

FILED

IN THE CHANCERY COURT OF JACKSON COUNTY, MISSISSIPPI

MAY 10 2023

CITY OF OCEAN SPRINGS, MISSISSIPPI,
EX REL. KENNY HOLLOWAY

PLAINTIFF
By JOSH ELDRIDGE, CLERK

VERSUS

CAUSE NO.: 2023-0867-NH

BRITTANY CRUSO ALEXANDER, individually,
and d/b/a THE SCRATCH KITCHEN AND BAR;
WHITE OAK LANE LLC; ANGELA
VERMILLION; and JOHN AND JANE DOES
A, B, C, D, and E

DEFENDANTS

COMPLAINT TO ABATE A COMMON NUISANCE AND FOR INJUNCTION

COMES NOW, the City of Ocean Springs, Mississippi, on relation of Kenny Holloway, a citizen and the elected Mayor of the City of Ocean Springs, and files this Complaint to Abate a Common Nuisance and for Injunction, and in support thereof would respectfully show unto the Court as follows, to-wit:

PARTIES

1. Plaintiff, Kenny Holloway, is the elected Mayor of the City of Ocean Springs, Mississippi and brings this action in equity in the name of the City of Ocean Springs, Mississippi.

2. Defendant, Brittany Cruso Alexander d/b/a The Scratch Kitchen and Bar is an individual, who upon information and belief, resides at 3914 Timberlake Drive, Ocean Springs, Mississippi 39564. Ms. Alexander operates The Scratch Kitchen and Bar located at 1013 Government Street, Ocean Springs, Mississippi 39564. This action is being brought against Ms. Alexander both individually and against the business she operates known as The Scratch Kitchen and Bar. Ms. Alexander may be served with process in the time and manner prescribed by law.

3. Defendant, White Oak Lane LLC, is a domestic limited liability company with its principal place of business located at 1013 Government Street, Ocean Springs, Mississippi 39564. White Oak Lane LLC may be served with process in the time and manner prescribed by law upon

its registered agent, Brittany Cruso Alexander, who may be located at 3914 Timberlake Drive, Ocean Springs, Mississippi 39564.

4. Angela Vermillion is an interested party in this action as the owner and lessor of commercial space at 1013 Government Street, Ocean Springs, Mississippi 39564. She may be located at 1010 Desoto Street, Ocean Springs, Mississippi 39564.

5. Defendants John and Jane Does A-E are fictitious defendants who may have participated in the nuisance(s) complained of herein, violations of municipal code and ordinances, and the endangering of the public health and welfare of the citizens of Ocean Springs, Mississippi, and whose identity is currently unknown.

JURISDICTION AND VENUE

6. This Court has jurisdiction over this matter.

7. This Court is the proper venue for this matter.

FACTS

8. Defendant, Brittany Cruso Alexander, is the equitable owner of the business described herein currently operating as The Scratch Kitchen and Bar located at 1013 Government Street, Ocean Springs, Mississippi 39564. Additionally, she is the listed manager and registered agent of Defendant, White Oak Lane LLC, which lists its principal office address at the same location. Ms. Alexander, The Scratch Kitchen and Bar, and White Oak Lane LLC may hereinafter be referred to collectively as "Defendants".

9. Defendants operate a combined restaurant and bar in the heart of downtown Ocean Springs on Government Street. They are advertised as open for business six days a week, with listed operating hours from 11 a.m. through 9 p.m., and extended hours until midnight on Fridays and Saturdays. On weekends, Defendants have a substantial amount of nighttime patronage.

10. Plaintiff would show that since Defendants opened in April of 2022, the Ocean Springs Police Department has received numerous calls and complaints from residents and other businesses of a continued nuisance and criminal activity from inside, around, and emanating from Defendants' business, including but not limited to the public streets, common areas, and the adjacent parking lot which appears to act as a spillover and staging area for Defendants' patrons.

11. This has now become and escalated to the level of a serious public safety issue based on multiple recent shootings that have occurred.

12. On April 16, 2023, at approximately 9:11 p.m., police officers from the Ocean Springs Police Department responded to a fight in progress outside of The Scratch Kitchen. Upon arrival, the officers found that the fight had ended, but another fight was occurring inside. As officers canvassed the premises and approached the bar itself, they heard a gunshot and witnessed a large crowd of people chaotically exiting the area. Officers then found a male limping with blood on his pants and applied a tourniquet. Officers then recovered a firearm that the wounded individual attempted to hide and arrested two others for a separate altercation resulting from the ensuing chaos.

13. More recently, only nineteen days later, on May 5, 2023, a mass shooting occurred on Defendants' premises. Sadly, this mass shooting resulted in the death of a nineteen-year-old. Additionally, seven other citizens were hospitalized with gunshot wounds. Evidence shows at least three other firearms were present inside the bar when the shooting occurred.

14. While the May 5, 2023 mass shooting is still in the early investigative stages, early findings strongly suggest a lack of accountable and responsible business practices that have unnecessarily endangered the health and safety of citizens. These include, but are not limited to: a wholesale failure by Defendants to properly identify underage patrons; failure to screen and

safeguard from the bringing of illegal drugs, bottled alcohol, and deadly weapons onto the premises; failure to implement adequate and effective security; failure to conduct necessary crowd control; and operating over maximum allowed capacity in violation of City fire code. The day after the shooting, the crime scene was evident with liquor bottles scattered throughout along with the overwhelming aroma of marijuana.

15. Plaintiff would further show that prior to these two shootings, numerous complaints were received and unlawful acts committed on or near Defendants' premises, constituting a public and common nuisance in violation of the law and municipal codes and ordinances. Plaintiff refers to the Calls List attached hereto as **Exhibit A**.

16. These events include, from April 2022 to the present: two shootings, a domestic dispute (hitting a female), disturbing the peace (congregation of people playing loud music and drinking in the parking lot), three calls for disturbing the peace (loud vulgar music), drunk and disorderly individual, four calls for fights (one call reporting ten or more males fighting), violations of city ordinances, and fire code violations for grossly exceeding the occupancy limit.

17. Additionally, Plaintiff would show that Defendants have repeatedly conducted business over the occupancy limit as evidenced in Police and Fire reports attached hereto as **Exhibit B**.

18. Further, Plaintiff would show that these repeated events have caused a serious strain on the Ocean Springs Police Department and Ocean Springs Fire Department out of a need for increased responses, patrols, and capacity inspections related to unlawful activity on Defendants' premises.

19. Plaintiff would show that on September 28, 2022, Defendants met with Mayor Holloway and city officials and representatives at the request of Defendant Brittany Alexander.

Therein, Ms. Alexander accused the City of discriminating against her business due to an alleged increased law enforcement presence surrounding her business. Ms. Alexander described the law enforcement presence as dissuading her patrons from visiting her business. Ms. Alexander presented photographs of various law enforcement officers in the parking lot adjacent to her business. Based upon information and belief, this alleged law enforcement presence largely consisted of outside agencies, both State and Federal, including various Task Forces, that identified Defendants' premises as a known gathering space for suspected criminals. Additionally, the Mayor pleaded with Defendant, Ms. Alexander, to implement necessary precautions described herein to help prevent harm to the City's citizens. Those requests, as evidenced by the subsequent shootings, where again, evidence shows multiple firearms were present inside the overcrowded bar, were ignored.

20. Plaintiff has every reason to believe that such unlawful and harmful acts are continuing and will continue in the future. Such activity has continued to escalate in recent weeks resulting in death and injury. The public and common nuisance of Defendants has and continues to disturb, injure, and/or endanger the citizens of Ocean Springs.

21. In addition to the harmful public and common nuisance created by Defendants, Defendants have violated certain municipal codes and ordinances of the City of Ocean Springs including:

Sec. 1-9. - General penalty; continuing violations.

(c)In addition to the penalties provided for [in subsection (a),] above, any condition existing in violation of any provision of this Code or any other ordinance shall be deemed a public nuisance and may be abated by the city as provided by law.

Sec. 9-1. - Fire code adopted.

The City of Ocean Springs, Mississippi does hereby adopt the 2018 Edition of the International Fire Code including Appendix Chapters as published by the International Code Council, for regulating and

governing the safeguarding of life and property from fire and explosion hazards arising from the storage, handling and use of hazardous substances, materials and devices, and from conditions hazardous to life or property in the occupancy of buildings and premises as herein provided; providing for the issuance of permits and collection of fees therefore; and each and all of the regulations, provisions, penalties, conditions and terms of said Fire Code on file in the office of the Building Official of the City of Ocean Springs, Mississippi are hereby referred to, adopted, and made part hereof, as if fully set out in this legislation, with the additions, insertions, deletions and changes, if any, prescribed below.

