

**COURT OF CHANCERY  
OF THE  
STATE OF DELAWARE**

WILLIAM B. CHANDLER III  
CHANCELLOR

COURT OF CHANCERY COURTHOUSE  
34 THE CIRCLE  
GEORGETOWN, DELAWARE 19947

Submitted: June 2, 2009

Decided: July 14, 2009

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Re: *Shore Investments, Inc. v. BHole, Inc., et al.*  
Civil Action No. 4252-CC

Dear Counsel:

I have reviewed the briefs submitted by defendants BHole, Inc. (“BHole”), Outlet Wines, LLC, Highway I Limited Partnership, and Alexander J. Pires, Jr., in support of their motion to dismiss, and Shore Investments, Inc. (“Shore Investments”), in opposition to the motion. For the reasons briefly stated below, I grant defendants’ motion to dismiss.

**I. Background**

Shore Investments is a Delaware corporation which owns the real property identified as Sussex County Tax Map Parcel 3-34-13.00-319.01. On August 31, 2004, Shore Investments leased a commercial structure and parking spots on the property to BHole. BHole operated “Ocean Wines and Spirits,” a liquor store, on the leased premises, selling beer, wine, and liquor. The lease has a seven year

term, expiring on August 31, 2011, and is divided into a four-year segment and a three-year segment. During the current three-year segment, base rent is established at \$61,000.00 per annum. The lease provides for additional rent to be paid by the tenant for land related expenses, hazard insurance, real estate taxes, common area maintenance, as well as electric and sewer services. The lease does not provide for the assessment of additional rent based on the business's profit, income, or revenue.

In November 2008, the sole owner of BHole, Kiran Patel, sold his entire interest in the company to Alexander Pires.<sup>1</sup> BHole filed an application with the Delaware Alcohol Beverage Control Commission ("DABCC") on December 3, 2008 to change its location of operation to a site immediately next to the property leased from Shore Investments. After a protest by Shore Investments and a public hearing, the DABCC granted the location transfer on April 7, 2009. Shore Investments appealed the decision to the DABCC Appeals Commission on April 21, 2009.<sup>2</sup>

Shore Investments filed its complaint in this Court on December 24, 2008, followed by an amended complaint on January 9, 2009. The complaint contained five claims for relief: (1) an injunction prohibiting the DABCC and its Commissioner John H. Cordrey from hearing the applications by BHole to move the license; (2) an order for specific performance of BHole's lease; (3) damages or specific performance of the lease from BHole, Pires, Patel, Highway I, and Outlet Wines for anticipated breach of the lease; (4) damages from Pires, Patel, Highway I, Outlet Wines, the DABCC, and Cordrey for intentional/negligent interference with a contract; and (5) a writ of mandamus, ordering the DABCC to produce records that Shore Investments requested.

On February 13, 2009, Shore Investments filed a motion for preliminary injunctive relief to prevent transfer of BHole's liquor license. I denied that motion, allowing the DABCC hearing to proceed. BHole, Outlet Wines, LLC, Highway I

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<sup>1</sup> Defendants assert Pires was not the purchaser of BHole. However, "[e]quitable jurisdiction must be determined from the face of the complaint as of the time of filing, with all material factual allegations viewed as true." *IBM Corp. v. Comdisco, Inc.*, 602 A.2d 74, 78 (Del. Ch. 1991). Accordingly, for purposes of this decision, I take the fact that Pires was the purchaser of BHole as true.

<sup>2</sup> The parties have not apprised the Court of any developments in the appeal besides the filing on April 21, 2009.

Limited Partnership, and Alexander J. Pires, Jr. filed this motion to dismiss on April 1, 2009.

## II. Analysis

### *A. Injunction Prohibiting the Progression of Any Application to Transfer the Liquor License*

First, the requests for temporary and permanent injunctions are moot. I denied Shore Investments' request for a temporary injunction, allowing the February 19, 2009 DABCC hearing to proceed. The DABCC later granted BHole's transfer application. Thus, there are no application hearings or proceedings for this Court to enjoin and these claims for relief are hereby dismissed.

