

STATE OF MINNESOTA
COUNTY OF FARIBAULT

DISTRICT COURT
FIFTH JUDICIAL DISTRICT

Case Type: Civil

State of Minnesota, by its Attorney General,
Keith Ellison,

Court File No. 22-CV-20-703

Plaintiff,

vs.

Veteran Enterprises, Ltd. d/b/a Carlson Event
Center,

**FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND TEMPORARY
RESTRAINING ORDER**

Defendant.

The above-titled matter came before the undersigned Judge of the District Court 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 Veteran Enterprises, Ltd. d/b/a Carlson Event Center.

The Court has considered the pleading, exhibits, files, records, arguments, 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. Veteran Enterprises Ltd. owns the property at 132 1st Ave. SE, Winnebago, MN 56098, which is the advertised location of Carlson Event Center (collectively, “Carlson Event

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

Center”). Carlson Event Center is a venue that offers event space to the public for indoor events and entertainment.

2. The COVID-19 pandemic has been labeled a public health emergency in part due to its susceptibility to community spread. The Minnesota Department of Health notes that preventing people from coming in close contact with one another indoors, such as at an indoor venue providing events and entertainment, is critical in stemming community spread.

3. Emergency Executive Order 20-99 temporarily prohibits venues that provide indoor events and entertainment from opening to the public through December 18, 2020. On December 16, 2020, Governor Walz issued Executive Order 20-103, which extended and modified Executive Order 20-99. Executive Order 20-99 as extended and modified by Executive Order 20-103 (hereinafter, collectively, “Modified Executive Order 20-99”) continues to prohibit venues from opening to the public for indoor events and entertainment until January 10, 2021, at 11:59 p.m. Exec. Order 20-99, ¶7.c.iii (D); Exec. Order 20-103 ¶5.

4. Defendant has threatened to violate Modified Executive Order 20-99 by opening to the public on December 31, 2020, for a “New Years Eve Bash.” Defendant’s advertisements indicate that the event will be “B.Y.O.B.,” (i.e., bring your own beverages) and will include live music and dancing. Despite multiple attempts at communication from the Minnesota Attorney General’s Office, Defendant has persisted in advertising the event as being open to the public, with a \$25 entry fee.

5. The Attorney General’s Office now asks this Court to grant a Temporary Restraining Order and Temporary Injunction to enjoin Defendant from opening to the public for indoor events and entertainment through January 10, 2021 at 11:59 p.m., as required by Modified Executive Order 20-99.

CONCLUSIONS OF LAW

1. This Court has jurisdiction over the subject matter of this case and the parties hereto and makes the following Conclusions of Law.

2. 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 venues providing indoor events and entertainment to the public, until Friday, December 18, 2020 at 11:59 pm. Executive Order 20-103 continues and modifies the same prohibitions to January 10, 2021, at 11:59 p.m. Executive Orders 20-99 and 20-103 were promulgated by the Governor under the authority of Minnesota Statutes section 12.21, subdivision 3, clause (1), were approved by the Executive Council, and filed in the Office of the Secretary of State. Thus, pursuant to Minnesota Statutes section 12.32, Executive Orders 20-99 and 20-103 have “the full force and effect of law” during the peacetime emergency.

3. Modified 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.

4. The State has filed an emergency action to enforce Governor Walz’s Modified Executive Order 20-99” which place restrictions on certain Places of Public Accommodation,

including temporarily prohibiting venues offering indoor events and entertainment from opening to the public through January 10, 2021, 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 a 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).

5. The State seeks temporary injunctive relief as authorized by statute pursuant to section 8.31 as well as Modified Executive Order 20-99; accordingly there is no need to make findings on the *Dahlberg* factors and instead the Court can grant temporary injunctive relief upon a showing that Defendant “violated or [was] about to violate the statutes involved” and that “injunctive relief would fulfill the legislative purpose of the statutes.” *State v. Cross Country Bank, Inc.*, 703 N.W.2d 562, 572 (Minn. Ct. App. 2005) (quoting *Wadena Implement Co. v. Deere & Co., Inc.*, 480 N.W.2d 383, 389 (Minn. App. 1992)); *accord State v. Minn. School of Business, Inc.*, 899 N.W.2d 467, 471-72 (Minn. 2017).

