rhode Island.

2. The Rhode Island State Police is a Division of the Rhode Island Department of Public Safety, established by Section 42-28-2 of the Rhode Island General Laws.

3. Section 42-61.3-1 of the Rhode Island General Laws directs that the Superintendent of the Rhode Island State Police establish a Gaming Enforcement Unit.

4. The Superintendent has established the Gaming Enforcement Unit.

5. Lieutenant Timothy Allen, Jr. is sued individually and in his capacity as the Officer in Charge of the Gaming Enforcement Unit of the Rhode Island State Police.

6. Corporal Lawens Fevrier is sued individually and in his capacity as an Officer of the Rhode Island State Police.

JURISDICTION AND VENUE

7. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 because this matter involves claims pursuant to 42 U.S.C § 1983 and the United States Constitution.

8. Venue is proper in this district pursuant to 28 U.S.C. § 1391 because a substantial part of the events giving rise to the claims made herein occurred in Rhode Island.

9. Supplemental jurisdiction over state law claims is conferred by 28 U.S.C. §1367 because the claims are so related to the Section 1983 that they form part of the "case or controversy" within the meaning of that statute.

FACTS COMMON TO ALL COUNTS

10. Marissa Lacoste has been employed as a waitress by UTRG, Inc., which operates Twin River Casino ("Twin River") in Lincoln, Rhode Island.

11. The terms and conditions of Ms. Lacoste's employment at Twin River are governed, *inter alia*, by a collective bargaining agreement between UTRG, Inc. d/b/a Twin River Casino and UNITE HERE, Local 26 (the "Union").

12. Pursuant to the aforementioned collective bargaining agreement, Ms. Lacoste's employment at Twin River may only be terminated for just cause.

13. Twin River is a "gaming facility" within the meaning of Title 41 of the Rhode Island General laws.

14. In connection with her employment as a waitress at Twin River, Ms. Lacoste is required by Rhode Island Law to hold a "Service Employee" license issued by the Rhode Island Department of Business Regulation, Division of Commercial Licensing and Racing & Athletics.

15. The Department of Business Regulation has promulgated regulations that establish standards and procedures for the issuance of licenses to, *inter alia*, employees of gaming facilities.

16. Section 41-4-9.1 provides that the Department may suspend or revoke a license issued to an employee of a gaming facility for good cause after a hearing held in accordance with the Rhode Island Administrative Procedures Act, Chapter 42-35.

17. The Department of Business Regulation has adopted regulations governing the conduct of such administrative hearings.

18. At all times relevant to this action, Ms. Lacoste has been in possession of a valid "Service Employee" license issued by the Department of Business Regulation, Division of Commercial Licensing and Racing & Athletics.

19. The Department of Business of Regulation has not sought to suspend or revoke Ms. Lacoste's license.

20. Section 42-61.3-1 of the Rhode Island General Laws provides in relevant part that:

> members of the gaming enforcement unit shall have the power to enter the premises of a gaming facility licensed by the division of state lottery at any time, to the extent permissible under the constitutions of the state of Rhode Island and the United States of America, through its investigators and law enforcement personnel at any time without notice for the following purposes.....
>
> (5) To eject, exclude or authorize the ejection or exclusion of a person from a gaming facility if the person allegedly violated any criminal law, or when the division of state lottery or the casino gaming unit determines that the person's conduct or reputation is such that his or her presence within the gaming facility may compromise the honesty and integrity of casino gaming activities or interfere with the orderly conduct of casino gaming activities..... (emphasis added).

21. Chapter 42-61.3-1 does not provide a process or procedure by which an individual who has been ejected or excluded from a gaming facility by order of the Gaming Enforcement Unit may challenge, appeal or otherwise have an opportunity to be heard regarding his or her exclusion.

22. Neither the Rhode Island State Police, nor its Gaming Enforcement Unit have adopted any rules or regulations establishing a process by which an individual whom the Unit has excluded from a gaming facility may challenge that exclusion or have an opportunity to be heard regarding it.

23. Neither the Rhode Island State Police, nor its Gaming Enforcement Unit have adopted any rules or regulations addressing what standards the Unit employs in determining whether a "person's conduct or reputation is such that his or her presence within the gaming facility may compromise the honesty and integrity of casino gaming activities or interfere with the orderly conduct of casino gaming activities."

24. On Friday, January 20, 2017 Ms. Lacoste worked the 4:00 a.m. to 10:00 a.m. shift at Twin River.

25. At the end of her shift Ms. Lacoste walked to her vehicle, which was located in the Twin River parking lot.

26. After Ms. Lacoste entered her vehicle, an individual approached her car and banged on the window.

27. The individual was dressed in plain clothes and identified himself as a member of the State Police. The individual was Detective Lawens Fevrier

28. Defendant Fevrier is and was at all relevant times an Officer in the Rhode Island State Police. Upon information and belief Defendant Fevrier was assigned to the Gaming Enforcement Unit.

