

5-18-20

STATE OF MINNESOTA  
COUNTY OF STEARNS

DISTRICT COURT  
SEVENTH JUDICIAL DISTRICT

Case Type: Civil  
(Consumer Protection)

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

Court File No. 73-CV-20-3556

Plaintiff,

vs.

Kris Schiffler d/b/a Shadys Long Shots,  
Shady's Inc., Shadys Hometown Tavern and  
Event Center, Inc., Shady's of Rice, Inc.,  
Shadys Golden Eagle, Inc., and Shady's Silver  
Spur, Inc.,

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

Defendants.

The above-titled matter came before the undersigned Judge of the District Court on May 18, 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 Defendants Kris Schiffler d/b/a Shadys Long Shots, Shady's Inc., Shadys Hometown Tavern and Event Center, Inc., Shady's of Rice, Inc., Shadys Golden Eagle, Inc., and Shady's Silver Spur, Inc. (hereinafter, collectively "Shady's Taverns").

The Court has considered the pleading, exhibits, files, records, arguments, submissions of the State, and the three affidavits the State submitted to the Court.<sup>1</sup> The Court accordingly makes the following findings of fact, conclusions of law, and enters the following Order:

### **FINDINGS OF FACT**

1. Defendants own and operate the following six Minnesota restaurants: (1) Shady's Bar & Grill, 511 Main Street, New Munich, Minnesota 56356; (2) Shady's Railside, 30 Division Street North, Rice, Minnesota 56367; (3) Shady's Hometown Tavern and Event Center, 451 Railroad Avenue, Albany, Minnesota 56307; (4) Shady's Golden Eagle, 13218 County Road 103, Burtrum, Minnesota 56318; (5) Shady's Long Shots, 17467 Fairway Circle, Cold Spring, Minnesota 56320; and (6) Shady's Silver Spur, 133 Maine Street, St. Martin, Minnesota 56376. Defendant Schiffler is the principal owner of these restaurants and serves as the chief executive officer of each of the Defendants.

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 722 Minnesotans. (Pleggenkuhle Aff. Ex. 2.) The disease is also virulent and prone to community spread, with at least 15,668 cases confirmed in Minnesota since March 5, 2020. (*Id.* Ex. 1.) This is evident from the recent rapid increase of confirmed cases in Stearns County, from just 55 in early May to 1,161 by May 7, 2020. (*Id.* Ex. 4.)

3. In order to slow the community spread of COVID-19, Governor Walz issued Executive Order 20-04, which ordered the closure of bars, taverns, restaurants, and other places of public accommodation for on-premises consumption. (Pleggenkuhle Aff. Ex. 6.) While the

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<sup>1</sup> The Court considered the affidavits of: Assistant Attorneys General Jason Pleggenkuhle and Noah Lewellen, as well as Investigator Nina Grove, at the Minnesota Attorney General's Office, 445 Minnesota Street, Suite 1200, St. Paul, MN 55101.

Order prohibited on-premises consumption, it nonetheless encouraged such establishments to “offer food and beverage using delivery service, window service, walk-up service, drive-through service, or drive-up service.” (*Id.*) Moreover, the Minnesota Legislature passed a bill signed by the Governor allowing bars and restaurants selling take-out food to also sell up to one bottle of wine or up to a six-pack of beer, cider, or hard seltzer with their food. *See* 2020 Minn. Laws ch. 75.

4. On May 13, 2020, Governor Walz issued Executive Order 20-56, extending the closure of bars, taverns, restaurants, and other public accommodations for on premises consumption set forth in Executive Order 20-04 “until May 31, 2020 at 11:59 pm.” (*Id.* at ¶ 7.) Executive Order 20-56 further instructed the Commissioners of Health, Employment and Economic Development, and Labor and Industry “to develop a phased plan to achieve the limited and safe reopening of bars, restaurants, and other places of public accommodation beginning on June 1, 2020.” (*Id.*) The Order states that the Commissioners’ plan must be ready for presentation to the public no later than May 20, 2020. (*Id.*)

5. Despite Executive Order 20-56, Defendants have repeatedly represented to the public their intention to re-open each of their six Minnesota restaurants for on-premises consumption before June 1, 2020. Defendant Schiffler publicly announced he would do so during an interview he gave to KMSP Fox 9. (Grove Aff. Ex. A.) Moreover, at least three of Defendants six restaurants—Shady’s Silver Spur, Shady’s Hometown Tavern and Event Center, and Shady’s Railside—similarly represented they would do so on their respective Facebook pages. (*Id.* Ex. B.)

6. Defendants, and their counsel, reiterated their intention to re-open all of their Minnesota restaurants for on-premises consumption before June 1, 2020, in telephone calls with

the Attorney General’s Office on May 15 and May 16, 2020. (Lewellen Aff. ¶ 3; Pleggenkuhle Aff. ¶ 2.) Additionally, Defendant Schiffler again publicly announced he planned to re-open his six restaurants before June 1, 2020, in a Facebook video posted on May 16, 2020. (*Id.* Ex. C.) He also stated publicly on May 17, 2020: “Shady’s Hometown Tavern in Albany will be open tomorrow, Monday May 18th at Noon!” (Grove Aff. Ex. D.)

