

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

MUNICIPALITY OF ANCHORAGE,

Plaintiff,

v.

KRINER'S DINER LLC et al.,

Defendant.

Case No. 3AN-20-07394CI

Filed
8/10/2020
nhr

**MOTION & MEMORANDUM FOR RECONSIDERATION OF
AUGUST 7, 2020 TEMPORARY INJUNCTION**

KRINER'S DINER, LLC, ANDREW KRINER, and NORANN KRINER
(hereinafter "**Kriners**") by and through the Law Offices of Blake Fulton Quackenbush
hereby files this motion and memorandum for the court to reconsider its August 7, 2020
Order Granting Plaintiff's Motion for Temporary Injunction.

Rule 77 (k)(1) of the Alaska R. Civ. Pro. provides that a "party may move the court
to reconsider a ruling previously decided if, in reaching its decision:

- (i) The court has overlooked, misapplied or failed to consider a statute, decision or principle directly controlling; or
- (ii) The court has overlooked or misconceived some material fact or proposition of law; or
- (iii) The court has overlooked or misconceived a material question in the case; or
- (iv) The law applied in the ruling has been subsequently changed by court decision or statute.

I. Alaska R. Civ. Proc. 77(k)(1)(ii): The Court's August 7, 2020 order has no factual basis.

The court has overlooked or misconceived all the material facts it expressly or implicitly found in issuing its 8/7/2020 order granting temporary injunctive relief because

the legal burden of proof and the burden of going forward on that motion for a temporary injunction was upon the Municipality of Anchorage, and the Municipality simply presented no evidence at the hearing on August 7, 2020.¹

For example, the court's August 7, 2020 order provides:

The Plaintiff has demonstrated that the Anchorage public will suffer irreparable harm by allowing businesses such as Kriner's Diner to violate Emergency Order – 15. Specifically, that indoor dining exacerbates the risk of the spread of COVID-19. If infected with COVID-19, individuals face significant risk of serious harm to their health to include death. But the foregoing findings are in error for many reasons, as are all facts expressly or implicitly found by the court at the August 7, 2020 hearing, because the Municipality presented no evidence in support of its motion.

Kriners stipulated to no facts at or prior to the August 7, 2020 hearing. The Municipality of Anchorage submitted absolutely no evidence whatsoever at the August 7, 2020 hearing. The Municipality called no witnesses; no exhibits were identified, offered for admission, and then admitted; and the Municipality failed to request that the court take judicial notice of any facts.

By failing to present evidence any evidence whatsoever at the hearing on their motion for a temporary injunction, the Municipality of Anchorage did not prove any facts in support of their motion.

Among the facts the Municipality failed to prove are the following:

1. whether Kriner's Diner is within the Municipality of Anchorage;

¹¹ *State v. Kluti Kaah Native Vill. of Copper Ctr.*, 831 P.2d 1270, 1273-74 (Alaska 1992).

2. the existence, legality, and terms of the legal document purporting to be the Anchorage Mayor's EO-15 which they seek to enforce;
3. the existence, terms, and service of the two alleged stop work orders;
4. whether the "stop work" orders were violated, and if so, how;
5. that the Anchorage public will suffer irreparable harm by allowing businesses such as Kriner's Diner to violate Emergency Order – 15;
6. that indoor dining exacerbates the risk of the spread of COVID-19; and
7. that if infected with COVID-19, individuals face significant risk of serious harm to their health to include death.

Absent evidentiary proof of any facts, the Municipality of Anchorage failed to meet both their legal burden of proof and burden of going forward on their motion for a temporary injunction, therefore their motion for a temporary Injunction clearly should have been denied, and the Court must reconsider and reverse its 8/7/2020 order granting a temporary injunction.

II. Alaska R. Civ. Proc. 77(k)(1)(i), (iii): The Kriners have a right to Equal Protection under the Constitution of the State of Alaska.

In this case, the court erred when it overlooked, misapplied, or failed to consider the Kriners' right to equal protection under the law, pursuant to Article I, Section 1 of the Constitution of the State of Alaska. The court also overlooked or misconceived the material question of whether the Kriners' right to equal protection under the Constitution

of the State of Alaska had been violated. Article I, Section 1 of the Alaska Constitution provides:

[...] all persons have a natural right to life, liberty, the pursuit of happiness, and the enjoyment of the rewards of their own industry; that all persons are equal and entitled to equal rights, opportunities, and protection under the law; and that all persons have corresponding obligations to the people and to the State.”²

The Kriner’s constitutional right to seek and obtain employment in their profession has been unlawfully impaired through the enactment and enforcement of Emergency Order 15 (“EO-15”). The right to employment has been consistently deemed an important right in the State of Alaska, warranting close scrutiny of enactments that encroach upon it. Though the MOA’s underlying interest in quelling the spread of COVID-19 is important, the MOA has failed to enact and enforce EO-15 in a way that creates a nexus to the underlying interest in a constitutional manner. The MOA is not equally applying EO-15 to all class members. For instance, gyms, outdoor dining, and canneries, all pose an equal, if not greater, threat to the community of Anchorage than Kriner’s Diner, yet, no gyms, outdoor dining, or canneries have been asked to stop work and none have been named in a Complaint or the *Motion for Temporary Injunction*.

