



TO: Members of the Troy City Council
FROM: Lori Grigg Bluhm, City Attorney
Christopher J. Forsyth, Assistant City Attorney
DATE: March 1, 2007
SUBJECT: Hooters of Troy Inc. v City of Troy

On February 28, 2007, Judge Julian Cook heard oral arguments on the City's motion to dismiss the federal court lawsuit, where Hooters is requesting one million dollars in damages. The City's motion was based on the fact that the federal lawsuit is an attempt to re-do what was or should have been done in the state court action. In the state court action, Hooters' case against the City was dismissed. Hooters has appealed that dismissal, and the state court action is now pending in the Michigan Court of Appeals. Briefs were filed in that case as of October 2006, and now the parties are just waiting for the Court of Appeals to schedule a date for oral argument. The parties will not have any legal work on this case until the Court of Appeals sets the hearing date and/or schedules facilitation. The Court of Appeals has complete control over setting the oral argument schedule, and it could be months before this case is heard, due to the volume of cases.

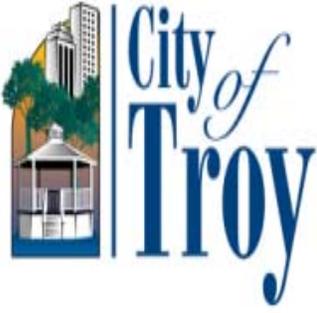
After arguments were presented, the Court issued his opinion from the bench. Although the Judge initially appeared to find that the lawsuit should be dismissed, since the issues could have or should have been raised in the state court lawsuit, in the end, the Judge did not make a final decision, and instead abstained until the state court lawsuit is finalized. The Judge stayed all proceedings on the federal case until final resolution of the state court lawsuit. This precludes any legal work on the federal case as well, including depositions or other discovery and trial preparation.

In the interim, City Council resolution #2007-02-044 requires the proposed consent judgment to be brought back as a City Council agenda item. The resolution states:

RESOLVED, That Troy City Council hereby POSTPONES Hooters v. Troy- Proposed Consent Judgment until the Regular City Council Meeting scheduled immediately after the receipt of the Ruling from the Federal District Court Judge regarding the City's Motion to Dismiss.

The information that was previously submitted is attached for your consideration. Since the deadline for the agenda has already passed, and since the hearing concluded late on Wednesday, this item is being submitted without knowing whether Hooters of Troy is still willing to offer the terms as set forth in the proposed consent judgment. As soon as we receive this information, we will notify City Council.

If you have any questions concerning the above, please let us know.



TO: Mayor and Members of City Council
FROM: Lori Grigg Bluhm, City Attorney
Christopher J. Forsyth, Assistant City Attorney
DATE: December 28, 2006
SUBJECT: Hooters v. Troy – Proposed Consent Judgment

Enclosed please find a consent judgment that would resolve both of the cases filed by Hooters of Troy against the City of Troy. The proposed consent judgment is provided for your consideration and deliberation.

The federal civil rights lawsuit is currently pending before Judge Julian Cook. As the first responsive pleading, we filed an immediate motion requesting dismissal of the federal lawsuit. The parties have already filed the briefs for this motion, and the Court has set oral argument on the motion to dismiss for February 7, 2007. If the parties are desirous of settling this case prior to the oral argument on Troy's Motion to Dismiss, then time is of the essence.

All briefs have already been filed in the state court appellate matter as well. The Michigan Court of Appeals has not yet set a date for oral argument on Hooters' appeal of the dismissal of Hooters' state court lawsuit.

The terms of the consent judgment are as follows:

- Troy must approve the requested transfer of the Sign of the Beefcarver Class C Liquor license (Wagon Wheel) to Hooters of Troy.
- Upon approval of the requested transfer, Hooters will dismiss its appeal of the state court case, as well as dismiss its federal case against the City. Hooters would also forego any claims for damages, costs, or attorney fees from the City.
- Within 30 days of MLCC's approval of the requested transfer of the liquor license, Hooters would place the liquor license for the John R. Road location into escrow. Hooters also agrees to operate only one Hooters restaurant in the City of Troy.
- Hooters would permanently remove the pole sign that currently extends over the roof of the building, as well as the pole sign that is located in the parking lot to the east of the building, which is visible from Big Beaver Road.

