

VIRGINIA, IN THE CIRCUIT COURT OF THE COUNTY OF ALBEMARLE

RICHARD C. COLLINS,)
)
 Plaintiff,)
)
 v.) AT LAW NO.
)
 LEBO COMMERCIAL PROPERTIES, INC.,)
 serve: Charles Thomas Lebo)
 684 Berkmar Circle)
 Charlottesville, VA 22901)
)
 CHARLES THOMAS LEBO,)
 serve: same address as above)
)
 and SHOPPERS' WORLD, L.C.)
 serve: J. Page Williams)
 530 East Main Street)
 Charlottesville, VA 22902,)
)
 Defendants.)

MOTION FOR DECLARATORY JUDGMENT AND INJUNCTION

COMES NOW the Plaintiff, Richard C. Collins, and asks that a declaratory judgment be entered in his favor in accordance with Virginia Code 8.01-184. In support of this motion, the Plaintiff alleges and avers as follows:

1. Plaintiff Richard C. Collins is an adult resident of the City of Charlottesville, Commonwealth of Virginia, and a retired professor of the College of Architecture at the University of Virginia.
2. Defendant Lebo Commercial Properties, Inc. is a corporation formed and doing business pursuant to the laws of the Commonwealth of Virginia. Defendant Lebo Commercial Properties, Inc. is engaged in the business of purchasing, developing, leasing, and managing real

property for commercial uses. Upon information and belief, Defendant Lebo Commercial Properties, Inc. formed and has the controlling interest in Defendant Shoppers' World, L.C.

3. Defendant Charles Thomas Lebo is an adult, natural person who is a resident of the Commonwealth of Virginia. Upon information and belief, Defendant Lebo is the majority shareholder and managing officer of Lebo Commercial Properties, Inc. and was at all relevant times acting as an agent for Defendant Lebo Commercial Properties, Inc. and Defendant Shoppers' World, L.C.

4. Defendant Shoppers' World, L.C. is a limited liability company created and doing business pursuant to the laws of the Commonwealth of Virginia. Upon information and belief, Defendant Shoppers' World, L.C. owns the real property, commercial buildings, and other improvements known as the shopping center "Shoppers' World."

5. On or about April 5, 2005, the Plaintiff announced his candidacy for Delegate representing the 57th District of Virginia in the House of Delegates of the Virginia General Assembly. At all relevant times, the Plaintiff resided within the 57th District and otherwise was qualified for election to the House of Delegates seat representing that District.

6. The 57th District encompasses an area that includes the City of Charlottesville and eight precincts within Albemarle County, Virginia.

7. The Plaintiff was one of three members of the Democratic Party who were announced candidates for the 57th District seat in the House of Delegates. The Democratic Party chose its candidate in a primary election held June 14, 2005.

8. The Plaintiff's success in his endeavor to be selected as the Democratic Party candidate depended upon his ability to conduct a "grass roots" campaign in which he could personally meet voters and speak to them about the issues in the campaign. The Plaintiff had

limited funds to support his candidacy and could not afford to purchase advertising time and space on television, radio, or in newspapers.

9. The only effective and efficient way for the Plaintiff and other candidates for public office with limited financial means to conduct a campaign is to make themselves available at places where the public is invited to gather and congregate, such as parks and shopping areas.

10. Because it is not possible for candidates to stop and discuss the campaign and issues of public importance with all persons they meet in gathering places, the only effective and efficient way for candidates with limited financial means to communicate their message to members of the public is to pass out leaflets or other literature to persons the candidates meet. The use of leaflets and printed literature allows candidates to convey their political speech to members of the public who may be unable or unwilling to stop and hear the candidates' message, allowing persons to receive the candidates' literature and read it at a different time that is convenient to the recipient.

11. Prior to May 7, 2005, the Plaintiff had engaged in personal campaigning in support of his candidacy, including passing out leaflets and other information, at shopping centers, malls, and other places where the public is invited to gather and congregate.

