

CAUSE NO.: _____

LANDRY'S SEAFOOD INN	§	IN THE DISTRICT COURT
& OYSTER BAR-GALVESTON,	§	
INC. and MORTON'S OF CHICAGO/	§	
HOUSTON, INC.	§	OF HARRIS COUNTY, TEXAS
	§	
VS.	§	
	§	
WEINGARTEN REALTY INVESTORS	§	
and WRI/POST OAK, INC.	§	_____ JUDICIAL DISTRICT

APPLICATION FOR TEMPORARY RESTRAINING ORDER AND INJUNCTION

Comes now Landry's Seafood Inn & Oyster Bar-Galveston, Inc. and Morton's of Chicago/Houston, Inc. (Movants) and files their request for a TRO against Weingarten Realty Investors and WRI/Post Oak, Inc. (Weingarten) in order to restrain and enjoin them from depriving Movants access to and use of the LaGriglia located at 2002 West Gray Street, Houston, Texas 77019 and Morton's located at 5000 Westheimer, Houston, Texas 77056.

Defendants have threatened to deny movants access to both restaurants, which have historically been operated as restaurants and bars serving their customers food, wine and drink on premises. Movants ask this Court to immediately restrain and enjoin Defendants' employees, agents and/or representatives from taking any action that would effectively deny Movants from being able to conduct their restaurant businesses.

FACTUAL BACKGROUND

Movant's restaurants were never intended to be operated as a takeout restaurant business. Movants will show that as a result of the COVID 19 pandemic the nature of the businesses being conducted at both locations has been severely limited, resulting in substantial loss to Movants.

In addition to the losses associated with the pandemic, governmental action by both the Governor of the State of Texas and the Harris County Judge have instituted substantial

limitations in the manner in which Movants could conduct their business at the two locations that are the subject of this application. The Court can take judicial notice of the fact that Harris County restaurants were forced to reduce their operation to take-out only, which resulted in extraordinary loss of revenue. Subsequently they were permitted to resume at 25% of operating capacity and more recently 50% operating capacity, which is well below the profit level of most commercial businesses.

The evidence will establish that forced closure due to governmental order, as well as the implementation of capacity restrictions under governmental order have resulted in significant financial losses to Movants.

DISCUSSION OF LAW

The evidence will overwhelming establish that both businesses satisfy the basic requirement in the Restatement of Contracts and *Centex Corp. v. Dalton*, because of the limitations imposed on them by virtue of COVID 19 and government regulations.

The Restatement (2d) of Contracts Section 261 states:

“Where, after a contract is made, a party’s performance is made impracticable without his fault by the occurrence of an event the non-occurrence of which was a basic assumption on which the contract was made, his duty to render that performance is discharged, unless the language or circumstances indicate to the contrary.”

The Restatement (2d) of Contracts Section 264 states that if a party’s performance... “is made impracticable by having to comply with a domestic or foreign governmental regulation or order, that regulation or order is an event the non-occurrence of which was a basic assumption on which the contract was made.”

Furthermore, the Texas Supreme Court in *Centex Corp. v. Dalton*, 840 SW2d 942 (Tex. 1992), adopted The Restatement (2d) of Contracts sections 261 and 264.

Tex. Civ. P. and Rem. Code section 65.001 states unequivocally that a writ of injunction may be granted if the applicant is entitled to the relief demanded and all or part of the relief requires the restraint that is prejudicial to the applicant.

Tex. Civ. P. and Rem Code Section 65.011 (1) states: the applicant is entitled to the relief demanded and all or party of the relief requires the restraint of some act prejudicial to the applicant. Tex. Civ. P. and Rem Code Section 65.011 (5) states: irreparable injury to real or personal property is threatened, irrespective of any remedy at law.

RELIEF REQUESTED

Movants request that the court set this Application for Temporary Restraining Order for hearing at the earliest possible time. Upon hearing, the Court should enter a temporary restraining order:

- (A) Retraining and enjoining Defendants and their officers, agents or employees from taking any action that would have the effect of partially or totally interfering with Movant's right of access to their property or that would in any manner impinge upon operating the restaurant businesses, and awarding Movant's cost of court and granting Movants all other relief to which they may otherwise be entitled; and
- (B) For the maximum time allowed by law and a Temporary injunction in 10 days.

s/Michael T. Gallagher
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