

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF SCOTT

FIRST JUDICIAL DISTRICT

Case Type: Civil

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

Court File No. 70-CV-20-17737

Plaintiff,

vs.

**TEMPORARY RESTRAINING
ORDER**

St. Patrick's Tavern & Restaurant, Inc.,

Defendant.

The above-titled matter came before the undersigned Judge of the District Court on December 23, 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 St. Patrick's Tavern & Restaurant, Inc. ("St. Patrick's").

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. Defendant St. Patrick's, located at 24436 Old Highway 13 Blvd, New Prague, MN 56071, is a bar and restaurant that offers food and beverage for on-premises consumption.

¹ The Court considered the affidavits of Assistant Attorney General Bennett Hartz and Investigator Nina Grove at the Minnesota Attorney General's Office, and Epidemiologist Richard Danila at the Minnesota Department of Health.

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. (Hartz Aff. Ex. 2.) 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 disease has picked up its pace in recent months, setting records in numbers of new infections. (*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. Modified Executive Order 20-99 temporarily prohibits restaurants from being open to the public for indoor, on-premises consumption of food or beverage from December 18, 2020 at 11:59 p.m. through January 10, 2021 at 11:59 p.m. (Hartz Aff., Ex. 7.)

4. Defendant has violated and indicated that it will continue to violate Modified Executive Order 20-99, by remaining open to the public for on-premises dining. (Hartz Aff. Ex. 14-16.) Despite communications from the Scott County Sheriff's Office that remaining open and offering on-premises consumption to the public would violate Modified Executive Order 20-99, Defendant has continued to serve customers food and beverages for on-premises consumption and has allowed more than five members of the public in its restaurant at one time. (Hartz Aff., Ex. 14-16.) Defendant has posted on its public Facebook page that, as of December 18, 2020, it would be offering dine-in services. (Hartz Aff., Ex. 16).

5. The Attorney General's Office now asks this Court to grant a Temporary Restraining Order and Temporary Injunction to enjoin Defendant from providing indoor, on-premises consumption of food and beverage to the public, and from permitting more than five members of the public in Defendant's restaurant at one time, in violation of 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 restaurants and bars to on-premises consumption through Friday, December 18, 2020 at 11:59 pm. On December 16, 2020, Governor Tim Walz issued Emergency Executive Order 20-103, which extended Executive Order 20-99's provisions, including Executive Order 20-99's prohibition on indoor, on-premises consumption of food and beverage, and its enforcement provisions, to January 10, 2021, but allows for outdoor on-premises consumption pursuant to certain safety precautions.

3. 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.

4. Modified Executive Order 20-99 authorizes the Attorney General to enforce Orders 20-99 and 20-103 and to 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.

5. The State has filed an emergency consumer-protection action to enforce Modified Executive 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 Sunday, 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).

6. 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 Defendants “violated or were 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).

7. There is good cause to believe that the temporary injunctive relief the State seeks would fulfill the purposes of Modified Executive Order 20-99. The purpose of Modified Executive Order 20-99 is to slow the spread of the COVID-19 virus in order to protect public health and safety. Modified Executive Order 20-99 promotes public health and safety by restricting avenues of viral transmission at locations where such transmission is likely to occur, like indoors at restaurants and bars. 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 Defendants’ patrons by temporarily closing St. Patrick’s for on-premises dining in accordance with Modified Executive Order 20-99 and requiring Defendant to comply with the safety requirements in Modified Executive Order 20-99 and any future Executive Orders pertaining to bars or restaurants.

8. In order to obtain temporary injunctive relief before St. Patrick’s 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. The state has established that Defendant will further violate Modified Executive Order 20-99 if action is not taken.

9. Furthermore, the State has established that it is entitled to not only temporary injunctive relief but to a TRO, before Defendant can be heard in opposition, pursuant to Minn. R. Civ. P. 65.01. It is clear from the facts shown by the State that Defendant's patrons and the general public will suffer irreparable harm unless Defendant is temporarily enjoined from opening for indoor, on-premises dining in violation of Modified Executive Order 20-99.

ORDER

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 Modified Executive Order 20-99. Defendants shall fully comply with Executive Order 20-99, as extended and modified by 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 restaurants and/or bars, while those Executive Orders are effective.

3. For the purpose of this Order, all correspondence and service of notices on the Plaintiff shall be addressed to:

Assistant Attorney General Bennett Hartz
Minnesota Attorney General's Office
445 Minnesota Street, Suite 1200
St. Paul, Minnesota 55101-2130
bennett.hartz@ag.state.mn.us

4. Pursuant to Minn. R. Civ. P. 65.01, counsel for Plaintiff and Defendants shall appear before this Court **on December 30, 2020, at 9:00 a.m. via Teleconference** 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.

a. Join ZoomGov Meeting
<https://courts-state-mn-us.zoomgov.com/j/1614709715?pwd=ZWVRcTAraFNFTGh0QUVTMEZZQ2tIZz09>

Meeting ID: 161 470 9715
Passcode: 595468

5. Plaintiff shall personally serve the temporary restraining order, supporting affidavits and notice of hearing to Defendant prior to the date of hearing.

Date: December 23, 2020

Caroline H. Lennon, Judge of District Court