12. On the morning of May 7, 2005, the Plaintiff went to commercial property located in Albemarle County, Virginia, abutting U.S. Route 29 on the west side between Berkmar Drive and Dominion Drive. The area is a shopping center commonly known and marketed as "Shoppers' World."

13. "Shoppers' World" consists of connected and detached structures designed for retail commercial use. Space within the structures or land itself is leased to individuals, corporations, or other entities by either Defendant Lebo Commercial Properties, Inc. or Defendant Shoppers' World, L.C. for commercial use, primarily retailing.

14. The majority of the area comprising “Shoppers’ World” consists of blacktopped, paved areas set aside and marked for vehicle traffic and as parking spaces. Paved areas in “Shoppers’ World” are marked with vehicle control lines such as lane lines, directional arrows, and stopping lines and with traffic control signs. The area also contains raised sidewalks with curbs to facilitate pedestrian traffic between the stores located in the shopping area.

15. Members of the public are invited to visit and gather at “Shoppers’ World,” and Defendant Lebo Properties, Inc. has designed and marketed “Shoppers’ World” in a manner to attract members of the public to “Shoppers’ World.” The lessees of space at “Shoppers’ World” also conduct marketing and advertising inviting the public to come to “Shoppers’ World.”

16. On May 7, 2005, the Plaintiff was exercising his right as a member of the public to come to and be upon the property comprising “Shoppers’ World.” The Plaintiff went to an area adjacent to “Whole Foods,” a retail grocery store, and began greeting and introducing himself to people.

17. The Plaintiff also offered and gave to willing recipients leaflets that introduced him, explained his position on issues of importance in the campaign for the Delegate seat, and otherwise contained expression constituting political speech. The Plaintiff reasonably believed that he had a constitutionally protected right to engage in peaceful, nondisruptive political expression at “Shoppers’ World.”

18. At all times during his interaction with members of the public on the morning of May 7, 2005, the Plaintiff was polite and nondisruptive, did not obstruct pedestrian or vehicular traffic, did not interfere with the conduct of any of the business of the Defendants or their lessees, and took care that no litter was caused by the leaflets he was distributing.

19. Notwithstanding the Plaintiff's peaceful and nondisruptive behavior in conducting his campaign activities, Defendant Lebo confronted the Plaintiff and demanded that the Plaintiff cease his expressive activity and leave the "Shoppers' World" property.

19. When the Plaintiff refused Defendant Lebo's request, Defendant Lebo contacted the Albemarle County Police Department and requested assistance.

20. At about 11:00 a.m. on May 7, 2005, Officers Reeves and Warfel of the Albemarle County Police Department arrived at "Shoppers' World," where they were met by Defendant Lebo. Defendant Lebo told the officers that the Plaintiff was passing out leaflets on the property and refused to leave when requested by Defendant Lebo.

21. The Plaintiff told the officers that he had a right to engage in political expression there and that he desired to discuss the matter further with Defendant Lebo and come to a satisfactory resolution. Defendant Lebo refused the Plaintiff's offer and demanded that the Plaintiff leave the property.

22. Officer Reeves then contacted his supervisor, Sgt. Manzier, who arrived at the scene and attempted to mediate the situation. The Plaintiff offered to limit the time he would stay at "Shoppers' World" and to remain in a particular place. Sgt. Manzier spoke with the Plaintiff and Defendant Lebo for about an hour, but Defendant Lebo continued to insist that the Plaintiff leave the property.

23. After Defendant Lebo made another demand that the Plaintiff leave "Shoppers' World" and the Plaintiff refused this demand, Officer Reeves arrested the Plaintiff for trespassing under § 18.2-119 of the Code of Virginia. While the Plaintiff was being arrested, Defendant Lebo told the police that there are signs posted at "Shoppers' World" reading "No Solicitation" and "No Loitering." Defendant Lebo did not say where such signs were posted, and the only signs to this effect posted in the outdoor areas of "Shoppers' World" read "No

trespassing or loitering after business hours.” The Plaintiff was handcuffed, placed in a Police Department vehicle, and transported to the Magistrate’s office, where Defendant Lebo swore out a warrant charging the Plaintiff with trespassing.

