

**STATE OF MINNESOTA
COUNTY OF DAKOTA**

**DISTRICT COURT
FIRST JUDICIAL DISTRICT**

State of Minnesota,

Court File No. 19HA-CV-20-4167

Plaintiff,

vs.

**TEMPORARY
RESTRAINING ORDER**

Lionheart L.L.C. d/b/a Alibi Drinkery,

Defendant.

The above-entitled matter came before the Honorable Jerome B. Abrams, Judge of the District Court, on December 18, 2020, upon the *Ex Parte* Motion for a Temporary Restraining Order and Temporary Injunction brought by the State of Minnesota, by its Attorney General Keith Ellison (“the State”), against Defendant Lionheart L.L.C. d/b/a Alibi Drinkery (“Alibi Drinkery”).

The Court has considered the pleading, exhibits, files, records, submissions of the State, and the affidavits the State submitted to the Court.¹ The Court accordingly makes the following findings of fact, conclusions of law, and enters the following Order.

FINDINGS OF FACT

1. Defendant, Lionheart L.L.C. d/b/a Alibi Drinkery, located at 20851 Holyoke Avenue, Lakeville, MN 55044, is a bar/restaurant that offers food and beverage for on-premises

¹ The Court considered the affidavits of Assistant Attorney General Noah Lewellen, Assistant Attorney General Elizabeth Odette, Investigator Nina Grove at the Minnesota Attorney General’s Office, and Epidemiologist Richard Danila at the Minnesota Department of Health.

consumption.

2. The COVID-19 pandemic represents one of the greatest public health emergencies Minnesota has endured in recent history. The disease is dangerous and has already killed 4,455 Minnesotans (Odette Aff. Ex. 3). The disease is also virulent and prone to community spread, with at least 386,412 cases confirmed in Minnesota since March 5, 2020. (*Id.*) The Minnesota Department of Health notes that preventing people from coming in close contact with one another indoors, such as dining inside a restaurant, is critical in stemming community spread of COVID-19. (Danila Aff. at ¶¶3-8.)

3. Emergency Executive Order 20-99 temporarily prohibits restaurants from being open to the public for on-premises consumption of food or beverage from November 20, 2020 at 11:59 p.m. through December 18, 2020 at 11:59 p.m. (Odette Aff., Ex. 7.)

4. Defendant has violated and indicates that it will continue to violate Executive Order 20-99, by remaining open to the public for on-premises dining. (Grove Aff. at ¶3, Exs. 2-3.) Defendant has posted on its public Facebook page that, as of December 16, 2020, it would be offering dine-in services. (Grove Aff., Ex. 1). Defendant also posted on its public Facebook page on December 17, 2020 “OPEN TODAY. COME IN FOR FOOD AND DRINKS!” (Grove Aff., ¶ 5, Ex. 5). Photos from media reports show people eating and drinking on-premises both December 16 and December 17, 2020 (Grove Aff., Exs. 2-3, 5.).

5. The State emailed correspondence to Defendant at the publicly-listed email address, alibidrinery@gmail.com, on December 15 requesting a response by 12 p.m. on December 16. Plaintiff did not receive a response. (Lewellen Aff., Ex. 1).

6. On December 17, 2020, the State emailed Defendant at its publicly-listed email address, alibidrinkery@gmail.com, to notify them that the Attorney General’s Office would be bringing a

motion for a temporary restraining order against the restaurant, and that they would email the restaurant courtesy copies of any filings and email the time and location of any scheduled motion hearing. (Odette Aff. ¶ 16).

7. The Attorney General's Office now asks this Court to grant a Temporary Restraining Order and Temporary Injunction to enjoin Defendant from remaining open to ingress, egress, use, and occupancy my members of the public in violation of Executive Order 20-99.

