

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

MICHIGAN DEPARTMENT OF
AGRICULTURE AND RURAL
DEVELOPMENT,

Plaintiff,

Case No. 2020-_____-CZ

HON. _____

v

CAFÉ ROSETTA, LLC,

Defendant.

Danielle Allison-Yokom (P70950)
Laura R. LaMore (P79943)
Eileen C. Whipple (P74700)
Assistant Attorneys General
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There is no other pending or resolved civil action
arising out of the transaction or occurrence
alleged in the complaint.

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 Café Rosetta, LLC is a Michigan limited liability company that operates a food service establishment at 102 5th Street in Calumet in Houghton County, Michigan.

7. Café Rosetta, LLC is a "person" within the meaning of the Food Law, MCL 289.1109(u).

GENERAL ALLEGATIONS

8. The Food Law regulates the production, manufacturing, production, 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. Café Rosetta operates a food service establishment located at 102 5th Street in Calumet, Michigan.

11. Café Rosetta 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 2, 2020, MDARD determined that Café Rosetta'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 December 10, 2020.

14. The summary suspension order required that Café Rosetta immediately cease operating as a food service establishment.

15. Despite the summary suspension order, Café Rosetta continued to operate as a food service establishment.

16. On December 10, 2020, the Michigan Office of Administrative Hearings and Rules (MOAHR) held a hearing before Administrative Law Judge (ALJ) Lauren G. Van Steel regarding MDARD's summary suspension of Café Rosetta's license.

17. Café Rosetta appeared at the hearing, was represented by an attorney, and offered testimony.

18. On December 21, 2020, ALJ Van Steel issued a decision and order finding that MDARD had demonstrated that the continued operation of Café Rosetta posed an imminent threat to the public health and continuing the summary suspension of Café Rosetta's food service establishment license.

19. Both MDARD and Café Rosetta were notified of ALJ Van Steel's Decision and Order Continuing Summary Suspension by email on December 21, 2020.

20. On December 22, 2020, The Western Upper Peninsula Health Department conducted surveillance at Café Rosetta after receiving a complaint regarding Café Rosetta's continued operations.

21. The Western Upper Peninsula Health Department observed that an open sign was posted in the window by the front door, customers entering and leaving the establishment, and customers seated in the front window of the facility on that date.

22. Additionally, an MDARD inspector purchased a carry out order from Café Rosetta on December 22, 2020. The inspector observed that the establishment

was open for indoor dining and that approximately 17 customers were seated and eating or drinking. The inspector purchased a carry out order and obtained a receipt.

23. Café Rosetta does not have a valid food service establishment license and is not licensed to sell or serve food.

24. Café Rosetta's continued operations in violation of the Food Law, without a license, and in a manner that poses an 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 Café Rosetta 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 Café Rosetta 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/ Danielle Allison-Yokom

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Dated: December 29, 2020