

**Molly's Bajan Creation Rest. v New York State Liq.
Auth.**

2014 NY Slip Op 31822(U)

July 11, 2014

Supreme Court, New York County

Docket Number: 101648/13

Judge: Peter H. Moulton

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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: Peter H. Moulton
Justice

PART 57

MOLLY'S BAJAN CREATION RESTAURANT
PHILLIP CARRINGTON, Pro Se.

MOTION INDEX NO. 101648/13

MOTION DATE _____

MOTION SEQ. NO. 001

MOTION CAL. NO. _____

-v-

NEW YORK STATE LIQUOR AUTHORITY,
NEW YORK CITY POLICE DEPARTMENT et al

The following papers, numbered 1 to _____ were read on this motion to/for _____

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits _____

Replying Affidavits _____

PAPERS NUMBERED

FILED

JUL 15 2014

Cross-Motion: Yes No

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Petitioner, pro se, brings this hybrid article 78 proceeding and malicious prosecution action in connection with cancellation of a "Restaurant Wine License" issued to "Molly's Caribbean Foods Inc. Bajan Creation Restaurant 407 Remsen Ave Brooklyn NY 11212" and the downfall of that restaurant.¹ Molly's Caribbean Foods Inc. is a registered active Domestic Business Corporation. However, according to a Business Certificate for Partners, filed with the Kings County Supreme Court in 2009 (an exhibit to the moving papers), petitioner and Gloria Farrell are members of a partnership operating the business "Molly's Bajan Creation Restaurant at 407 Remsen Avenue Brooklyn NY 11212."² Respondent New York State Liquor Authority (NYSLA)

¹The liquor license permits the sale of wine and beer.

²Petitioner does not explain how the restaurant can be both an active corporation and a partnership. He submits a "Stipulation To Omit Exhibit" which only he signed March 24, 2014. The purported stipulation reflects a consent to

has not answered the petition.³ Respondent New York City Police Department (NYPD) and the individual officers cross-move to dismiss the petition.

According to petitioner, respondents are "operating in bad faith by wilfully issuing false summons, making several threats of closure and, cancelling petitioner's license based on misrepresentation and perjury of member [sic] of the police department." Petitioner alleges harassment and asserts that he had no knowledge of any illegal sales of alcohol within the establishment. He claims the premises were always in compliance and had the necessary licenses and signs posted. Petitioner attaches the affidavits of many of the officers named herein, who made the affidavits in connection with a separate "nuisance abatement" proceeding in Kings County (discussed below). Petitioner blames respondents for "forc[ing] the premises to close July 2, 2013 in debt, humiliation and disgrace."⁴ Petitioner seeks reinstatement of the liquor license and damages.

This litigation also involves claims arising out of a "nuisance abatement" proceeding in Brooklyn Supreme Court City of New York v Land and Building Known

change the name of the licensee from the corporate name to the partnership name.

³Petitioner himself served NYSLA on December 13, 2013 by serving Robert Burkley at 317 Lenox Avenue NY 10017.

⁴After a hearing on March 8, 2013, respondent NYSLA cancelled the liquor license issued to Molly's Caribbean Food, Inc., effective July 2, 2013 for multiple violations (see Decision and Order dated July 12, 2013). The violations which were upheld included the failure to operate the business as a restaurant, the lack of an operable kitchen, the failure to have food available for sale, the failure to comply with regulations, the keeping or permitting of alcoholic beverages not covered by the license, and the purchase or receipt of alcohol from a person not licensed to sell alcohol for resale. By Decision and Order dated August 22, 2013, NYSLA denied a request for reconsideration. A hearing involving the cancellation of the license (presumably, an appeal) was held before administrative law Judge Carl B Stoll on September 17, 2013 and October 30, 2013. Stoll's decision is not attached.

as 407 Remsen Avenue, Index Number 1294/2013.⁵ That proceeding resulted in a temporary closing of the premises and a February 15, 2013 stipulation, so ordered on March 12, 2013, permitting the reopening of the business on February 15, 2013 (the February Stipulation). In the February Stipulation, petitioner agreed to monitoring of the business and other terms, but did not admit any wrongdoing. The February Stipulation also provided that "Defendant Phillip Carrington shall hold [City] harmless...against all claims arising from the investigation at and closing of the subject premises."