The attached consent judgment is attached for your consideration. It includes the site plan, since it depicts the location of signage and will be incorporated by reference.

If you have any questions concerning the proposed consent judgment please let us know.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

HOOTERS OF TROY INC.,

Plaintiff,

v.

CASE NUMBER 06-CV- 14945
HON. JULIAN A. COOK
MAGIST. R. STEVEN WHALEN

CITY OF TROY,

Defendant.

_____/

EDWARD G. LENNON PLLC
Edward G. Lennon (P42278)
Attorney for Plaintiff
HYMAN LIPPITT, P.C.
Stephen McKenney (P65673)
Co-Counsel for Plaintiff
322 N. Old Woodward
Birmingham, MI 48009
248.723.1276

City of Troy – City Attorney’s Office
Lori Grigg Bluhm (P46908)
Christopher J. Forsyth (P63025)
Attorney for Defendant
500 W. Big Beaver Road
Troy, MI 48084
(248) 524-3320

_____ /

JUDGMENT BY CONSENT

At a session of said Court, held in the City of Detroit,
Eastern District of Michigan on _____.

PRESENT: Hon. _____
DISTRICT COURT JUDGE

HOOTERS OF TROY INC. and the CITY OF TROY consent to the entry
of this Consent Judgment.

RECITALS

1. Plaintiff, Hooters of Troy Inc. ("Hooters"), is a Georgia corporation and a wholly owned subsidiary of Hooters of America Inc., a Georgia corporation.

2. Plaintiff currently operates a Hooters restaurant located at 1686 John R Road in the City of Troy, Oakland County, Michigan. Plaintiff also currently holds a Class C liquor license for this restaurant.

3. On January 6, 2006, Plaintiff entered into an agreement with Sign of the Beefcarver, Inc. ("Beefcarver") to purchase Beefcarver's Class C and SDM Liquor Licenses and the requested Sunday Sales, Entertainment, and Outdoor Service permits, (collectively the "Liquor License") which Beefcarver was using at a restaurant named the Wagon Wheel Saloon and which it operated at 2946-2950 Rochester Road in Troy. The Wagon Wheel Saloon closed on or about May 31, 2006.

4. In addition to the agreement to purchase the Liquor License, Plaintiff also agreed to lease the property at 2946-2950 Rochester Road in which the Wagon Wheel Restaurant was located.

5. As required by the Michigan Liquor Control Code, MCL 436.1101 et. seq., Plaintiff submitted an application to the Michigan Liquor Control Commission, seeking a transfer of said Liquor License from Beefcarver to Hooters.

6. Pursuant to MCL 436.1501(2), such an application requires approval from the Troy City Council, the legislative body of the City of Troy. At

the June 19, 2006 regular City Council meeting, the Troy City Council denied Hooter's request to transfer the Liquor License from Beefcarver.

7. On June 27, 2006, Plaintiff filed a lawsuit in Oakland County Circuit Court. Plaintiff sought an order of superintending control approving the transfer of the Liquor License to Hooters. This case was dismissed by Oakland County Circuit Court Judge John McDonald. Plaintiff has appealed Judge McDonald's dismissal, and the case is pending oral argument in the Michigan Court of Appeals (Docket no. 272155).

8. On November 2, 2006, Plaintiff initiated this 42 U.S.C. § 1983 lawsuit against Defendant.

9. After extensive negotiation, the parties have reached a settlement of this §1983 lawsuit and the state court action. The parties agree that Troy City Council shall approve Plaintiff's application to transfer the Liquor License provided that Plaintiff complies with certain conditions that are further defined in this Consent Judgment. The parties also agree that this Consent Judgment shall be binding upon the parties, their successors and assigns.

10. The Court has reviewed the proposed Consent Judgment, and has verified that it currently possesses jurisdiction over this action, and has approved the form and substance of this Consent Judgment.

NOW, THEREFORE, IT IS HEREBY ORDERED as follows:

1. This Consent Judgment shall constitute the final judgment of the Federal District Court, Eastern District of Michigan, and resolves all claims between the parties.

