

FILED
04-13-2018
CIRCUIT COURT
DANE COUNTY, WI
20180413
Honorable Peter C
Anderson
Branch 17

STATE OF WISCONSIN : CIRCUIT COURT :

DANE COUNTY

BELL GREAT LAKES, LLC,
P.O. Box 507
West Linn, Oregon 97068

Plaintiff,

v.

Case No. _____

Case Code: 30703

CITY OF MADISON
c/o Michael May, City Attorney
210 Martin Luther King, Jr. Boulevard
Room 401
Madison, Wisconsin 53703

MADISON COMMON COUNCIL
c/o Maribeth Witzel-Behl, City Clerk
210 Martin Luther King, Jr. Boulevard
Room 103
Madison, Wisconsin 53703

and

MAYOR PAUL SOGLIN
210 Martin Luther King, Jr. Boulevard
Room 403
Madison, WI 53703

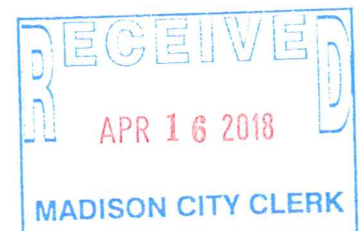
Defendants.

SUMMONS

THE STATE OF WISCONSIN to the above named Defendants:

You are hereby notified that the Plaintiff named above has filed a lawsuit or other legal action against you. The Complaint which is attached states the nature and basis of the legal action.

QB\148688.00003\51718327.1



EC - Hand-delivered

Within 20 days of receiving this Summons, you must respond with a written answer, as that term is used in Chapter 802 of the Wisconsin Statutes, to the Complaint. The Court may reject or disregard an answer that does not follow the requirements of the statutes. The answer must be sent or delivered to the Court, whose address is Clerk of Circuit Court, Dane County Circuit Court, 215 S. Hamilton Street, Madison, WI 53703, and to Gregory T. Everts, Quarles & Brady LLP, Plaintiff's attorney, whose address is 33 East Main Street, Suite 900, Madison, WI 53703. You may have an attorney help or represent you.

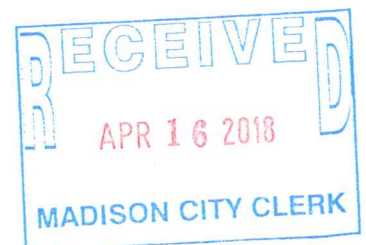
If you do not provide a proper answer within 20 days, the Court may grant judgment against you for the award of money or other legal action requested in the Complaint, and you may lose your right to object to anything that is or may be incorrect in the Complaint. A judgment may be enforced as provided by law. A judgment awarding money may become a lien against any real estate you own now or in the future, and may also be enforced by garnishment or seizure of property.

Dated this 13th day of April, 2018.

QUARLES & BRADY LLP
Electronically signed by

/s. Gregory T. Everts
Gregory T. Everts
State Bar No. 1001636
Douglas S. Buck
State Bar No. 1021453
Rikaela Greane
State Bar No. 1104420
33 East Main Street, Suite 900
Madison, WI 53701
608-251-5000

Attorneys for Plaintiff



FILED
04-13-2018
CIRCUIT COURT
DANE COUNTY, WI
20180413
Honorable Peter C
Anderson
Branch 17

STATE OF WISCONSIN : CIRCUIT COURT :

DANE COUNTY

BELL GREAT LAKES, LLC,
P.O. Box 507
West Linn, Oregon 97068

Plaintiff,

v.

Case No. _____

Case Code: 30703

CITY OF MADISON
c/o Michael May, City Attorney
210 Martin Luther King, Jr. Boulevard
Room 401
Madison, Wisconsin 53703

MADISON COMMON COUNCIL
c/o Maribeth Witzel-Behl, City Clerk
210 Martin Luther King, Jr. Boulevard
Room 103
Madison, Wisconsin 53703

and

MAYOR PAUL SOGLIN
210 Martin Luther King, Jr. Boulevard
Room 403
Madison, WI 53703

Defendants.

COMPLAINT

Plaintiff, Bell Great Lakes, LLC (“Plaintiff” or “Bell”), through counsel, Quarles & Brady LLP, files this Complaint for review of the City of Madison’s denial of Plaintiff’s application for a liquor license for Taco Bell Cantina on the 500 block of State Street in Madison, and allege against these Defendants as follows:

QB\51685311.2



SUMMARY OF THE CASE

1. This is an action pursuant to Wis. Stat. § 125.12(d)(2) for reversal of Defendants' arbitrary, capricious, discriminatory, and unreasonable denial of Plaintiff's application for a liquor license for a new downtown Madison restaurant. Defendants' denial was unlawful and discriminatory in light of the City's prior restaurant liquor license approvals, current City policy, and the fact that three weeks after denying Plaintiff's License Application the City approved a license for another new restaurant across the street. There was no meaningful or material difference between Plaintiff's application and the applications the City earlier and later approved; the disparate treatment is arbitrary, unlawful, and unfair.

THE PARTIES

2. Plaintiff Bell Great Lakes, LLC is a Delaware limited liability company, formed to own and manage restaurants including a Taco Bell Cantina (or "Restaurant") in Madison.

3. Defendant City of Madison ("the City") is a municipal corporation organized and existing under the statutes and constitution of the State of Wisconsin that may sue and be sued.

4. Defendant Madison Common Council is the legislative branch of the City of Madison.

5. Defendant Paul Soglin is Mayor of the City of Madison, sued here in his official capacity.

FACTUAL BACKGROUND

Plaintiff's Restaurant

6. Taco Bell Cantinas are a new Taco Bell restaurant concept intended for urban areas, with no drive-thrus.

7. Taco Bell Cantinas typically feature trendy décor, music, and tapas-style appetizers, as well as serve alcohol.



8. Currently, there are fewer than a dozen Taco Bell Cantinas across the United States. They are located in leading cities such as Boulder, Colorado; Austin, Texas; Newport Beach, California; Las Vegas, Nevada; and Chicago, Illinois.

9. Plaintiff Bell was formed, among other things, to open, own, and manage a Taco Bell Cantina at 534 State Street in downtown Madison. This Restaurant recently opened and is up and operating, albeit without serving alcohol.

Madison's Regulatory Regime for Liquor Licensing

10. Liquor licensing in the City of Madison is governed by the Wisconsin Statutes, Ch. 125 (Alcohol Beverages).

11. Liquor licensing is further governed by Chapter 38 of the City of Madison's Code of Ordinances (Alcohol Beverages Regulated).

12. The City of Madison also has an Alcohol Overlay District (the "AOLD"), which includes the 500 block of State Street. MGO, § 28.127.

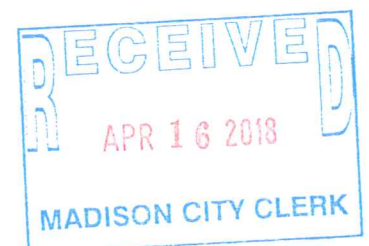
13. The City adopted the AOLD to regulate and control the density of liquor licenses in the State Street Area.

14. AOLD represents the City's policy and law with regard to liquor license density on State Street.

15. The City's AOLD forbids new brewpubs, nightclubs or taverns without special permits, but permits new liquor licenses for restaurants that predominantly serve food.

Bell's Liquor License Application

16. Bell applied to the City of Madison for a Class B liquor license on October 5, 2017 (the "License Application").



17. Bell's liquor license application was for a restaurant and complied with the City's AOLD.

18. Bell's License Application sought a license for the sale of beer, and wine/liquor, but Bell amended the Application after it was filed, limiting its request to beer and wine only.

19. Bell met with the City of Madison Police Department to discuss the Restaurant and address any concerns that might be raised.

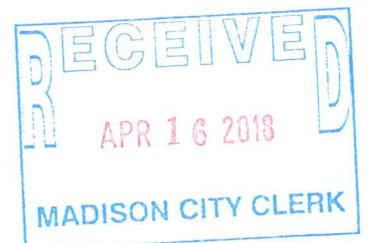
20. Following discussions with the Police Department, and the City's Alcohol Licensing Review Committee (the "ALRC"), Bell agreed to limit the hours during which alcohol would be sold, with no sale of alcohol after 10 p.m. on weekdays (Sunday through Thursday) and no sale of alcohol after 11 p.m. on Friday and Saturday.

