

**IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI
AT KANSAS CITY**

JACKSON COUNTY, MISSOURI,)	
)	
Plaintiff,)	
Counterclaim Defendant,)	
vs.)	Case No. 2116-CV19441
)	Division 12
RAE'S CAFÉ, and)	
AMANDA WOHLLETZ,)	
)	
Defendants)	
)	
vs.)	
)	
TROY SCHULTE, County Administrator,)	
DEB SEES, Administrator for Environmental)	
Health,)	
BRIDGETTE SHAFFER, Acting Director)	
of Health,)	
CALEB CLIFFORD, Administrator of)	
Emergency Management,)	
FRANK WHITE JR., County Executive,)	
)	
Counterclaim Defendants.)	

ORDER

NOW on this 22nd day of September, 2021, this matter comes before the Court for hearing. Plaintiff and Counterclaim Defendant Jackson County, Missouri appears by counsel Bryan Covinsky and Josh Haner. Defendants and Counterclaim Plaintiffs Rae's Café and Amanda Wohletz appears by counsel John Reeves and Melinda Clark-Sann. Counterclaim Defendant Bridgette Shaffer appears by counsel Matt Depaz and Marty Bax. Counterclaim Defendants Troy Schulte, Caleb Clifford and Frank White, Jr. appear by counsel, Bryan Covinsky and Josh Haner. The Court takes up and considers *Plaintiff Jackson County, Missouri's Amended Motion for Temporary Restraining Order and Preliminary Injunction*, filed

September 14, 2021, Defendants Rae's Café and Amanda Wohletz's *Verified Counter-Petition for Temporary Restraining Order, Preliminary Injunction, Permanent Injunction, Declaratory Judgment and Damages*, filed September 17, 2021, and *Counterclaim Defendant Bridgette Shaffer's Suggestions in Opposition to Counterclaim Plaintiff's Motion for Temporary Restraining Order and Preliminary and Permanent Injunction*, filed September 22, 2021. Evidence and argument were presented by the parties. The Court took the matter under advisement. The Court being duly advised in the premises, finds as follows:

INTRODUCTION

Plaintiff Jackson County, Missouri, (*hereinafter referred to as Plaintiff*) comes before this Court seeking a Preliminary Injunction prohibiting Defendants Rae's Café and Amanda Wohletz (*hereinafter referred to as Defendants*) from operating Rae's Café in a manner which violates the County's Health Order (Jackson County Exhibit B, *hereinafter referred to as Health Order*). Specifically Plaintiff requests the Court order Defendants (1) Be enjoined and restrained from directly or indirectly operating their business, Rae's Café (2) Comply with the Health Order requirement for facial coverings while indoors at places of public accommodation (3) Cease operation as a restaurant and food service provider until it obtains a valid food permit (4) Be enjoined from occupying or operating a business out of the restaurant, which order should also apply to the building owner and other parties.

Defendants seek a dissolution of the Amended Restraining Order entered by this Court on September 17, 2021. Additionally, Defendants seek a Temporary Restraining Order, Preliminary Injunction, and Permanent Injunction which enjoins Plaintiff from any further withholding of Defendant Rae's Food Establishment permit, maintaining the status quo and allowing Defendants to continue to operate during the pendency of this litigation as Rae's Private Club.

Further, Defendants' request the Plaintiff be enjoined from any efforts to secure the closure of Defendant Rae's Café or Rae's Private Club for purported violations of the Health Order.

FINDINGS OF FACT

The Court finds that the evidence adduced thus far is, in part, as follows:

1. Rae's Café is located in Blue Springs, Jackson County, Missouri.
2. Amanda Wohletz is the owner and operator of Rae's Café.
3. According to the Centers for Disease Control and Prevention, more than 650,000 Americans have lost their lives to COVID-19. *COVID DATA Tracker* (September 21, 2021).
4. As of August 24, 2021, there have been 31,660 total cases and 388 deaths of COVID-19 reported in the area within the Jackson County Health Department jurisdiction. (Plaintiff Exhibit B)
5. On August 6, 2021, Jackson County, Missouri, through its County Executive and Director of its Health Department, issued a Health Order.
6. The Health Order, by vote of the Jackson County Legislature, is to be in effect until October 7, 2021.
7. Jackson County, by and through its health authorities, is vested by the Missouri Constitution, Missouri Statutes, the Code of State Regulations, County Home Rule Charter and County Code provisions with the police power to issue and enforce business restrictions and closure orders for the protection of the health of Jackson County residents. See, e.g. Mo. Const., Art IV, §18; RS MO. §192.300; §192.320; Sections 4001 and 4052 of Jackson County Code; 19 CSR 20-20.020-050.

