

STATE OF SOUTH CAROLINA)
)
 COUNTY OF BEAUFORT)
)
 Bear Island Distributors, LLC,)
)
 Plaintiff,)
)
 vs.)
)
 Lincoln & South Brewing Co., LLC,)
)
 Defendant.)
 _____)

IN THE COURT OF COMMON PLEAS
 FOURTEENTH JUDICIAL CIRCUIT
 C.A. No.: 2025-CP-07-00051

**ORDER DENYING PLAINTIFF’S MOTION
 TO ALTER OR AMEND ORDER DENYING
 MOTION FOR TEMPORARY INJUNCTION**

This matter came before the Court upon Plaintiff, Bear Island Distributors’, Motion to Alter or Amend, filed on March 13, 2025. The Court thoroughly considered the Motions and filings of the parties in this matter as well as the relevant statutes and case law. For the reasons stated below, Plaintiff’s Motion to Amend is denied.

BACKGROUND

Defendant, Lincoln & South Brewing Co., LLC, as a product supplier, entered into an exclusive Distribution Agreement with Plaintiff, Bear Island Distributors, LLC, as its exclusive distributor. Plaintiff was to purchase, market, and sell Defendant’s product to retail customers throughout the State of South Carolina.

In addition to Defendant, Plaintiff has 27 other beer product suppliers with which it has exclusive distribution rights. According to the controlling statute and the Distribution Agreement, Defendant cannot distribute its product through another distributor unless or until its Distribution Agreement with Bear Island is terminated.

In accordance with the contract and the controlling statute, the Alcohol and Alcoholic Beverages Act, S.C. Code Ann. § 61-4-10, *et seq.*, Defendant verbally and then in writing gave notice of termination of the Distribution Agreement. Defendant’s Notice of Termination letter

dated November 15, 2024, provided sixty (60) specific instances where Plaintiff breached the terms and conditions of the contract. Plaintiff did not address the Defendant's Notice of Termination. Plaintiff did not come into compliance with the Distribution Agreement after receiving the Notice of Termination. Plaintiff has not placed a purchase order with Defendant for product since October 2024.

On February 25, 2025, the Court held a hearing via WebEx upon Plaintiff's Motion for a Temporary Restraining Order filed on January 9, 2025. Appearing at the hearing were John F. Connell, Jr., Esquire, and Roni B. Payne, Esquire, Counsel for Plaintiff, together with William Cram on behalf of the Plaintiff, and R. Nicholas Felix, Esquire, and Edward B. Mitchell, Esquire, Counsel for Defendant, together with Thomas Gadhue, John Rybicki, and Heather Mastropole on behalf of the Defendant. The Court issued an Order Denying Plaintiff's Motion for a Temporary Restraining Order on March 3, 2025. On March 13, 2025, Plaintiff, Bear Island Distributors filed Motion to Alter or Amend, arguing that the Court erred by applying a heightened evidentiary standard to the "Adversely Affected" analysis Under the Alcohol and Alcoholic Beverages Act, S.C. Code Ann. § 61-4-10, et seq.; the Court required Plaintiff to establish the Common Law Elements for Temporary Injunction; and the Court failed to set forth findings of fact in its ruling that Plaintiff did not present sufficient evidence that it will or may be adversely affected by Defendant's termination of the distribution agreement.

DISCUSSION

The party seeking an injunction has the burden of demonstrating facts and circumstances that support a prima facie showing of entitlement to relief. *Strategic Resources v. Bcs Life Ins. Co.*, 367 S.C. 540, 627 S.E.2d 687, (2006); *Jennings-Dill, Inc. v. Israel*, 442 S.C. 98, 111, 897 S.E.2d 201, 207 (Ct. App. 2024), reh'g denied (Feb. 14, 2024). The remedy of an injunction is a drastic

one and ought to be applied with caution. *Id.* A party makes a prima facie showing when it presents “evidence sufficient to raise a presumption of fact or establish the fact in question unless rebutted.” *La Count v. Gen. Asbestos & Rubber Co.*, 184 S.C. 232, 192 S.E. 262, 266 (1937). The fact that the Plaintiff’s Motion is brought pursuant to Statute does not alter this burden. The Court’s decision was within its sound discretion, and it should stand. The Plaintiff’s Motion is also within the Court’s discretion. *See Compton v. S.C. Dep’t of Corr.*, 392 S.C. 361, 366, 709 S.E.2d 639, 642 (2011) (“Whether to grant a preliminary injunction is left to the sound discretion of the trial court and will not be overturned unless it is clearly erroneous.”).

I. The Order does not Apply a Heightened Evidentiary Standard to the “Adversely Affected” Analysis Under the Alcohol and Alcoholic Beverages Act, S.C. Code Ann. § 61-4-10, et seq.

The Order issued by the Court does not apply a heightened standard to the Adversely Affected Analysis. The Court stated that the facts and circumstances presented by Plaintiff did not convince the Court that Plaintiff made a showing that it will or might be adversely affected.

Plaintiff offered evidence they were not able to order product from Defendant. However, the Court finds that Plaintiff itself was the cause of any potential adverse affect because they had not ordered product since October, 2024. Plaintiff’s counsel’s letter to Defendant’s counsel on January 29, 2025, is not evidence of Plaintiff’s attempt to submit a Purchase Order. Additionally, the letter did not show that Plaintiff made any attempt to comply with the Distribution Agreement.

Plaintiff also argued they would suffer loss of business, loss of reputation, loss of goodwill, and loss of customers. However, Plaintiff provided a text message with a retail customer of Defendant, where the customer inquired about getting Defendant’s product and was told by Plaintiff’s Sales Representative... “Lincoln and South has none to sell us [] need to sub for

something else.” Plaintiff admitted that it did not make an inquiry to Defendant or place a purchase order to service that retail customer; instead, it told the customer Defendant did not have any product and offered a substitute product.

Plaintiff also argues that it collaborated with Defendant to service the HHI Seafood Festival. However, the evidence indicated that Plaintiff tried to sell competing products to the Hilton Head Island Seafood Festival. Further, after the customer contacted Defendant to inquire why Plaintiff was promoting one of its competitors, Defendant contacted Plaintiff and had to demand that Plaintiff make the product delivery to the HHI Seafood Festival.

II. The Order Does Not Address the Common Law Elements for Temporary Injunction.

The Court did not consider the common law elements for Temporary Injunction when it ruled. At the hearing on Plaintiff’s Motion for Temporary Injunction, the Court used the Statutory standard provided by the Alcohol and Alcoholic Beverages Act, S.C. Code Ann. §61-4-10 *et seq.* The Order issued by the Court did find that Plaintiff has “statutory and contract claims with discernible and calculable amounts in dispute which provide adequate remedies at law”; however, this finding was not used to consider the common law elements for Temporary Injunction, rather it was further evidence that the Plaintiff did not show that it will or might be adversely affected.

III. The Order Includes Sufficient Findings of Fact.

The Plaintiff had ample opportunity to review and edit the order, which it did, and the Court adopted the Plaintiff’s version. If the Plaintiff wanted additional facts, it could have submitted them. The essential facts are included in the Order denying the Plaintiff’s Motion for Temporary Injunction, and the Court references its consideration of all pleadings and filings in the record. The Court conducted a thorough inquiry into the Plaintiff’s business, including what

constitutes a purchase order and how many other beer suppliers' products were serviced under similar distribution agreements.

The Court's Order is based on the pleadings, filings of record, submissions of the parties, presentation of counsel, and inquiry of the Court at the hearing, which included but is not limited to the following:

- Plaintiff and Defendant had an exclusive distribution agreement whereby Defendant cannot distribute its product through anyone other than Plaintiff so long as the exclusive distribution agreement is in place;

- Defendant alleged Plaintiff had not complied with the Distribution Agreement and issued a Notice of Termination on November 15, 2024;

- Defendant is only one of the 28 beer suppliers that have exclusive distribution agreements with Plaintiff;

- Plaintiff can and has continued to do business with its 27 other beer suppliers;

- Plaintiff has not placed a purchase order with Defendant since October 2024;

- Defendant could not sell its product through another distributor while the Plaintiff's motion for injunctive relief was pending;

- In December 2024, Plaintiff's sales agent told a retail customer when asked about getting Defendant's product that Defendant had no product but did not place a purchase order to service that customer and instead suggested a substitute product;

- Plaintiff tried to market another of its supplier's products to an existing customer of Defendant (HHI Seafood Festival) without placing a purchase order to service that customer; and

- Plaintiff removed three of Defendant's taps from one of its retail customers on Hilton Head Island without placing a purchase order to service that customer.

CONCLUSION

Based on the foregoing, Plaintiff's Motion to Alter or Amend the Order Denying Motion for Temporary Injunction in this matter is DENIED.

AND IT IS SO ORDERED.

Carmen T. Mullen
Fourteenth Judicial Circuit

March __, 2025
Beaufort, South Carolina



Beaufort Common Pleas

Case Caption: Bear Island Distributors Llc VS Lincoln & South Brewing Co Llc

Case Number: 2025CP0700051

Type: Order/Other

So Ordered

s/Carmen T Mullen 2142