21. Bell further agreed to numerous changes to its Restaurant that would increase public safety. These changes included installing additional video cameras on site, using an ID scanner, providing additional employee training, and increasing lighting on State Street, which increased the visibility at the Restaurant's entrance.

Common Council Approval of Bell's License Application

22. On November 15, 2017, the ALRC approved Bell's application subject to the agreed-upon restrictions that (1) Bell would not sell alcohol after 10 p.m. on weekdays (Sunday to Thursday) or after 11 p.m. on Friday and Saturday; (2) the Restaurant would predominantly serve food, and not alcohol; (3) food service would be available at all times; and (4) the Restaurant's staff would regularly patrol the premises and discourage loitering.

23. On December 5, 2017, the Common Council held a hearing on Bell's License Application.



24. Jason Freedman, Captain of the City Police Department's Central District, testified at the hearing that Bell was "very amenable to the concerns that we had and the changes that we requested—far more amenable than many other applicants in terms of their alacrity and willingness to adjust their business model."

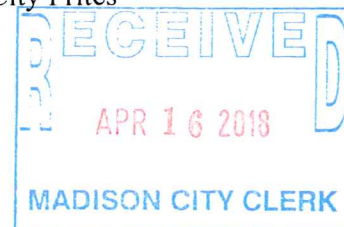
25. At the December 5, 2017 hearing on Bell's License Application, Captain Freedman also stated that Bell "demonstrated a level of due diligence, of planning, of understanding of the business that is certainly in total and absolutely, not only relatively, in compared to previous applicants who had been granted licenses, but just in terms of an absolute sense, they clearly met the standards from my standpoint that there were no red flags, that they were going to be practicing due diligence and etc."

26. At the December 5, 2017 hearing on Bell's License Application, Captain Freedman further stated: "We did not see any security concerns with this applicant, and they have appeared to present a very cogent, well thought-out, and flexible plan, and they have met every condition that, certainly, we have requested, my team requested, the alders, as well as the ALRC."

27. Bell's License Application was approved by the City's Common Council on December 5, 2017, on a vote of 16 - 1.

28. By approving Bell's License Application, the Common Council necessarily determined that Bell had complied with City Ordinance and met all other requirements.

29. Further, by approving Bell's License Application, the Common Council necessarily determined, among other things, that granting Bell's liquor license request would be consistent with the City's prior liquor license approvals in the State Street Area: (1) in 2015, the City Council overturned the Mayor's veto of a liquor license in the area for Mad City Frites



(which has since gone out of business); (2) in 2016 the City Council overturned the Mayor's veto of a liquor license for Lotsa Stone Fired Pizza, also on the 500 block of State Street; (3), in 2017, the City Council overturned the Mayor's veto of an almost identical liquor license to for the Koi Sushi restaurant at 502 State Street.

The Mayor's Veto of Plaintiff's License Application

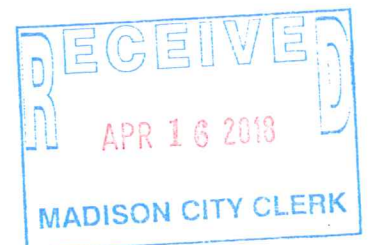
30. On December 11, 2017, Mayor Paul Soglin vetoed Bell's License Application.

31. With his veto, Mayor Soglin issued a message, stating that Bell's License Application, if granted, would have "enormous costs for the residents of Madison and our city government" by contributing the alcohol-related problems downtown, potentially including violence, and raising the cost of policing." Adding more liquor outlets to the area, even if they close early, makes little sense," Soglin stated, further asserting: "[T]he violence at downtown locations associated with liquor is only growing--growing in terms of frequency, in terms of location, and in terms of severity."

32. Mayor Soglin's veto message cited, as a second concern, his belief that Plaintiff's License Application was just the edge of the wedge--i.e., that other fast food chains (Starbucks or Burger King) would make similar requests, and that Plaintiff would be back asking for "full liquor."

