STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. **SUPERIOR COURT**

[Filed: January 17, 2018]

HAPPY BEATS, INC.; D2D ENTERTAINMENT, LLC; GERARD DISANTO II	:	
v.	:	**C.A. No. PC-2017-0219**
SABINA MATOS, individually and in her capacity as member of the Providence City Council; JUAN M. PICHARDO, in his capacity as Chair and Secretary of the Providence Board of Licenses; CHARLES NEWTON, in his capacity as Vice-Chair of the Providence Board of Licenses; DELIA RODRIGUEZ-MASJOAN, in her capacity as member of the Providence Board of Licenses; JOHANNA HARRIS, in her capacity as member of the Providence Board of Licenses; and LUIS PERALTA, in his capacity as member of the Providence Board of Licenses	:	

DECISION

LICHT, J. Happy Beats, Inc. (Happy Beats), D2D Entertainment, LLC (D2D), and Gerard DiSanto II (Mr. DiSanto) (collectively Plaintiffs) have moved for a preliminary injunction to which the Providence Board of Licenses (the Board) and Providence City Councilwoman Sabina Matos (Matos) (jointly Defendants) have objected. Also, pursuant to Super. R. Civ. P. 12(b)(1), the Board filed a Motion to Dismiss Plaintiffs' Verified Complaint for lack of subject matter jurisdiction.

I

FACTS AND TRAVEL

In January 2014, Happy Beats opened "Club Therapy," an after-hours music club at 62 Dike Street in Providence, Rhode Island. In August of 2016, Equity Beats, Inc., a corporation controlled by Mr. DiSanto, acquired the stock of Happy Beats. Contemporaneously, Mr. DiSanto also organized D2D, a management company which schedules nationally known disc jockeys and attracts a regional customer base. In October 2016, Happy Beats, under the new ownership, changed its operating name and the club name to Dusk 2 Dawn. Mr. DiSanto made substantial improvements to the Dike Street property, apparently investing over a million dollars on upgrading the building's soundproofing, lighting, and security.

Happy Beats is the holder of a 1:00 a.m. to 4:00 a.m. after hours license and an entertainment license (the Happy Beats Entertainment License), both issued by the Board. However, Happy Beats does not have a liquor license for the premises and has never received approval from the Board to permit the sale of liquor at this location. In fact, the physical location of the premises does not qualify for the issuance of a liquor license under G. L. 1956 § 3-7-19(a), which prohibits the issuance of a liquor license within two hundred feet of a church.

As a result of this restriction, the sale of liquor on the Plaintiffs' premises has been accomplished through the use of a caterer, M & M Food Service d/b/a Millonzi Fine Catering (Millonzi Catering). Millonzi Catering, not a party to the instant action, holds a state-issued Class P caterer's license (the Millonzi Class P License). A Class P caterer's license allows caterers to serve alcohol, subject to certain restrictions, such as limiting

alcohol service at events to five hours and prohibiting service of shots or triple-strength drinks. Sec. 3-7-14.2(a)(5), (8). The statute relevant to a Class P caterer's license provides that:

> "[a] caterer licensed by the department of health and the division of taxation shall be eligible to apply for a Class P license from the department of business regulation. The department of business regulation is authorized to issue all caterers' licenses. The license will be valid throughout this state as a state license and no further license will be required or tax imposed by any city or town upon this alcoholic beverage privilege." Sec. 3-7-14.2(a).

On November 10, 2016, Happy Beats and Mr. DiSanto appeared before the Board for a discussion and review of the Happy Beats Entertainment License. At this hearing, it was suggested that Happy Beats was simply exploiting an "end around" to getting a proper liquor license. (Pls.' Ex. 3, Tr. 12:16-24.) After considerable debate, the Board determined that it could "condition the license so that the licensee operates responsibly." *Id.* at 44:16-17. In seeking to effectuate this objective, the Board imposed a condition on the Happy Beats Entertainment License whereby "liquor will be served only to 1:00 a.m." *Id.* at 63:20-24.