### 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 March 23, 2020, Governor Tim Walz issued Emergency Executive Order 20-56 which prohibits restaurants from opening for on-premises consumption through May 31, 2020. Executive Order 20-56 was promulgated by the Governor under the authority of Minnesota Statutes section 12.21, subdivision 3, clause (1), was approved by the Executive Council, and filed in the Office of the Secretary of State. Thus, pursuant to Minnesota Statutes section 12.32, Executive Order 20-56 has “the full force and effect of law” during the peacetime emergency. (*See* Pleggenkuhle Aff. Ex. 10.)

3. Executive Order 20-56 authorizes the Attorney General to enforce its provisions and seek any relief available pursuant to Minnesota Statutes section 8.31, “including civil penalties up to \$25,000 per occurrence from businesses and injunctive relief.” (*Id.*) 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.

**I. THE STATE IS ENTITLED TO A TEMPORARY RESTRAINING ORDER PURSUANT TO MINNESOTA RULE OF CIVIL PROCEDURE 65.01.**

4. The State has filed an emergency consumer-protection action to enforce Governor Walz’s Emergency Executive Order 20-56 (“Order 20-56”), which prohibits restaurants from opening for on-premises consumption through May 31, 2020. 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 Order 20-56; 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).

6. There is good cause to believe that the State will likely prevail on the merits of its claims that Defendants are about to violate Order 20-56. The State has submitted evidence showing that Defendants intend to reopen their Minnesota restaurants for on-premises consumption before June 1, 2020. (*See, e.g.*, Grove Aff. Exs. A-D; Lewellen Aff. ¶ 3;

Pleggenkuhle Aff. ¶ 3.) Indeed, Defendants' principal owner and chief executive officer has publicized as much via news interviews, Facebook videos, and several of the restaurants' Facebook pages, as well as his own Facebook page. (Grove Aff. Exs. A-D.)

7. Thus, the State is likely to prevail on the merits that Defendants are about to violate Executive Order 20-56. EXEC. ORDER 20-56 ("The closure of bars [and] restaurants . . . is extended until May 31, 2020. . . .")

8. There is good cause to believe that the temporary injunctive relief the State seeks would fulfill the purposes of Order 20-56. The purpose of Order 20-56 is to slow the spread of the COVID-19 virus in order to protect public health and safety. Order 20-56 promotes public health and safety by restricting avenues of viral transmission at locations where such transmission is likely to occur. 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 and employees during the pendency of this litigation by temporarily preventing on-site consumption at Defendants' restaurants in accordance with Order 20-56. It also protects this Court's ability to grant full and effective relief among the parties.

9. Furthermore, the State has established that it is entitled to not only temporary injunctive relief but to a TRO, before Defendants can be heard in opposition, pursuant to Minn. R. Civ. P. 65.01. It is clear from the facts shown by the State that Defendants' patrons, Defendants' employees, and the general public will suffer irreparable harm unless Defendant is temporarily enjoined from providing on-site consumption services at their six Minnesota restaurant locations prior to the expiration of Executive Order 20-56.

10. 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, Defendants are prevented, restrained, and enjoined from taking any action violating Executive Order 20-56, including but not limited to providing on-site consumption services at their six Minnesota restaurant locations.

3. Defendants are enjoined and prohibited from providing on-site consumption services at their six Minnesota restaurant locations in any manner inconsistent with Executive Order 20-56 or the plan that will be announced on or before May 20, 2020 by the Commissioners of Health, Employment and Economic Development, and Labor and Industry in accordance with paragraph 7 of Executive Order 20-56.

4. Defendants shall fully comply with Executive Order 20-56 and any future Executive Orders that apply to bars, taverns, or restaurants 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.

5. Nothing in this Order shall prevent Defendants from offering food and beverage through delivery service, window service, walk-up service, drive-through service, or drive-up service under the conditions provided in Executive Order 20-04. Moreover, nothing in this Order shall prevent Defendants from selling up to one bottle of wine or up to a six-pack of beer, cider, or hard seltzer with their take-out food in accordance with 2020 Minn. Laws ch. 75.

6. Within one (1) hour after the State emails Defendants' counsel with a copy of this Order, Defendants shall certify in writing to the State that it is no longer providing on-premises consumption of food and alcohol and is in full compliance with this Order, as well as Executive Order 20-56. Defendants are hereby ordered to retain all receipts, accounting information, and other financial information related to their operations prior to suspending on-premises consumption of food and alcohol, subject to further order of this Court regarding the State's request for an immediate accounting, restitution, disgorgement, and civil penalties.

**II. CORRESPONDENCE AND SERVICE ON PLAINTIFF.**

7. 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, Jason Pleggenkuhle  
 Minnesota Attorney General's Office  
 445 Minnesota Street, Suite 1200  
 St. Paul, Minnesota 55101-2130  
 jason.pleggenkuhle@ag.state.mn.us

**III. TEMPORARY INJUNCTION HEARING.**

8. IT IS FURTHER ORDERED that, pursuant to Minn. R. Civ. P. 65.01, counsel for Plaintiff and Defendants shall appear before this Court **on May 22, 2020, at 2:30 pm, at the Stearns County Courthouse at 815 Courthouse Square, St. Cloud MN 56303 or Via Teleconference** for a hearing on Plaintiff's motion for a temporary injunction pending final ruling on the Complaint against Defendants and imposing such additional relief as may be appropriate.

9. 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: May 18, 2020

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The Honorable Judge \_\_\_\_\_  
Judge of District Court