24. “Shoppers’ World” is a community shopping center that is freely and openly accessible to the public. Defendant Lebo Commercial Properties, Inc. and Defendant Shoppers’ World, L.C., in furtherance of and to benefit their business purposes, have not restricted public access to the roadways, parking areas, and sidewalks within “Shoppers’ World” and have actively invited the public to come to the shopping center and use the facilities and services available there.

25. Defendant Lebo Commercial Properties, Inc. and Defendant Shoppers’ World, L.C. have in the past made the facilities, sidewalks, roadways, and parking areas of “Shoppers’ World” available to members of the public for expressive and civic purposes. For example, the Girl Scouts of America have been allowed to conduct fundraising activities at “Shoppers’ World,” various civic groups have been allowed to place posters in windows at “Shoppers’ World” advertising their causes, and protests have taken place at the shopping center. On Friday, August 12, 2005, “Shoppers’ World” was made available for a car show at the request of the Albemarle County Police Department. Uninvited musicians and performers also have been permitted to remain in the parking area during the hours stores at “Shoppers’ World” are open.

26. Shopping centers like “Shoppers’ World” have effectively replaced urban commercial districts or “downtown” areas as places where persons congregate, interact, and exchange information and ideas of cultural and political importance. Shopping centers like “Shoppers’ World” are the functional equivalent of downtown business districts that have been considered traditional public fora for expression.

27. The deterioration and elimination of downtown business and retail districts as a place where the public congregates and exchanges information and ideas has seriously diminished the fora available to the public generally and to candidates for political office, such as the Plaintiff, for communicating on matters of public interest.

28. The Constitution of the Commonwealth of Virginia in Article I, Section 12 provides that “[t]he freedoms of speech and of the press are among the great bulwarks of liberty, and can never be restrained except by despotic governments” and “that any citizen may freely speak, write, and publish his sentiments on all subjects, being responsible for the abuse of that right[.]”

29. The Defendants’ refusal to allow the Plaintiff to engage in peaceful, nondisruptive political speech in support of his candidacy for public office and to pass out literature supporting that candidacy and their active prevention of the Plaintiff from engaging in such expressive activity by procuring and causing the Plaintiff’s arrest for trespassing violated the Plaintiff’s right to freedom of speech and of the press guaranteed by Va. Const. Art. I, § 12.

30. The Plaintiff has been active in politics and social causes for many years and desires to remain actively engaged in such causes in the coming years, including running for public office.

31. In pursuit of the activities set forth in ¶ 30, the Plaintiff intends to attempt to distribute leaflets and other literature to persons at shopping centers, including “Shoppers’ World.” For example, the Plaintiff desires to engage in such distribution or other political speech on behalf of David Toscano, selected at the July 14, 2005 primary election as the Democratic Party candidate in the November 8, 2005 general election for the House of Delegates seat from the 57th District.

32. The Defendants' past conduct toward the Plaintiff and refusal to allow him to engage in the peaceful and nondisruptive political speech and distribution of literature at "Shoppers' World" establishes that the Plaintiff would not be allowed to engage in such activity at "Shoppers' World" and that Plaintiff would be charged by the Defendants with trespassing if he attempted to engage in such conduct.

33. There presently exists an actual controversy between the parties involving an actual antagonistic assertion and denial of rights.

WHEREFORE, the Plaintiff demands that judgment be entered as follows:

A) that judgment be entered pursuant to Va. Code §§ 8.01-184 et seq., declaring that the Plaintiff is allowed and entitled to engage in peaceful, nondisruptive political speech and to distribute leaflets as part of such activity at "Shoppers' World" and that the Defendants, their agents, and employees are forbidden from interfering with the Plaintiff's expressive activity under Va. Const. Art. I, § 12;

B) that the Defendants, their agents, and employees are enjoined from preventing or interfering with the Plaintiff's attempts to engage in peaceful, nondisruptive political speech and to distribute leaflets as part of such activity at "Shoppers' World."

Respectfully submitted,
RICHARD COLLINS
By Counsel

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