Millonzi Catering subsequently filed an appeal of the Board's decision with the Director of the Department of Business Regulation (DBR). The DBR, per an order by Hearing Officer Catherine R. Warren dated November 18, 2016, stated that "the Board does not have the authority to limit a Class P license as that is within the purview of the [DBR]." *M&M Food Service, LLC d/b/a Millonzi Fine Catering v. City of Providence, Board of Licenses*, DBR Order No. 16LQ (Nov. 18, 2016). The order further stated that "any action against the Class P license is beyond the authority of the Board so any such action taken by the Board is stayed." *Id.* However, the order also noted that "[t]o the

extent that the Board restricted the late night license to no service of alcohol after 1:00 a.m., the Department has no authority to hear such a claim and [Millonzi Catering] is not that licenseholder." *Id.* The DBR also declined to rule on the issue of how late a caterer can serve alcohol, finding that such a ruling was unnecessary to the instant appeal. *Id.*

On January 13, 2017, Plaintiffs then filed the instant six-count Verified Complaint. Counts I and II are against Matos alone, alleging defamation and false light, respectively. Count III seeks a declaration that the actions of the Board were in excess of the Board's authority. Counts IV through VI are against all Defendants. Specifically, Count IV alleges due process violations, Count V alleges interference with expected business advantage, and Count VI alleges violations of the Open Meetings Act. Matos has two counterclaims—one under the SLAPP statute and one alleging abuse of process. Currently before the Court is Plaintiffs' Motion for Preliminary Injunction and Defendants' Motion to Dismiss the Verified Complaint for lack of subject matter jurisdiction.

On May 18, 2017, this Court held a hearing on the Board's Motion to Dismiss Plaintiffs' Verified Complaint and reserved judgment. Subsequently, hearings on Plaintiffs' Motion for Preliminary Injunction were held before this Court on June 19, 2017, June 26, 2017, October 3, 2017 and October 10, 2017, with argument on November 7, 2017.

The pertinent testimony can be summarized as follows.

Providence Public Safety Commissioner Steven Pare (Commissioner Pare) testified at the hearing in this case that he met with Mr. DiSanto prior to the opening of Dusk 2 Dawn. The Commissioner testified that he specifically asked Mr. DiSanto how he

planned to make any money without selling alcohol and that Mr. DiSanto made no mention of any plans to use Millonzi Catering to effectuate the sale of alcohol at Dusk 2 Dawn. Commissioner Pare testified that he believed there would be no sale of alcohol on the premises and that he was livid upon learning that alcohol was being sold at the Dike Street premises. Commissioner Pare also testified that there had been no incidents at Dusk 2 Dawn and that there were no public safety concerns involving the club since the change in ownership had taken place.

Steven Baraducci (Mr. Baraducci), a former Providence Police officer, manages security at Dusk 2 Dawn. Mr. Baraducci testified regarding the improved security measures that Mr. DiSanto implemented in order to alleviate public safety concerns at Dusk 2 Dawn. These security efforts included more cameras, police details, more lighting in the area, valet parking, and a van patrolling the area. Captain Dean Isabella (Captain Isabella) of the Providence Police Department testified that he was familiar with Club Therapy and that liquor was frequently served there. However, Captain Isabella was uncertain of whether or not alcohol service at Club Therapy typically ceased at 1:00 a.m. or 2:00 a.m. each night. Justin Dupont (Mr. Dupont), a disc jockey at both Dusk 2 Dawn and its predecessor Club Therapy, testified that he had seen alcohol service until 2:00 a.m. at both clubs. He also testified to having observed improved security measures at Dusk 2 Dawn after the change in ownership occurred.

