

STATE OF NORTH CAROLINA
COUNTY OF PITT

10-11-20 11:17:00

PITT COUNTY C.S.C.

PITT COUNTY HEALTH DIRECTOR,

Dr. John H. Morrow,
Plaintiff,

vs.

MATTHEW BLACKMAN and
CHARLES McNEIL, Owners of
OTHER PLACE
Defendants.

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

10-CVS-1833

**VERIFIED COMPLAINT
AND MOTION FOR
INJUNCTIVE RELIEF**

N.C. Gen. Stat. §130A-18
N.C. Gen. Stat. §1A-1, Rule 65

COMES NOW the Plaintiff, Pitt County Health Director Dr. John H. Morrow, pursuant to N.C. Gen. Stat. §130A-18 and N.C. Gen. Stat. §1A-1, Rule 65, complaining of the Defendants and hereby moving this Honorable Court for injunctive relief by alleging and saying the following:

1. That the Plaintiff, Pitt County Health Director Dr. John H. Morrow, is authorized by the State of North Carolina to ensure the health and wellbeing of the citizens of Pitt County, through directing the efforts of the Pitt County Health Department under the provisions of Chapter 130A of the North Carolina General Statutes.
2. That the Plaintiff, Pitt County Health Director Dr. John H. Morrow, manages the Pitt County Public Health Center, a local health department operating in Pitt County, North Carolina.
3. That the Defendants, Matthew Blackman and Charles McNeil are the owners of the Other Place nightclub located at 207 East 5th Street in Greenville, Pitt County, North Carolina, 27858.

4. That N.C. Gen. Stat. §130A-496, et. seq., also known as the Act to Prohibit Smoking in Certain Public Places and Places of Employment, went into effect as law on January 2, 2010. Under this new law, smoking is prohibited in enclosed areas of bars and restaurants.

5. That N.C. Gen. Stat. §130A-497 requires bar owners and managers to take the following steps:

- a. Conspicuously post signs clearly stating that smoking is prohibited;
- b. Remove all indoor ashtrays and other smoking receptacles; and
- c. Direct a person who is smoking to extinguish the lighted tobacco product.

6. That pursuant to N.C. Gen. Stat. §130A-22(h1), the local health director is authorized to enforce the provisions of N.C. Gen. Stat. §130A-497 through the imposition of administrative penalties.

7. That notwithstanding the enforcement remedies available in N.C. Gen. Stat. §130A-22(h1), the local health director is also authorized to seek injunctive relief pursuant to N.C. Gen. Stat. §130A-18 for violation of any public health law.

8. That complaints were received on January 10 and February 21, 2010 that the Other Place nightclub was violating the smoking prohibition law and alleging that employee(s) and/or customer(s) were observed smoking inside and that ash trays or similar tobacco ash receptacles were present.

9. That on January 29, 2010, a representative of the Pitt County Health Department conducted an unannounced on-site inspection at the Other Place and noncompliance with the law was verified. Subsequently, on February 1, 2010, a "First Violation" letter was issued. A copy of this "First Violation" letter is attached hereto as Exhibit A and is incorporated herein by reference.

10. That on February 6, 2010, a representative of the Pitt County Health Department made another on-site inspection at the Other Place and noncompliance with the law was again verified. Subsequently on February 15, 2010, a "Second Violation" letter was issued. A copy of

this "Second Violation" letter is attached hereto as Exhibit B and is incorporated herein by reference.

11. That on March 6, 2010, a representative of the Pitt County Health Department made a third on-site visit and verified continued noncompliance with the law. Subsequently on March 9, 2010, a "Third Violation" letter was issued and an ongoing administrative penalty of \$200.00 per day was imposed upon the owners of Other Place night club pursuant to N.C. Gen. Stat. §130A-22(h1). A copy of this "Third Violation" letter is attached hereto as Exhibit C and is incorporated herein by reference.

12. That the "Third Violation" letter issued to Other Place advised the owners, Matthew Blackman and Charles McNeil, that this administrative penalty would continue to accrue at a rate of \$200.00 per day until 1) the owners provided notice to the Pitt County Health Department that the violation(s) had been corrected; 2) the owners provided the Pitt County Health Department staff access to the Other Place during the establishment's operating hours; and 3) the health department staff certified that the Other Place was in compliance with the law. This letter also detailed the process to appeal the administrative penalty pursuant to N.C. Gen. Stat. §130A-24.

13. That on March 27, 2010, a representative of the Pitt County Health Department made an unannounced on-site visit and verified continued noncompliance with the law in that the establishment had no signage posted, ash trays were present and there were people smoking within the establishment who were not directed to extinguish their lighted tobacco product.

14. That on March 29, 2010, a "Reminder Notice" letter was issued reminding the bar owners that an administrative penalty of \$200.00 per day had been imposed against them and that they could appeal the imposition of the administrative penalties by providing written notice to the Pitt County Health Department. A copy of the "Reminder Notice" letter is attached hereto as Exhibit D and is incorporated herein by reference.

15. That, after receiving a notice and reminder of the process and right of appeal, the Defendants did not appeal the administrative penalties imposed by the local health director

pursuant to N.C. Gen. Stat. §130A-22(h1). As such, their right to appeal expired on April 8, 2010.

16. That on April 11, 2010, a representative of the Pitt County Health Department made an unannounced on-site visit and again verified continued noncompliance with the law in that the establishment had no signage posted, ash trays were present and there were people smoking within the establishment who were not directed to extinguish their lighted tobacco product.

17. That on April 14, 2010 an invoice letter and demand for payment was issued to the Other Place requesting payment of the administrative penalties in the amount of \$7,400.00. A copy of the invoice letter is attached hereto as Exhibit E and is incorporated herein by reference.

18. That on April 17, 2010, a representative of the Pitt County Health Department attempted an unannounced on-site visit but the bar establishment was closed. The representative made contact with an employee and left her business card requesting that the owners contact the Pitt County Health Department. No contact was made by the owners as a result of this attempt.

19. That on April 18, 2010, a representative of the Pitt County Health Department made an unannounced on-site visit and again verified continued noncompliance with the law in that the establishment had no signage posted, ash trays were present and there were people smoking within the establishment who were not directed to extinguish their lighted tobacco product. Consequently, this enforcement matter was referred to the Pitt County Legal Department.

20. That on May 6, 2010, the Pitt County Legal Department sent a letter to the Defendants advising that the noncompliance of their establishment had been brought to its attention and referred for legal action. The letter explained that the daily accruing penalties then totaled \$11,600.00 and detailed that several warning letters had been sent by the Pitt County Health Department regarding their noncompliance and that they should immediately comply

with the law to avoid formal legal action. See Pitt County Legal Department Letter attached as Exhibit F and incorporated herein by reference.

21. That on June 5, 2010 Pitt County Health Director Dr. John H. Morrow made an unannounced on-site visit to the Other Place to verify compliance with the law. Upon arrival, Dr. Morrow identified himself as the local health director and indicated that he was there to inspect the bar establishment. Staff at the Other Place refused Dr. Morrow admittance to inspect the establishment.

22. That on June 20, 2010 Pitt County Health Director Dr. John H. Morrow made another unannounced on-site visit to the Other Place to verify compliance with the law. Upon arrival, Dr. Morrow identified himself as the local health director and indicated that he was there to inspect the bar establishment. Dr. Morrow was asked to wait at the door while the door bouncer spoke with the manager on duty. After several minutes, the bouncer advised that the manager had instructed not to allow Dr. Morrow in the establishment.

23. To date, Defendants Matthew Blackman and Charles McNeil have failed to comply with N.C. Gen Stat. §130A-496, et. seq. and the directives of the Pitt County Health Department to comply with the law prohibiting smoking in the inside areas of their bar establishment.

24. To date, the Defendants Matthew Blackman and Charles McNeil have failed to pay the administrative penalties assessed against them in the amount of \$11,600.00 and more than thirty (30) days have passed after demand for payment was made without reaching equitable settlement.

25. That the numerous attempts made by the Pitt County Health Department to provide educational materials and violation warning letters to garner compliance with the law have been ignored by the Defendants and the Defendants continue to operate their bar establishment in violation of the law.