Cross-Motion to Dismiss

Respondent NYPD and the individual officers cross-move to dismiss the petition. The motion is based on the arguments that (1) Molly's Caribbean Foods Inc. Bajan Creation Restaurant has not appeared by an attorney, as required under CPLR § 321 (a), (2) petitioner lacks standing, (3) petitioner waived any claims arising out of the summonses and the police investigation in connection with the nuisance abatement proceeding, (4) petitioner is not entitled to damages because he did not file a notice of claim before commencing this case⁶ and respondent was merely exercising discretion in the performance of an official action, and (5) the petition fails to state a cause of action. The petition fails to state a cause of action, NYPD argues, because all summonses issued by the officers were noticed in criminal court and not properly challenged here, and all testimony given by the officers was given in connection with the administrative hearing before respondent NYSLA. Respondent also maintains that any challenge is time-barred by a four month statute of limitations because this lawsuit

⁵It appears that the genesis of this litigation relates to community complaints about the restaurant. One person was shot near the restaurant (which respondent police department believes started with a dispute inside the premises), one man was allegedly punched in the face at the premises, and two women had a fight inside the premises, who petitioner testified were cousins.

⁶In reply, petitioner attempts to cure the defect by submitting a notice of claim dated March 24, 2014 stamped received by the City of New York on that date.

was not commenced until more than a month after the cancellation of the license. The petition also fails to state a cause of action, respondent asserts, because petitioner fails to make out the necessary elements for malicious prosecution, including that a proceeding was terminated in favor of the accused.

In response, petitioner repeats that the cancellation of the license was arbitrary and capricious and that the restaurant is a partnership as of March 15, 2013. He has standing because "the State Liquor Authority accept the change of the business name in the name of the above from Molly's Carribean Foods Inc." Petitioner also complains that the license was cancelled based on affidavits "prohibited" by the February Stipulation. This argument, as the court understands it, is based on petitioner's belief that because the nuisance abatement matter was settled in favor of permitting the business to stay open, the officers' affidavits could not be used in connection with any other matter (i.e., before the NYSLA) to hurt the business. The argument may also be based on petitioner's belief that hearing officer Stoll made unfair evidentiary rulings regarding the affidavits which "petitioner has no right to respond and refer to documents used to punish them." Petitioner further argues that the litigation is not time-barred because the final hearing was on August 22, 2013 and he commenced this proceeding on December 11, 2013.

Discussion

The cross-motion to dismiss is granted on the basis that the claims asserted herein are barred by the February Stipulation. The stipulation provided in relevant part that "Defendant Phillip Carrington shall hold [City] harmless...against all claims arising from the investigation at and closing of the subject premises." It further provided that it applied "to any successor corporation, partnership, joint venture, or other legal entity in which any individual defendants are shareholders in, on the board of directors, or have a pecuniary interest, direct or indirect." The February Stipulation is signed by Phillip Carrington Pro Se Owner of "Molly's Restaurant & Catering" d/b/a "Molly's Bajan Creation Restaurant." Petitioner cannot have it both ways-the stipulation permitted him to reopen the business on February 15, 2013, in lieu of litigating the matter. To the extent that petitioner did not wish to waive claims arising out of the investigation and closing of the business, he should have declined to settle the

nuisance abatement litigation and proceeded to a hearing on whether a nuisance existed and whether the business should be reopened.

Further, the petition must be denied because petitioner does not have standing to challenge the decision of NYSL to cancel the liquor license, nor does he have standing to seek restoration. Regardless of the true nature of the business as a corporation or a partnership, the license is issued in the name of "Molly's Caribbean Foods Inc. Bajan Creation Restaurant 407 Remsen Ave Brooklyn NY 11212." Therefore, only the corporation has standing to sue, and this litigation was not commenced in the corporate name, which would require the appearance by an attorney (see CPLR § 321 [a]). The court need not address any of the other multiple legal defects in this litigation.⁷ It is hereby

ORDERED that the cross-motion to dismiss all claims against respondent New York City Police Department and the individual officers is granted based on the February Stipulation; and it is further

ORDERED that the petition challenging the decision of the New York State Liquor Authority is denied and dismissed based on lack of standing.

This constitutes the Decision, Order and Judgment of the Court.

FILED

Dated: July 11, 2014

[Signature]
J.S.C. JUL 15 2014

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⁷The court is sympathetic to petitioner's belief that the business was unfairly targeted in connection with community complaints about the business, which petitioner believed were unfounded. However, among other issues, the premises were largely rented out for parties and admittedly there was no cooking on premises (see NYSLA Tr October 30, 2013). Petitioner maintains that "catering" food was permitted under the liquor license and that he did not need a catering establishment license. However, the NYSLA website indicates that "Restaurant Wine: License for on-premises consumption of wine and beer in a place where food is prepared in such quantities that the sale of wine and beer is not the prime source of revenue."