CONCLUSIONS OF LAW

1. On November 18, 2020, Governor Tim Walz issued Emergency Executive Order 20-99, which places restrictions on certain Places of Public Accommodation, including temporarily closing restaurants and bars to on-premises consumption through Friday, December 18, 2020 at 11:59 pm. Executive Order 20-99 was promulgated by the Governor under the authority of Minnesota Statutes section 12.21, subdivision 3, clause (1), was approved by the Executive Council, and filed in the Office of the Secretary of State. Thus, pursuant to Minnesota Statutes section 12.32, Executive Order 20-99 has "the full force and effect of law" during the peacetime emergency.

2. Executive Order 20-99 authorizes the Attorney General to enforce its provisions and seek any relief available pursuant to Minnesota Statutes section 8.31, including "injunctive relief, civil penalties in an amount to be determined by the court, up to \$25,000 per occurrence, costs of investigation and reasonable attorney's fees and costs, and other equitable relief as determined by the court...." Among other relief, Minnesota Statutes section 8.31, subdivision 3 provides in pertinent part:

On becoming satisfied that any of those laws has been or is being violated, or is about to be violated, the attorney general shall be entitled, on behalf of the state;

(a) to sue for and have injunctive relief in any court of competent jurisdiction against any such violation or threatened violation

Minn. Stat. § 8.31, subd. 3.

3. The State has filed an emergency consumer-protection action to enforce Governor Walz's Emergency Executive Order 20-99 ("Order 20-99"), which places restrictions on certain Places of Public Accommodation, including temporarily prohibiting bars and restaurants from opening to the public for on-premises consumption through Friday, December 18, 2020 at 11:59 pm. The express purpose of the Order is to slow the spread of the COVID-19 virus in order to protect public health and safety. The State has also moved the Court for an ex-parte temporary restraining order ("TRO") pursuant to Minn. R. Civ. P. 65.01. Requests for TROs and temporary injunctions are generally evaluated under the same standards. *Compare Minneapolis Urban League, Inc. v. City of Minneapolis*, 650 F. Supp. 303, 303 (D. Minn. 1986) (Reviewing TRO request), with *Metro. Sports Facilities Comm'n v. Minn. Twins P'ship*, 638 N.W.2d 214, 220 (Minn. App. 2002), *rev'w denied* (Minn. Feb. 4, 2002) (reviewing temporary injunction request).

4. In order to obtain temporary injunctive relief before Alibi Drinkery can be heard in opposition (*i.e.* an *ex parte* TRO), the State must show that: (1) It clearly appears from specific facts shown by affidavit or by the verified complaint that immediate and irreparable injury, loss, or damage will result to the applicant before the adverse party or that party's attorney can be heard in opposition, and (2) the applicant's attorney states to the court in writing the efforts, if any, which have been made to give notice or the reasons supporting the claim that notice should not be required. Minn. R. Civ. P. 65.01. The State has submitted evidence showing that Defendant, a Minnesota restaurant, is offering on-premises consumption of food and beverages and allowing more than five members of the public to enter its restaurant at a time. (Lewellen

Aff. Ex. 1; Grove Aff., ¶ 3 Exs. 2-3). Defendant's actions on December 15, 2020 and December 16, 2020 violate Executive Order 20-99. (Grove Aff., Exs. 2-3, 5). Further, the State established that Defendant will further violate Executive Order 20-99 if action is not taken. The State attempted notice to Defendant twice prior to filing this case while Defendant, or any representative on Defendant's behalf, failed to respond. (Lewellen Aff., Ex. 1; Odette Aff. ¶ 16).

ORDER

- 1.) Plaintiff's request for a temporary restraining order is **GRANTED**.
- 2.) Given the nature of this proceeding, the public health issues, and the financial impact on the Defendant, the parties shall appear before this Court on Tuesday, December 22, 2020 at 10 a.m. virtually by Zoom to consider Plaintiff's motion for a temporary injunction pending final ruling on the Complaint against Defendant. Access to the Court's virtual hearing can be found in **Meeting ID 161 549 6681** and **Passcode 046841**.
- 3.) Plaintiff shall personally serve the temporary restraining order, supporting affidavits, and notice of hearing to Defendant prior to Tuesday's hearing.

BY THE COURT:

Dated: _____, 2020

Jerome B. Abrams
Judge of District Court