IN

08:07 am, Jul 23, 2020

DEBORAH A. MYERS

CLERK OF COURTS

ASHLAND COUNTY, OHIO

IN THE COURT OF COMMON PLEAS, ASHLAND COUNTY, OHIO
GENERAL DIVISION

CATTLEMANS INC., ET AL,

Plaintiffs, **CASE NO. 20-CIV-099**

vs.

ASHLAND COUNTY HEALTH DEPARTMENT, ET AL,

Defendants. **JUDGMENT ENTRY**
Temporary Restraining Order

This matter is before the Court for consideration of Plaintiffs' Complaint filed July 22, 2020, which includes a request for temporary restraining order relief pursuant to Civ.R.65, as well as a Motion for Temporary Restraining Order and Temporary Injunction subsequently filed as well on July 22, 2020.

Plaintiffs have requested a temporary restraining order on the basis that their food service license has been revoked by administrative adjudication on the part of the Ashland County Health Commissioner without due process of law. No advance notice of violation, no order of corrective action, and no meaningful right to a hearing was afforded Plaintiffs prior to revocation of their food service license.

Before this Court can immediately issue a Temporary Restraining Order pursuant to Civ.R. 65, without notice to the opposing parties, "[o]nly if (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

his attorney can be heard in opposition, and (2) the applicant's attorney certifies to the court in writing the efforts, if any, which have been made to give notice and the reasons supporting his claim that notice should not be required." Civ.R. 65(A).

The Complaint and the Motion requesting the issuance of an immediate restraining order meet the first test set forth in Civ.R. 65(A). The Court finds that immediate and irreparable injury, loss, and damage will result to the Plaintiffs in this matter, due to their inability to engage in their commercial food service activities without a valid food service license. The Court further finds that the economic loss Plaintiffs could potentially sustain is significant and could result in the complete financial ruin of Plaintiffs and permanent closure of their business.

R.C. 3717.49 authorizes a department of health, or the health director acting under it, to suspend or revoke a food service license immediately, without hearing, only where there is a finding and determination that a violation of Chapter 3717 or rules adopted under it applicable to food service operations, presents an ***immediate*** danger to the public health. The findings set forth in the July 15, 2020 Cease and Desist Order fail to state with any specificity the nature of any immediate danger to public health posed by the conditions cited, where the "Dine Safe Ohio Order" specifically recognizes exceptions to the requirement that business employees wear masks. There is no indication in the July 15, 2020 Cease and Desist Order that exceptions to the Dine Safe Ohio Order mask-wearing requirement were ever considered or determined not to exist. And if the Dine Safe Ohio Order recognizes exceptions to a blanket mask wearing rule (and as such would not consider the lack of wearing a mask an immediate danger to public health), then it begs the question as to whether the failure to wear a mask for any

reason could ever constitute or serve as the basis for finding an immediate danger to the public health. The Court further finds that Plaintiffs have been denied a meaningful right to appeal as afforded by R.C. 3717.49 and are therefore being denied their civil liberties, including the right to earn a living and operate a commercial enterprise, without due process of law.

The second Civ.R. 65(A) requirement which must be met for the issuance of a temporary restraining order without notice to the opposing party is certification by the applicant's attorney as to the efforts to give notice to Defendants, and the reasons why a restraining order should be issued without notice. It is unclear from the proceedings filed to date what, if any notice has been given to Defendants, other than normal service of process of the Complaint, as well as email service of the subsequent motion for temporary restraining order "by email." (It must be presumed by the Court that Plaintiffs have chosen to utilize a public email address for the Ashland County Department of Health and/or the Director of Health, Heather Reffett.

The Court finds that while the relief of a temporary restraining order is justified in this case to restore and maintain the status quo until Defendants have an opportunity to be heard, the requirements of Civ.R. 65(A) have not fully been met. Therefore, any restraining order this Court issues shall be delayed in its effective date, to give Defendants appropriate notice of the same by regular United States mail and/or any email address provided to the Clerk of Courts by the party using that particular email address.

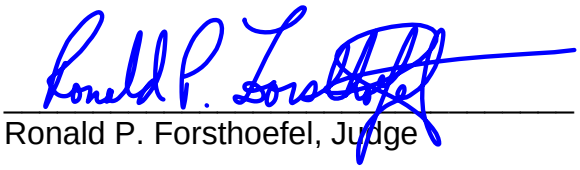
The Court finds that because there appears to be an obvious deprivation of procedural due process under the current circumstances, and since Defendants will not

incur any quantifiable damages if the restraining order is issued and enforced, a nominal bond of $1.00 cash, deposited with the Clerk of Courts shall be the only bond required of Plaintiffs as a condition precedent to enforcement of the temporary restraining order.

Based on the foregoing, the Court hereby GRANTS the motion for a temporary restraining order and directs the follow:

1) Effective on the date and time set forth below, the Defendants are temporarily restrained from enforcing the July 15, 2020 Cease and Desist Order until further order of this Court or the expiration of this temporary restraining order.
2) Plaintiff's food service license previously revoked by Defendants shall be reinstated immediately, and Plaintiffs shall be permitted to ***lawfully*** operate their food service business pending further orders of the Court or the expiration of this temporary restraining order as set forth below.
3) Because the Court believes notice to Defendants is necessary prior to the effective date of this restraining order, this restraining order shall be effective, subject to the prerequisite posting of bond, at 6:00 a.m. on Saturday, July 25, 2020 and shall continue for 14 days, expiring on Saturday, August 8, 2020 at 5:00 a.m. The Court reserves the right to extend the temporary restraining order for an additional period if a ruling on Plaintiff's request for a preliminary injunction has not been issued prior to August 8, 2020.
4) The Court shall schedule a hearing on preliminary injunction with all parties' counsel following an appearance by legal counsel for Defendants. The Court shall attempt to schedule that hearing on or before July 31, 2020.

It is so ordered.



Ronald P. Forsthoefel, Judge