

#275

E-FILED

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT
SUPERIOR COURT DEPARTMENT

WORCESTER, ss.

Docket No. *2285CV404 A*

CAROLINE'S CANNABIS, LLC)
)
 Plaintiffs,)
 v.)
 STEVE SETTE, TOWN MANAGER and)
 THE TOWN OF UXBRIDGE)
)
 Defendant.)

FILED

APR 07 2022

ATTEST: *Del M...* CLERK

**VERIFIED COMPLAINT FOR MANDAMUS, INJUNCTION,
DECLARATORY JUDGMENT, AND DAMAGES**

NOW COMES Plaintiff Caroline's Cannabis, LLC ("Caroline's Cannabis" or "Plaintiff") and complains against Defendants Steve Sette, Town Manager ("Settee") and the Town of Uxbridge ("Uxbridge") as follows:

PRELIMINARY STATEMENT

1. Caroline's Cannabis and the Town entered into a contract, the Host Community Agreement ("HCA"), pursuant to which both parties undertook certain obligations. Caroline's Cannabis has performed all its commitments pursuant to the contract, but the Town has failed to comply with its obligations. Specifically, Caroline's Cannabis has made all required community impact fee payments, totaling \$1,265,357.59, and the Town has neglected to provide the statutorily required documentation of the costs the Town has incurred that are reasonably related to Caroline's Cannabis's operation. As required for its annual license renewal, Caroline's Cannabis requested the documentation supporting the Town's imposition of the community impact fee, but the Town failed to provide any documentation of costs. Accordingly, Caroline's

7

Cannabis seeks a writ of mandamus to order the Town to perform its nondiscretionary obligation and provide the required documentation and substantiate the fee. Furthermore, Caroline's Cannabis requests an injunction prohibiting the Town from collecting any further fees until such time as the required documentation is produced to substantiate the alleged costs. Moreover, Caroline's Cannabis seeks a declaratory judgment that the Town cannot seek to recover any impact fee from Caroline's Cannabis in the absence of proof of such costs, and that given that the Town has failed to produce any such costs, no impact fee is due or was properly owed and that a refund from the Town of all funds paid is due. Finally, Caroline's Cannabis brings claims for breach of contract and breach of the covenant of good faith and fair dealing as a result of the Town's refusal to comply with the terms of the contract and failure to act in good faith by charging Caroline's Cannabis fees higher than other marijuana establishments and not in relation to reasonably related costs.

PARTIES AND JURISDICTION

2. Plaintiff Caroline's Cannabis, LLC ("Caroline's Cannabis") is a Massachusetts limited liability company with a principal place of business at 640 Douglas Street, Uxbridge, Worcester County, Massachusetts 01569. Caroline Frankel is the owner and manager of Caroline's Cannabis and executed the HCA.

3. Defendant Steve Sette is the Town Manger of the Town of Uxbridge. Defendant Town of Uxbridge is a municipality within the Commonwealth of Massachusetts and has offices at the Town Hall, 21 South Main Street, Uxbridge, Worcester County, Massachusetts 01569.

4. Jurisdiction is proper in this Court pursuant to M.G.L. c. 212 § 4.

5. Venue is proper in this Court pursuant to M.G.L. c. 223 § 1.

FACTUAL BACKGROUND

6. On November 8, 2016, Massachusetts voters voted in favor of a ballot initiative known as “Question 4” authorizing the limited adult use of marijuana and the licensing of marijuana establishments. The ballot initiative became Chapter 334 of the Acts of 2016 and created the “Regulation and Taxation of Marijuana Act, G.L. c.94G (“2016 Marijuana Act”).

7. On July 19, 2017, the Massachusetts Legislature passed a bill (H.3818) to amend Chapter 334 and the law it created, G.L. c.94G, as well as create additional laws relating to adult and medical use of marijuana. The bill became Chapter 55 of the Acts of 2017 (“2017 Marijuana Act”) and was signed by the Governor on July 28, 2017. The 2017 Act created the Cannabis Control Commission (“CCC”) and also placed limits and restrictions on municipal control over the siting of marijuana establishments.

8. On March 7, 2018, the CCC promulgated final regulations at 935 CMR 500.

9. The CCC is required by law to engage in a licensing process for marijuana establishments. During the application process, applicants must have executed a Host Community Agreement (“HCA”) with the municipality.

10. The HCA may include a community impact fee to be paid to the host community, provided, however, that the community impact fee shall be reasonably related to the costs imposed upon the municipality by the operation of the marijuana establishment or medical marijuana treatment center and shall not amount to more than 3 per cent of the gross sales of the marijuana establishment or medical marijuana treatment center or be effective for longer than 5 years. Any cost to the Town imposed by the operation of a marijuana establishment must be documented and considered a public record under Massachusetts public records laws, G.L. c.4 §7 cl. 26 and G.L. c.66 §10.

11. Caroline's Cannabis is licensed to operate a Licensed Marijuana Establishment ("LME") at 640 Douglas Street, in Uxbridge.
12. Caroline's Cannabis's sole owner and shareholder, Caroline Frankel, is a Social Equity Program Participant and Social Equity Program Member as of May 3, 2019.
13. Caroline's Cannabis submitted its application for a Retail Marijuana Establishment on June 1, 2018, and received its provisional license from the CCC on October 23, 2018.
14. Prior to receiving its CCC license, Caroline's Cannabis entered into an HCA with the Town dated May 21, 2018. See Exhibit A.
15. Angeline Elison was the Town Manager of the Town of Uxbridge at the time of the execution of the HCA, and as agent for the Town, was authorized by vote of the Board of Selectman, to execute the HCA and bind the Town.
16. Pursuant to the HCA, Caroline's Cannabis agreed to pay a community impact fee pursuant to the provisions of the HCA and Massachusetts law.
17. The HCA provides:

Community Impact Fee: The Town anticipates that, as a result of the Operator's operation of the Retail Establishment, the Town will incur additional expenses and impacts upon its road system, law enforcement, inspectional services, permitting services, administrative services, public health services and education in addition to potential additional unforeseen impacts upon the Town. Accordingly, in order to mitigate the direct and indirect financial impact upon the Town and use of Town resources, the Operator agrees to annually pay a community impact fee to the Town, in the amounts and under the terms provided herein (The "Annual Payments").
18. The HCA sets forth an Annual Payment "in an amount equal to three percent (3%) of the gross revenue from the Retail Marijuana Establishments annual cannabis or marijuana product sales, as long as the fee is reasonably related to the costs imposed upon

the town by the operation of the marijuana establishment.” HCA, Page 1, Payment

(Emphasis added).

19. Furthermore, the HCA provides that it is governed by the laws of the Commonwealth of Massachusetts.

20. Caroline’s Cannabis obtained its final license from the CCC issued on February 7, 2019.

21. Caroline’s Cannabis commenced operations on March 15, 2019.

22. Pursuant to the HCA, Caroline’s Cannabis made impact fee payments each quarter, beginning on July 1, 2019.

23. M.G.L. c. 94G, § 3(d) provides: "Any cost to a city or town imposed by the operation of an [ME or MTC] shall be documented and considered a public record as defined by clause Twenty-sixth of section 7 of chapter 4."

24. The associated regulations provide:

A [ME or MTC] shall submit as a component of the renewal application documentation that the establishment requested from its Host Community the records of any cost to a city or town reasonably related to the operation of the establishment, which would include the city's or town's anticipated and actual expenses resulting from the operation of the establishment in its community. The applicant shall provide a copy of the electronic or written request, which should include the date of the request, and either the substantive response(s) received or an attestation that no response was received from the city or town. The request should state that, in accordance with M.G.L. c. 94G, § 3(d), any cost to a city or town imposed by the operation of a [ME or MTC] shall be documented and considered a public record as defined by M.G.L. c. 4, § 7, cl. 26."

935 CMR 500.103; 935 CMR 501.103.

25. Thus, an ME or MTC licensee must seek documentation of the cost imposed by its operations in the host community.