8. Bridgette Shaffer (*hereinafter referred to as Shaffer*), the Director of the Jackson County Health Department, is vested with the powers to use the legal means necessary to control, investigate, or both, any disease or condition listed in 19 CSR 20-20.020 which is a threat to the public health. 10 CSR 20-20.040; §192.300; §192.320.
9. Deborah Sees (*hereinafter referred to as Sees*), the Jackson County Environmental Health Administrator, is given the authority to issue general ordinance summons to persons for violations of §192.300, §192.320, Jackson County Code 4052.
10. The City of Blue Springs has previously entered into an agreement with Jackson County that gives the Jackson County Environmental Health Administrator the duties to provide for the inspection of food service establishments.
11. To address non-compliance with the Health Order, the Jackson County Code, Chapter 40, legislatively granted authority to the Environmental Health Administrator to issue general ordinance summonses for alleged violations of §192.300.
12. The Environmental Health Administrator received complaints that Rae's Café was operating in violation of the Health Order.
13. On August 18, 2021, the Environmental Health Administrator issued a warning to Rae's Café regarding noncompliance with the Health Order.
14. Following additional complaints, on August 27, 2021, the Environmental Health Administrator issued a general summons for noncompliance with the Health Order.
15. On August 30, 2021, after receiving further complaints, the Environmental Health Administrator issued a second summons for noncompliance. Within that summons,

notice was given to Defendants regarding potential revocation of Rae's Café's food permit.

16. Rae's Café continued to operate in violation of the Health Order after the August 30, 2021, summons.

17. On September 3, 2021, the Environmental Health Administrator revoked Defendants' food permit.

18. Rae's Café continued to operate after September 3, 2021.

19. On September 9, 2021, Shaffer, issued a letter ordering the closure of Defendants' restaurant. Said letter was posted on Rae's Café on September 9, 2021, and hand delivered to Amanda Wohletz on September 10, 2021.

20. On September 10, 2021, Plaintiff filed the *Petition for Temporary Restraining Order, Preliminary Injunction and Permanent Injunction*.

CONCLUSIONS OF LAW

The Court makes, based upon the evidence adduced thus far, the following conclusions of law:

THE CREATION OF THE HEALTH ORDER

Missouri law bestows upon the Department of Health and Senior Services (DHSS) the "general duty and responsibility....to safeguard the health of the people in the state and all its subdivision." Mo. Rev. Stat. §192.020(1). Among the enumerated powers that flow from such duty and responsibility is the "power and authority... to make such orders, findings, rules and regulations as will prevent the entrance of infectious, contagious and communicable diseases into the state." *Id.* DHSS has, in turn, empowered local health authorities, such as Counterclaim Defendant Shaffer, of the Jackson County Health Department, with the discretion to "establish appropriate control measures" to combat infectious or contagious diseases like COVID-19. 19

C.S.R. 20-20.040(2). Specifically, DHSS regulations entrust local health authorities with “the creation and enforcement of adequate orders to prevent the spread of the disease and other measures considered by the department and/or local health authority as appropriate disease control measures based upon the disease.” 19 C.S.R. 20-20.040(2)(G). And these regulations further obligate the local health authority to “assume direct responsibility as director of health to make necessary investigation and immediately institute appropriate control measure necessary for the protection of the public health in occurrence of outbreaks. 19 C.S.R. 20-20.040(2)(I).

Mo. Rev. Stat. §67.265 was passed by the Missouri Legislature in 2021. This statute further outlines the requirements and procedure for issuance and maintenance of health orders. It states that a health order issued by a local health authority (and/or the political subdivision’s executive) during a declared emergency that places restrictions on the access to any one or more business organizations shall automatically expire at the end of the thirty days unless so authorized by a simple majority vote of the political subdivision’s governing body:

- (1) Any order issued during and related to an emergency declared pursuant to chapter 44 that directly or indirectly closes, partially closes or places restrictions on the opening of or access to any one or more business organizations, churches, schools, or other places of public or private gathering or assembly, including any order, ordinance, rule, or regulation of general applicability or that prohibits or otherwise limits attendance at any public or private gatherings, shall not remain in effect for longer than thirty calendar days in a one hundred eighty-day-period, including the cumulative duration of similar orders issued concurrently, consecutively, or successively, and shall automatically expire at the end of the thirty days or as specified in the order, whichever is shorter, unless so authorized by a simple majority vote of the political subdivision’s governing body to extend

such order or approve a similar order; provided such extension or approval of similar orders shall not exceed thirty calendar days in duration and any order may be extended more than once;

Mo. Rev. Stat. §67.265(1).