2. With the entry of this Consent Judgment by the Court, the Troy City Council approves Plaintiff's application to transfer the Liquor License from the Beefcarver to Hooters. After such time, the Troy City Clerk shall immediately forward a resolution of approval of the transfer to the Michigan Liquor Control Commission.
3. The City of Troy will reasonably cooperate and file such other additional or revised documents that reflect the above referenced approval, and as required by the Michigan Liquor Control Commission to complete or expedite the Liquor License transfer.
4. In consideration of the approval of the transfer of the Liquor License by the City of Troy, Plaintiff agrees to the following:
 - a. Plaintiff relinquishes any claim of damages against Defendant.
 - b. Plaintiff will dismiss with prejudice its claim of appeal filed with the Michigan Court of Appeals in the state court action, which is entitled *In Re Hooters of Troy Inc.*, Oakland County Circuit Court No. 06-75618 AS, Michigan Court of Appeals No. 272155.
 - c. Plaintiff will cease its operation of a Hooters Restaurant at 1868 John R Road, and place its Class C liquor license for that location into escrow with the Michigan Liquor Control Commission. This Consent Judgment does not address any future transfer or sale of the John R. escrowed license, and any sale or transfer of said liquor license shall comply with the Michigan Liquor Control Code. Plaintiff shall close this restaurant within 30 days after approval by

the Michigan Liquor Control Commission of the transfer of the Liquor License.

- d. After the John R restaurant is closed, Plaintiff shall be permitted to operate only one Hooters restaurant in Troy.
- e. Prior to operating the restaurant at the 2946-2950 Rochester Road address, Plaintiff shall remove the two pole signs (collectively, "Pylon Signs F & G"), which were erected at this location. More specifically, the first pole sign Plaintiff shall remove is located a short distance from the restaurant, is in close proximity to the intersection of Rochester and Big Beaver Roads, and is the larger of the two pole signs. The second pole sign Plaintiff shall remove is located in close proximity to the northeast parking entrance to the restaurant, which also curb cuts on Big Beaver Road, and is the smaller of the two pole signs. These two pole signs are further described as F, SF Pylon, and G, DF Pylon, in the attached plan (Exh. A., incorporated by reference).
- f. Plaintiff shall be permitted to construct up to two directional signs from Big Beaver Road, which shall not exceed 2 square feet each, and which shall not contain any logos or other commercial message, and shall be limited to identifying the Entrance and Exit for the parking lot. These signs, if constructed, shall be located at the existing north easternmost curb cut of the parking lot.

- g. With the exception of the pole signs, which Plaintiff agrees to remove, and the directional signs, as referenced in Paragraph f, the amount and type of signage Plaintiff can maintain at 2946-2950 Rochester Road, is limited to that depicted in Exhibit A.
 - h. Plaintiff is further permanently barred from seeking permission or any variances from the City of Troy to construct or erect additional signage at 2946-2950 Rochester Road, including but not limited to any special event signs as set forth in Chapter 85 of the City of Troy Ordinances.
 - i. In the event Plaintiff fails to remove above described pole signs prior to operating its restaurant at 2946- 2950 Rochester Road, Defendant shall have the right to remove said pole signs, and charge all costs and expenses to Plaintiff. This does not preclude the parties from pursuing any other available relief under state or federal law for any violation of the terms of this Consent Judgment.
- 5. The parties agree to waive all costs and attorney fees incurred as result of the case.
 - 6. By entry of this Consent Judgment, the parties, their agents, successors, assignees waive and discharge any and all claims that they may have against the other party, including its officials and employees, relating to the subject of this lawsuit.
 - 7. In order to effectuate the intent of this Consent Judgment and to reconcile any differences of the parties that may arise in connection

with the performance of this Consent Judgment, this Court shall retain jurisdiction of this action.

DISTRICT COURT JUDGE

Approved for entry:

HOOTERS OF TROY INC.

By: _____
Coby G. Brooks, President

CITY OF TROY, a Michigan Municipal Corporation

By: _____
Louise Schilling, Mayor

By: _____
Tonni Bartholomew, City Clerk

Approved as to form:

CITY OF TROY
CITY ATTORNEY'S OFFICE
By: LORI GRIGG BLUHM (P46908)
CHRISTOPHER FORSYTH (P63025)
Christopher J. Forsyth (P63025)
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Stephen McKenney (P65673)
Co-Counsel for Plaintiff
322 N. Old Woodward
Birmingham, MI 48009

Prepared by:

CITY OF TROY
CITY ATTORNEY'S OFFICE
By: s/Christopher J. Forsyth
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Christopher J. Forsyth (P63025)
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c.forsyth@ci.troy.mi.us

AGREEMENT REGARDING LIQUOR LICENSE REQUEST

This Agreement, made this _____ day of _____, 2006, by and between the CITY OF TROY, MICHIGAN, a municipal corporation, with offices located at 500 W. Big Beaver Road, Troy, Michigan 48084, hereinafter known as "THE CITY", and HOOTERS OF TROY, INC., a Georgia corporation, with offices located at 1815 The Exchange, Atlanta, Georgia 30339, hereinafter known as "APPLICANT".

RECITALS:

1. The City Council of THE CITY, for and in consideration of the following covenants and conditions, agrees to recommend to the Michigan Liquor Control Commission, approval of the transfer of ownership of the Class C license and permits now held by Sign of The Beefcarver, Inc. to the APPLICANT, located at 2946-2950 Rochester Road, Troy, Michigan 48084, Oakland County (hereinafter "APPLICATION")

2. In consideration of THE CITY'S recommendation for approval of the APPLICATION, APPLICANT hereby agrees that:

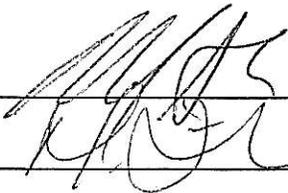
- (a) It has read and is aware of the provisions of the City of Troy Ordinances, Chapter Nos. 67, 68, 92 and Chapter No. 98 (effective 02/01/01), and agrees that it shall be deemed to have knowledge of any subsequent amendments to said Chapters which may become effective during the term of this Agreement.
- (b) It has read and is in receipt of copies of the provisions of the City of Troy, City Council Resolution No. 93-1028 regarding Entertainment Permits, and agrees that it shall be deemed to have knowledge of any subsequent amendments to the Resolution which may become effective during the term of this Agreement.
- (c) It agrees to observe and comply with all laws, statutes, ordinances, rules, regulations or resolutions of the United States government, State of Michigan, and the City of Troy, or any department or agency of the governmental entities, as well as the rules and regulations of the Michigan Liquor Control Commission as they pertain to the operation of a liquor license business in the City of Troy.
- (d) It agrees to immediately require all employees who serve/sell alcohol, to attend a recognized alcohol awareness program, and forward the names of each certified employee to the Troy Police Department. The alcohol awareness program must either be recognized by the Troy Police Department (i.e., TIPS, TAM, SERV SAFE Alcohol), or the program must be reviewed by the Troy Police Department to insure that the program is comparable to the recognized programs.

3. APPLICANT agrees that the recommendation of Approval agreed upon by the City Council is not a property right and is approved upon the express and continuing condition that no violation as set forth in paragraph 2 of this Agreement shall occur.

4. APPLICANT agrees that the recommendation of approval agreed upon by the City Council is approved upon the express and continuing condition that the physical characteristics (including, but not limited to the inside layout, building design and engineering, seating capacity, parking space allocations, fire exits, and other physical attributes); and also the nature and type of business intended to be conducted remain virtually the same.

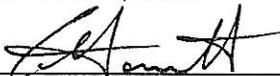
5. APPLICANT agrees that upon a violation, after full investigation and an opportunity for said APPLICANT to be heard, upon a finding by the City Council that a violation as set forth in paragraph 2 of this Agreement has occurred, the City Council shall have just cause for revocation of said recommendation for approval.

Witnesses:



Applicant:

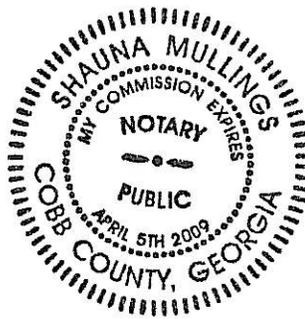
HOOTERS OF TROY, INC.

By: 
_____ Coby G. Brooks, President

Subscribed and sworn to before me
this 31 day of March, 2006.



Notary Public
Cobb County, Georgia
My commission expires: 4-5-2009



CITY OF TROY

By: _____
Louise E. Schilling, Mayor

By: _____
Tonni L. Bartholomew, Clerk

Subscribed and sworn to before me
this _____ day of _____, 2006.

Notary Public, Oakland County, Michigan
My commission expires:

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