

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Independent State Store Union
and David Wanamaker, individually
and as Vice-President and Member
of Independent State Store Union,
Petitioners

v.

Commonwealth of Pennsylvania,
Pennsylvania Liquor Control Board,
Patrick J. Stapleton III, Chairman of
Pennsylvania Liquor Control Board,
Thomas F. Goldsmith, Board Member
of Pennsylvania Liquor Control Board,
and Robert S. Marcus, Board Member
of Pennsylvania Liquor Control Board,
Respondents

No. 526 M.D. 2010

Argued: September 16, 2010

BEFORE: HONORABLE BONNIE BRIGANCE LEADBETTER, President Judge
HONORABLE BERNARD L. McGINLEY, Judge
HONORABLE DAN PELLEGRINI, Judge
HONORABLE RENÉE COHN JUBELIRER, Judge
HONORABLE MARY HANNAH LEAVITT, Judge
HONORABLE PATRICIA A. McCULLOUGH, Judge
HONORABLE JOHNNY J. BUTLER, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE McCULLOUGH

FILED: November 18, 2010

Presently before this Court are the preliminary objections filed by the Pennsylvania Liquor Control Board, its chairman, and its individual members (hereafter, collectively, PLCB) to the petition for review in the nature of a complaint in mandamus and for declaratory relief filed by the Independent State Store Union

and David Wanamaker (hereafter, together, ISSU) seeking to enjoin the PLCB from establishing and operating wine kiosks in the Commonwealth.

ISSU is a labor organization and bargaining representative for liquor store managers 1, 2, and 3, liquor store general managers 1 (A & B), 2 (supervisory), and liquor subwarehouse supervisor 1 and 2. ISSU represents 739 employees, or 13% of the total number of employees (5,694) of the PLCB. David Wanamaker is vice-president of ISSU and a liquor store general manager 2 (supervisory).

On March 24, 2008, the PLCB publicly issued Request For Proposal 20080318, inviting interested parties to submit proposals to lease, provide, maintain, and service 100 fully functional wine kiosks in locations throughout the Commonwealth. Simple Brands, LLC, was the only entity to respond. On November 19, 2008, the PLCB and Simple Brands executed a ten-year contract, with Simple Brands assuming all costs relating to production and installation of the kiosks in exchange for the right to sell advertising space along the top of the kiosks. The PLCB thereafter solicited proposals from merchants to lease space within grocery stores to place the wine kiosks. After selecting the locations, the PLCB announced the same at a public meeting on December 2, 2009, and published the locations in various newspapers of general circulation.

The PLCB chose two locations in the Harrisburg area for testing of the kiosk units, which commenced the week of June 21, 2010. No date has been set for the statewide rollout of the remaining units. A week prior to the commencement of the testing, on June 14, 2010, ISSU filed its petition for review seeking both mandamus and declaratory relief. As to their request for declaratory relief, ISSU seeks an order from this Court that the PLCB is not authorized by the Liquor Code¹ or

¹ Act of April 12, 1951, P.L. 90, as amended, 47 P.S. §§1-101 – 10-1001.

any other law to operate wine kiosks in the Commonwealth and enjoining the PLCB from operating the same. As to mandamus, ISSU seeks an order from this Court that the PLCB has violated the Liquor Code by establishing wine kiosks and directing the PLCB to discontinue the operation of the existing kiosks. Simple Brands thereafter filed a petition to intervene, which we granted by order dated July 14, 2010.

ISSU simultaneously filed an application for a preliminary injunction. By single-judge opinion and order dated August 3, 2010, the undersigned denied the application, concluding that ISSU failed to establish the necessary prerequisites for the grant of a preliminary injunction, including a clear right to relief and irreparable harm. The opinion noted that ISSU relied on speculative testimony which is insufficient to support a conclusion that the harm they sought to prevent was immediate and irreparable.

While the application for a preliminary injunction was pending, the PLCB filed preliminary objections to ISSU's petition for review. With respect to ISSU's claim for declaratory relief, the PLCB asserted a lack of jurisdiction on the basis that no true case or controversy existed and a demurrer premised upon legal insufficiency. As to ISSU's claim in mandamus, the PLCB asserted a failure of the pleading to conform to law or rule of court; insufficient specificity; failure to exhaust an adequate statutory remedy; and a demurrer premised upon a failure to state a cause of action. ISSU filed an answer denying the allegations of the PLCB's preliminary objections, the PLCB and ISSU filed briefs, and argument was held before this Court *en banc* on September 16, 2010.²

² Intervenor Simple Brands filed a notice of non-participation on August 31, 2010.

We first address the PLCB's preliminary objections to ISSU's claim for declaratory relief.³ The purpose of the Declaratory Judgments Act, 42 Pa. C.S. §§ 7531-7541, is to settle and to afford relief from uncertainty and insecurity with respect to rights, status, and other legal relations. Waslow v. Pennsylvania Department of Education, 984 A.2d 575 (Pa. Cmwlth. 2009). In addition, the Declaratory Judgments Act is to be liberally construed and administered. Id.

However, a party seeking a declaratory judgment must allege an interest that is direct, substantial, and present and must demonstrate the existence of an actual controversy related to the invasion or threatened invasion of its legal rights. Id. Declaratory judgment must not be employed to determine rights in anticipation of events that may never occur, or for consideration of moot cases, or as a medium for the rendition of an advisory opinion which may prove to be purely academic. Id.

In its pleadings, ISSU does not identify any specific legal right that is implicated or threatened by the operation of the wine kiosks. Indeed, we note that sections 104(c) and 207(a) of the Liquor Code vests the PLCB with control over the manufacture of and transactions in liquor, alcohol and malt or brewed beverages, including the power to sell the same. 47 P.S. §§1-104(c), 2-207(a). Section 301(a) of the Liquor Code also vests the PLCB with the authority to operate and maintain

³ In considering preliminary objections, a court must consider as true all well-pleaded material facts set forth in the petition and all reasonable inferences that may be drawn from those facts. Richardson v. Beard, 942 A.2d 911 (Pa. Cmwlth.), affirmed, 600 Pa. 102, 963 A.2d 904 (2008). Preliminary objections will be sustained only where it is clear and free from doubt that the facts pleaded are legally insufficient to establish a right to relief. Id. A court need not accept as true conclusions of law, unwarranted inferences from facts, argumentative allegations, or expressions of opinion. Id. Moreover, the question presented by a demurrer is whether, on the facts averred, the law says with certainty that no recovery is possible, and any doubt should be resolved in favor of overruling the demurrer. Chester Community Charter School v. Department of Education, 996 A.2d 68 (Pa. Cmwlth. 2010).

stores known as “Pennsylvania Liquor Stores,” without defining the term “store.” 47 P.S. §3-301(a). A “store” is generally defined as a “place where goods are deposited for purchase or sale.”⁴ Black’s Law Dictionary 1555 (9th ed. 2009). Further, we note that the construction given this term by the PLCB, as the agency charged with execution and application of the Liquor Code, is entitled to great weight and should only be disregarded or overturned for cogent reasons and if clearly erroneous. Pittsburgh Stadium Concessions, Inc. v. Pennsylvania Liquor Control Board, 674 A.2d 334 (Pa. Cmwlth.), appeal denied, 546 Pa. 687, 686 A.2d 1314 (1996); Hyland Enterprises, Inc. v. Pennsylvania Liquor Control Board, 631 A.2d 789 (Pa. Cmwlth. 1993). ISSU has failed to identify such reasons in its pleadings.

Moreover, even accepting as true the allegations of ISSU’s petition for review, ISSU’s request for declaratory relief is premised upon the speculative belief that sales at the wine kiosks will lead to a decrease in sales at traditional stores, a decrease in work at those stores, and future layoffs. However, it is well-settled that speculative events cannot support the grant of declaratory relief. Pennsylvania State Lodge, Fraternal Order of Police v. Department of Conservation, 909 A.2d 413 (Pa. Cmwlth. 2006), affirmed, 592 Pa. 304, 924 A.2d 1203 (2007) (denying declaratory judgment based upon the speculative belief that lack of sufficient training to park rangers would jeopardize the safety of police officers working with the rangers or the general public); Citizens Police Review Board v. Murphy, 819 A.2d 1216 (Pa. Cmwlth. 2003), appeal denied, 579 Pa. 694, 856 A.2d 835 (2004) (denying declaratory judgment based upon the speculative belief that police officers may

⁴ Likewise, the Liquor Code does not define the term “kiosk,” which is generally understood to be “a stand or booth at which merchandise is sold or information is provided.” Webster’s Third New International Dictionary 1245 (2002). Nothing in the plain language of these definitions indicates that they are mutually exclusive.

refuse to testify before the Citizens Police Review Board in the future). Thus, the PLCB preliminary objections to ISSU's claim for declaratory relief must be sustained.

Next, we address the PLCB's preliminary objections to ISSU's claim for mandamus relief. Mandamus is an extraordinary writ available to compel performance of a ministerial duty where there exists a clear legal right in the plaintiff, a corresponding duty in the defendant, and the lack of any other adequate and appropriate remedy. Lennitt v. Department of Corrections, 964 A.2d 37 (Pa. Cmwlth. 2008). A mandamus action is not proper to establish legal rights but is only appropriate to enforce those rights which have already been established. Id.

ISSU's petition for review fails to identify any specific ministerial/mandatory duty which the PLCB failed to perform. Instead, ISSU asserts that the PLCB violated the Liquor Code by establishing wine kiosks. However, ISSU has failed to set forth any allegations sufficient to demonstrate a clear right to relief. As noted above, section 301(a) of the Liquor Code vests the PLCB with the authority to operate and maintain stores. In establishing the wine kiosks, the PLCB has consistently followed the guidelines for opening a store as set forth in this section, including provisions relating to the choice of the store's location and notice of the location in two newspapers of general circulation.

Section 301(a) also sets forth the process by which taxpayers or a local solicitor may object to a store's opening, i.e., by filing a protest with the local court of common pleas. ISSU acknowledges in its petition for review that the PLCB proposed a statewide network of 100 wine kiosks in 2008. The PLCB later announced the location of these kiosks. Yet, at no point prior to filing their petition for review did ISSU object to the kiosks pursuant to section 301(a), an adequate and available

statutory remedy. Thus, the PLCB's preliminary objections to ISSU's claim for mandamus relief must likewise be sustained.

Accordingly, ISSU's petition for review is dismissed.

PATRICIA A. McCULLOUGH, Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Independent State Store Union	:	
and David Wanamaker, individually	:	
and as Vice-President and Member	:	
of Independent State Store Union,	:	
Petitioners	:	
	:	
v.	:	No. 526 M.D. 2010
	:	
Commonwealth of Pennsylvania,	:	
Pennsylvania Liquor Control Board,	:	
Patrick J. Stapleton III, Chairman of	:	
Pennsylvania Liquor Control Board,	:	
Thomas F. Goldsmith, Board Member	:	
of Pennsylvania Liquor Control Board,	:	
and Robert S. Marcus, Board Member	:	
of Pennsylvania Liquor Control Board,	:	
Respondents	:	

ORDER

AND NOW, this 18th day of November, 2010, Respondents' preliminary objections are hereby sustained, and the petition for review in the nature of a complaint in mandamus and for declaratory relief filed by the Independent State Store Union and David Wanamaker is dismissed.

PATRICIA A. McCULLOUGH, Judge