In this matter, Shaffer exercised her lawfully afforded discretion in issuing the Health Order. Shaffer and Counterclaim Defendants fully complied with the procedural requirements set forth in Mo. Rev. Stat. §67.265. After a public hearing, which was open for public comment, on August 6, 2021, the Jackson County Legislature voted and affirmed the Health Order to be in effect until October 7, 2021.

THE ENFORCEMENT OF THE HEALTH ORDER

The City of Blue Springs has previously entered into an agreement with Jackson County that gives the Jackson County Environmental Health Administrator the duties to provide for the inspection of food service establishments. To address non-compliance of the Health Order, the Jackson County Code, Chapter 40, legislatively granted authority to the Environmental Health Administrator to issue general ordinance summonses for alleged violations of §192.300. After receiving complaints from the public that Rae's restaurant was in violation of the Health Order, the Environmental Health Administrator issued a warning after it was witnessed that customers and/or employees were not wearing face coverings or masks. After receiving additional complaints, two additional summonses were issued, on August 27, 2021 and August 30, 2021, respectively. Defendants continued to openly operate in violation of the Health Order. On September 3, 2021, the Environmental Health Administrator revoked Defendants food permit for repeated violations of the Health Order. After this revocation, Defendants continued to operate Rae's restaurant.

Defendant Shaffer, the Director of the Jackson County Health Department, is vested with the powers to use the legal means necessary to control, investigate, or both, any disease or condition listed in 19 CSR 20-20.040; which is a threat to the public health. 19 CSR 20.040; §192.300; §192.320. On September 9, 2021, the Director of the Jackson County Health Department, Defendant Shaffer, issued a letter ordering the closure of Defendants' restaurant that was posted to the restaurant and hand delivered to Amanda Wohletz.

HEALTH ORDER EXCEPTIONS

Defendants argue that the Health Order allows for private club and medical exemptions. The Court does not find these arguments to be compelling. The evidence presented to the Court regarding the classification of Rae's restaurant as a private club, even if taken as true, does not exempt the restaurant from the requirement of operating with a food permit, which was revoked on September 3, 2021. Additionally, Sees testified that at no time prior to the warning or the issuances of citations was the suggestion of medical exemptions made or documentation provided regarding medical exemption of the employees. Sees testified that she had never seen the medical exemption cards, Defendants' Exhibit D. There is a protection for businesses when a food permit is revoked. It is through that process, the reinstatement of a food permit after revocation, that the medical exemption defense could be properly presented.

JACKSON COUNTY, MISSOURI'S REQUEST FOR PRELIMINARY INJUNCTION

Missouri Supreme Court Rule 92.02(a)(1) authorizes the entry of a temporary restraining order and preliminary injunction where the party seeking relief demonstrates that immediate and irreparable injury, loss, or damage will result in the absence of relief. *Id.* "The purpose of an injunction is to prevent actual or threatened acts that constitute real injury. "State *ex rel. Gardner v. Stelzer*, 568 S.W.3d 48, 51 (Mo.Ct.App. 2019), and to maintain the status quo until the motion

for permanent injunction can be adjudicated” *Hemme v. Evans*, 866 S.W.2d 922, 923 (Mo. Ct. App. 1993).

In considering Plaintiff’s Motion for Preliminary Injunction, this Court is required to weigh: (1) the Plaintiff’s likelihood of success on the merits; (2) the threat of immediate and irreparable harm absent the relief sought; (3) the balance between this harm and the injury that the injunction would inflict; and (4) whether public interest favors injunctive relief. *State ex rel. Director of Revenue v. Gabbert*, 925 S.W.2d 838, 839 (Mo. 1996); *Minana v. Monroe*, 467 S.W.3d 901, 907 (Mo. Ct. App. 2015).

Given the reasons discussed above, the Court finds the Plaintiff would likely succeed on the merits. The Health order was lawfully created and enforced. Despite warnings, citations, the revocation of the food permit, and the Jackson County Health Department ordering the closure of the restaurant, the Defendants continued to operate the restaurant. The Court finds the private club and medical exemptions as argued by the Defendant do not provide a sufficient defense.

“Irreparable harm occurs when a party has no adequate remedy at law, typically because its injuries cannot be fully compensated through an award of damages.” *Gen. Motors Corp. v. Harry Brown’s LLC*, 563 F.3d 312, 319 (8th Cir. 2009). Defendants’ continued operation in violation of the Health Order increases the risk of transmission of COVID-19 and its variants in the community. This is immediate and irreparable harm. Additionally, there is no adequate remedy at law to address the COVID-19 public health crisis.

