

IN THE SUPREME COURT OF PENNSYLVANIA

FRIENDS OF DANNY DEVITO,	:	
KATHY GREGORY,	:	
B&J LAUNDRY, LLC	:	No. 68 MM 2020
BLUEBERRY HILL PUBLIC GOLF	:	
COURSE & LOUNGE, and	:	
CALEDONIA LAND COMPANY,	:	
Petitioners	:	SUPPLEMENTAL APPLICATION
	:	FOR RELIEF – BLUEBERRY HILL
	:	PUBLIC GOLF COURSE & LOUNGE
	:	
v.	:	
	:	
TOM WOLF, GOVERNOR	:	
AND RACHEL LEVINE,	:	
SECRETARY OF PA.	:	
DEPARTMENT OF	:	
HEALTH,	:	
	:	
Respondents	:	

SUPPLEMENTAL APPLICATION FOR RELIEF
BY PETITIONER BLUEBERRY HILL
PUBLIC GOLF COURSE & LOUNGE

COMES NOW Petitioner, Blueberry Hill Public Golf Course & Lounge, by and through its attorneys, Scaringi Law, pursuant to Rule 123 of the Pennsylvania Rules of Appellate Procedure, and respectfully represent:

1. On March 24, 2020, Petitioners filed their Emergency Application for Extraordinary Relief (the Petition), challenging Governor Tom Wolf’s order of March 19, 2020 barring most businesses in Pennsylvania from accessing their physical locations (the Order).

2. On March 26, 2020, the Governor filed his Answer.
3. On March 26, 2020, Petitioners filed an Ancillary Application for Relief requesting expedited briefing and oral arguments.
4. On March 26, 2020, Petitioners filed a Supplemental Application for Relief renewing their request for briefing.
5. On March 27, 2020, this Court granted Petitioners' request for briefing and set briefing deadlines.
6. On March 31, 2020, Petitioners filed their Brief.
7. The Governor's Brief is due on Friday, April 3, 2020 at noon.
8. Since the filing of the Petition, several new facts have arisen that are material and relevant to the disposition of this matter, including the Governor's issuance of a Stay-At-Home Order on April 1, 2020, which covers the entire Commonwealth of Pennsylvania, necessarily including the county in which Petitioner is located, Warren County, and the fact that neighboring and other governors have issued Stay-At-Home orders that permit golf courses to remain open, provided they put into place COVID-19 prevention and mitigation protocol, thus recognizing the importance of golfing to help fulfill the need for exercise.

PETITIONER BLUEBERRY HILL

9. Petitioner Blueberry Hill hereby supplements the Petition to present an updated statement on the Order's financial impact on Petitioner and Petitioner's plan to incorporate United States Golfing Association rules and its own rules on the prevention and mitigation of COVID-19 at its place of physical operations, should this Court Order that it may resume its physical operations. See the Statement of Blueberry Hill, which is incorporated herein by reference, made a part hereto attached and marked as Exhibit A.

10. Golf courses in the neighboring state of New York have been permitted to reopen by the Governor of New York provided those courses put into effect these COVID-19 prevention and mitigation protocol.¹

11. Petitioner, which is located only two miles from the New York/Pennsylvania border, will lose all of its golf business to golf courses located across the border in New York State, even though Petitioner is prepared and willing to implement the exact same protections as are required of the New York State golf courses.

¹ <https://spectrumlocalnews.com/nys/buffalo/news/2020/03/27/state-allows-golf-courses-to-open>

12. Golf courses in the neighboring state of Ohio have been permitted to stay open, even with the Ohio Governor's statewide Stay-At-Home order, provided those courses put into effect COVID-19 prevention and mitigation protocol.²

13. On April 1, 2020, the Governor of Florida issued a statewide Stay-At-Home Order that specifically states golf is permissible in the order's exercise category.³

14. In the meantime, Petitioner is still subject to this governor's closure Order and is continuing to suffer economic harm and a deprivation of its constitutional rights as more fully set forth in the Petition.

