

VERMONT SUPERIOR COURT
Washington Unit
65 State Street
Montpelier VT 05602
802-828-2091
www.vermontjudiciary.org



CIVIL DIVISION
Case No. 26-CV-03393

Forbins Finest, LLC et al v. Vermont Cannabis Control Board

ENTRY REGARDING MOTION

Title: Civil Complaint Plaintiffs' Emergency Motion for Temporary Stay, Temporary Restaining Order, Preliminary Injudcuton & Expedited Review (Motion:)
Filer: Timothy Bryon Fair
Filed Date: June 07, 2026

The motion is DENIED.

Plaintiffs Forbins Finest, LLC, Forbins Reserve, Inc., Nicholas Mattei, and Angela Payette seek a temporary restraining order pursuant to V.R.C.P. 65 to provide both an immediate and extended stay of the Vermont Cannabis Control Board's May 15, 2026 decision revoking their licenses to grow and sell cannabis under Vermont's cannabis act.

Standard of Review: Preliminary Injunction

As a Motion for Preliminary Injunction, Plaintiff seeks an "extraordinary remedy," which is "never awarded as of right." *Taylor v. Town of Cabot*, 2017 VT 92, ¶ 19 (quoting *Winter v. Nat. Res. Def. Council, Inc.*, 55 U.S. 7, 24 (2008)). There are four factors to determining whether a Plaintiff is entitled to a preliminary injunction, and Plaintiff bears the burden of establishing all four of the relevant factors under Vermont law: "(1) the threat of irreparable harm to the movant; (2) the potential harm to the other parties; (3) the likelihood of success on the merits; and (4) the public interest." *Taylor*, 2017 VT 92, at ¶ 19 (citing *In re J.G.*, 160 Vt. 250, 255 n.2 (1993)); see also V.R.C.P. 65. This framework applies to a party seeking an appellate stay. *Gilbert v. Gilbert*, 163 Vt. 549, 560 (1995).

Threshold Jurisdictional Issue

There is an initial threshold issue with the Superior Court taking jurisdiction of the present action. Under 7 V.S.A. § 847(a)(1), a party who is aggrieved with a decision rendered by the Cannabis Control Board, such as the Plaintiffs in the present case, may take a timely appeal within 30 days to an appellate officer assigned by the Executive Director of the Cannabis Control

Board. Under Section 847(b), the standard of review is limited and precludes the officer from substituting their “judgment for that of the Board as to the weight of the evidence on questions of fact.” *In re Holland Cannabis, LLC*, 2025 VT 61, ¶ 20. If either Plaintiff or the Cannabis Control Board is unhappy with the decision, they may appeal to the Vermont Supreme Court. *Id.* at ¶¶ 19, 20; see also 7 V.S.A. § 847(c).

There are two qualities that are apparent from the plain language and terms of Section 847. *Northfield School Board v. Washington South Education Association*, 2019 VT 26, ¶ 13 (noting that in construing a statute the court’s objective is discern legislative intent, which begins with the plain language of the statute). First, is that the legislature has created an appellate route that runs from the Board to a hearing officer to the Vermont Supreme Court. Second, there is no role within the statute for an appellant to take that appeal, even on a temporary collateral basis, to the Superior Court.

Jurisdiction in Superior Courts for administrative decision flow through two rules that govern how Superior Courts accept and manage appeals from administrative agencies. The First, Rule 74 applies if there is a direct right of appeal given, by statute, to the Superior Court. V.R.C.P. 74; see, e.g., 28 V.S.A. § 724(c). This Rule is not implicated by the present case.

The other is Rule 75 that applies when the “legislation is silent on the mode of review” and appellate procedure is available as a matter of law. *Preston v. Burlington City Retirement System*, 2013 VT 56, ¶ 13. The second part of Rule 75 applicability refers to the right that a party may have under the common law to procedural review under the so-called ancient writs, including mandamus, certiorari, quo warranto, scire facias, etc. *Id.* It is the first part of the Rule, however, that is relevant to the Court’s present considerations. In this case, there is a plainly established right of appeal and process that Plaintiffs may pursue. When such appellate processes and remedies are available, there is no Rule 75 jurisdiction. *Luck Bros. v. Agency of Transp.*, 2014 VT 59, ¶¶ 19-20 (stating the long-standing rule that a party must exhaust their administrative procedures and remedies before seeking relief in the trial courts under Rule 75). “This long-settled rule of judicial administration serves the dual purposes of protecting the authority of the administrative agency and promoting judicial efficiency.” *Id.* at ¶ 20 (quoting *Jordan v. State Agency of Transp.*, 166 Vt. 509, 512 (1997)). This doctrine applies even if the party is asserting constitutional challenges to administrative proceedings. *Luck Bros.*, 2014 VT 59, at ¶ 21.

There are two problems raised by Plaintiff's filing. First, Plaintiffs seek intervention from this Court in an administrative process that has not reached a point of finality. Second, they seek intervention in an appellate process where this Court lacks a statutory role. As such, the Court does not see that it has subject matter jurisdiction to take up even a portion of the appeal. "Subject matter jurisdiction' refers to the power of a court to hear and determine a general class or category of cases." *Lamell Lumber Corp. v. Newstress Int'l, Inc.*, 2007 VT 83, ¶ 6, 182 Vt. 282 (citation omitted); see also *Baron v. McGinty*, 2021 VT 6, ¶ 31, 214 Vt. 141 (stating that because subject matter jurisdiction refers to a court's power to hear a case, "a court either has subject matter jurisdiction or it does not"). If a Court lack such jurisdiction, it must dismiss the matter. V.R.C.P. 12(b)(1).

In this case, despite Plaintiff's broader filing and petition for a review of certiorari over the Board's decision, it appears that the primary relief they seek is a temporary stay of the Cannabis Control Board's Order suspending their licenses to grow and sell cannabis. The question is whether this Court has such limited jurisdiction over this question. The Court is unable to find a basis for such limited jurisdiction. In other instances, the legislature has provided Superior Courts with such authority, but in this instance, the Court finds no such authority. See *Vermont State Employees' Ass'n, Inc. v. State*, 134 Vt. 195, 197 (1976) (interpreting 3 V.S.A. § 1002's provisions allowing the Vermont Labor Relations Board to seek injunctive relief through the Superior Court).

Given that the Court does not have broader subject matter jurisdiction over the present appeal, the Court cannot discern from the present filing or its review of the applicable law where it has the authority to intervene and impose a stay.¹ See *Ketchum v. Town of Dorset*, 2011 VT 49, ¶¶ 4, 5 (premising appellate stay on Rule 75 standing).

Beyond and in addition to this issue, the Court is not persuaded that even if it had such authority whether Plaintiffs are entitled to the relief sought. In reviewing Plaintiffs' filings, the Court is struck by the fundamentally factual nature of the appeal. Plaintiffs emphasize the circumstantial nature of the evidence, the credibility of the evidence, and the weight that the Board gave the evidence. Such decisions are not in and of themselves abuse of discretion, but

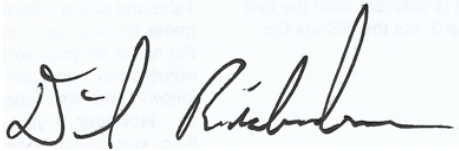
¹ The issue of whether a party is entitled to a stay during an appeal is often within the discretion of the appellate body. See V.R.C.P. 75(c). In this case, as Plaintiffs note, the statute does not have any express provisions concerning an appellate stay, but in such case, there are options along the lines of Plaintiffs' direct course of appeal that would appear to control, including V.R.A.P. 8, 21.

more importantly, Section 847 expressly limits appellate review of the Board's decisions on findings. 7 V.S.A. § 847(b) ("The appellate officer shall not substitute his or her judgment for that of the Board as to the weight of the evidence on questions of fact."); see also *State v. Warner*, 151 Vt. 469, 472 (1989) (noting that circumstantial evidence is sufficient to sustain a decision and is to be evaluated and given the same weight as direct evidence). Given that much of Plaintiffs' dispute is grounded in the factual disputes, the Court finds that it is unclear from the present filing that Plaintiffs have a likelihood of prevailing on the underlying legal issues to an extent that would meet their burden for injunctive relief. *Gilbert*, 163 Vt. at 560.

ORDER

Based on the foregoing, the Court concludes that it lacks a basis for jurisdiction over the present appeal, even in a limited capacity, and Plaintiff has not met its obligation to establish a likelihood of success on the merits. For these reasons, Plaintiffs' motion for a temporary restraining order is denied. In light of the Court's analysis, it will not set this matter for a hearing, but Plaintiffs, if they seek such a hearing, may request one from the Court within 7 days from this Order. If no request is received, the Court will dismiss this matter pursuant to Rule 12(b)(1).

Electronically signed on 6/11/2026 12:05 PM pursuant to V.R.E.F. 9(d)

A handwritten signature in black ink, appearing to read "D. P. Richardson", is written over a light blue rectangular background.

Daniel P. Richardson
Superior Court Judge