Second, Shore Investments may appeal the transfer of the license through statutorily prescribed avenues. Section 541 of Title 4 of the Delaware Code establishes the procedures for the DABCC to receive and process applications for liquor licenses. Protests to liquor licenses must first be filed with the DABCC Appeals Commission.<sup>3</sup> The Appeals Commission's decision may then be appealed to the Superior Court.<sup>4</sup> Shore Investments has already invoked its appeal rights under 4 *Del. C.* § 541.

### *B. Specific Performance Requiring BHole to Comply with Obligations of its Lease*

It is axiomatic that the Court of Chancery "will not exercise subject matter jurisdiction 'where a complete remedy otherwise exists but where plaintiff has prayed for some type of traditional equitable relief as a kind of formulaic 'open sesame' to the Court of Chancery.'"<sup>5</sup> "A practical analysis of the adequacy of any legal remedy, then, must be the point of departure for each matter which comes before this Court."<sup>6</sup> "[T]his [C]ourt must assess the nature of the wrong alleged and the remedy available in order to determine whether a legal, as opposed to an

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<sup>3</sup> 4 *Del. C.* § 541.

<sup>4</sup> *Id.*

<sup>5</sup> *Christiana Town Ctr.*, 2003 WL 21314499, at \*3 (Del. Ch. 2003) (quoting *Comdisco, Inc.*, 602 A.2d at 78).

<sup>6</sup> *Comdisco, Inc.*, 602 A.2d at 78.

equitable remedy, is available and fully adequate.”<sup>7</sup> The party seeking the Court’s intervention bears the burden of establishing jurisdiction.

Shore Investments offers two theories for why equitable jurisdiction exists in this case. First, it contends that monetary damages are not a sufficient remedy because the liquor license confers unique property rights on Shore Investments. The DABCC Commissioner is prohibited from granting new liquor licenses within a certain proximity to existing licenses.<sup>8</sup> Shore argues this creates a monopolistic business opportunity for the licensee and the landlord derivatively enjoys a unique benefit tied directly to the license being authorized at the landlord’s property. According to Shore Investments, the loss of the license to a directly adjacent property causes Shore Investments irreparable harm, since it will not be able to lease its property to another liquor licensee and loses the intrinsic value the license confers on the property. Shore Investments contends that monetary damages are an inadequate remedy, because the intrinsic value the license adds to the property is difficult to ascertain. Thus, Shore Investments seeks an order for specific performance of the lease, compelling BHole to operate its license on Shore Investments’ property. This, it argues, is the only option to prevent waste and ensure a complete remedy.

Shore Investments’ second argument is that the lease makes it mandatory for BHole to operate a liquor store on the subject property. It relies on language in the lease which provides that BHole “shall use the Premises for the purpose of conducting the business of retail sales of alcoholic beverages” and that BHole “shall conduct its business on the premises at least during the regular and customary days, nights, and hours for such type of business.”<sup>9</sup> The interaction of these two terms requires BHole to keep the liquor license on Shore Investments’ property, because without the license, BHole cannot comply with the terms of its lease. Shore argues that BHole breached the mandatory use provision in the lease by transferring the license and that the only remedy that will make it whole is specific performance.

Shore Investments has failed to meet its burden of establishing the Court’s subject matter jurisdiction. This Court does not have jurisdiction to order specific performance of a lease when a remedy at law is complete and adequate.<sup>10</sup> A legal

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<sup>7</sup> *IMO Indus., Inc. v. Sierra Int’l, Inc.*, 2001 WL 1192201, at \*2 (Del. Ch. Oct.1, 2001).

<sup>8</sup> 4 *Del. C.* § 453(d).