33. On January 2, 2018, the Madison Common Council held a hearing to consider whether to override the Mayor's veto.

34. Mayor Soglin, who was absent from the December 5, 2017, Council vote, appeared at the January 2, 2018 hearing and opposed Bell's License Application. Issuing the license to Bell, Soglin told the Common Council, would add to alcohol-fueled violence on State Street, stating: "All we continue to do is add to the total of liquor."



35. Mayor Soglin showed the Council a video depicting late night disturbances that, he asserted, were related to alcohol.

36. The disturbances shown in the video did not occur at any restaurants and, for the most part, were not even related to State Street but rather to bars and taverns on University Avenue.

37. Mayor Soglin presented “police call” data to the Council, arguing that this data showed that Plaintiff’s License Application would contribute to late night problems downtown.

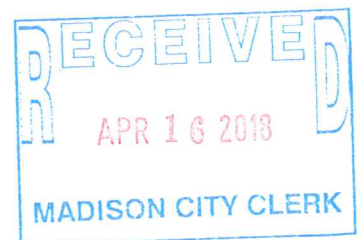
38. In fact, the disturbances shown in the Mayor’s Police Department data were primarily related to bars and taverns, not restaurants, and mostly occurred well after the cut-off hours in Bell’s License Application (10 p.m. on weeknights, 11 p.m. on weekends).

39. At the January 2, 2018 hearing and/or subsequent January 16, 2018 Council meeting, Mayor Soglin proposed a moratorium on liquor licenses in the State Street Area. The Mayor disparaged fast food, argued that even one more license would be detrimental, and further proposed that, following this moratorium, the City should implement policies more restrictive than the current AOLD.

40. On January 2 and 16, 2018, Alders expressed concern that the Mayor was singling out Bell for denial.

41. On January 2 and 16, 2018, Alders expressed the view that denial of Bell’s license application would be arbitrary in light of the City’s liquor ordinances, currently in place, and the City’s approval of previous restaurant beer/wine licenses.

42. Alder Matthew Phair (District 20) stated: “I don’t know how we can call ourselves ‘policy makers’ and vote [to uphold] the veto, with the Mayor, because we’d be



making a decision with the absence of a policy at the detriment of a business, regardless of it's a national chain or whatever.”

43. Referring to the Mayor's videotape of disturbances on University Avenue, Alder Phair went on to state: “I don't know how anyone could believe that by allowing this Cantina to go forward, that somehow, it's going to make the issues [of violence] we saw on that screen better or worse.”

44. Alder Phair also stated: “We need to stop holding certain businesses hostage, regardless of who they are—small, ‘mom & pop’ like two years ago, or a national chain—until we figure out a bigger, broader policy.”

45. A majority of the Common Council voted to override the Mayor's veto and to approve Bell's License Application on January 2, 2018. The Council's 9 - 7 vote in favor of the license, however, was less than the two-thirds majority (14 votes) required to override the Mayor's veto. Accordingly, Bell's license was denied.

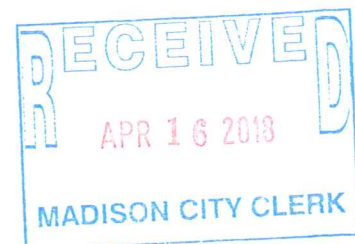
The Common Council's Reconsideration of Plaintiff's License Application

46. On January 16, 2018, the Common Council, on a motion for reconsideration, considered the Plaintiff's License Application once again.

47. During debate on this motion to reconsider, multiple Alders again expressed concern that denial of Bell's license was arbitrary and also inconsistent with the alcohol rules currently in place for State Street and the City of Madison.