26. The Defendants' violation subjects them to the injunctive relief provisions of North Carolina General Statutes Sections 130A-18, and Pitt County is entitled to equitable relief to prevent, restrain, correct or abate the violations noted above.

27. The existing noncompliant business establishment presents a public health hazard in that members of the public are being exposed to the harmful effects of second-hand smoke in violation of the law. Additionally, the continued operation of this establishment in violation of the law serves to create angst and backlash from other establishments who have complied with the law. This condition is one which the Defendants should not be permitted to inflict and the Plaintiff, as the public health agent for the citizens of Pitt County, should not be required to endure, and is of such a continuous and frequent occurrence as to cause immediate harm and irreparable injury.

28. Plaintiff is without an adequate remedy at law as to these violations by the Defendants and is suffering immediate, irreparable injury in that the continuing violation of the Act to Prohibit Smoking in Certain Public Places and Certain Places of Employment is a health hazard and constitutes an ongoing violation of N.C. Gen. Stat. §130A-496.

29. That the undersigned attorney for the Pitt County Health Director does hereby certify to this Court that the allegations set forth in Paragraphs 9 through 22 of the foregoing Verified Complaint set forth numerous efforts that have been made by the applicant to notify the Defendants of their violation of the smoking prohibition law and impending legal action. Additionally, the undersigned counsel certifies that she also attempted to telephone the owners of Other Place by dialing the business phone number of (252) 353-1555 on June 23, 2010 and again of June 30, 2010, but that she was unsuccessful in reaching the Defendants to advise of this action.

WHEREFORE, the Plaintiff prays the Court as follows:

1. That the Court grant a Restraining Order, without notice or hearing, immediately, restraining the Defendants from operating the Other Place nightclub in violation of N.C. Gen. Stat. §130A-496, et. seq.

2. That the Court further order the Defendants to immediately comply with N.C. Gen. Stat. §130A-497 by requiring the Defendants to take the following actions:

- a. Conspicuously post signs clearly stating that smoking is prohibited;
- b. Remove any ashtrays or similar tobacco ash receptacles from inside the business establishment; and
- c. Direct all persons smoking to extinguish any cigarette, cigar or other lighted tobacco product.

3. That the Court order the Defendants to provide access to the Other Place so that the Pitt County Health Department may verify its compliance with the law.

4. That judgment be entered against the Defendants for administrative penalties assessed in the amount of \$200.00 per day, each day since March 9, 2010 and continuing until the establishment comes into compliance with the smoking prohibition law.

5. That the Defendants be taxed with all costs and applicable attorney fees associated with this action.

6. For such other and further relief as the Court may deem just and proper.

This the 28th day of June, 2010.

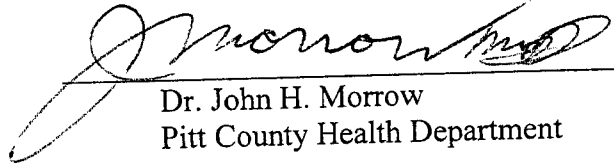
PITT COUNTY LEGAL DEPARTMENT

By: *Lisa Woodard Overton*
Lisa Woodard Overton
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VERIFICATION

I, Dr. John H. Morrow, being first duly sworn, say that I am the Health Director for Pitt County, a political subdivision of the State of North Carolina, and that pursuant to Rule 11(d) of the North Carolina Rules of Civil Procedure I have reviewed the contents of the foregoing Complaint and that the same are true to my own personal knowledge, except as to those matters alleged upon information and belief, and as to those, I believe them to be true.

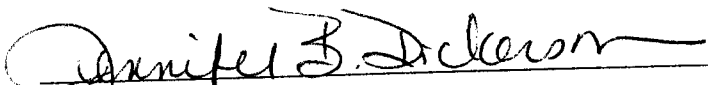
This the 28 day of June, 2010.


Dr. John H. Morrow
Pitt County Health Department

STATE OF NORTH CAROLINA

COUNTY OF PITT

Sworn to and subscribed before me this 28 day of June, 2010.


Notary Public

My Commission Expires 12/9/2011