

[J-81-2009][M.O. - McCaffery, J.]
IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

GREENWOOD GAMING AND ENTERTAINMENT, INC.,	:	No. 106 MM 2009
	:	
Petitioner	:	Appeal from the Order of the Pennsylvania Gaming Control Board, No. 19421, dated May 8, 2009
	:	
v.	:	
	:	ARGUED: October 21, 2009
	:	
PENNSYLVANIA GAMING CONTROL BOARD,	:	
	:	
Respondent	:	
	:	
VALLEY FORGE CONVENTION CENTER PARTNERS, L.P.,	:	
	:	
Intervenor	:	

DISSENTING OPINION

MR. JUSTICE EAKIN

DECIDED: March 8, 2011

Our question is whether the Valley Forge Convention Center is a “well-established resort hotel.” That term, though modified by further requirements of room and recreational amenities, is entirely undefined in the statute, but much like

pornography, we need not define it to know it when we see it¹ — and anyone who has seen this excellent complex knows what it is, and what it is not.²

For all the expert testimony of pools and “theme rooms,” let me suggest the matter can be settled by a simple common sense test. Let each member of the Pennsylvania Gaming Control Board say to his or her significant other, “Honey, I’m taking you for a romantic weekend at a ‘well-established resort hotel.’” Then put the suitcases in the car, get on the turnpike or the Schuylkill Expressway and drive to the front of the Valley Forge Convention Center. Get out, smile, say “Honey, we’re here!”, and see what your loved one says.

The Convention Center is a fine place, and I do not suggest otherwise. It is more than suitable for many things and with many features justifying its obvious success — indeed, until very recently, our Court’s Bar Examiners held the bar exam at the Convention Center. It is many things, but it simply is not a resort. It is enclosed by the turnpike and major arteries, surrounded by apartment complexes, office parks, and sprawling shopping malls. The area is overrun with traffic, and the center is populated

¹ Jacobellis v. Ohio, 378 U.S. 184, 197 (1964) (Stewart, J., concurring).

² There are additional issues with the majority opinion. First, a newly-created partnership, Valley Forge Convention Center Partners, L.P., is actually the one seeking license approval, not the previous 15-year owner. See Majority Slip Op., at 7. Further, the sales agreement between Valley Forge Convention Center Partners, L.P. and the former owner, Colonial, contained a condition precedent that the sale would not be consummated if Valley Forge Convention Center Partners, L.P. did not receive license approval. However, at the Board’s insistence, the parties waived this condition. This further evidences Valley Forge Convention Center Partners, L.P. was the owner of the Convention Center merely from the date of its license application, and not for 15 years, as the Board and majority surmise. See id., at 8 (citing Board’s Adjudication, at 36 (Valley Forge Convention Center Partners, L.P.’s “equitable ownership through equitable conversion should be applied retroactive to the ... application date ...”).

by conventioners with nametags meeting in the commodious rooms built for the purpose of conventioning. It is a wonderful and centrally located convention center and attracts visitors by the busload. I do not know why the statute created a license issuable only to a well-established resort instead of a convention center, but it did, and we should not perpetuate the deceit of calling this facility something it is not.

You can call a duck a goose. You can point to its size, its aquatic lifestyle and its diet, its bill and its cry, its feathery wings and its webbed feet. There are similarities to be sure, but at the end of the day, it is still a duck. No matter what the Board here tried to shoehorn into the term, we know a duck when we see one, and for better or worse, the Convention Center is a duck, not a goose.

Respectfully, I dissent.