15. On April 1, 2020, Pennsylvania Governor Wolf issued a statewide Stay-At-Home Order. According to the Governor and the Secretary of Health, "Allowable Individual Activities" include "engaging in outdoor activities, such as walking, hiking or running if they maintain social distancing."⁴

16. Petitioner is ready, willing and able to fill the need for Pennsylvanians to engage in outdoor activities and get exercise; golfing provides walking and outdoor activity for Pennsylvanians.

² <https://www.wkbn.com/news/coronavirus/golf-courses-exempt-from-ohio-governors-stay-at-home-order/>

³ <https://www.usnews.com/news/best-states/florida/articles/2020-04-01/golf-is-ok-but-county-advises-lockdown-at-retirement-haven>

⁴ <https://www.scribd.com/document/452929448/03-23-20-Stay-at-Home-Order-Guidance>

17. On March 23, 2020, the Petitioner applied for a waiver from the Order through the Department of Community and Economic Development (DCED).

18. To date the Petitioner has not yet received a response from DCED.

19. The waiver process is overwhelmed. Recent media reports indicate that as of Tuesday, March 31, 2020, DCED has received nearly 31,000 waiver applications, approved 4,925 and denied 7,737. According to DCED, another 6,757 requests were filed by businesses that did not need them to continue to operate.⁵

20. Petitioner requests that this Honorable Court order the Governor to revise his Order and move all golf courses from the non-life-sustaining to life-sustaining lists.⁶

21. Petitioner makes this request on behalf of itself and all golf courses in Pennsylvania.

WHEREFORE, Petitioner respectfully requests that this Court order and decree that the Governor transfer Petitioner and all golf course businesses from the non-life-sustaining list to the life-sustaining list and that the Governor may include a proviso imposing reasonable restrictions on golf course operations designed to

⁵ <https://www.sungazette.com/news/top-news/2020/04/lycoming-up-to-six-cases-more-counties-under-stay-home-order/>

⁶ This may have a beneficial corollary effect of relieving DCED from having to receive, process and decide upon waivers from golf courses. This could free up administrative resources to focus on the other waiver requests.

combat the spread of the viral illness COVID-19 that are the same or substantially similar to those imposed upon golf clubs in Ohio, or New York or as recommended by the United States Golf Association.

Respectfully submitted,

/s/ Marc A. Scaringi

Marc A. Scaringi, Esq.

Supreme Court ID No. 88346

Brian C. Caffrey, Esq.

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April 2, 2020

VERIFICATION

I, James Roth, Manager of Blueberry Hill Public Golf Course & Lounge, hereby swear or affirm that the above-written statements of fact in the **SUPPLEMENTAL APPLICATION FOR RELIEF BY PETITIONER BLUEBERRY HILL GOLF COURSE & LOUNGE** are true and correct to the best of my knowledge, information and belief and that I make said statements of fact subject to the penalties of 18 Pa.C.S. §4904 relating to unsworn falsification of authorities.

Date: 4-2-20



James Roth, Manager
Blueberry Hill Public Golf Course &
Lounge

EXHIBIT A

IN THE SUPREME COURT OF PENNSYLVANIA

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Statement of Blueberry Hill Public Golf Course and Lounge

James Roth, Manager of Blueberry Hill Public Golf Course and Lounge
(hereinafter “Blueberry”), a Pennsylvania business entity, presents the following
statement:

- 1) Blueberry is not operating its public golf course (located in Warren County),
nor is Blueberry serving takeout meals from its kitchen, in order to comply
with the order of Governor Tom Wolf requiring the closure of all
Pennsylvania businesses engaged in “other amusement and recreation
activities.”

- 2) Under the waiver application program announced by the Governor, Blueberry applied for a waiver on March 23, 2020. As of the making of this statement on April 1, 2020, Blueberry has not received a response to its waiver application.
- 3) Blueberry is fully prepared and willing to offer meals prepared by its kitchen, on a “takeout” basis only, in a fashion similar to “takeout-only” service currently being offered in Warren County by Blueberry’s competitors, such as Wendy’s, Bob Evans and other restaurants.
- 4) Blueberry is fully prepared and willing to operate its golf course in accordance with social-distancing practices to insure that golf course patrons do not come into contact with one another and to insure that patrons do not touch any equipment touched by other golfers. Such practices include the following:
 - a. Blueberry is prepared to assign one patron to one golf cart and to sanitize the golf cart after each use;
 - b. Blueberry is prepared to instruct golfers (whether walking or riding in separate carts) to remain apart from other golfers at all times while engaging in golf.