International Fire Code 2018 Edition, Section 105.5 Revocation.

The fire code official is authorized to revoke a permit issued under the provisions of this code where it is found by inspection or otherwise that there has been a false statement or misrepresentation as to the material facts in the application or construction documents on which the permit or approval was based including, but not limited to, any one of the following:

1. The permit is used for a location or establishment other than that for which it was issued.
2. The permit is used for a condition or activity other than that listed in the permit.
3. Conditions and limitations set forth in the permit have been violated.
4. There have been any false statements or misrepresentations as to the material fact in the application for permit or plans submitted or a condition of the permit.
5. The permit is used by a different person or firm than the name for which it was issued.
6. The permittee failed, refused or neglected to comply with orders or notices duly served in accordance with the provisions of this code within the time provided therein.
7. The permit was issued in error or in violation of an ordinance, regulation or this code

International Fire Code 2018 Edition, Section 108.6 Overcrowding.

Overcrowding or admittance of any person beyond the approved capacity of a building or a portion thereof shall not be allowed. The fire code official, on finding any overcrowding conditions or obstructions in aisles, passageways or other means of egress, or on finding any condition that constitutes a life safety hazard, shall be authorized to cause the event to be stopped until such condition or obstruction is corrected.

Sec. 3-23. - Responsibility of owner or occupant of premises.

(a) It shall be unlawful for any owner or occupant of any premises located within the city to allow or permit any person on or before the day of their eighteenth birthday to remain on such premises, while in the possession of alcoholic beverages.

(b) It shall be unlawful for any owner or occupant of any premises within the city to allow or permit any person on or before the day of their eighteenth birthday to consume or accept delivery of beer or wine on such premises.

(c) It shall be unlawful for any owner or occupant of any premises within the city to allow or permit any person under the age of twenty-one (21) years to consume or accept delivery of any alcoholic beverages on such premises.

Sec. 3-24. - Identification.

(a) If any person authorized by the laws of the state to sell, furnish, dispose of, give, or cause to be sold, furnished, disposed of, or given, any alcoholic beverage, beer or wine to any person, has reason to believe or should have reason to believe that a sale or delivery thereof is prohibited because the prospective recipient is underage, then he shall, before making such sale or delivery, demand presentation of at least one form of positive identification card issued by a federal, state, county or municipal government or subdivision or agency thereof, such as a valid driver's license, or military identification card, such positive identification to contain proof of age, issued by a public officer or government agency. A traffic citation shall not be accepted as identification or evidence of age.

Sec. 3-6. - Consumption on premises or common parking lots of certain licensed premises.

No person, firm, corporation, partnership, nor other entity, duly licensed to sell beer, wine, or alcoholic beverages, shall permit beer or wine or alcoholic beverages to be consumed on their premises or in any common area parking lot adjacent thereto. Provided, however, specifically excepted are the following:

- (1) Any temporary (not to exceed seven (7) days) beer or wine permittee, provided such permittee does not renew or utilize said permit more than four (4) times per year.
- (2) Consumption within a tavern, lounge, restaurant, or bar where such establishment is otherwise properly licensed.

Sec. 4.5-143. - Outside consumption of alcoholic beverages permitted; conditions.

(1) A person may not enter licensed premises with an open container of alcoholic beverages acquired at that licensed premises or elsewhere.

(2) A permittee located in the district shall allow alcoholic beverages to be removed from the licensed premises only in a biodegradable paper or clear plastic cup, not larger than sixteen (16) fluid ounces in size, and containing a standard identifying logo, and no such alcoholic beverages shall be removed from the licensed premises in a can, bottle, glass container or other container, except as otherwise allowed by law.

(4) No permittee shall allow a patron, guest or member to exit its licensed premises with more than one open container of alcoholic beverages, and it shall be unlawful for any person to exit such licensed premises with more than one such open container.

Sec. 15-13. - Unreasonable noise or vibration.

(1) Generally prohibited.

(a) It shall be unlawful for any person to make, cause, or, on premises under his or her legal control, permit to be made any unreasonable noise or vibration audible or perceptible within the corporate limits or police jurisdiction of the city, including the waters lying within such areas.