29. Defendant Fevrier was accompanied by Detective Richard D. Ptaszek.

30. Defendant Fevrier demanded that Ms. Lacoste "hand over the weed."

31. After some back and forth, Ms. Lacoste produced a baggie containing less than one ounce of marijuana. Defendant Fevrier intimated that Ms. Lacoste was in serious trouble and could go to jail.

32. Under Rhode Island law, it is not a crime to possess less than one ounce of marijuana.

33. Instead possession of less than one ounce of marijuana is treated as a civil traffic violation subject to a fine.

34. Defendant Fevrier prepared an incident report regarding, *inter alia*, his seizure of marijuana from Ms. Lacoste.

35. Under the heading status, the report indicates "No Crime Involved."

36. After obtaining the marijuana from Ms. Lacoste, Defendant Fevrier demanded that she go with him to the State Police's Lincoln Woods Barracks.

37. Ms. Lacoste complied with Defendant Fevrier's directive.

38. At the Lincoln Woods Barracks, Ms. Lacoste was questioned by Defendant Fevrier and Detective Ptaszek.

39. The Detectives told Ms. Lacoste that if she did not assist them in an ongoing criminal investigation at Twin River they could cause her to lose her job at the casino.

40. Ms. Lacoste cooperated with the State Police for a period of time.

41. In February 2017, Ms. Lacoste informed Defendant Fevrier that she was no longer willing to assist the State Police.

42. Ms. Lacoste was on vacation in Australia from March 1 through March 23, 2017.

43. On or about March 18, 2017, Defendant Fevrier issued a traffic summons to Ms. Lacoste.

44. The traffic summons indicated that it was issued pursuant to R.I.G.L. § 21-28-4.01(c)(III) and described the violation as "Possession of Marijuana, 1 oz or less."

45. The summons falsely indicated that it was delivered "in hand." Ms. Lacoste was not in the country at the time the summons was issued. Upon information and belief, the summons was mailed to her home.

46. In addition to issuing the summons, Defendant Fevrier and Defendant Allen also communicated with the Rhode Island Department of Business Regulation and requested that Ms. Lacoste's license be immediately revoked.

47. On or about March 24, 2017 Ms. Lacoste and a representative of the Union met with the Twin River's head of Human Resources and its Food and Beverage Director. They discussed the civil citation which Ms. Lacoste had received for possessing less than an ounce. marijuana. The two management representatives indicated that the civil citation did not impact Ms. Lacoste's employment and that she could return to work on her next scheduled shift.

48. Ms. Lacoste reported to work at Twin River on her next scheduled shift.

49. Instead of being permitted to work her shift, Ms. Lacoste was informed by Twin River's security guards that she had been permanently excluded from Twin River by the order of the State Police.

50. Ms. Lacoste was provided a letter dated March 26, 2017 signed by Twin River's Director of Security. The letter provided in relevant part: "You were involved in an incident while in Twin River Casino. Due to your actions, you are now **permanently ejected** from entering the casino." Upon information and belief, the Director Security issued the March 26, 2017 in accord with a directive from the Rhode Island State Police.

51. The letter did not provide any further information regarding the "incident" which had led to Ms. Lacoste's permanent ejection.

52. The letter did not describe any process or procedure by which Ms. Lacoste could appeal, challenge or have an opportunity to be heard regarding her permanent ejection from Twin River.

53. Neither the Rhode Island State Police, Defendant Allen nor Defendant Fevrier communicated directly with Ms. Lacoste regarding her permanent ejection from her place of employment, Twin River.

54. The Rhode State Police did not advise Ms. Lacoste of any process or procedure by which Ms. Lacoste could appeal, challenge or have an opportunity to be heard regarding her permanent ejection from Twin River.

55. Ms. Lacoste has been unable to continue her employment at Twin River as the result of the Defendants' order permanently ejecting her from the casino.

56. Twin River has indicated to Ms. Lacoste and her collective bargaining representatives that but for the Defendants' ejection of Ms. Lacoste from the casino she would be able to continue her employment at Twin River.

57. Through counsel Ms. Lacoste contacted the Rhode Island State Police in an effort to understand the basis of her permanent ejection and determine whether a process or procedure existed to challenge that ejection.

58. In an email sent on April 25, 2017, Paul L. Andrews, Chief Legal Counsel for the Rhode Island Department of Public Safety stated "Marissa Lacoste was barred from Twin River Casino under Title 42-61.3-4 (G-5) Gaming Enforcement Unit. She was barred after her arrest

for possession of one ounce of marijuana, a misdemeanor.... The statute does not have an appeal process."

