

STATE OF MICHIGAN
CIRCUIT COURT FOR THE 30TH JUDICIAL CIRCUIT
INGHAM COUNTY

MICHIGAN DEPARTMENT OF
AGRICULTURE AND RURAL
DEVELOPMENT,

Plaintiff,

v

MOORE MURPHY HOSPITALITY, L.L.C.,
D/B/A IRON PIG SMOKE HOUSE,

Defendant.

Case No. 2021-56-CZ
HON. CLINTON CANADY III

Danielle Allison-Yokom (P70950)
Laura R. LaMore (P79943)
Eileen C. Whipple (P74700)
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BARB BYRUM
CLERK OF THE 30TH
JUDICIAL CIRCUIT COURT
INGHAM COUNTY CLERK

2021 JAN 27 P 12:47

FILED

There is no other pending or resolved civil
action arising out of the transaction or
occurrence alleged in the complaint.

VERIFIED COMPLAINT

Plaintiff Michigan Department of Agriculture and Rural Development
(MDARD), by its attorneys, Dana Nessel, Attorney General of the State of Michigan,

and Danielle Allison-Yokom, Laura LaMore, and Eileen Whipple, Assistant Attorneys General, says:

NATURE OF THE CASE

1. This civil action is being brought pursuant to the Food Law, 2000 PA 92, MCL 289.1101 *et seq.*, seeking a permanent injunction pursuant to MCL 289.5111 to prevent the Defendant's unlicensed sale of food in violation of the Food Law.

JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of this action pursuant to MCL 289.5111.

3. This Court has personal jurisdiction over the Defendant pursuant to MCL 600.701 and MCL 600.711(1) and (3).

4. Venue is proper in this Court pursuant to MCL 600.1631(a).

PARTIES

5. Plaintiff, MDARD, is the state agency with authority to implement and enforce the Food Law, MCL 288.1101 *et seq.*

6. Defendant Moore Murphy Hospitality, L.L.C., d/b/a Iron Pig Smoke House, is a Michigan limited liability company that operates a food service establishment at 143 West Main Street in Gaylord in Otsego County, Michigan.

7. Moore Murphy Hospitality, L.L.C., d/b/a Iron Pig Smoke House, is a "person" within the meaning of the Food Law, MCL 289.1109(u).

GENERAL ALLEGATIONS

8. The Food Law regulates the production, manufacturing, processing, packing, exposure, offer for sale, holding for sale, dispensing, giving, or supplying of food in Michigan. MCL 289.1103.

9. In order to sell food in Michigan, a person must obtain a license from MDARD. MCL 289.4101.

10. Iron Pig Smokehouse operates a food service establishment located at 143 West Main Street in Gaylord, Michigan.

11. Iron Pig Smokehouse held a license issued by MDARD to operate its food service establishment.

12. The Food Law provides that MDARD's Director can summarily suspend a food establishment license upon a determination that an imminent threat to the public health, safety, or welfare exists. MCL 289.4125(4).

13. On December 29, 2020, MDARD determined that Iron Pig Smokehouse's continued operation created an imminent or substantial endangerment to the public health, issued a summary suspension pursuant to MCL 289.4125(4), and scheduled an administrative hearing regarding the propriety of the summary suspension for January 12, 2021.

14. The summary suspension order required that Iron Pig Smokehouse immediately cease operating as a food service establishment.

15. Despite the summary suspension order, Iron Pig Smokehouse continued to operate as a food service establishment.

16. After granting Iron Pig Smokehouse's request for a delay, on January 14, 2021, the Michigan Office of Administrative Hearings and Rules (MOAHR) held a hearing before Administrative Law Judge (ALJ) Eric J. Feldman regarding MDARD's summary suspension of Iron Pig Smokehouse's license.

17. Iron Pig Smokehouse appeared at the hearing, was represented by an attorney, and offered evidence.

18. On January 20, 2021, ALJ Feldman issued a decision and order finding that MDARD had demonstrated that the continued operation of Iron Pig Smokehouse posed an imminent threat to the public health, safety, and welfare and continuing the summary suspension of Iron Pig Smokehouse's food service establishment license.

19. Both MDARD and Iron Pig Smokehouse were notified of ALJ Feldman's Decision and Order Continuing Summary Suspension by email on January 20, 2021.

20. On January 21, 2020, James Padden, the Food Safety Inspection Program Manager at MDARD conducted observations at Iron Pig Smokehouse.

21. Mr. Padden observed that the open sign was illuminated, and customers were dining inside.

22. Additionally, two officers from the Gaylord Police Department observed that the establishment was open and there were customers seated inside.

23. Iron Pig Smokehouse does not have a valid food service establishment license and is not licensed to sell or serve food.

24. Iron Pig Smokehouse's continued operations in violation of the Food Law, without a license, and in a manner that poses and imminent threat to the public health causes irreparable harm to the public and MDARD.

COUNT I – INJUNCTIVE RELIEF

25. Paragraphs 1 through 24 of this Complaint are re-alleged and incorporated herein by reference.

26. The Food Law defines "food" as "articles used for food or drink for humans or other animals, chewing gum, and articles used for components of any such article." MCL 289.1107(m).

27. The Food Law defines "food establishment" as "an operation where food is processed, packed, canned, preserved, frozen, fabricated, stored, prepared, served, sold, or offered for sale. Food establishment includes, but is not limited to, a food processor, a food warehouse, a food service establishment, and a retail grocery. . . ." MCL 289.1107(p).

28. Defendant Iron Pig Smokehouse is selling and offering food for sale and, therefore, is a food establishment as defined by the Food Law.

29. The Food Law provides that a person cannot operate a food establishment unless licensed by MDARD. MCL 289.4101(1).

30. MDARD suspended Defendant's food service establishment license. MDARD's suspension of Defendant's food service establishment was continued after a hearing conducted in accordance with the Administrative Procedures Act, MCL 24.201 *et seq.*

31. Defendant is not currently licensed to operate a food establishment.

32. The Food Law prohibits the operation of a food establishment without a license:

(1) A person shall not do or cause to be done any of the following:

* * *

(d) Sell, deliver for sale, hold for sale, or offer for sale food unless that person holds a license issued under chapter IV.

* * *

(q) Operate without a license, registration, permit, or endorsement.

(r) Violate a provision of this act or a rule. [MCL 289.5101(1).]

33. As set forth above, Defendant Iron Pig Smokehouse is violating the Food Law by engaging in the sale of food without a license.

34. The Food Law provides that:

In addition to the remedies provided for in this act, the department may apply to the circuit court for, and the court shall have jurisdiction upon hearing and for cause shown, a temporary or permanent injunction restraining any person from violating any provision of this act or rules promulgated under this act irrespective of whether or not there exists an adequate remedy at law. [MCL 289.5111.]

RELIEF REQUESTED

Plaintiff respectfully requests that this Court grant the following relief:

A. Enter an order permanently enjoining Defendant and its members, employees, agents, and officers from selling or offering food for sale without a license contrary to MCL 289.5101(1)(d) and (q);

B. Grant MDARD further relief as the Court finds just and appropriate.

VERIFICATION

I declare under the penalties of perjury that this complaint has been examined by me and that its contents are true to the best of my information, knowledge, and belief.

/s/ James Padden

James Padden
Food Safety and Inspection Program Manager

Respectfully submitted,

Dana Nessel
Attorney General

/s/ Eileen C. Whipple

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Dated: January 27, 2021

LF: Iron Pig Smokehouse (MDARD v) CC/AG# 2020-0308468-B/Verified Complaint 2021-01-27