

IN THE CIRCUIT COURT FOR THE SIXTEENTH JUDICIAL CIRCUIT
KANE COUNTY, ILLINOIS

Thomas M. Hartwell
Clerk of the Circuit Court
Kane County, Illinois
10/26/2020 9:09 AM
FILED/IMAGED

FOX FIRE TAVERN, LLC, d/b/a)
FoxFire, an Illinois Limited Liability)
Company,)
)
PLAINTIFF,)
)
vs.)
)
GOVERNOR JAY ROBERT PRITZKER,)
in his official capacity, *et al.*)
)
DEFENDANTS.)

GEN. NO. 20 CH 348

**EMERGENCY PETITION FOR TEMPORARY RESTRAINING ORDER AND
PRELIMINARY INJUNCTION PURSUANT TO 735 ILCS 5/11-101**

NOW COMES the Petitioner, FOX FIRE TAVERN, LLC, d/b/a FoxFire, an Illinois Limited Liability Company (“FoxFire” and sometimes “Petitioner”), by and through its attorneys, Myers, Earl & Nelson, P.C., and for its *Emergency Petition for Temporary Restraining Order and Preliminary Injunction Pursuant to 735 ILCS 5/11-101*, states as follows:

1. As set forth more fully in its *Verified Complaint* (filed October 23, 2020), which is adopted and incorporated by reference, the Illinois Department of Health (the “Department”), and the Kane County Health Department specifically, have adopted the mitigation measures found in Governor Pritzker’s Executive Order 2020-61. As to Kane County, the same Resurgence Mitigation Measures were adopted on October 20, 2020.
2. Thus, as it pertains to restaurants and bars in Kane County, as of October 23, 2020, all such restaurants have been ordered to cease indoor dining indefinitely, among other restrictions.
3. As demonstrated by the affidavit of K.C. Gulbro, one of the principals of FoxFire, complying with such mitigation measures will cause irreparable harm to the Plaintiff.

4. In the absence of issuance of a restraining order prohibiting the Department and the Kane County Health Department from enforcing EO 2020-61 and applicable mitigation measures – instead of following the procedures of the IDPHA, 20 ILCS 2305/2 (b) & (c) – the result is an immediate and irreparable harm to Plaintiff, until such time as the Court can rule on the merits.

5. Simplifying a notably complex analysis for the Court, regardless of Executive Orders, like all other takings of property or ordered closures (or making property off limits), the Department is required to give a specific notice of order of closure. This notice is to include the right to counsel, notice of the right to file a petition requesting a hearing, among other things. *See 20 ILCS 2305/2 (b) & (c).*

6. The aforementioned process is not simply abandoned because Gov. Pritzker issues an invalid, or even a valid, Executive Order. That is exactly what has happened here as the Department has failed to send the requisite notice, simply relying on EO 2020-61, and demanding closure.

7. Plaintiff has no adequate remedy at law because they are forced into the dilemma of complying with the indoor dining closure orders, effectively putting them out of business, or continuing to operate in defiance of the Governor's Executive Order and the Department, which subjects them to fines and penalties.

8. Plaintiff clearly has a protectable rights and interests at stake, including, but not limited to: the right to be free from arbitrary and capricious rule making and the use and enjoyment of property rights, among other things.

9. Plaintiffs are likely to succeed on the merits as: 1) all of Gov. Pritzker's subsequent Proclamations of Disaster (after that original declaration dated March 9, 2020) were invalid, 2) Executive Order 2020-61 was invalid and unenforceable, and, 3) and the mitigation efforts adopted

by the Department do not ameliorate the strict requirements of *20 ILCS 2305/2 (b) & (c)*, none of which have been complied with at present.

10. The injunctive relief Petitioners seek is necessary to maintain the status quo of a phased reopening, instead of going backwards, again, without the proper statutory compliance.

11. Given the Petitioner's undisputed property rights and business interest, Petitioner has a high likelihood of success on the merits of its claim against the Defendants.

12. Petitioner has no adequate remedy at law for the injury they have already sustained and will continue to sustain unless Defendants' conduct is restrained.

13. Petitioner submits the attached affidavit in support of proceeding without notice, which is attached hereto as Exhibit "A," and expressly incorporated herein.

WHEREFORE, Petitioners pray that this Honorable Court:

- a. Enter a Temporary Restraining Order, without bond, restraining Defendant from enforcing the terms of EO 2020-61 and their current mitigation efforts, without a hearing;
- b. Enter a mandatory injunction that Defendants abide by the procedure established in the IDPHA; and
- c. Grant such other and further relief as the Court deems just.

Respectfully Submitted,



Kevin L. Nelson, Esq.
Attorney for the Petitioner

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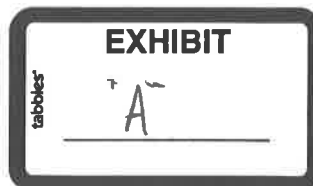
GEN. NO.

GOVERNOR JAY ROBERT PRITZKER,)
in his official capacity, the ILLINOIS)
DEPARTMENT OF PUBLIC HEALTH, and)
THE KANE COUNTY HEALTH)
DEPARTMENT,)
DEFENDANTS.)

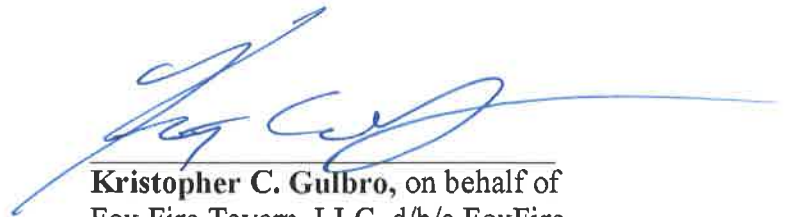
AFFIDAVIT OF K.C. GULBRO

I, Kristopher C. Gulbro, on oath state:

1. I am one of the principal owners of FoxFire, the Plaintiff corporation in the above-captioned cause, and if called to testify as a witness, can testify competently to the matters set forth in this affidavit.
2. I make this affidavit in support of Plaintiffs' Emergency Motion for Temporary Restraining Order and Preliminary Injunction Pursuant to 735 ILCS 5/11-101. The allegations set forth therein are true and accurate.
3. As a principal owner of FoxFire, I have direct knowledge of income generated from indoor food and dining service at the restaurant, as well as payroll and other existing obligations.
4. A temporary shutdown of all indoor dining and drinks at Foxfire, for more than a few days, will lead to an insurmountable loss of income, and for all intents and purposes require that FoxFire shutter its doors permanently.
5. Being actively involved in the Geneva/St. Charles restaurant community, I have also fielded calls from more than a half dozen similarly situated restaurant owners – implementation of EO 2020-61, specifically the closure of indoor food and restaurant dining in Kane County, will put countless restaurants out of business for good.
6. The relief requested is necessary on an emergency basis as Executive Order 2020-61 is void, and despite its inapplicability, is already negatively affecting clientele.
7. Notice of our intent to proceed with injunctive relief was given verbally, and electronically, to the Defendants.



Dated this 23 day of October, 2020.


Kristopher C. Gulbro, on behalf of
Fox Fire Tavern, LLC, d/b/a FoxFire

Subscribed and Sworn before me this
23rd day of October, 2020.


NOTARY PUBLIC