59. Ms. Lacoste has not been arrested or convicted for possession of marijuana. Ms. Lacoste was issued a civil traffic citation for possession of less than an ounce of marijuana. She has paid the fine associated with that civil traffic citation.

60. Following Attorney Andrews' email, Ms. Lacoste, through counsel, continued to communicate with the Rhode Island State police requesting an opportunity to be heard regarding her permanent ejection from Twin River, her place of employment.

61. In a letter dated July 26, 2017, Defendant Allen stated:

> This letter is in response to your request for a meeting with representatives of the Rhode Island State Police-Gaming Enforcement Unit and your client, Marissa Lacoste. Rhode Island General Law 42-61.3-1"Gaming Enforcement Unit", identifies the duties and responsibilities for the Gaming Enforcement Unit and provides the authority to carry out their obligations. As it relates to Ms. Lacoste and her actions while employed by Twin River Casino, refer to the following subsection of 42-3.1-1;
> (5) To eject, exclude or authorize the ejection or exclusion of a person from a gaming facility if the person allegedly violated any criminal law, or when the division of state lottery or the casino gaming unit determines that the person's conduct or reputation is such that his or her presence within the gaming facility may compromise the honesty and integrity of casino gaming activities or interfere with the orderly conduct of casino gaming activities. Nothing herein shall preclude any other Law enforcement or regulatory agency from having similar authority as otherwise permitted by law or regulation;
>
> Based upon the investigation conducted by members of the Gaming Enforcement Unit, it was determined that Ms. Lacoste's conduct warranted a permanent ejection from Twin River Casino. At this time, the State Police-Gaming Enforcement Unit is declining your request for a meeting with your client, Marissa Lacoste and her union representatives.

62. The Defendants' permanent ejection of Ms. Lacoste from Twin River deprived her of her liberty and her property.

63. The Defendants did not afford Ms. Lacoste due process in permanently ejecting Ms. Lacoste from Twin River.

64. The Defendants' conduct violates the Fifth and Fourteenth Amendments to the United States Constitution.

65. As a result of the Defendants' conduct Ms. Lacoste has been damaged. She has suffered lost wages and fringe benefits as well as emotional distress.

COUNT I
(Deprivation of Fifth and Fourteenth Amendment Rights Under 42 U.S.C. 1983)

66. Plaintiff incorporates the allegations contained in paragraphs 1 through 65 of the Complaint as if fully set forth herein.

67. At all times relevant thereto Defendants were acting under the color of law.

68. Defendants' order permanently ejecting Ms. Lacoste from Twin River deprived the Plaintiff of her liberty and her property.

69. Ms. Lacoste was entitled to notice at the time of her exclusion from Twin River as to the basis of that order and a meaningful opportunity to be heard.

70. The Defendants did not provide Ms. Lacoste with notice of what conduct, if any on her part, justified her permanent ejection, or otherwise give Ms. Lacoste an opportunity to be heard before her permanent ejection.

71. Subsequent to her permanent ejection from Twin River, the Defendants did not provide Ms. Lacoste with any means or process by or through which she could contest the deprivation of her property interest in her continued employment with Twin River and/or her liberty interest in being permitted to enter onto the premises of Twin River.

72. The above referenced conduct constitutes a violation of the Plaintiff's rights to procedural due process secured by the Fifth and Fourteenth Amendments to the United States Constitution.

73. As a result of the Defendants' conduct Plaintiff has sustained damages.

WHEREFORE, Plaintiff demands judgment against Defendants for:

a. An order of this Court temporarily restraining the Defendants from excluding the Plaintiff from Twin River.

b. A preliminary and permanent injunction requiring the Rhode Island State Police to rescind their order ejecting the Plaintiff from Twin River;

c. An award for compensatory damages, including, but not limited to, back pay and emotional distress.

d. An award of punitive damages;

e. An award of Plaintiffs' attorneys fees and costs; and

f. Such other relief as this Court deems appropriate.

COUNT II
Declaratory Judgement – Procedural Due Process

74. Plaintiff incorporates the allegations contained in paragraphs 1 through 73 of the Complaint as if fully set forth herein.

75. There exists an actual controversy between the parties regarding the Constitutionality of Rhode Island General Laws Section 42-3.1-1(g)(5).

76. Section 42-3.1-1(g)(5) denies the Plaintiff the right to procedural due process in violation of the Due Process Clause of the Fourteenth Amendment to the United States Constitution

WHEREFORE, Plaintiff respectfully requests that this Court enter judgment in her favor and against Defendants as follows:

(a) Grant temporary and preliminary injunctive relief restraining the State Police from enforcing Rhode Island General Laws Section 42-3.1-1(g)(5);

(b) After hearing on the merits, issue a declaratory judgment that Rhode Island General Laws Section 42-3.1-1(g)(5) is unconstitutional both on its face and as applied to Plaintiff and grant corresponding injunctive relief permanently enjoining its enforcement;

(c) Grant such other and further relief as the Court deems just and proper.

COUNT III
Declaratory Judgement – Vagueness

77. Plaintiff incorporates the allegations contained in paragraphs 1 through 76 of the Complaint as if fully set forth herein.

78. There exists an actual controversy between the parties regarding the Constitutionality of Rhode Island General Laws Section 42-3.1-1(g)(5).

79. A vague statute denies fair notice of the standard of conduct to which a citizen is held accountable.

80. A statute is void for vagueness "if it is an unrestricted delegation of power, which in practice leaves the definition of its terms to law enforcement officers, and thereby invites arbitrary, discriminatory and overzealous enforcement." *See Gregory v. City of Chicago*, 394 U.S. 111, 120, 89 S.Ct. 946, (951), 22 L.Ed.2d 134 (1969) (Black, J., concurring).

81. The Statute's empowerment of the Gaming Enforcement to permanently exclude or expel individuals from Twin River because they "allegedly violated any criminal law, or when the division of state lottery or the casino gaming unit determines that the person's conduct or

reputation is such that his or her presence within the gaming facility may compromise the honesty and integrity of casino gaming activities or interfere with the orderly conduct of casino gaming activities" is unconstitutionally vague and an unrestricted delegation of power.

82. The Statute denies due process to Plaintiff both on its face and as applied, in violation of the Fifth and Fourteenth Amendments to the United States Constitution.

WHEREFORE, Plaintiff respectfully requests that this Court enter judgment in her favor and against Defendants as follows:

(a) Grant temporary and preliminary injunctive relief restraining the State Police from enforcing Rhode Island General Laws Section 42-3.1-1(g)(5);

(b) After hearing on the merits, issue a declaratory judgment that Rhode Island General Laws Section 42-3.1-1(g)(5) is unconstitutional both on its face and as applied to Plaintiff and grant corresponding injunctive relief permanently enjoining the statute's enforcement;

(c) Grant such other and further relief as the Court deems just and proper.

COUNT IV
Abuse of Process

83. Plaintiff incorporates the allegations contained in paragraphs 1 through 82 of the Complaint as if fully set forth herein.

84. The Defendants ordered that Ms. Lacoste to be excluded from Twin River and recommended that the Department of Business Regulation revoke her gaming license for an ulterior and wrongful purpose.

85. As a direct and proximate result of Defendants' Abuse of Process, Ms. Lacoste has suffered and will continue to suffer injury.

WHEREFORE, Plaintiff Marissa Lacoste respectfully demands that judgment be entered in his favor and against the Defendants, jointly and severally, that she be awarded compensatory damages, costs, interest and reasonable attorneys' fees, and that she be awarded such other and further relief as this. Court may deem just and proper.

COUNT V
Tortious Interference with Contractual Relations

86. Plaintiff incorporates the allegations contained in paragraphs 1 through 85 of the Complaint as if fully set forth herein.

87. Ms. Lacoste's employment at Twin River is governed by a valid collective bargaining agreement, pursuant to which her employment could only be terminated for just cause.

88. The Defendants had actual or constructive knowledge of that contractual relationship.

89. By the above referenced conduct, the Defendants intentionally and without justification interfered with Ms. Lacoste's contractual relationship.

90. As a direct and proximate result of the Defendants intentional interference, Ms. Lacoste has suffered injury and damage.

WHEREFORE, Plaintiff Marissa Lacoste respectfully demands that judgment be entered in his favor and against the Defendants, jointly and severally, that she be awarded compensatory damages, costs, interest and reasonable attorneys' fees, and that she be awarded such other and further relief as this. Court may deem just and proper.

Plaintiff demands a trial by jury on all issues triable to a jury and designates James A. Musgrave as trial counsel.

Verification

The undersigned, being duly sworn upon all, hereby depose and say:

1. I am the plaintiff in this action;

2. I have read the foregoing complaint, and hereby verify that the facts of matters contained in it are, to the best of my knowledge and belief, true and accurate and that as to those matters that are stated "upon information and belief" I also believe them to be accurate as stated.

Marissa Lacoste

Marissa Lacoste

Subscribed and sworn before me in Providence, Rhode Island, this 13th day of October 2017.

Notary Public
#755374
5/15/2021

PLAINTIFF,
LACOSTE, MARISSA
By Her Attorney(s),

/s/ James A. Musgrave

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October 31, 2017

JAM:jam
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