A business is not permitted to engage in conduct that endangers the well-being of the state. *State ex rel. Kansas City Pub. Serv. Co. v. Latshaw*, 30 S.W.2d 105, 108 (1930). When the need for public health measure is weighed against the effect the measure has on commerce, the measures are typically upheld unless they are arbitrary or unreasonable in nature. *Bezayiff v. City*

of St. Louis, 963 S.W.2d 225, 229 (Mo. Ct. App. 1997). The balance of harm, increasing the risk of the transmission of COVID-19 and its variants, overwhelmingly outweighs any injury that an injunction may inflict. Defendants need only follow the reinstatement process for a food permit and comply with the Health Order to avoid injury.

Finally, public interest favors injunctive relief. Compliance with the Health Order bears a real and substantial relation to the COVID-19 pandemic. Refusal to comply with the Health Order endangers the health, safety, and welfare of the community of Jackson County, Missouri and its surrounding areas.

Plaintiff has met its burden in the four factors determining whether injunctive relief is appropriate. The law and evidence on each of these factors supports injunctive relief. Plaintiff Jackson County, Missouri's Amended Motion for Temporary Restraining Order and Preliminary Injunction shall be granted.

COUNTER PETITION FOR TEMPORARY RESTRAINING ORDER, PRELIMINARY INJUNCTION AND PERMANENT INJUNCTION

Missouri Supreme Court Rule 92.02(a)(1) authorizes the entry of a temporary restraining order and preliminary injunction where the party seeking relief demonstrates that there is no adequate remedy at law and immediate and irreparable injury, loss, or damage will result in the absence of relief. *Id.* As stated above, in evaluating whether a temporary restraining order or preliminary injunction is appropriate, a court considers: (1) the plaintiff's likelihood of success on the merits; (2) the threat of immediate and irreparable harm absent the relief sought (3) the balance between the harm and the injury an injunction would inflict; and (4) whether the public interests favors injunctive relief. *State ex rel. Dir. of Revenue, State of Mo. v. Gabbert*, 925

S.W.2d 838, 839 (Mo. banc 1996); *Minana v. Monroe*, 467 S.W.3d 901, 907 (Mo. Ct. App. 2015).

In the Defendant's counter petition, both damages and equitable relief are sought. Throughout the counter petition, Defendants reference loss of revenue and income. This suggests to the Court that there is an adequate remedy at law, monetary damages. Additionally, there is insufficient evidence for the Court to conclude that monetary damages in this instance are inadequate. On this basis alone, the Court finds injunctive relief to be inappropriate. However, the Court will address the factors in determining whether a temporary restraining order, preliminary injunction or permanent injunction should be issued.

As previously stated, the first factor in evaluating whether a temporary restraining order or preliminary injunction is appropriate, is a determination as to the likelihood of success on the merits. The Court has found that the Health Order was lawfully enacted and enforced, thus the Defendants are unlikely to succeed on the merits of the claim. Given this finding, the Court declines to address the remaining factors.

The Defendants' adequate remedy at law, as pled and requested in their counter petition, is monetary damages. Additionally, the Defendants are unlikely to succeed on the merits of their claim, given the Health Order was lawfully enacted and enforced. The Defendants' Counter-Petition for Temporary Restraining Order, Preliminary Injunction and Permanent Injunction is denied.

WHEREFORE, for the above stated reasons, the Court hereby orders as follows:

IT IS HEREBY ORDERED that the Plaintiff Jackson County, Missouri's Amended Motion for Temporary Restraining Order and Preliminary Injunction is GRANTED.

IT IS FURTHER ORDERED that Defendant Rae's Café and Defendant Amanda Wohletz are hereby enjoined and restrained from directly or indirectly operating Rae's Café, located at 1605 S. 7 Hwy, Blue Springs, MO 640115 in violation of the Health Order.

IT IS FURTHER ORDERED that Defendant Rae's Café and Defendant Amanda Wohletz shall cease operation as a restaurant and food service provider until a valid food permit is obtained.

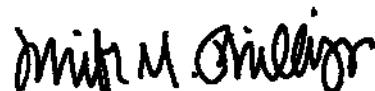
IT IS FURTHER ORDERED that Defendants Verified Counter-Petitioner for Temporary Restraining Order, Preliminary Injunction and Permanent Injunction is DENIED.

IT IS FURTHER ORDERED that a Case Management Conference will be held on **September 24, 2021, at 10:00 a.m.** by phone to address the remaining issues before the Court. The attorneys will receive additional instructions by email regarding the phone conference.

IT IS SO ORDERED.

September 23, 2021

Date



Judge Jennifer M. Phillips

Division 12

CERTIFICATE OF MAILING

It is hereby certified that a copy of the forgoing was sent via the E-Filing System on _____, to all attorneys of record.

Law Clerk