(b) For purposes of this section, "unreasonable noise or vibration" is defined to mean any unreasonably loud, raucous, or jarring sound or vibration which is not constitutionally protected speech in form and scope of audibility and which, under the circumstances of time, place, and manner in which it is produced and audible or perceptible, annoys, disturbs, injures, or endangers the comfort, repose, health, peace, or safety of a reasonable person of normal sensitivities within the area of the audibility or perceptibility of the noise or vibration without the consent of such person.

22. Plaintiff would show that the actions of Defendants have caused and continue to cause immediate and irreparable harm to the health, safety, and welfare of the citizens of Ocean Springs, and especially to other businesses, property owners, tourists, residents, and taxpayers;

that there is no adequate remedy at law to protect the health, safety, and welfare of the citizens of Ocean Springs; that the public interest is suffering immediate and continuous irreparable harm to the health, safety, and welfare of its citizens; and that the harm and injury is immediate and ongoing and requires immediate action to prevent further and permanent harm and injury.

23. That Defendants' premises is currently closed as an active crime scene. However, a preliminary injunction is immediately necessary to cease all operations of Defendants at 1013 Government Street to preserve the health, safety, and welfare of the general public and citizens of Ocean Springs until the prescribed time under the law for a hearing and ultimate determination on a permanent injunction.

24. Plaintiff further states unto the Court that the City of Ocean Springs is entitled to a preliminary and permanent injunction against Defendants enjoining them from all operations at 1013 Government Street and authorizing the City to remove and prevent Defendants from continued operations after the date of the issuance of the preliminary and permanent injunction. Plaintiff would show that unless a preliminary and subsequent permanent injunction is granted, serious, immediate, and irreparable harm will be done to the public health, safety, and welfare of the citizens of Ocean Springs.

WHEREFORE PREMISES CONSIDERED, the Plaintiff prays that this Complaint be filed, and that, pursuant to M.R.C.P. 65, a preliminary injunction be immediately issued declaring that the business conducted at Defendants' premises has been and continues to be a public and common nuisance and in violation of municipal codes and ordinances and is harmful to the health, safety, and welfare of the citizens of Ocean Springs, which necessitates the immediate preliminary injunction ordering Defendants to cease all operations at 1013 Government Street, authorization of the Ocean Springs Police Department to strictly enforce the laws, statutes, codes, and ordinances

of the State of Mississippi and the City of Ocean Springs to enforce this injunction; that process shall issue to Defendants and interested parties; that pursuant to M.R.C.P. 65, the Court will enter an Order granting a preliminary injunction, and that upon a final hearing, the Court will enter a permanent injunction enjoining Defendants from continuing any business operations at 1013 Government Street. Your Plaintiff prays for further and more general relief which equity may entitle.

Respectfully submitted, this the 10th day of May, 2023.

**CITY OF OCEAN SPRINGS, MISSISSIPPI
EX REL. KENNY HOLLOWAY**

BY:


ROBERT W. WILKINSON

ROBERT W. WILKINSON (MSB No. 7215)
WILL R. NORMAN (MSB No. 105713)
S. MITCHELL MCCAULEY (MSB No. 106498)
Wilkinson, Williams, Bosio & Sessoms, PLLC
734 Delmas Avenue (39567)
Post Office Box 1618
Pascagoula, MS 39568-1618
228-762-2272
228-762-3223 fax
rwilkinson@wwbslaw.com
wnorman@wwbslaw.com
mmccauley@wwbslaw.com

STATE OF MISSISSIPPI

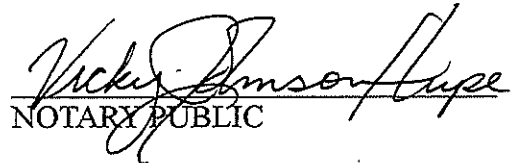
COUNTY OF JACKSON

BEFORE ME, the undersigned authority in and for the State and County aforesaid, personally came and appeared Kenny Holloway, Mayor of Ocean Springs, Mississippi, who being duly sworn, states on oath that he appears in the foregoing Complaint, and the matters and things contained therein are true and correct as therein stated to the best of his knowledge, information and belief.



KENNY HOLLOWAY, Mayor
City of Ocean Springs, Mississippi

SWORN TO AND SUBSCRIBED before me on this the 9th day of May, 2023.


NOTARY PUBLIC

My Commission Expires:

