

IN THE CIRCUIT COURT FOR ANNE ARUNDEL COUNTY, MARYLAND

MARYLAND SHALL ISSUE, INC., *et al.* *

Plaintiffs, *

v. * Case No.: C-02-CV-22-000217

ANNE ARUNDEL COUNTY, MD, *

Defendant. *

* * * * *

**DEFENDANT ANNE ARUNDEL COUNTY’S MEMORANDUM OF LAW
REGARDING MOOTNESS**

Defendant, Anne Arundel County, Maryland, by and through Hamilton Tyler, Deputy County Attorney, and M. Brooke McKay, Assistant County Attorney, files this Memorandum of Law in preparation for the July 11, 2022 motions hearing. The County will be prepared to present arguments relative to the pending Motion to Dismiss and Motions for Summary Judgment. However, as set forth during the May 24, 2022 hearing, the County asserts that due to the introduction of and presumably future passage of County Bill 70-22, “Public Safety – Security Measures for Sale of Firearms – Trigger” by the County Council on June 21, 2022, which amended Bill 109-21, the issues raised by the Plaintiffs in their Complaint and subsequent Motions are now moot. Thus, the Court need not reach a determination on the merits of the Motions, but rather the case should be dismissed because the issues therein are moot and there is no controversy between the parties.

BACKGROUND REGARDING COUNTY BILL 70-22

Counsel for the County’s representation to the Court regarding the introduction of the amendment was entirely accurate at the time it was made at the May 24, 2022 hearing. Contrary

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to Plaintiffs' allegation, the County may not unilaterally introduce legislation before the County Council. Instead, the Chair of the County Council, as a courtesy to the administration, introduces legislation that the County proposes. However, this process is subject to scheduling issues. Bills and amendments may only be introduced at a Council meeting.

The amendment to the legislation was indeed introduced by Councilmember Andrew Pruski, the Councilmember who introduced the original bill. County Bill 70-22 is attached as Exhibit 1. Because of the intense legislative schedule of the County Council in early June due to annual budget hearings and related budget bills, the amendment was not introduced until June 21, 2022. It is expected that the bill will be voted upon at the Council meeting of July 18, 2022. It is anticipated that amendment will be passed by the County Council. Thereafter, it is expected that measure will be signed into law by the County Executive no later than 17 days later, or by August 4, 2022.¹ The amendment would then take effect 45 days thereafter or September 18, 2022.

As indicated previously, the ordinance would not be enforced under its current provisions until August 23, 2022 against existing dealers. The County will not enforce the ordinance at all should the amendment pass as expected, unless and until the effective date contingency occurs if the State bill is voided or repealed sometime in the future. Thus, there will be no effect whatsoever upon the Plaintiffs. Plaintiffs' claims that they will somehow be adversely affected and that there are timeliness issues regarding their challenge to the ordinance are wholly without merit. As detailed below, Plaintiffs' challenges are mooted in total by the amendment to the ordinance.

¹ Anne Arundel County Charter § 307(j) provides: "Upon the passage of any ordinance by the County Council, with the exception only of such measures as may in this Charter be made expressly exempt from the executive veto, the same shall be presented within five (5) days (exclusive of Saturdays, Sundays and legal holidays of the State or Nation) to the County Executive for his approval or disapproval, and within ten (10) days after such presentation he shall return any such ordinance to the County Council with his approval endorsed thereon or with a statement in writing of his reasons for not approving the same."

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LAW

The Maryland Uniform Declaratory Judgments Act states, “a court may grant a declaratory judgment or decree in a civil case, if it will serve to terminate the uncertainty or controversy giving rise to the proceeding, and if: (1) An actual controversy exists between contending parties; (2) Antagonistic claims are present between the parties involved which indicate imminent and inevitable litigation; or (3) A party asserts a legal relation, status, right, or privilege and this is challenged or denied by an adversary party, who also has or asserts a concrete interest in it.” Md. Code Ann., Cts. & Jud. Proc. § 3-409(a).

The existence of a justiciable controversy is a prerequisite for a request for declaratory relief. The Court “has discretion to entertain or decline the declaratory judgment action based on an assessment of its usefulness or likeliness to terminate the controversy.” *Polakoff v. Hampton*, 148 Md. App. 13, 32, 810 A.2d 1029, 1039 (2002). The court in *Polakoff* held that a declaratory judgment is moot when there is no useful purpose. A question is moot if, at the time it is presented to the Court, there is no longer an existing controversy between parties for which the Court can issue an effective remedy. *Atty. Gen. v. Anne Arundel Cnty. Sch. Bus Contractors Ass’n, Inc.*, 286 Md. 324, 327, 407 A.2d 749, 751 (1979). A justiciable controversy exists when “there are interested parties asserting adverse claims upon a state of facts which must have accrued wherein a legal decision is sought or demanded.” *Patuxent Oil Co. v. Cnty. Comm’rs of Anne Arundel Cnty.*, 212 Md. 543, 548, 129 A.2d 847, 849 (1957). However, a controversy is not justiciable if it is not ripe or becomes moot before the case can be decided. *Stevenson v. Lanham*, 127 Md. App. 597, 612, 736 A.2d 363, 371 (1999).

The Court in *Stevenson v. Lanham*, 127 Md. App. 597, 617, 736 A.2d 363, 374-375 (1999) opined that it is necessary to examine the conduct at issue to determine the existence of a

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controversy. In the instant case the conduct in question is the enforcement of County legislation which Plaintiffs argue infringes upon their rights. With the anticipated passage of County Bill 70-22, the enforcement of County Bill 109-21 is no longer at issue and Plaintiffs' rights are no longer in question or affected. With the introduction of County Bill 70-22, the County is voluntarily discontinuing the conduct in question. The nonexistence of the conduct is of primary concern in determining a justiciable controversy. *Atty. Gen.*, 286 Md. at 328, 407 A.2d at 752. Because the County is essentially deferring to the State legislation the conduct in question (enforcement) has been discontinued. Therefore, the County's lack of conduct equates to a lack of a justiciable controversy. Both injunctive and declaratory relief require the presence of a justiciable controversy.

In *Attorney General v. Anne Arundel Cnty. Sch. Bus Contractors Ass'n, Inc.*, 286 Md. 324, 327, 407 A.2d 749, 751 (1979), when school bus operators threatened to withhold services from the County, an interlocutory injunction was obtained to restrain the drivers from refusing to provide service. The court later vacated the judgment and held that the controversy had become moot because the operators voluntarily discontinued the conduct which the judgment sought to enjoin. The court further reasoned that there was no effective remedy to impose.

By seeking a permanent injunction for the enforcement of the County's Bill, Plaintiffs in the instant case are requesting that the court impose a remedy which will prove to have no effect. Assuming the County Bill 70-22 is passed, there will be no enforcement of County Bill 109-21 unless the triggering event occurs which is highly unlikely. Furthermore, without the enforcement of County Bill 109-21, Plaintiffs rights are no longer at issue before the court because they are no longer required to comply with County legislation. An order to enjoin the enforcement of County Bill 109-21 would not prove to be an effective remedy. Analogous to the facts in *Attorney General*,

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the conduct is no longer occurring, which makes a request to enjoin enforcement an ineffective remedy.

In *Attorney General*, the Court noted that it could “decide a moot question where there is an imperative and manifest urgency to establish a rule of future conduct in matters of important public concern, which may frequently recur, and which, because of inherent time constraints, may not be able to be afforded complete appellate review.” *Id.at 328, 752*. Even though the court in *Attorney General* concluded the case involved a matter of important public concern, it still declined to decide the moot question. Similar to *Attorney General*, this Court should conclude that there is no imperative or manifest urgency to establish a rule of future conduct in this case. Based on the recent legislation by the County, there is a negligible possibility that the County law will ever go into effect and therefore will not impact the Plaintiffs, thus defeating any argument that this moot question should still be decided by this Court. Moreover, the Court would have ample time to address any issues in the extremely unlikely event that the triggering clause occurs.

Plaintiffs cite a plethora of federal law on injunctions, much of which is inapplicable. It is Maryland law that is controlling in this case. Much of the case law cited by Plaintiffs involves federal constitutional issues, issues that are not at play in the instance case.

There is a very telling statement in Plaintiffs’ Supplemental Memorandum on Mootness that reveals why they want a ruling from this Court despite the mootness and the fact that their rights are unaffected once the amendment becomes law. At page 13 of the memorandum, Plaintiffs state:

The County has not retreated one *iota* from its insistence that it has the power to enact Bill 109-21 under subsection 4-209(b)(1)(iii). It likewise has not offered any binding assurance that it will not elect to impose similar or additional requirements on dealers in the future under the same expansive and unlawful reading of subsection 4-

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209(b)(1)(iii) it used to justify its original enactment of Bill 109-21. Indeed it is doubtful that the County could ever be held to any such assurance.

Plaintiffs' Memorandum at p. 13.

The above statement makes clear why Plaintiffs continue to seek a ruling from this Court despite the fact that their rights are unaffected. Plaintiffs seek a ruling in this moot case so they can attempt to use it to attack potential future legislation enacted by the Anne Arundel County Council. Such a purpose is clearly improper in the current litigation. It is the reason for the mootness case law set forth above. To issue a ruling on the merits of the instant case when the Plaintiffs' rights are unaffected is essentially an advisory opinion which Maryland law does not permit.

Consistent with case law, this Court should avoid deciding future rights in anticipation of an event that may never happen. The Court in *Anne Arundel Cnty. v. Ebersberger*, 62 Md. App. 360, 368, 489 A.2d 96, 100 (1985) stated, "One thing is clear, however: 'In a declaratory judgment proceeding, the court will not decide future rights in anticipation of an event which may never happen, but will wait until the event actually takes place, unless special circumstances appear which warrant an immediate decision.'" *Id.* quoting *Tanner v. McKeldin*, 202 Md. 569, 579, 97 A.2d 449 (1953). Relative to the case at hand, pending County Bill 70-22 supports the contention that Plaintiffs' claims are nothing more than an anticipated event that will likely never occur. Therefore, this Court should deny the Plaintiffs' request for declaratory and equitable relief.

CONCLUSION

Plaintiffs' claims are mooted by the introduction and presumed passage of County Bill 70-22. Plaintiffs filed their Complaint for Declaratory and Equitable Relief and subsequent request for Preliminary Injunction on the premise that County Bill 109-21 was not a valid local law, is

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preempted by State law, and is otherwise unconstitutional. These claims will be moot upon passage of County Bill 70-22 because County Bill 109-21 will not impact Plaintiffs unless and until the triggering event of a final judicial or legislative action that voids or repeals MD Code PS § 5-145.1. Therefore, there is no justiciable controversy and the Court should deny the Plaintiffs' request for declaratory and equitable relief.

Respectfully submitted,

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CERTIFICATE OF SERVICE AND COMPLIANCE

I HEREBY CERTIFY that on the 8th day of July, 2022, I electronically filed the foregoing via this Court's MDEC electronic filing system, which served a copy of the foregoing on the parties listed below. I further certify that the foregoing contains none of the information prohibited by Md. Rule 20-201.

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