

STATE OF SOUTH CAROLINA

COUNTY OF AIKEN

Retail Services & Systems, Inc., dba Total Wine &
More,

Plaintiff(s)

vs.

South Carolina Department of Revenue and ABC
Stores of South Carolina,

Defendant(s)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2014-CP-02-00259

Submitted By: Brian M. Barnwell

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NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- ☐ JURY TRIAL demanded in complaint. ☒ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

C O P Y
ORIGINAL FILED

FEB 05 2014

AIKEN COUNTY
CLERK OF COURT

- | | | | |
|---|--|---|---|
| Contracts | Torts - Professional Malpractice | Torts - Personal Injury | Real Property |
| <input type="checkbox"/> Constructions (100) | <input type="checkbox"/> Dental Malpractice (200) | <input type="checkbox"/> Assault/Slander/Libel (300) | <input type="checkbox"/> Claim & Delivery (400) |
| <input type="checkbox"/> Debt Collection (110) | <input type="checkbox"/> Legal Malpractice (210) | <input type="checkbox"/> Conversion (310) | <input type="checkbox"/> Condemnation (410) |
| <input type="checkbox"/> Employment (120) | <input type="checkbox"/> Medical Malpractice (220) | <input type="checkbox"/> Motor Vehicle Accident (320) | <input type="checkbox"/> Foreclosure (420) |
| <input type="checkbox"/> General (130) | Previous Notice of Intent Case # | <input type="checkbox"/> Premises Liability (330) | <input type="checkbox"/> Mechanic's Lien (430) |
| <input type="checkbox"/> Breach of Contract (140) | 20 -CP- - | <input type="checkbox"/> Products Liability (340) | <input type="checkbox"/> Partition (440) |
| <input type="checkbox"/> Other (199) | <input type="checkbox"/> Notice/ File Med Mal (230) | <input type="checkbox"/> Personal Injury (350) | <input type="checkbox"/> Possession (450) |
| | <input type="checkbox"/> Other (299) | <input type="checkbox"/> Wrongful Death (360) | <input type="checkbox"/> Building Code Violation (460) |
| | | <input type="checkbox"/> Other (399) | <input type="checkbox"/> Other (499) |
| Inmate Petitions | Administrative Law/Relief | Judgments/Settlements | Appeals |
| <input type="checkbox"/> PCR (500) | <input type="checkbox"/> Reinstate Drv. License (800) | <input type="checkbox"/> Death Settlement (700) | <input type="checkbox"/> Arbitration (900) |
| <input type="checkbox"/> Mandamus (520) | <input type="checkbox"/> Judicial Review (810) | <input type="checkbox"/> Foreign Judgment (710) | <input type="checkbox"/> Magistrate-Civil (910) |
| <input type="checkbox"/> Habeas Corpus (530) | <input type="checkbox"/> Relief (820) | <input type="checkbox"/> Magistrate's Judgment (720) | <input type="checkbox"/> Magistrate-Criminal (920) |
| <input type="checkbox"/> Other (599) | <input type="checkbox"/> Permanent Injunction (830) | <input type="checkbox"/> Minor Settlement (730) | <input type="checkbox"/> Municipal (930) |
| | <input type="checkbox"/> Forfeiture-Petition (840) | <input type="checkbox"/> Transcript Judgment (740) | <input type="checkbox"/> Probate Court (940) |
| | <input type="checkbox"/> Forfeiture-Consent Order (850) | <input type="checkbox"/> Lis Pendens (750) | <input type="checkbox"/> SCDOT (950) |
| | <input type="checkbox"/> Other (899) | <input type="checkbox"/> Transfer of Structured Settlement Payment Rights Application (760) | <input type="checkbox"/> Worker's Comp (960) |
| Special/Complex /Other | | <input type="checkbox"/> Confession of Judgment (770) | <input type="checkbox"/> Zoning Board (970) |
| <input type="checkbox"/> Environmental (600) | <input type="checkbox"/> Pharmaceuticals (630) | <input type="checkbox"/> Petition for Workers Compensation Settlement Approval (780) | <input type="checkbox"/> Public Service Comm. (990) |
| <input type="checkbox"/> Automobile Arb. (610) | <input type="checkbox"/> Unfair Trade Practices (640) | <input type="checkbox"/> Other (799) | <input type="checkbox"/> Employment Security Comm (991) |
| <input type="checkbox"/> Medical (620) | <input type="checkbox"/> Out-of State Depositions (650) | | |
| <input checked="" type="checkbox"/> Other (699) | <input type="checkbox"/> Motion to Quash Subpoena in an Out-of-County Action (660) | | |
| | <input type="checkbox"/> Sexual Predator (510) | | |

Submitting Party Signature:

Brian M. Barnwell

Date:

2/5/14

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

FOR MANDATED ADR COUNTIES ONLY

Aiken, Allendale, Anderson, Bamberg, Barnwell, Beaufort, Berkeley, Calhoun, Charleston, Cherokee, Clarendon, Colleton, Darlington, Dorchester, Florence, Georgetown, Greenville, Hampton, Horry, Jasper, Kershaw, Lee, Lexington, Marion, Oconee, Orangeburg, Pickens, Richland, Spartanburg, Sumter, Union, Williamsburg, and York

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

**Please Note: You must comply with the Supreme Court Rules regarding ADR.
Failure to do so may affect your case or may result in sanctions.**

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*Attorneys for Retail Services & Systems, Inc., dba
Total Wine & More*

Columbia, South Carolina

February 5, 2014

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF AIKEN) SECOND JUDICIAL CIRCUIT

Retail Services & Systems, Inc., dba
Total Wine & More

Plaintiff,

vs.

South Carolina Department of Revenue
and ABC Stores of South Carolina,

Defendants.

Civil Action No. 2014-CP-02-

COMPLAINT

(Declaratory Judgment)

Non-Jury

C O P Y
ORIGINAL FILED

FEB 05 2014

AIKEN COUNTY
CLERK OF COURT

COMES NOW Retail Services & Systems, Inc., dba Total Wine & More

("Plaintiff" or "Retail Services") and brings this action for a declaratory judgment based on the allegations set forth below.

PARTIES

1. Retail Services is organized under the laws of the State of Maryland and has its principal place of business in Potomac, Maryland.

2. Defendant South Carolina Department of Revenue ("DOR") is an administrative agency of the State of South Carolina, created by and existing under the authority of the Government of the State of South Carolina. The DOR administers and monitors South Carolina's laws which regulate the manufacture, sale, and retail of alcoholic liquors.

3. Upon information and belief, Defendant ABC Stores of South Carolina ("Defendant ABC Stores") is organized under the laws of the State of South Carolina; has its principal place of business in the State of South Carolina; and has as its principal

purpose the advocacy of legislative matters for its members who are owners and holders of retail liquor licenses.

JURISDICTION AND VENUE

4. This is an action for a declaratory judgment pursuant to S.C. Code Ann. section 15-33-10, *et seq.* for the purpose of determining a question of actual controversy regarding the constitutionality of S.C. Code Ann. sections 61-6-140 and -150, which are enforced by the DOR and which directly affect Retail Services and Defendant ABC Stores.

5. Retail Services has standing to bring this action because it has a substantial interest in the subject matter of this litigation due to the fact that it is directly and detrimentally affected by the enforcement of the statutes that it is challenging. The substantial interest arises by virtue of Retail Services' ownership of Columbia Fine Wine, Inc., Charleston Fine Wine, Inc., and Greenville Fine Wine, Inc., each of which has a license from the DOR for the retail sale of liquor. The DOR is prohibited by the language of S.C. Code Ann. sections 61-6-140 and -150 from issuing "[no] more than three" licenses to any corporation or entity in which Retail Services has any ownership interest.

6. This Court has subject matter and personal jurisdiction.

7. The South Carolina Attorney General ("Attorney General") is not a named party to this action; however, pursuant to S.C. Code Ann section 15-53-80, the undersigned counsel for Total Wine has served a copy of this Complaint on the Attorney General.

8. Venue is proper in this Court because Retail Services is prevented by the terms of S.C. Code Ann. sections 61-6-140 and -150 from applying for a retail dealer license to open a retail liquor store in Aiken County, South Carolina.

FACTS

9. Article VIII-A of the Constitution of the State of South Carolina (the "Constitution") provides that "[i]n the exercise of the police power the General Assembly has the right to prohibit and to regulate the manufacture, sale, and retail of alcoholic liquors or beverages within the State," thus limiting the authority of the General Assembly's power to regulate alcoholic liquor to the exercise of its "police power."

10. The power to administer and enforce statutes concerning the manufacture, sale, and retail of alcoholic liquors is vested in the DOR including the administration and enforcement of S.C. Code Ann. sections 61-6-140 and -150.

11. In its present day form, S.C. Code Ann. section 61-6-140 limits the number of retail dealer licenses that can be issued to a licensee or issued for the use of a corporation to "no more than three."

12. In its present day form, S.C. Code Ann. section 61-6-150 prohibits any person from directly or indirectly having "any interest whatsoever" in more than three retail liquor stores.

13. Prior to its amendment in 1978, the statutory law in South Carolina did not limit the number of licenses that could be issued for the use of a corporation and it did not place any limits on the number of retail liquor stores in which a person could have a direct or indirect interest.

14. S.C. Code Ann. section 61-6-150 continues to provide a grandfather provision stating that it does, "not apply to a person having an interest in retail liquor stores on July 1, 1978."

15. S.C. Code Ann. sections 61-6-140 and -150 do not provide any explanation as to why the number of licenses that can be issued or the number of retail liquor stores that a person may have an interest in is limited to three.

16. Additionally, there is no rational basis for S.C. Code Ann. section 61-6-150 to treat people who had an interest in retail liquor stores on July 1, 1978 differently from those who acquired an interest in retail liquor stores after July 1, 1978.

17. Retail Services desires to open a retail liquor store in Aiken County, South Carolina.

18. The DOR's enforcement of S.C. Code Ann. sections 61-6-140 and -150, however, prevents Retail Services from applying for a license or opening a store in Aiken County, South Carolina because three retail dealer licenses have already been issued for Retail Services' use in South Carolina.

19. Upon information and belief, Defendant ABC Stores lobbies before the General Assembly on behalf of certain retail liquor stores that benefit financially and economically from the current versions of S.C. Code Ann. sections 61-6-140 and -150 and, therefore, has an interest in defending the economic protectionism created by those sections.

20. Because Defendant ABC Stores has an interest that would be affected by a declaration from this Court that S.C. Code Ann. sections 61-6-140 and -150 are

unconstitutional, Defendant ABC Stores is a proper party to this action pursuant to S.C. Code Ann. section 15-53-80.

FOR A FIRST CAUSE OF ACTION
**(Declaratory Judgment—S.C. Code Ann. Sections 61-6-140 and -150 are
not within the Scope of the General Assembly's Police Powers)**

21. The allegations in the preceding paragraphs are incorporated as if repeated verbatim herein.

22. Under Article VIII-A of the Constitution, the General Assembly must act within the scope of its police powers when it regulates the manufacture, sale, and retail of alcoholic liquors, which means any statute that regulates the manufacture, sale, and retail of alcoholic liquor must be for the purpose of protecting the health, safety, or morals of the State.

23. Any statute purporting to regulate the manufacture, sale, and retail of alcoholic liquor that is not a police measure is unconstitutional.

24. S.C. Code Ann. sections 61-6-140 and -150 have no relation to the morals, good health, or safety of South Carolina.

25. Instead, S.C. Code Ann. sections 61-6-140 and -150 are purely for the economic protection of the members of Defendant ABC Stores and Defendant ABC Stores has, in fact, defended these sections before the General Assembly as measures necessary to provide economic protectionism for its members.

26. Specifically, Defendant ABC Stores, by and through its members, testified on March 20th, 2013 before a South Carolina Senate Subcommittee in opposition to S. Bill 404, which was authored by Senator Chauncey K. Gregory and

Senator C. Bradley Hutto. Defendant ABC Stores also testified in support of retaining S.C. Code Ann. sections 61-6-140 and -150.

27. As originally introduced, S. Bill 404 would have amended S.C. Code Ann. section 61-6-140 by raising the number of retail dealer licenses that can be issued to a licensee or issued for the use of a corporation from three to ten, and would have amended S.C. Code Ann. section 61-6-150 to allow a person to have an interest in up to ten retail liquor stores.

28. Defendant ABC Stores' entire basis for opposing S. Bill 404 and retaining S.C. Code Ann. sections 61-6-140 and -150 was to preserve the economic protectionism that these statutes currently provide for its members.

29. The Constitution does not permit the General Assembly to engage in economic protectionism when it regulates the manufacture, sale, and retail of alcoholic liquors.

30. Because S.C. Code Ann. sections 61-6-140 and -150 are not within the scope of the General Assembly's police powers, they are unconstitutional.

31. Retail Services has been harmed by S.C. Code Ann. sections 61-6-140 and -150 by virtue of the fact that it cannot apply for a license nor open a retail liquor store in Aiken County, South Carolina since three retail dealer licenses have already been issued for its use in South Carolina.

32. Therefore, Retail Services is entitled to a judgment that S.C. Code Ann. sections 61-6-140 and -150 are unconstitutional.

FOR A SECOND CAUSE OF ACTION
(Declaratory Judgment—S.C. Code Ann. Section 61-6-150
Violates the One Subject Rule)

33. The allegations in the preceding paragraphs are incorporated as if repeated verbatim herein.

34. Under Article III, section 17 of the Constitution, “[e]very Act or resolution having the force of law shall relate to but one subject and that shall be expressed in the title.”

35. S.C. Code Ann. section 61-6-150, which prohibits any person, directly or indirectly, from having any interest in any retail liquor store beyond the three store limit of S.C. Code Ann. section 6-6-140, was enacted as Section 35 of the permanent provisions of Act 644 of 1978, which was the General Appropriations Act of that year.

36. S.C. Code Ann. section 61-6-150 does not reasonably or inherently relate to the raising and spending of tax monies.

37. Therefore, S.C. Code Ann. section 61-6-150 violates the one subject rule set forth in Article III of the Constitution and is unconstitutional.

38. Retail Services has been harmed by S.C. Code Ann. section 61-6-150 by virtue of the fact that it cannot apply for a license nor open a retail liquor store in Aiken County, South Carolina since three retail dealer licenses have already been issued for its use in South Carolina.

39. Therefore, Retail Services is entitled to a judgment that S.C. Code Ann. section 61-6-150 is unconstitutional.

FOR A THIRD CAUSE OF ACTION
**(Declaratory Judgment—S.C. Code Ann. sections 61-6-140 and -150 Violate the
Equal Protection and Due Process Clauses Because They are Arbitrary)**

40. The allegations in the preceding paragraphs are incorporated as if repeated verbatim herein.

41. Article 1, section 3 of the Constitution states as follows: “The privileges and immunities of citizens of this State and of the United States under this Constitution shall not be abridged, nor shall any person be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.”

42. Amendment 14 of the United States Constitution provides that “No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the law.”

43. While the General Assembly has the power in passing legislation to make a classification of its citizens, the constitutional guaranty of equal protection of the law requires that all members of a class be treated alike under similar circumstances and conditions, and that any classification cannot be arbitrary but must bear a reasonable relation to the legislative purpose sought to be effected.

44. S.C. Code Ann. sections 61-6-140 and -150 treat large retail dealers differently from small retail dealers by arbitrarily limiting the number of licenses that can be issued to a person or for the use of a corporation to three and the number of retail liquor stores that a person may have an interest in to three.

45. The three license and three store limitations created by S.C. Code Ann. sections 61-6-140 and -150 have no reasonable relation to protecting the health, safety, or morals of this State, which must be the purpose of any legislation that regulates the manufacture, sale, and retail of alcoholic liquors, and there is no rational basis for treating similarly situated retail dealers differently.

46. S.C. Code Ann. section 61-6-150 also arbitrarily classifies and treats people who had an interest in retail liquor stores on July 1, 1978 differently from those who acquired an interest in retail liquor stores after July 1, 1978.

47. The classification created by S.C. Code Ann. section 61-6-150 does not bear a reasonable relation to the protection of the health, safety, or morals of the State.

48. Accordingly, S.C. Code Ann. sections 61-6-140 and -150 create arbitrary classes, treat people within the same class differently for no rational reason or basis, are arbitrary, and otherwise violate the equal protection and due process clauses of the South Carolina and United States Constitution.

49. As a result, Retail Services has been denied due process and equal protection of the law.

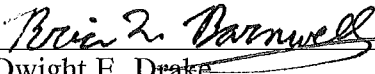
50. Retail Services has been harmed by S.C. Code Ann. sections 61-6-140 and -150 by virtue of the fact that it cannot apply for a license nor open a retail liquor store in Aiken County, South Carolina since three retail dealer licenses have already been issued for its use in South Carolina.

51. Therefore, Retail Services is entitled to a judgment that S.C. Code Ann. sections 61-6-140 and -150 are unconstitutional.

WHEREFORE, Retail Services requests that this Court inquire into this matter and issue a judgment declaring that S.C. Code Ann. sections 61-6-140 and -150 are unconstitutional and providing such other and further relief as the Court deems just and appropriate.

Respectfully submitted,

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February 5, 2014