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No immunity for Clear Channel

A judge rules that the owner of the Ford Amphitheatre can be held to noise rules.

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TAMPA - The chances that concerts at the Ford Amphitheatre will get a little quieter got a lot better Monday.

Hillsborough Circuit Judge Charlene Honeywell ruled that media giant Clear Channel Entertainment, owner of the amphitheater at the state fairgrounds, does not have immunity from local noise regulations.

Clear Channel had sought to dismiss two lawsuits brought by the Hillsborough Environmental Protection Commission and residents who live near the amphitheater. The suits, one of which also names the Florida State Fair Authority as a defendant, seek to halt concerts until the noise is reduced. Several hundred noise complaints have been logged since the amphitheater opened a year ago.

Concerts will continue for now. But one of the biggest hurdles to bringing the amphitheater into compliance with the county noise ordinance has been cleared.

Clear Channel, a San Antonio-based company that owns 41 amphitheaters and about 1,200 radio stations, had sought to attach itself to the Fair Authority, which Honeywell had ruled enjoys sovereign immunity as an arm of state government.

In her ruling, Honeywell cited the lease agreement Clear Channel signed with the Fair Authority in 2003. Clear Channel and the Fair Authority "have a landlord-tenant relationship," Honeywell said. "The Fair Authority has little or no control over Clear Channel. They (Clear Channel) are not an agent of the state."

The judge also pointedly urged both sides to stop wasting court time and taxpayer money and come to a settlement.

The 20,000-seat Ford Amphitheater is located on 17 acres of Fair Authority land off Interstate 4 in eastern Hillsborough.

Clear Channel has sought similar immunity in a separate lawsuit against Hillsborough Property Appraiser Rob Turner, seeking an exemption from local property taxes. That case is pending.

Standing by itself, Clear Channel has little defense against the noise lawsuits, attorneys for the other side said.

"She (Honeywell) has taken away the veneer," said attorney Mark Bentley, who represents the residents who live near the amphitheater, "and Clear Channel has nothing to hang their hat on now except a constitutional issue."

That issue, Bentley said, is whether a state statute regarding nuisances is vague.

Don Conwell, Clear Channel's lead attorney, did not return phone calls Monday.

The EPC, the agency that enforces the noise ordinance, sued Clear Channel and the Fair Authority in January, alleging noise from concerts exceeded legal limits. EPC officials later claimed plans for the amphitheater Clear Channel sent to the EPC for examination do not match the venue that was built. In the plans the EPC says it received, the roof was 40 percent lower than the facility that was built, and the sound system design was incomplete.

Had Honeywell granted Clear Channel immunity, the ruling could have had broad implications for other private, for-profit

businesses that operate on government-owned land, including the Hillsborough Aviation Authority and the Tampa Port Authority.

Given Honeywell's ruling, what else might Clear Channel do to avoid lowering noise levels at the amphitheater? Although Clear Channel spent \$23-million to build the venue, it could turn the responsibility of putting on concerts over to the Fair Authority. But the Fair Authority's board has said that job is best left to Clear Channel. And if Fair Authority concerts remained in violation of the noise ordinance, it still might be vulnerable to having its sovereign immunity waived.

Honeywell's ruling Monday doesn't change her July 11 decision granting sovereign immunity to the Fair Authority.

"The Fair Authority maintains its continuing immunity from lawsuits of this nature," said Gordon Schiff, an attorney for the Fair Authority. "However, we continue to encourage all the parties to sit down and reach a reasonable resolution."

Honeywell echoed that sentiment.

As both parties returned to court-ordered mediation Monday, Honeywell emphasized that the clock was ticking on what has become a lengthy and costly legal battle.

"It's not a very difficult issue," she said. "The only people profiting are the attorneys. The citizens are not winning, and as long as this case keeps going on, they continue to lose."

Honeywell is scheduled to hear additional motions Wednesday.

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