- c. Blueberry is prepared to follow the United States Golf Association (USGA) recommendations for safe golf in the face of COVID-19, including removing of rakes from sand traps and other recommendations published by the USGA as follows:
- <https://www.usga.org/content/usga/home-page/rules-hub/rulesarticles/covid-19-rules-and-handicapping-faqs.html>
- 5) Pennsylvania Health Secretary Dr. Levine is quoted in the April 1, 2020 edition of the Warren Times Observer (in an article concerning PA's "stay-at-home" orders) as follows: As more and more of the state falls under the stay-at-home order, what outdoors activities will be safe? Levine said going for a walk, hike, jog or bike ride is "OK" if people "maintain social distancing." "Going for a solitary walk...would be fine." <https://www.timesobserver.com/news/local-news/2020/04/state-announces-756-new-cases-tuesday/>
- 6) Dr. Levine's description of activities permitted even under the restrictive stay-at-home order describes golf precisely as Blueberry proposes to offer it (a walk maintaining social distancing).
- 7) Blueberry is located two miles from the New York State border. Even in the face of COVID-19, and even though New York State has imposed other

restrictions in response to COVID-19, New York state is permitting the operation of golf courses, provided the golf courses implement the same social distancing and other protections that Blueberry is prepared and willing to implement:

<https://spectrumlocalnews.com/nys/buffalo/news/2020/03/27/state-allows-golf-courses-to-open>

- 8) Blueberry will lose all of its golf business to golf courses located across the border in New York State, even though Blueberry is prepared and willing to implement the exact same protections as are required of the New York State golf courses.
- 9) The COVID-19 protections that the Governor's Order seeks to achieve can be achieved by Blueberry by a modification of the Governor's order that permits the operation of Blueberry's facility in a way that is consistent with practices deemed safe for other businesses. Specifically, the COVID-19 protections can be achieved by:
 - a. Allowing Blueberry to implement its plan to operate its kitchen on a "takeout" basis only; and

- b. Allowing Blueberry to implement its plan to operate its golf course under the same restrictions and modifications as are currently being practiced in New York State and as recommended by the USGA.
- 10) The order prohibiting Blueberry's physical operation will have permanent impact upon Blueberry because the closure order means the imminent insolvency of Blueberry for reasons including:
- a. Blueberry already accepted annual membership fees from patrons for the 2020 season. Blueberry spent that money at the beginning of the 2020 season for equipment, seed, chemicals and payroll to date. Blueberry has no ability to repay all or a portion of the membership money.
 - b. Blueberry is indebted pursuant to several promissory notes, including a mortgage obligation to Northwest Savings Bank. Without funds generated by the operation of Blueberry's kitchen and golf course Blueberry is unable to make the next payments due on said promissory notes.
 - c. Blueberry's short operating season of thirty weeks requires Blueberry to accumulate funds for the coming twenty-two week off season. The Governor's closure order prevents Blueberry from accumulating those

necessary funds and Blueberry is without ability to borrow more funds or to obtain the funds necessary to sustain the off season, in any other manner.

Blueberry Hill Public Golf Course and Lounge


James Roth, Manager

4-2-20
Date

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CERTIFICATE OF SERVICE

I, Deborah A. Black, Paralegal for Scaringi Law, do hereby certify that I served a true and correct copy of *Supplemental Application For Relief by Petitioner Blueberry Hill Public Golf Course & Lounge*, in the above-captioned action, upon the following via PACfile System, to:

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Date: April 2, 2020

/s/ Deborah A. Black

Deborah A. Black, Paralegal
For Marc A. Scaringi, Esquire and
Brian C. Caffrey, Esquire

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CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania* that require filing confidential information and documents differently than non-confidential information and documents.

Submitted by: Petitioners' Counsel

Signature: /s/ Marc A. Scaringi

Name: Marc A. Scaringi, Esquire

Attorney No. (if applicable): 88346

Date: April 2, 2020