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Courtroom Number: 2301
Location: District 1 Court
Cook County, IL

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DOROTHY BROWN
CIRCUIT CLERK
COOK COUNTY, IL
2020CH01579

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT – CHANCERY DIVISION**

TRIPLE LOCATION, LLC d/b/a CLUB O,) Case No.
)
Plaintiff,)
)
v.)
)
CITY OF HARVEY,)
)
Defendant.)

8389115

COMPLAINT FOR DECLARATORY JUDGMENT AND WRIT OF MANDAMUS

TRIPLE LOCATION, LLC d/b/a CLUB O (“Plaintiff”), by and through its attorneys,
THE GARBIS LAW FIRM, LLC, complains of CITY OF HARVEY (“Defendant” or
“Harvey”), as follows:

Parties

1. At all times relevant, Plaintiff, TRIPLE LOCATION, LLC d/b/a CLUB O, was an Illinois limited liability company operating in the City of Harvey, County of Cook, State of Illinois.
2. At all times relevant, Defendant, CITY OF HARVEY, was an Illinois city located in the County of Cook, the State of Illinois.

Jurisdiction and Venue

3. This Court has jurisdiction over the subject matter hereof and the parties hereto pursuant to 735 Illinois Compiled Statute 5/2-209 (b)(4), because Defendant is a company licensed to conduct business within Illinois. In addition, Defendant is a city located in the County of Cook, State of Illinois.
4. Venue is proper under 735 Illinois Compiled Statute 5/2-101 because this action arose

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out of activities in Cook County, Illinois.

Factual Allegations

5. At all times relevant, Plaintiff was and still is the rightful owner and tenant of the property located at 17032-40 Halsted Street, Harvey, Illinois 60426 (the “Property”).

6. Plaintiff’s management team has been in the adult entertainment business for over 40 years in the Chicagoland area. Plaintiff’s business operation at the Property is a full service restaurant, nightclub, and adult entertainment venue called Club O.

7. Plaintiff has had valid business and liquor licenses from the State of Illinois and the City of Harvey throughout its entire existence at the Property. Plaintiff has operated without any incidents of suspension or revocation. Plaintiff’s most recent liquor license (the “License”) has allowed Plaintiff to sell and for Plaintiff’s patrons to consume alcohol until 5:00 am.

8. On or about June 24 2019, Defendant passed amendments to its municipal code and ordinances, particularly Ordinance No. 3376, altering the hours of operation for Harvey establishments that had liquor licenses. Pursuant to these amended ordinances, all establishments that sold liquor would not only need to cease selling alcohol but close their businesses at midnight. Defendant also made it a public nuisance for any of these establishments to operate past midnight. Yet, Defendant has somehow exempted certain businesses, particularly restaurants, gas stations, and convenience stores, from this hard midnight deadline.

9. Some time in September of 2019, Defendant’s local liquor commissioner/mayor’s office instructed all businesses that had licenses to sell liquor in the City of Harvey that their licenses would expire on October 31, 2019 and that renewal applications needed to be submitted to Defendant. In an effort to review the expected glut of applications to renew all of the licenses issued by Harvey, Defendant extended the deadline to apply for a renewal of a license to

November 25, 2019.

10. Plaintiff timely submitted its renewal packet to Defendant to renew the License.

11. Since November 25, 2019, Defendant has attempted to delay the adjudication of the hearings to renew the liquor licenses of Harvey-located businesses. Since the filing of this complaint, Defendant has only renewed some of the liquor licenses of certain businesses, but has continued the vast majority of the hearings on the renewal of most of the liquor licenses of other businesses. On information and belief, Defendant has also denied many liquor license renewals based on minor infractions and arbitrary standards prompting those businesses to file appeals with the Illinois Liquor Control Commission.

12. Rather than start the process prior to the expiration of said liquor licenses which would have allowed businesses an opportunity to remedy said minor infractions, Defendant opted to wait until the liquor licenses expired and then started process of adjudicating the renewal said liquor licenses.

13. After three months of delay and countless unnecessary and cumbersome requests for documents from Plaintiff, Defendant's local liquor control commissioner begrudgingly held a hearing—which Defendant continued for almost two months—and ultimately ruled that Plaintiff's License would not be renewed pursuant to an Order entered February 5, 2020. Please see the copy of the Appeal (defined hereinafter) filed with the Illinois Liquor Control Commission on February 6, 2020 attached hereto as Exhibit "A" for a copy of Defendant's February 5, 2020 Order.

14. Plaintiff immediately filed a petition for an appeal (the "Appeal") with the Illinois Liquor Control Commission on February 6, 2020. A copy of the Appeal is attached hereto as Exhibit "A".

15. Pursuant to Illinois law, Plaintiff is permitted to operate under its previous liquor license while the Appeal is pending. In fact, Defendant has acknowledged as much to Plaintiff through email communication between their respective attorneys.

Procedural Due Process Violation

16. Article I, Section 2 of the Illinois Constitution provides. “No person shall be deprived of life, liberty, or property without due process of law nor be denied the equal protection of the laws.” Ill. Const., Art. I § 2.

17. A local liquor commissioner cannot avoid the procedural revocation requirements by waiting for a license to expire and then refusing to renew. A local liquor commissioner must hold a hearing if a license will not be renewed. See City of Wyoming v. ILCC, 48 Ill.App.3d 404, 362 N.E.2d 1080 (3rd Dist. 1977). If a licensee appeals the local liquor commissioner’s decision to the state liquor commission, the licensee may resume its business under the previous liquor license until the state liquor commission renders its decision. City of Wyoming, 48 Ill.App.3d at 407-08.

18. Plaintiff has properly and timely filed the Appeal. Plaintiff wishes to resume its business pursuant to the previous License as is Plaintiff’s right under Illinois law. Yet, Defendant has indicated that Plaintiff will only be allowed to operate and sell liquor until midnight and then Plaintiff will need to be closed to the public. Plaintiff desires to be open based on the hours of operation stated on the License that it has held since it has been in business at the Property and not be limited to midnight, as this hard deadline will directly impact not only its finances, but its standing in the community and industry. Moreover, Plaintiff’s business is clearly a restaurant, among other things, and should not even be held to the midnight standard.

19. By reason of the foregoing, an actual controversy exists between the parties which must

be determined by a judgment or order of this Court. This Court has the power to declare and adjudicate the rights and liabilities of the parties hereto under the terms and provisions of statutes of the Illinois Liquor Control Commission and of the City of Harvey, and to adjudicate the final rights of all parties, and to give further relief as may be necessary to enforce the same. Resolution of this controversy by means of declaration requested herein will terminate the controversy or some part thereof.

Violation of Due Process – Declaratory Judgment

20. Plaintiff realleges and incorporates herein Paragraphs 1-19 of the previous section as Paragraphs 1-19 of Count I, as fully stated herein.

21. Defendant has decided not to renew Plaintiff's License and Plaintiff has timely filed the Appeal.

22. Defendant's duties under the law are clear. Defendant cannot unilaterally decide that the new operating hours of an existing license are now limited to midnight. Defendant must allow Plaintiff to continue operating under the License's existing hours of operation.

23. Plaintiff has a clear right to the performance of Defendant's duties. Plaintiff has a clear right to operate until 5:00 am as it has been allowed to operate all of the time it has been located at the Property.

24. Defendant's refusal to act in this case is arbitrary and not in accordance with the law. Defendant willfully and unreasonably has refused to allow Plaintiff to operate under the hours of operation listed on Plaintiff's License, thereby depriving the Plaintiff of its rights. Moreover, Plaintiff has been deprived of its due process.

25. As a result of Defendant's failure to perform its duties, Plaintiff has suffered and will continue to suffer irreparable harm. Plaintiff has been unable to operate at the Property for over

three months now and therefore has been unable to earn any income from its business operations, resulting in the loss of revenue in excess of \$100,000 per month as well as depriving Plaintiff's employees with their loss of income. In addition, each day that passes causes Plaintiff to lose goodwill in an immeasurable quantity that cannot be compensated through monetary means.

WHEREFORE, Plaintiff, TRIPLE LOCATION, LLC d/b/a CLUB O, prays that this Honorable Court:

A. Enter a judgment finding and declaring that the License is immediately reinstated without any alterations pursuant to the filing of the Appeal and that Plaintiff can operate and sell liquor pursuant to the hours of operation listed on the License;

B. Issue a permanent injunction to Defendant, CITY OF HARVEY, to cease from interfering with Plaintiff's License and Plaintiff's operations from midnight until 5:00 am;

C. Award damages in favor of Plaintiff and against Defendant, CITY OF HARVEY, in excess of \$100,000, plus attorney's fees and court costs to reasonably compensate Plaintiff for its injuries; and

D. Order whatever other relief this Court deems just.

Respectfully Submitted,
TRIPLE LOCATION, LLC d/b/a CLUB O

By: /s/ Dan E. Garbis
Dan E. Garbis
Plaintiff's Attorneys

Dan E. Garbis
The Garbis Law Firm, LLC
7330 North Cicero Avenue
Lincolnwood, Illinois 60712
(847) 982-9518
Firm No. 43757
dgarbis@garbislawfirm.com