48. During the debate on Plaintiff's License Application on January 16, Alder Mark Clear (District 19) stated:

I served on the economic development committee for almost 10 years, starting two years before I was elected to this council in 2005. And in those days, not long ago, this city had a reputation as being very hostile to business. Deserved or not, that reputation



ranged, especially from the development community to all kinds of business that tried to operate or begin operating in our city. And many, many people on this council currently, many of our predecessors, many, many city staff, many citizens worked to repair that reputation, both through actions, many of which had to do with our development review process. But also just through creating an environment, and a climate, and an attitude that Madison appreciates its businesses, that they are part of our community, and that our ways of regulating, and licensing, and operating businesses may be more strict than other communities, but they were not, as we were so often accused of, they're not arbitrary. And I'm very concerned that the kind of vetoes we've seen from the Mayor over this and other establishments create that kind of arbitrariness again, and do significant damage to our reputation as a place to do business. I think that is extremely harmful to our city. We've talked a lot about how, if you want to create a different policy—and I see that the Mayor has introduced something, and I look forward to actually seeing something when it's on Legistar—let's have a debate about that policy. But let's not change arbitrary rules.

49. On January 16, 2018, a significant majority of the Common Council voted to approve Bell's license. However, the vote in favor was 12 - 7, which once again was not the two-thirds majority (14 votes) required to override the Mayor's veto.

The City's Stated Reasons for Denying Plaintiff's License Application

50. On January 22, 2018, as required by Wis. Stat. § 125.12(3m), the City sent Bell a letter explaining its denial of Bell's License Application (the "Denial Letter").

51. The City's Denial Letter stated:

[I]ssuing a license to this location would have adverse effects on public health, safety and welfare because this business is located in an area of high density for alcohol licenses. Thus, issuing this license would place additional strain on police and public safety resources.

52. The City's Denial Letter stated:

Adding another licensed establish[ment] to this area would seriously undermine the ability of public safety agency to provide



services to your business and to other businesses/residences in the State Street area.

The City Grants a Liquor License to a Similarly Situated Restaurant

53. Three weeks after denying Plaintiff's License Application, the City granted a virtually identical liquor license to a new restaurant across the street.

54. On February 6, 2018, the City granted a Class B liquor license to Chen's Dumpling House ("Chen's"), a new restaurant, for beer and wine.

55. Chen's is located in the 500 block of State Street; indeed, it is across the street from the Taco Bell Cantina.

56. The impact of granting a liquor license to Chen's is not different, rationally or materially, than the impact of granting Plaintiff's License Application.

57. A previous restaurant in the same location as Chen's, since shut down, had a record of liquor license infractions.

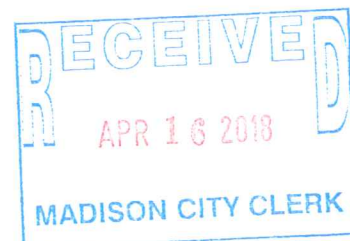
58. At the February 6, 2018, Common Council meeting, where the Chen's license was approved, multiple Alders expressed concern about granting a license to Chen's when it had denied a license to Bell.

59. At the hearing on the Chen's license, Alder Shiva Bidar-Sielaff, District 5 stated:

I don't know what is going to happen with it...once it...goes to the Mayor's desk.... I'm going to think about this and how we are going to justify any level of...equitable decision-making if we do give it to this one [Chen's] and didn't give it to Taco Bell.... But this is exactly what I was talking about when I said that we can't just pick and choose.

60. At the hearing on Chen's license, Alder Bidar-Sielaff stated:

From the ALRC perspective, we recommended both of them [the Bell and Chen's license applications]. We were actually consistent in recommending both of them to the Council for



approval, with pretty much exactly the same conditions....Again, we need to make sure that we are consistent.

61. Alder Barbara Harrington-McKinney, District 1, also expressed concern about the issue of arbitrary denial, asking:

What is the difference between...this applicant in the 500 block of State Street and the [application] of the Cantina in the 500 block of State Street if ah, the reason for the vote is that we want to limit the license to the 500 block area? I mean, there has to be some consistency.

62. Despite these restaurants being similarly located and similarly situated, Mayor Soglin did not veto Chen's Dumpling House's application for the same type of liquor license.

63. Despite the similarities, Mayor Soglin made no public objection and, in fact, spoke in support of the Chen's license at the February 6, 2018 Common Council meeting.