II

MOTION TO DISMISS

A

Standard of Review under Rule 12(b)(1)

"A motion under Rule 12(b)(1) questions a court's authority to adjudicate a particular controversy before it." *Boyer v. Bedrosian*, 57 A.3d 259, 270 (R.I. 2012). Rule 12(b)(1) permits a justice to dismiss a civil matter for "[l]ack of jurisdiction over the subject matter." Super. R. Civ. P. 12(b)(1). "The term 'lack of jurisdiction over the subject matter' means quite simply that a given court lacks judicial *power* to decide a particular controversy." *Pollard v. Acer Group*, 870 A.2d 429, 433 (R.I. 2005) (citing *George v. Infantolino*, 446 A.2d 757, 759 (R.I. 1982)). A question of subject-matter jurisdiction may be raised at any time before judgment. *State Loan Co. v. Barry*, 71 R.I. 188, 189, 43 A.2d 161, 162 (1945). Likewise, "[a] challenge to subject-matter jurisdiction [']may not be waived by any party and may be raised at any time in the proceedings.[']" *Boyer*, 57 A.3d at 270 (citation omitted).

B

Analysis

In support of its motion to dismiss, the Board argues that Plaintiffs' Verified Complaint must be dismissed because the Court lacks subject-matter jurisdiction over Plaintiffs' claim for relief. Our Supreme Court has stated that, in licensing cases, "[t]he proper procedure for direct appellate review of the actions of town councils in granting or denying license applications is by a writ of certiorari to [the Supreme] Court, except where a right of appeal is specifically provided by statute." *Phelps v. Bay Street Realty*

Corp., 425 A.2d 1236, 1239 (R.I. 1981) (citing *Eastern Scrap Servs., Inc. v. Harty*, 115 R.I. 260, 261, 341 A.2d 718, 719 (1975); *Fink v. Bureau of Licenses*, 90 R.I. 408, 414, 158 A.2d 820, 823 (1960); *Order of St. Benedict in Portsmouth v. Town Council of Portsmouth*, 84 R.I. 503, 506, 125 A.2d 150, 151 (1956); *Aldee Corp. v. Flynn*, 72 R.I. 199, 201, 49 A.2d 469, 470 (1946)). This line of cases makes it abundantly clear that appellate review of a licensing board's decision to grant or deny a license requires a grant of certiorari from the Supreme Court.

In *Aldee Corp.*, the Supreme Court stated that:

> "If in license cases, such as the instant case, an appeal was the proper remedy the superior court would thus become a superior licensing authority. We are of the opinion that the Legislature did not intend by the general language of § 49 to cast such a burden upon that court and to deprive a town council of the exclusive power and authority to supervise such matters of internal police and administration. On the contrary, it is our opinion that in the case at bar the action of the town council is subject only to limited review by certiorari. By that writ this court may, if the town council exceeds its jurisdiction or any other serious irregularity inheres in its action upon a matter within its jurisdiction, correct error and prevent injustice. Respondents' contention that this court is without jurisdiction to review, by certiorari, the town council's action is, therefore, without merit." *Id.* at 201, 49 A.2d at 470.

In *Phelps*, the plaintiffs there argued that "a judicial prohibition of collateral attack" in licensing cases "effectively leaves an objecting party without an effective means of restraining the acts of a licensee," or in this case, a licensor. *Phelps*, 425 A.2d at 1240. However, the Court held that "[t]he plaintiffs could have requested a stay or injunction pending consideration of a petition for certiorari pursuant to Supreme Court Rule 8." *Id.*

Even if this Court were to apply the principle set out in *Aldee Corp.* and its progeny to the instant case, which it declines to do, such an application still would not dispose of the Verified Complaint in its entirety as the Board contends. Instead, Counts I and II against Matos alone—for defamation and false light—would remain as they do not, even indirectly, relate to an appeal of the Board's decision. Count VI, the Open Meetings Act violation, would also remain intact, as this Court has statutory jurisdiction over such matters under G.L. 1956 § 42-46-8.

In regard to Count III and Count IV, Plaintiffs contend that they do not seek direct appellate review of a licensing board's decision to grant or deny a license application. Instead, in Count III, Plaintiffs have moved for a declaratory judgment that the Board has acted outside the scope of its authority in restricting Happy Beats' Entertainment License and in Count IV, the Plaintiffs contend that the Board violated their due process rights by not providing a proper show cause hearing. Plaintiffs contend that these issues, along with the others presented in the instant action, are properly before the Superior Court.

Pursuant to the Uniform Declaratory Judgments Act (UDJA), G.L. 1956 §§ 9-30-1 *et seq.*, "[t]he superior or family court upon petition, following such procedure as the court by general or special rules may prescribe, shall have power to declare rights, status, and other legal relations whether or not further relief is or could be claimed." Sec. 9-30-1.

In *Tucker Estates Charlestown, LLC v. Town of Charlestown, LLC*, 964 A.2d 1138 (R.I. 2009), the Supreme Court considered a challenge to a municipal zoning ordinance. The plaintiff sought a declaration under the UDJA that the ordinance "was void *ab initio* because it was enacted in contravention of both the Town of Charlestown Charter and the notice requirements" of the Zoning Enabling Act. *Tucker Estates*, 964

A.2d at 1139. The trial justice treated the case as an appeal, and thus untimely under § 45-24-71(a). *Id.* However, the Supreme Court held that "[i]t was improper to hold, as the motion justice did in this instance, that a declaratory judgment is no more than a type of appeal." *Id.* at 1140. The Court observed that the availability of other avenues of relief does not preclude a party "from proceeding under the UDJA, particularly when 'the complaint seeks a declaration that the challenged ordinance or rule is facially unconstitutional or in excess of statutory powers, or that the agency or board had no jurisdiction.'" *Id.* (quoting *Kingsley v. Miller*, 120 R.I. 372, 374, 388 A.2d 357, 359 (1978)). As such, "when acting under the authority of the UDJA, the Superior Court acts not in its appellate capacity; it acts on its original jurisdiction." *Id*. (citing *Bradford Assocs. v. R.I. Div. of Purchases*, 772 A.2d 485, 489 (R.I. 2001)). It is therefore improper to hold that a declaratory judgment is no more than a type of appeal. *Id.*

In regard to Count III, this Court is convinced that the matter presently before the Court is not an appeal of the Board's decision to restrict Happy Beats' Entertainment License, but a dispute as to the Board's authority to restrict a statewide license. Plaintiffs seek a declaration of rights to this effect. Such a declaration lies wholly within the purview of this Court's authority. Thus, in hearing this matter, the Court acts not in its appellate capacity, but based on its original jurisdiction pursuant to the UDJA. As such, the instant controversy does not require a writ of certiorari to the Supreme Court. Instead, the Superior Court is well within its authority to make a declaration of the rights of the parties to this controversy.

In regard to Count IV, however, the Plaintiffs complain of the process utilized by the Board. The Court believes this Count does not deal with the authority of the Board

but rather, how it acted in a particular case. As such, the proper avenue for review would be by writ of certiorari to the Rhode Island Supreme Court. *Phelps*, 425 A.2d at 1239.

Accordingly, the Court grants Defendants' Motion to Dismiss as to Count IV and denies it as to all other remaining Counts in the Verified Complaint.

III

MOTION FOR PRELIMINARY INJUNCTION

Plaintiffs have asked this Court to consolidate the issues before the Court so that, for the sake of judicial economy, a final declaratory judgment can be issued. In contrast, Defendants argue that this Court should treat the matter before it as a motion for preliminary injunction, as that was Defendants' understanding of what was actually before the Court. Since the parties did not agree in advance to consolidation or that the matter was ripe for a final adjudication, this Court declines to issue a final declaratory judgment and will instead treat the matter before it as a motion for preliminary injunctive relief.

A

Standard of Review for a Preliminary Injunction

The criteria upon which this Court should determine a motion for preliminary injunction is well settled in this jurisdiction. "The moving party . . . must demonstrate that it stands to suffer some irreparable harm that is presently threatened or imminent and for which no adequate legal remedy exists to restore that plaintiff to its rightful position." *Fund for Cmty. Progress v. United Way of Se. New England*, 695 A.2d 517, 521 (R.I. 1997) (citations omitted). In addition, the moving party "must also show that it has a reasonable likelihood of [success] on the merits of its claim at trial." *Id.* As the Court in

Fund for Cmty. Progress pointed out, a certainty of success is not required; rather, only a *prima facie* case need be shown. *Id.* "Prima facie evidence is that amount of evidence that, if unrebutted, is sufficient to satisfy the burden of proof on a particular issue." *Paramount Office Supply Co., Inc. v. D.A. MacIsaac, Inc.*, 524 A.2d 1099, 1101 (R.I. 1987). Once the above-mentioned initial requirements are met by the moving party, the Court must then "consider the equities of the case by examining the hardship to the moving party if the injunction is denied, and the hardship to the opposing party if the injunction is granted and the public interest in denying or granting the requested relief." *Fund for Cmty. Progress*, 695 A.2d at 521.

In essence, "in deciding whether to issue a preliminary injunction, the hearing justice should determine whether the moving party (1) has a reasonable likelihood of success on the merits, (2) will suffer irreparable harm without the requested injunctive relief, (3) has the balance of the equities, including the possible hardships to each party and to the public interest, tip in its favor, and (4) has shown that the issuance of a preliminary injunction will preserve the status quo." *Iggy's Doughboys, Inc. v. Giroux*, 729 A.2d 701, 705 (R.I. 1999) (citing *Fund for Cmty. Progress*, 695 A.2d at 521). The issuance of an injunction and the scope of the relief granted rests in the Court's discretion. *DeNucci v. Pezza*, 114 R.I. 123, 130, 329 A.2d 807, 811 (1974). Defendants argue that, in the case at bar, the Plaintiffs are actually seeking a mandatory preliminary injunction. This Court does not agree with that characterization. The Supreme Court has stated that "[w]hen a preliminary injunction is mandatory in nature in—that it commands action from a party rather than preventing action—a stricter rule applies and such injunctions should be issued only upon a showing of 'very clear' right and 'great

urgency.'" *King v. Grand Chapter of R.I. Order of the E. Star et al.*, 919 A.2d 991, 995 (R.I. 2007) (citing *Giacomini v. Bevilacqua,* 118 R.I. 63, 65, 372 A.2d 66, 67 (1977)); (quoting *Smart v. Boston Wire Stitcher Co. et al.,* 50 R.I. 409, 415, 148 A. 803, 805 (1930)).

Happy Beats seeks to enjoin the Board from imposing a condition upon the Happy Beats Entertainment License providing that no alcohol can be served on the premises after 1:00 a.m. This Court fails to understand how preventing the Board from enforcing this restriction would constitute a requirement that the Board act. Instead, it is most definitely a prohibition on the Board continuing to act. As such, this Court does not believe that the heightened standard applied to a mandatory injunction is applicable in the present case and will instead use the standard of review that is regularly applied to non-mandatory preliminary injunctions.

B

Likelihood of Success on the Merits

In addressing Plaintiffs' Motion for Preliminary Injunction, this Court is focused solely on Count III of Plaintiffs' Verified Complaint, which requests that this Court declare that the actions taken by the Board were in excess of the Board's authority. This Court's jurisdiction over Count III is pursuant to § 9-30-1.

The UDJA, §§ 9-30-1 *et seq.*, authorizes this Court to "declare [the] rights, status, and other legal relations" of litigants. Sec. 9-30-1. A declaratory judgment "is neither an action at law nor a suit in equity but a novel statutory proceeding." *Newport Amusement Co. v. Maher*, 92 R.I. 51, 63, 166 A.2d 216, 217 (1960). It is the purpose and intention of a declaratory judgment action to "allow the trial justice to 'facilitate the termination of

controversies,'" or otherwise remove uncertainties. *Bradford Assocs.*, 772 A.2d at 489; *Fireman's Fund Ins. Co. v. E. W. Burman, Inc.*, 120 R.I. 841, 845, 391 A.2d 99, 101 (1978).

Though a Court's power to declare rights "is broadly construed," *Bradford Assocs.*, 772 A.2d at 489, its "decision to grant or to deny declaratory relief under the Uniform Declaratory Judgments Act is purely discretionary." *Sullivan v. Chafee*, 703 A.2d 748, 751 (R.I. 1997). Accordingly, the UDJA "confers broad discretion upon the trial justice as to whether he or she should grant declaratory relief." *Cruz v. Wausau Ins.*, 866 A.2d 1237, 1240 (R.I. 2005); *see also* § 9-30-6; *Woonsocket Teachers' Guild Local Union 951, AFT v. Woonsocket Sch. Comm.*, 694 A.2d 727, 729 (R.I. 1997); *Lombardi v. Goodyear Loan Co.*, 549 A.2d 1025, 1027 (R.I. 1988). Our Supreme Court, however, has cautioned that "declaratory-judgment action[s] may not be used 'for the determination of abstract questions or the rendering of advisory opinions,' nor [do such actions] 'license litigants to fish in judicial ponds for legal advice.'" *Sullivan*, 703 A.2d at 751 (quoting *Lamb v. Perry*, 101 R.I. 538, 542, 225 A.2d 521, 523 (1967); *Goodyear Loan Co. v. Little*, 107 R.I. 629, 631, 269 A.2d 542, 543 (1970)).

The central issue in this case revolves around whether the Board can properly restrict the hours of the Mellonzi Class P License, a state license, by using its authority to impose restrictions on the Happy Beats Entertainment License. Plaintiffs argue that the Board has no authority to regulate, in any way, the Millonzi Class P License and that any restrictions imposed by the Board on alcohol service by a Class P licensee are preempted by state law and thereby void. In turn, Defendants counter that the Board has taken no

action whatsoever against the state-issued Millonzi Class P License, but has instead sought to restrict city-issued Happy Beats Entertainment License.

Millonzi Catering holds a Class P license issued by the DBR. Pursuant to § 3-7-14.2(a), "[t]he license will be valid throughout this state as a state license and no further license will be required or tax imposed by any city or town upon this alcoholic beverage privilege." Sec. 3-7-14.2(a). While the Board vehemently argues that it is seeking only to restrict Happy Beats' city-issued license, as opposed to the state-issued license of a caterer, the distinction is one without difference. The end result of the Board's action is that it has imposed a restriction on the sale of alcohol by a state-licensed caterer.

The Board cannot, and does not even attempt to, argue that it could invoke authority over a state-issued Class P license. The DBR has explicitly confirmed that "the Board does not have the authority to limit a Class P license as that is within the purview of the [DBR]." *M&M Food Service, LLC d/b/a Millonzi Fine Catering v. City of Providence, Board of Licenses*, DBR Order No. 16LQ (Nov. 18, 2016). The DBR has not sought to limit how late a caterer may serve alcohol. *Id.* The only time restriction placed on a Class P license is that "[l]icensee's may only serve alcoholic beverages for no more than a five (5) hour period per event." Sec. 3-7-14.2(a)(5).

Defendants aver that Plaintiffs' claim lacks merit because Plaintiffs' use of a caterer with a Class P license at the Dike Street location leads to an "absurd result." Defendants argue that this "absurd result" is a caterer being able to serve liquor at a location where the state would otherwise prevent the issuance of a liquor license. This Court does not draw the same conclusion. First of all, the Board's action belies its contention. The Board did not attach a condition preventing Happy Beats from serving

alcohol on the premises even though it is within 200 feet of a place of worship. It merely imposed a restriction on the hours that alcohol could be served at the location.

A location may not be suitable for a liquor license, but it does not automatically follow that that location can never be host to a catered event where alcohol is served. Obviously, a school or a church would be prevented from obtaining a liquor license pursuant to § 3-7-19(a), which prohibits the issuance of a liquor license to sell alcohol in a building within two hundred feet (200') of the premises of any public, private, or parochial school or a place of public worship. However, it does not follow that a school or a church should not be eligible to host a catered event where alcohol is served because of their inability to obtain a liquor license. This Court takes judicial notice of the fact that wedding receptions, bar mitzvahs, charitable galas, etc., where alcohol is frequently served by caterers, often take place in schools or the social halls of churches and synagogues. Any assertion to the contrary is, in this Court's view, unfounded. If the result of Happy Beats using a caterer at the Dike Street location is an "absurd result" as Defendants contend, then the onus would be on the DBR or the General Assembly to clarify that caterers' state-issued Class P licenses are prohibited from catering events past a certain hour of the night or within 200 feet of a school or a church. The Board does not have authority to make such a ruling in regard to a state-issued license.

The Court is also unconvinced by Defendants' assertion that an event cannot be catered if it occurs at the same fixed retail location on a repeated and continuous basis. Again, the Board's action is not consistent with the legal argument it thrusts on the Court. The Board did not restrict the number of times Happy Beats could engage Millonzi Catering to serve alcohol at Dusk 2 Dawn. Instead, it merely restricted the hours when

alcohol could be served. Moreover, this Court finds no support for such an assertion in the Class P license statute. Nothing in the Class P license statute prohibits a caterer from serving liquor at the same location on a regular basis. Further, if such an arrangement became an issue, the onus would again fall on the DBR or the General Assembly to clarify that caterers' state-issued Class P licenses are not to be used to cater events at venues similar to Dusk 2 Dawn. The Board itself lacks authority to place such a restriction on a state-issued license.

Further, this Court heard evidence that concerns about the potential misuse of a Class P license were heard and addressed on the floor of the House of Representatives during the debate on passage of the Class P license statute. The sponsor of the bill was asked the following:

> "[s]o what would keep [someone] . . . from basically setting up shop in an existing restaurant and just continually providing the food for that restaurant and the liquor and thereby completely circumventing the law that other restaurant owners have to go through to obtain liquor licenses"? (Hearing on H.B. 6163, January Session, 2003.)

The bill's sponsor responded that:

> "the caterers would still have to buy beer, liquor from Class A places so therefore they would have to buy it from a liquor store and not a distributor. And it has to be a bona fide caterer that would apply for this license through DBR and under the rules and regs that they've established. And if you read the bill, you'll see that the catering industry has requested several items such as, you know, only a five hour maximum, such as no shots, such as only the two mixed drinks, and this came from the industry." (Hearing on H.B. 6163, January Session, 2003.)

This legislative history makes it apparent that the House was aware of the possibility that a restaurant or event hall could utilize a Class P license as a substitute for a Class B

license to serve alcohol. As discussed at the hearing before the House of Representatives, certain provisions were included in the statute to limit such use of a Class P license. Noticeably absent from these provisions was any discussion of preventing venues from having an event every weekend or any provision restricting what time caterers must cease serving alcohol.

The uncontroverted evidence in this case is that Millonzi Catering is an entirely independent caterer that shares no common ownership with either Happy Beats or D2D. Furthermore, Kevin Millonzi (Mr. Millonzi), the owner of Millonzi Catering, testified that the Plaintiffs reimbursed him for all overhead and that Millonzi Catering and Happy Beats equally split the proceeds from the sale of alcohol. Further, Mr. Millonzi testified that liquor is not stored at Dusk 2 Dawn but is transported to and from his commissary at the conclusion of each catered event. Mr. Millonzi, who has been a caterer since 1998, testified that he has served alcohol until 2:00 a.m. at events all over the State of Rhode Island. Mr. Millonzi caters events at Dusk 2 Dawn regularly and did so at Club Therapy as well. He testified that alcohol was served up until 2:00 a.m. by the owners of Club Therapy prior to the club's change in ownership.

If the Defendants are correct, the Board could condition any entertainment license or other event license to prevent caterers from serving alcohol for more than three or four hours rather than five, or to prevent caterers from serving certain beverages such as margaritas or Russian mules for example. The General Assembly made the Class P license a state license because it did not want caterers who operate at venues throughout our small state to have to learn the differing rules of each jurisdiction.

For the reasons elucidated above, this Court concludes that Plaintiffs have established a likelihood of success on the merits on the issue of whether a municipal licensing board can restrict the activity of a caterer by imposing a condition on the license of the venue owner where the caterer is serving.

C

Irreparable Harm

"The purpose of an injunction is to prevent imminent, irreparable injury." *Ward v. City of Pawtucket Police Dep't*, 639 A.2d 1379, 1382 (R.I. 1994). Plaintiffs have argued that the irreparable harm they will face if an injunction is not granted in this case is damage to their businesses' good will and reputation. This is precisely the type of irreparable injury for which an injunction is appropriate. It is well settled that prospective damage to a business's good will and reputation "is precisely the type of irreparable injury for which an injunction is appropriate." *Iggy's Doughboys, Inc.*, 729 A.2d at 705 (citing *Fund for Cmty. Progress*, 695 A.2d at 523). Further, Plaintiffs point to a loss of business opportunity as an irreparable harm they will suffer as a result of the Board's actions in this case. This Court is convinced by Plaintiffs' argument. As a result of the restriction the Board has placed on the Happy Beats Entertainment License, Plaintiffs have been unable to employ a caterer in the manner contemplated by the Class P caterer statute. Hence, this Court finds that the restrictions the Board has placed on the Happy Beats Entertainment License will undoubtedly cause irreparable harm in the form of damage to Plaintiffs' reputation and damage to Plaintiffs' ability to run their business as they see fit, within the confines of the law.

D

Balance of the Equities

Testing the balance of the equities involves "examining the hardship to the moving party if the injunction is denied, the hardship to the opposing party if the injunction is granted and the public interest in denying or granting the requested relief." *Fund for Cmty. Progress*, 695 A.2d at 521. The hardship to the Plaintiffs if this motion is denied is not being able to employ a caterer in the manner allowed by the statewide Class P caterer statute. The only hardship facing Defendants if this injunction is granted is that they must be bound by the provisions of the state-wide Class P caterer statute. Moreover, witnesses for both Plaintiffs and Defendants acknowledged that there had been no public safety incidents when Dusk 2 Dawn was operating until 2:00 a.m. As such, the Court finds that no legitimate public interest will be affected by the granting or denial of the instant motion. Thus, considering the burdens on the parties and the impact on the public interest, this Court finds that the balance of the equities lies with the Plaintiffs.

E

The Status Quo

The *status quo* analysis is straightforward. Prior to the Board's restriction on the Happy Beats Entertainment License, the Court is convinced based on the testimony of several witnesses that alcohol was served at Dusk 2 Dawn until 2:00 a.m. The uncontroverted testimony before this Court is that the same was true when Dusk 2 Dawn operated under different ownership as Club Therapy. Moreover, "this status quo is the last peaceable status prior to the controversy." *E.M.B. Assocs. v. Sugarman*, 118 R.I. 105, 108, 372 A.2d 508, 509 (1977). As such, Defendants' argument that the appropriate

status quo for the Court to maintain is the one existing immediately before the present action was filed is incorrect. Defendants argue that the Happy Beats Entertainment License with the restriction that no alcohol can be served after 1:00 a.m. constitutes the *status quo*. The Court is not convinced that this is the *status quo* it should seek to preserve. These are the circumstances that existed after the controversy at issue as opposed to prior to the controversy. As such, granting Plaintiffs' Motion for Preliminary Injunction would indeed preserve the *status quo* as it would return the parties to the conditions that existed prior to the Board's action, namely, service until 2:00 a.m.

IV

CONCLUSION

This Court finds that the Plaintiffs have satisfied their burden for the granting of a motion for preliminary injunction in regard to Count III of the Verified Complaint. For the reasons stated above, the Plaintiffs' Motion for Preliminary Injunction is granted and the Board is enjoined from conditioning Plaintiffs' entertainment license by restricting what the holder of a Class P license may do. Also, as previously stated, the Board's Motion to Dismiss is granted as to Count IV and denied as to all other Counts.

Prevailing counsel may present an order consistent herewith which shall be submitted after due notice to counsel of record.

RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE:	Happy Beats, Inc., et al. v. Sabina Matos, et al.
CASE NO:	C.A. No. PC-2017-0219
COURT:	Providence County Superior Court
DATE DECISION FILED:	January 17, 2018
JUSTICE/MAGISTRATE:	Licht, J.

ATTORNEYS:

For Plaintiff:	Richard Warren Nicholson, Esq.; John B. Harwood, Esq.; David S. Francazio, Esq.
For Defendant:	Paul V. Sullivan, Esq.; Louis DeSimone, Jr., Esq.