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**IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO**

FILED
APR X 7 2020
Clerk of Courts
Cuyahoga County, Ohio

CUYAHOGA COUNTY BOARD OF HEALTH
Plaintiff

Case No: CV-20-931731

Judge: ASHLEY KILBANE

SECONDS CITY LTD DBA SECONDS CITY
CONSIGNMENT HOME
Defendant

JOURNAL ENTRY

OPINION AND JUDGMENT ENTRY. O.S.J.

Judge Signature

Date

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

CUYAHOGA COUNTY BOARD OF HEALTH,)	CASE NO. CV 20:931731
)	
)	
Plaintiff,)	JUDGE ASHLEY KILBANE
)	(Taken by Administrative Judge
v.)	Brendan J. Sheehan)
)	
)	
SECONDS CITY, LTD, d/b/a)	OPINION AND JUDGMENT
Seconds City Consignment Home)	ENTRY
Furnishings,)	
)	
)	
Defendant.)	

I. ISSUE PRESENTED.

This matter is before the Court on Plaintiff Cuyahoga County Board of Health's Emergency Motion for Temporary Restraining Order to order a retail store from conducting business during the COVID-19 pandemic. Due to the emergency nature of the proceedings, it was heard by Administrative Judge Brendan J. Sheehan *ex parte* pursuant to Civ.R. 65.

Since the beginning of March 2020, the State of Ohio has been under increasingly restrictive orders necessitated by the highly contagious SARS-CoV-2 virus that causes COVID-19. In efforts to control the spread of the virus to avoid overloading our hospitals and causing substantial loss of life, the Ohio Department of Health and Governor DeWine lawfully issued extraordinary orders to promote "social distancing" which included the closure of nonessential businesses.

Ohio Health Director Dr. Amy Acton is empowered to issue "Director's Orders" pursuant to her authority under R.C. § 3701.13 ("to make special orders *** for preventing the spread of contagious or infectious diseases"). Relevant to this matter, Director Acton has issued the following orders:

- On March 12, Director Acton first issued an order to "Limited and/or Prohibit Mass Gatherings of more than 100 people. (Cmplt. Ex. A). This order was amended on March 17 to prohibit mass gatherings of more than 50 people and strongly discourage private gatherings of more than 10 individuals. (Cmplt. Ex. B).
- On March 15, Ohio limited the sale of food and beverage sales throughout the state to carry out only. (Cmplt. Ex. C). Dr. Acton issued the order "to avoid an imminent threat with the high probability of widespread exposure to COVID-19 with a significant risk of substantial harm to a large number of people in the general population."
- On March 23, 2020, Director Acton issued an order referred to as the "Stay At Home Order" which, among other statements, required all persons to stay at home unless they were employed in or operating an "essential business" as defined in the order. (Cmplt. Ex.D). While drastic, Director Acton and Governor DeWine concluded that such a broad restriction was necessary to protect public health.

The Court acknowledges that these orders have placed a high burden on the people and businesses of Ohio but also acknowledges that the burden was necessary to lessen the future burden of a prolonged pandemic and horrific loss of life. The vast majority of Ohioans have complied with the orders leading to noticeable "flattening of the curve."

Defendant is a retail shop selling second hand home furnishings. It is not an essential business yet it has not complied with the health orders. As set for the in the Complaint, despite

repeated warnings from the Board of Health and citations from the City of Parma Heights, Defendant has continued to operate.

II. LAW AND ANALYSIS.

Pursuant to Civ.R.65(A):

A temporary restraining order may be granted without written or oral notice to the adverse party or his attorney only 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.

Plaintiff Cuyahoga County Board of Health ("CCBOH") is a "general health district" CCBOH is among multiple state officials directed by statute to "enforce quarantine and isolation orders, and rules that [the Ohio Department of Health] adopts." R.C. § 3701 .56. Moreover, "the board of health of a general health district *** may petition the court of common pleas for injunctive or other appropriate relief requiring any person violating a[n] *** order issued by the director of health under this chapter to comply with such rule or order. The court of common pleas of the county in which the offense is alleged to be occurring may grant such injunctive or other appropriate relief as the equities of the case require." R.C. § 3701 .57.