<sup>9</sup> Defs.’ Mot. to Dismiss Ex. A.

<sup>10</sup> *Chavin v. H.H. Rosin & Co.*, 246 A.2d 921 (Del. 1968).

remedy, monetary damages for breach of lease, is fully adequate and available to Shore Investments. Granting an injunction to prevent waste is unnecessary and Shore Investments' argument that it will not be made whole by monetary damages is unpersuasive.

A geographic monopoly for liquor sales is of obvious value to the licensed retailer, but a landlord has no enforceable rights to assert an ownership interest in the retailer's license. Shore Investments offers nothing more than vague claims of "intrinsic value" and a "unique property interest" to support its claim that monetary damages for a breach of the lease are insufficient. Any "intrinsic value" that exists in a liquor license is possessed solely by the licensee; it is not a property right (at least in the circumstances of this case) in which the landlord can assert an interest. Section 511(a) of Title 4 of the Delaware Code states that only "the person to whom such license is granted may purchase, resell or dispense alcoholic liquor in accordance with his license." This Court has held that an improper transfer of liquor license rights to a party other than the licensee is unlawful.<sup>11</sup> Shore Investments was not granted the liquor license, and no basis for specific performance of the lease exists. Therefore, Shore cannot assert an interest in the license without violating § 511. In short, Shore points to no authority for its novel theory that a landlord acquires a possessory interest in the lessee's exclusive license to sell alcohol. Shore's claim for specific performance is meritless.

*C. Damages to Remedy BHole's Breach of Lease and for Intentional/Negligent Interference with a Contract*

Nor is there a reason for this Court to hear Shore's legal claims under the clean up doctrine. "It is a well-established that if a controversy contains any equitable feature that would provide this Court with subject-matter jurisdiction over any part of a controversy, the Court may, in its discretion, take jurisdiction over the entire controversy."<sup>12</sup> The Court of Chancery may exercise its discretionary jurisdiction to hear legal claims for a variety of reasons, including: "to resolve a factual issue which must be determined in the proceedings; to avoid a multiplicity of suits; to promote judicial efficiency; to do full justice; to avoid great expense; to afford complete relief in one action; and to overcome insufficient

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<sup>11</sup> See *Eisenman v. Seitz*, 25 A.2d 496 (Del. Ch. 1942) (holding a partnership may not run a retail liquor store under a license issued in a single partner's name); *Della Corp. v. Diamond*, 210 A.2d 847 (Del. Ch. 1965) (holding a tenant cannot operate a retail business and restaurant when the landlord holds the liquor license).

<sup>12</sup> *Clark v. Teeven Holding Co., Inc.*, 625 A.2d 869, 881 (Del. Ch. 1992).

modes of procedure at law.”<sup>13</sup> “Of great importance also is whether the facts involved in the legal and in the equitable claims are so intertwined that it would be undesirable or impossible to sever them.”<sup>14</sup>

Shore Investments’ legal claims do not reach the threshold required to justify exercise of this Court’s clean up doctrine. The claims under the lease can be remedied by a money damage award in Superior Court. No efficiency would be gained or expense averted by adjudicating Shore’s legal claims here rather than in Superior Court. Because the claims for an injunction and specific performance are dismissed, all that remains is the purely legal question of damages for breach of the lease. Transferring this case to the Superior Court will not sever Shore Investments’ remaining claims or promote a multiplicity of suits. I therefore decline to exercise my clean up jurisdiction over Shore’s purely legal claim for money damages relating to the alleged breach of its lease agreement.

### III. Conclusion

For the reasons set forth above, I grant defendants’ motion to dismiss, unless plaintiff moves within fourteen days to transfer its claim to the Superior Court in accordance with 10 *Del. C.* § 1902.

IT IS SO ORDERED.

Very truly yours,



William B. Chandler III

WBCIII:pld

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<sup>13</sup> *Id.*

<sup>14</sup> *Id.*