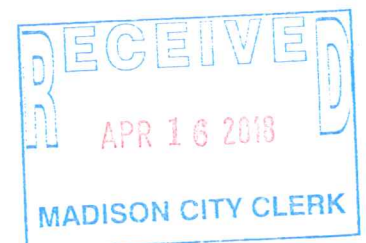
64. The City's approval of the Chen's application proves that there is no evidence or rational basis for the finding that granting Bell's License Application would undermine public safety or harm the City's ability to provide services to Plaintiff's business or other businesses in the State Street area.

CLAIM FOR RELIEF

65. Bell seeks review of Defendants' denial of its Liquor License Application pursuant to Wis. Stat. § 125.12(2)(d).

66. Denial of Bell's License Application was arbitrary, capricious, discriminatory and unreasonable in the circumstances.

67. The Council's grant of three other similar licenses (overturning the Mayor's veto in each instance) shows that its denial of Bell's license was arbitrary, capricious, and unreasonable.



68. The City's grant of the license to Chen's three weeks after denying an identical license to Bell shows that its denial of Bell's licenses was arbitrary, capricious, and unreasonable.

69. Denial of Bell's License Application was the result of impermissibly applying a different standard to Bell than the standard set by ordinance, applied to previous applicants, and applied to Chen's.

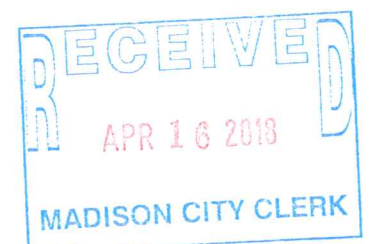
70. There are no meaningful distinctions between Bell and Chen's that would justify denying Bell's license while granting Chen's license; the City's grant of the license to Chen's constitutes differential treatment of two similarly situated businesses.

71. The inconsistent approach to these similar applicants demonstrates that the Defendant's decision was so unreasonable that it shocks the sense of justice and indicates a lack of fair and careful consideration.

72. Indeed, to the extent there are differences between Bell and Chen the differences favor Bell's License Application over Chen's application, including that:

A. Bell's License Application was first-filed.

B. Bell's association with a national chain is a major advantage in terms of liquor controls. As Police Captain Freedman testified, Bell's application was superior in terms of security and liquor controls: "They demonstrated a level of due diligence, of planning, of understanding of the business that is certainly in total and absolutely, not only relatively, in compared to previous applicants who had been granted licenses, . . . they clearly met the standards from my standpoint that there were no red flags, that they were going to be practicing due diligence and etc."



C. On information and belief, Chen's was not proposing, nor does it have, the level of security Bell was offering (extra street lighting, video cameras, ID scanner, etc.).

D. On information and belief, Chen's is set up in the same way as the prior business at the same location, which had significant liquor violation issues.

73. By failing to apply the AOLD and City liquor license ordinances to Bell, the City acted outside of its jurisdiction.

74. In denying Bell's License Application, the City failed to apply the AOLD and City liquor ordinance and, therefore, failed to act according to law.

75. The Mayor's veto of Bell's License Application, despite the Common Council's approval by majority vote on multiple occasions, was arbitrary, oppressive, discriminatory and unreasonable, and represented the Mayor's will and not his judgment.

76. The City's denial of Bell's License Application as a whole was arbitrary, oppressive, discriminatory and unreasonable, and represented its will and not its judgment.

77. The City's denial of Bell's License Application, and the distinction it drew between Bell's Application and Chen's application, was irrational, unlawful, and without an evidentiary basis.

WHEREFORE, Plaintiff demands:

- A. A finding from the Court that denial of Plaintiff's application for a liquor license was arbitrary, capricious, unreasonable, discriminatory, and contrary to law;
- B. An order granting Plaintiff's application for a Class B liquor license in the form negotiated with the City of Madison and applied for;
- C. Recoverable costs and disbursements; and



D. All such other relief as may be just and necessary.

Respectfully submitted this 13th day of April, 2018.

QUARLES & BRADY LLP
Electronically signed by

s/ Gregory T. Everts
Gregory T. Everts
State Bar No. 1001636
Douglas S. Buck
State Bar No. 1021453
Rikaela Greane
State Bar No. 1104420
33 East Main Street, Suite 900
Madison, WI 53701
608-251-5000

Attorneys for Plaintiff