6. There is good cause to believe that the State will prevail on the merits of its claims that Defendant is about to violate Modified Executive Order 20-99. The State has submitted evidence showing that Defendant Carlson Event Center, a venue, is offering an indoor concert and dance event on December 31, 2020 and into the early morning hours of January 1, 2021. Those actions clearly threaten to violate the Order. Accordingly, the State is likely to prevail on the merits that Defendant is about to violate the Order. Exec. Order 20-103, ¶ 5 (“Venues providing

indoor events and entertainment such as . . . concert halls . . . [and] performance venues . . . are closed to ingress, egress, use, and occupancy by members of the public.”)

7. There is good cause to believe that the temporary injunctive relief the State seeks would fulfill the purpose of Modified Executive Order 20-99, as its stated purpose is to slow the spread of the COVID-19 virus in order to protect public health and safety. The Order promotes public health and safety by restricting avenues of viral transmission at locations where such transmission has been found likely to occur, like at venues providing indoor events and entertainment. The temporary injunctive relief ordered by the Court will help protect the public’s health and safety as well as the health and safety of Defendant’s patrons by temporarily prohibiting Carlson Event Center from opening to the public for indoor events and entertainment, in accordance with Modified Executive Order 20-99 and any future Executive Orders pertaining to venues offering indoor events and entertainment. It also protects this Court’s ability to grant full and effective relief among the parties.

8. The State has established that it is entitled to a Temporary Restraining Order before Defendant can be heard in opposition, pursuant to Minn. R. Civ. P. 65.01. It clearly appears from the facts shown by the State that the State will suffer irreparable harm as the relief sought would be ineffectual or impossible to grant at a later date. *See Cramond v. Am. Fed. Of Labor & Congress of Indus. Organizations*, 126 N.W.2d 252, 256 (Minn. 1964). If Defendant is not temporarily enjoined from having its celebration, the violation the State is seeking to stop will have already occurred.

9. No security is required of the State of Minnesota for issuance of a temporary restraining order. *See* Minn. Stat. § 574.18; *State v. Nelson*, 189 Minn. 87, 89-90 (1933).

ORDER

I. TEMPORARY RESTRAINING ORDER.

WHEREFORE, IT IS HEREBY FURTHER ORDERED THAT:

1. The State's motion for a temporary restraining order pursuant to Minnesota Rule of Civil Procedure 65.01 is **GRANTED**.

2. Effective from the date of this Order, Defendant and its officers, agents servants, employees, and other persons in active concert or participation with Defendant who receives actual notice of this Order are prevented, restrained, and enjoined from taking any action violating Executive Order 20-99, as extended and modified by Executive Order 20-103, including but not limited to opening to the public for indoor events and entertainment, including its advertised New Year's Eve event scheduled to take place December 31, 2020 at 8pm through January 1, 2021 at 2 am.

3. Defendant shall fully comply with Executive Orders 20-99, as extended and modified by Executive Order 20-103, and any future Executive Orders issued by the Governor, approved by the Executive Council, and filed in the Office of the Secretary of State in accordance with Minnesota Statutes Chapter 12 that apply to venues offering indoor events and entertainment, while those Executive Orders are effective.

II. CORRESPONDENCE AND SERVICE ON PLAINTIFF.

4. IT IS FURTHER ORDERED that, for the purpose of this Order, all correspondence and service of notices on the Plaintiff shall be addressed to:

Assistant Attorney General Noah Lewellen
Minnesota Attorney General's Office
445 Minnesota Street, Suite 1200
St. Paul, Minnesota 55101-2130
noah.lewellen @ag.state.mn.us

III. TEMPORARY INJUNCTION HEARING.

5. IT IS FURTHER ORDERED that, pursuant to Minn. R. Civ. P. 65.01, counsel for Plaintiff and Defendant shall appear before this Court **on January 8, 2021, at 10:00 am via Zoom**, for a hearing on Plaintiff's motion for a temporary injunction pending final ruling on the Complaint against Defendant and imposing such additional relief as may be appropriate.

6. IT IS FURTHER ORDERED that this Court shall retain jurisdiction of this matter for all purposes and this Order shall remain in effect until further order of the Court.

Dated:
