

IN THE FRANKLIN COUNTY MUNICIPAL COURT  
ENVIRONMENTAL DIVISION  
COLUMBUS, OHIO

**CITY OF COLUMBUS, OHIO**

% Zach Klein

Columbus City Attorney, Zone Initiative

375 South High Street, 17<sup>th</sup> Floor

Columbus, Ohio 43215,

Plaintiff,

v.

**AFTERMATH**

Attn: John Delia, owner

1921 Channingway Center Drive

Columbus, Ohio 43232

AND

**JOHN DELIA**

5600 Naiche Road

Columbus, Ohio 43213

AND

**DAVID SHELTON**

1915-21 Channingway Center Drive

Columbus, Ohio 43232

AND

**BRICE-LIVINGSTON COMPANY,  
LTD.**

**aka BRICE LIVINGSTON ANTIQUE  
MALL, LTD.**

Attn: John J Joseph, S/A

1853-1921 Brice Road

Columbus, Ohio 43215

*Also at*

Attn: Stephen P. Campbell, S/A

3016 Maryland Avenue

Columbus, Ohio 43209

AND

**PLAZA MEDIA, LTD.**

Attn: Stephen P. Campbell, Plaza Properties,

Case No.

**2020 EVH 60 6 26**

**JUDGE STEPHANIE MINGO**

FILED  
FRANKLIN COUNTY  
MUNICIPAL COURT  
LORI M. TWICK

2020 DEC -8 PM 12: 10

81.300 HV 1080S

Inc., S/A  
3016 Maryland Avenue  
Columbus, Ohio 43209

AND

**PNC BANK NATIONAL ASSOCIATION:**

Attn: Corporation Service Company, S/A  
50 West Broad Street, Suite 1330  
Columbus, Ohio 43215

AND

**O'REILLY AUTOMOTIVE, INC.**

Attn: CT Corporation System, S/A  
4400 Easton Commons Way, Suite 125  
Columbus, Ohio 43219

AND

**CHERYL BROOKS SULLIVAN  
FRANKLIN COUNTY TREASURER**

373 S. High Street, 17<sup>th</sup> Floor  
Columbus, Ohio 43215

AND

**REAL PROPERTY LOCATED AT:**

1921 Channingway Center Drive  
Columbus, Ohio 43232

**Parcel No. 010-007894-00**

**Parcel No. 010-007874-00**

Defendants.

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**TEMPORARY RESTRAINING ORDER**

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This matter came before the Court on December 8, 2020, on Plaintiff's request for a temporary restraining order filed in conjunction with a Complaint for Preliminary and Permanent Injunctive Relief. In light of the circumstances, this motion was filed *ex parte*. For purposes of the temporary restraining order, the Court finds that the Plaintiff has established that Defendants are owners and/or person in charge, care or control of the property located at 1921

Channingway Center Drive, Columbus, Ohio, Parcel Nos. 010-007894 & 010-00784 (“the Premises”). On information and belief, Plaintiff asserts the following:

1. On March 9, 2020, the Governor of Ohio issued Executive Order 2020-01D and declared a state of emergency in Ohio in response to COVID-19.
2. On March 11, 2020, the World Health Organization publicly characterized COVID-19 as a global pandemic requiring “urgent and aggressive action” to control the spread of COVID-19.
3. On March 13, 2020, the Columbus Board of Health passed Resolution No. 20-08, a declaration of Public Health Emergency to include the cities of Columbus and Worthington, in response to the developing community health crisis surrounding COVID-19/Coronavirus.
4. According to the Centers for Disease Control and Prevention (CDC) and the Ohio Department of Health (ODH):
  - a. COVID-19 is a new respiratory disease caused by one of the seven coronaviruses known to infect humans.
  - b. Little is known about COVID-19 and how it spreads and the severity of the illness it causes.
  - c. You can be infected through community spread with symptoms generally appearing two (2) to fourteen (14) days after exposure.
  - d. People are thought to be the most contagious when they are most symptomatic.
  - e. Some people will be asymptomatic, making it harder to know if community spread is occurring.
5. On June 5, 2020, Dr. Amy Acton, Director of the Ohio Department of Health, pursuant to Ohio Revised Code, § 3703.13, issued the Amended Dine Safe Ohio Order (hereinafter, “June Order”) to prevent the spread of COVID-19 / Coronavirus in the State of Ohio.

6. The June Order was then extended until the earlier State of Emergency declared by the Governor under Executive order 2020-01D no longer exists, or the Director of the Ohio Department of Health rescinds or modifies the Order.
7. The June Order notes that, pursuant to O.R.C. 3701.56, “[b]oards of health of a general or city health district, health authorities and officials, officers of state institutions, police officers, sheriffs constables, and other officers and employees of the state or any county, city, or township, shall enforce quarantine and isolation orders, and the rules the Department of Health adopts.” Thus, Columbus Public Health has the authority to enforce the rules the Department of Health adopts, such as this Order.
8. On July 31, 2020, the Governor issued Executive Order 2020-30D, which adopted O.A.C. Rule 4301:1-1-80, which prohibited the hours for the sale and consumption of alcohol at liquor-permitted establishments. Specifically, it prohibited the sale of alcoholic beverages at such establishments between the hours of 10:00 p.m. and 5:30 a.m., and it prohibited the consumption of alcoholic beverages at such establishments between 11:00 p.m. and 5:30 p.m. This Executive Order remains in effect.
9. On September 23, 2020, Dr. Lance Himes, Director of the Ohio Department of Health, pursuant to Ohio Revised Code, § 3703.13, issued the Third Amended Dine Safe Ohio Order (hereinafter, “Order”) to prevent the spread of COVID-19 / Coronavirus in the State of Ohio.
10. The Order still remains in effect and includes regulations on facial coverings, social distancing, and customer seating.
11. The September Order did not rescind the June 2020 Order allowing for Columbus Public Health to have the authority to enforce the rules of that the Department of Health adopts.
12. On September 5, 2020, Columbus Public Health Sanitarian Timothy Basak (hereinafter “Basak”) conducted an investigation into violations of the O.R.C. and Columbus City

Health Code at the Premises, because it was suspected of being in violation of the Order and operating without a food license.

13. During the course of this investigation, Basak witnessed the following violation of Columbus City Health Code: O.R.C. § 3717.41 – **Operating without a Food License**;<sup>2</sup>

14. During the course of this investigation, Basak witnessed the following violations of the Order at the Premises:

- a. **Provision 2, Restaurants and Bars to reopen**, and specifically customers not seated while eating and drinking;
- b. **Provision 4, Facial Coverings**; and
- c. **Provision 6, Social Distancing**.

15. On September 5, 2020, Basak issued a Formal Warning Letter notifying the Aftermath Venue (hereinafter “Aftermath”) of the violation.

16. On September 5, 2020, Agents Harold Kolsky and Christopher Grant (hereinafter, “Agents”) of the Ohio Department of Safety, Investigative Unit (“OIU”), conducted an investigation into violations of the O.R.C. at the Premises because it was suspected of being in violation of the Order and O.R.C. Title 43 (Specifically, Ohio Administrative Code (“O.A.C.”) 4301:1 *et seq.*, Ohio Liquor Law).

17. During the course of the investigation, the Agents witnessed the following violations of the Order:

- a. **Provision 2, Restaurants and Bars to reopen**, and specifically customers not seated while eating and/or drinking;
- b. **Provision 4, Facial Coverings**, specifically many bartenders, employees, and patrons not wearing masks; and
- c. **Provision 6, Social Distancing**.

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<sup>2</sup> Defendants have since obtained the necessary food license from Columbus Public Health.

18. During the course of the investigation, the Agents witnessed the following violations of O.R.C. Title 43, and O.A.C. 4301:1 *et seq.*:

- a. 4301:1-1-21 – **Permit Not Posted**;
- b. 4301:1-1-52(B)(1) – **Improper Conduct** – Disorderly Activity, specifically, the violations of the Order; and
- c. 4303.13-4303.15, 4303.182 – **No Food Service**, specifically the operation of food service without a license under O.R.C. 3717.

19. On September 5, 2020, Agents issued a citation to the Premises for the above violations.

20. On December 5, 2020, Agents Richard Hupp, Darin Plummer, and Christopher Grant (hereinafter, “2<sup>nd</sup> Inspection Agents”) of the Ohio Department of Safety, Investigative Unit (“OIU”), conducted an investigation into violations of the O.R.C. at the Premises because it was suspected of being in violation of the Order and O.R.C. Title 43 (Specifically, Ohio Administrative Code (“O.A.C.”) 4301:1 *et seq.*, Ohio Liquor Law).

21. During the course of the investigation, the 2<sup>nd</sup> Inspection Agents witnessed the following violations of the Order:

- a. **Provision 2, Restaurants and Bars to reopen**, and specifically customers not seated while eating and/or drinking;
- b. **Provision 4, Facial Coverings**, specifically many bartenders, employees, and patrons not wearing masks; and
- c. **Provision 6, Social Distancing**.

22. During the course of the investigation, the 2<sup>nd</sup> Inspection Agents witnessed the following violations of O.R.C. Title 43, and O.A.C. 4301:1 *et seq.*:

- a. 4301:1-1-52(B)(1) – **Improper Conduct** – Disorderly Activity, specifically, the violations of the Order.

23. Specifically, the 2<sup>nd</sup> Inspection Agents witnesses approximately 400-500 people inside the aforementioned Premises, filled wall-to-wall with patrons, many of whom were walking around carry intact and partial liquor bottles, while several groups passed the partial bottles for consumption directly from the bottle. Several employees were not properly wearing masks, and 80% of the patrons were not wearing masks.
24. On December 5, 2020, 2<sup>nd</sup> Inspection Agents issued a citation to the Premises for the above violations.
25. Per the webpage of Aftermath, Defendants intend to host at least four large-crowd concerts and/or events in the month of December 2020, beginning with an event on Friday, December 11, 2020.
26. The Premises, and specifically the hosting of large events without required social distancing and facial coverings, constitute an imminent danger for those at the property, for those around the property, and for the community that may contract COVID-19 from a large event lacking proper facial coverings and social distancing.
27. Failing to immediately close the Premises to the public until further order of this Court will allow the dangerous activity to continue—namely, multiple large events will be hosted at the Premises, likely in violation of the orders in place to prevent the spread of COVID-19, thereby causing immediate and irreparable injury, loss or damage to the Defendants, their patrons, and the community.
28. *Ex parte* closure of the property is necessary in order to prevent the large events that are already planned at the Premises for as early as Friday, December 11, 2020.
29. Prior notification of the temporary restraining order could pose a danger to the Defendants, their patrons, and their community by virtue of large events that are set to be held this upcoming weekend, including as early as Friday, December 11, 2020.

**IT IS THEREFORE ORDERED, ADJUDGED AND DECREED THAT:**

Plaintiff has established by clear and convincing evidence that the failure to comply with the Order and Ohio Administrative Code requirements enacted to stop the spread of COVID-19 occurring at the Premises continues to cause irreparable harm to the community; that Defendants have violated provisions of O.R.C. § 3701, O.A.C. § 4301, and C.C.H.C. § 221; and that the property is a nuisance per se as defined in C.C.C. § 4703.01.

It is further **ORDERED** of this Court that the Premises be closed to the public until further order of this Court, effective immediately and until further order of this Court.

It is further **ORDERED** that this temporary restraining order shall apply to 1921 Channingway Center Drive and the associated parking lots on the parcels. The Premises shall be closed to the public until further order of this Court and no person may hold or host any events at in the associated parking lots. Any violation of this order, including mutilation of this order, is contempt of court, punishable as a first degree misdemeanor.

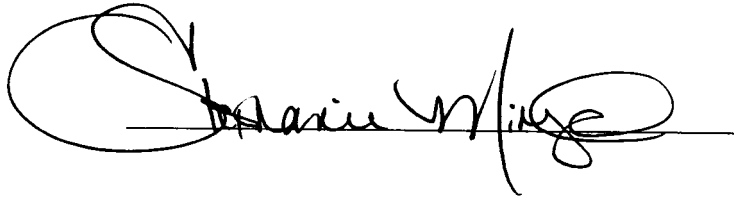
This case is continued for further preliminary hearing on the merits of Plaintiff's Complaint for Preliminary and Permanent Injunctive Relief on the 17th day of December, 2020 at 9 A.M./P.M. in courtroom 15B, located on the 15<sup>th</sup> floor of 375 S. High Street, Columbus, Ohio 43215. This Order shall remain in effect until that time or as otherwise ordered by this Court.

This order shall be served upon the Defendants by the Columbus Division of Police or Plaintiff's Counsel; the order may be served by posting a copy of it in a conspicuous place at or upon one or more of the principal doors or entrances of the property. Based on the Affidavit submitted with the Complaint and Motion, the Court finds that notice of entry upon the premises could pose a danger to Defendants, their patrons, and their community by virtue of large events that are set to be held this upcoming weekend, including as early as Friday, December 11, 2020.

IT IS SO ORDERED.

12-8-2020

DATE

A handwritten signature in black ink, appearing to read 'Stephanie Mingo', written over a horizontal line.

JUDGE STEPHANIE MINGO