The court seemed to decline consideration of the Kriners’ equal protection argument during its oral decision on August 7, 2020, but the court’s written decision appears to have made a decision on the issue of equal protection. The court’s written

² Alaska Const. Art. I, § 1 (emphasis added).

decision provides that “the economic interests of Kriner’s Diner and businesses similarly situated are adequately protected by the ability to continue business operation by serving food outdoors, curbside, to-go orders or for delivery.”³ The Kriners respectfully request that the court reconsider its August 7, 2020 decision. The motion for a temporary restraining order should be denied.

III. Alaska R. Civ. Proc. 77(k)(1)(i): The Constitution of the State of Alaska is the supreme law that should govern this case.

In this case, the court erred when it overlooked, misapplied or failed to consider the supremacy of Article I, Section 1 of the Constitution of the State of Alaska over the Alaska R. Civ. Proc. 65(d). The constitutional issues set forth in Kriners’ opposition should have been addressed before or at the same time as the issue of a temporary injunction because it is the deprivation of the Kriners’ right to the enjoyment of the rewards of their own industry and entitlement to equal rights, opportunities, and protection under the law that was squarely at issue before the court.

DATED this 10th day of August 2019 at Anchorage, Alaska.

LAW OFFICES OF
BLAKE FULTON QUACKENBUSH
Attorney for Defendants



BLAKE F. QUACKENBUSH, ESQ.
ALASKA BAR NO. 1405040

³ *Order Granting Plaintiff’s Motion for Temporary Injunction 1 (Aug. 7, 2020).*

LAW OFFICES OF BLAKE FULTON QUACKENBUSH

807 G Street, Suite 100

Anchorage, Alaska 99501

Phone (907) 868-2780 | Fax (907) 885-0059

blake@BFQLaw.com

CERTIFICATE OF SERVICE

Undersigned hereby certifies that on Aug 10, 2020 a true and correct copy of this document was served by:
☒USPS 1st Class Mail; ☒E-Mail; ☐Fax; ☐Messenger;
and/or ☐Hand Delivery to the following recipient(s):

Attn: Ruth Botstein
Attn: Linda Johnson
Municipal Attorney's Office
PO Box 196650
Anchorage AK 99519
Ruth.botstein@anchorageak.gov
Linda.johnson@anchorageak.gov

By: 

BLAKE F. QUACKENBUSH, ESQ.
ALASKA BAR NO. 1405040

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

MUNICIPALITY OF ANCHORAGE,

Plaintiff,

v.

KRINER'S DINER, LLC, et al.,

Defendants.

TREAT AS ORIGINAL

Case No. 3AN-20-07394 CI

ORDER ON MOTION FOR RECONSIDERATION

The Court, having reviewed the motion for reconsideration hereby orders that the motion is GRANTED. It is further ordered that the preliminary injunction ordered by this court on July 7, 2020 is hereby vacated.

IT IS SO ORDERED this _____ day of _____ 2020 at Anchorage, Alaska.

ERICA A. AARSETH
SUPERIOR COURT JUDGE

CERTIFICATE OF SERVICE

Undersigned hereby certifies that on Aug 10, 2020
a true and correct copy of this document was served by:
☒ USPS 1st Class Mail; ☒ E-Mail; ☐ Fax; ☐ Messenger;
and/or ☐ Hand Delivery to the following recipient(s):

Attn: Ruth Botstein
Attn: Linda Johnson
Municipal Attorney's Office
PO Box 196650
Anchorage AK 99519
Ruth.botstein@anchorageak.gov
Linda.johnson@anchorageak.gov

By: _____

BLAKE F. QUACKENBUSH, ESQ.
ALASKA BAR NO. 1405040

LAW OFFICES OF BLAKE FULTON QUACKENBUSH

807 G Street, Suite 100

Anchorage, Alaska 99501

(907) 868-2780 | Fax (907) 885-0059

blake@BFQLaw.com

8/10/2020