Where a statute grants a specific injunctive remedy to the State, the State may obtain an injunction from the court merely by showing that the defendant has violated the statute. *Ackerman v. Tri-City Geriatric & Healthcare, Inc.*, 55 Ohio St.2d 51, 56-57, 378 N.E.2d 145, .

Statutory violations "proscrib[e] behavior which the General Assembly has determined not to be in public interest." *Id.*, 55 Ohio St.2d at 57. Therefore, to obtain injunctive relief, the State only has to establish that "the statutory conditions exist." *Id.*

The Court reasoned that it would be "redundant" to require a governmental agent to establish the elements of a private action for injunctive relief, such as irreparable damage or lack of an adequate legal remedy, because "activities deemed harmful by the General Assembly are not designed primarily to do justice to the parties but to prevent harm to the general public." *Id.*

Director Acton's order is clear: "Non-essential business and operations must cease. All businesses and operations in the State, except Essential Business and Operations as defined below, are required to cease all activities within the State. . ." Cmplt. Ex. D at p. 1. The list of "Essential Businesses and Operations" includes stores that sell groceries and medicine, organizations that provide charitable and social services, religious entities, gas stations, hardware and supply stores, critical trades, educational institutions (for distance learning purposes), businesses that sell supplies to work at home, etc. Cmplt. Ex. D at pp. 5-7.

Defendant's business does not qualify under any of the categories of "Essential" under Director Acton's order.

Even if the Court considers the factors for private action injunctive relief, the factors weigh heavily in Plaintiff's favor. There is a strong likelihood that Plaintiff will prevail on the merits of its action and the threat of irreparable harm is evident. Every day that Seconds City remains open, it creates an unnecessary risk of spreading COVID-19. Moreover, Defendant's recalcitrance undermines the badly needed social distancing required at a critical moment in history. No amount of money damages can undo the public-health harm that is occurring by failing to adhere to public health orders. The Court finds that third party harm will result if this restraining order is not entered. It is in the public's best interest that all persons and nonessential businesses comply with the social distancing orders.

III. CONCLUSION.

Accordingly, for good cause shown and pursuant to Ohio Civ.R. 65(A), Plaintiff Cuyahoga County Board of Health's ("CCBOH's") Motion for Temporary Restraining Order is hereby GRANTED. Upon review of the Affidavit of Joe Lynch, Defendant Second City, LTD is operating a non-essential business in violation of Director's Orders issued by Ohio Health Director Amy Acton to control the spread of COVID-19 and encourage "social distancing."

Continued operation of Defendant's business will cause irreparable harm to the public health. The Court further finds that Cuyahoga County Board of Health has previously attempted to communicate with Defendant concerning its continued operation, but Defendant's business remains open. THEREFORE:

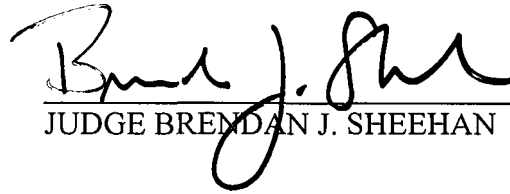
- 1) Defendant is ordered to cease operations immediately upon receipt of this order.
Failure to do so may be punishable by contempt sanctions, including fines and jail time.
- 2) A telephonic hearing on CCBOH's Motion for Preliminary Injunction is set for April 20, 2020 at 11:00AM. The parties shall place a conference call to the Court's bailiff at (216) 443-8708. The Court will then determine whether Defendant must stay closed pursuant to the Director's Orders or may remain open. Failure to appear by telephone may be punishable by contempt sanctions, including fines and jail time. In addition, a default judgment may be entered.
- 3) Plaintiff is directed to use reasonable efforts to inform Defendant of this Order and the date and time of the hearing on preliminary injunction.
- 4) The Clerk is directed to serve a copy of this order via certified mail pursuant to Civ.R. 4. I (A)(1)(a) and via Sheriff service pursuant to Civ.R. 4. I (B).

5) This order may be enforced by all persons authorized by R.C. 3701.56.

IT IS SO ORDERED.

Dated:

4/7/2020


JUDGE BRENDAN J. SHEEHAN