

STATE OF RHODE ISLAND

PROVIDENCE, SC.

SUPERIOR COURT

[Filed: September 22, 2021]

ATLANTIC IMPORTING AND  
DISTRIBUTING OF RHODE ISLAND,  
INC.,

*Plaintiff,*

VS.

JACK’S ABBY BREWING, LLC,

*Defendant.*

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C.A. No. PC-2021-04923

**DECISION**

**STERN, J.** Before this Court is Plaintiff Atlantic Importing and Distributing of Rhode Island, Inc.’s (Atlantic RI) Motion for Preliminary Injunction and related relief pursuant to the Rhode Island Beer Industry Fair Dealing Law, codified in G.L. 1956 §§ 3-13-1 *et seq.* (Act). Defendant Jack’s Abby Brewing, LLC (Jack’s Abby) filed a timely objection. Jurisdiction is pursuant to § 3-13-11.

**I**

**Facts and Travel**

In 1994, Sean Siegal formed Atlantic Importing Company, Inc. (Atlantic MA), a duly licensed malt beverage wholesaler located in Massachusetts. (Def.’s Opp’n Mot. Prelim. Inj. Ex. 2.) In 2014, Sean Siegal formed Atlantic RI, an affiliate of Atlantic MA, under the laws of Rhode Island to conduct business as a duly licensed malt beverage wholesaler in Rhode Island. (Compl. ¶ 1; Def.’s Opp’n Ex. 4.) Jack’s Abby is a Massachusetts limited liability company formed in 2011 to conduct business as a “Farmer-Brewery,” pursuant to Mass. Gen. Laws ch. 138, § 19C

(2016), located at 100 Clinton Street in Framingham, Massachusetts. (Compl. ¶ 2; Def.’s Opp’n Ex. 1, ¶ 3.) In or about 2012, Jack’s Abby began distributing its brands of beer, primarily under the trademarked names of “Jack’s Abby” and “Springdale” (the “Brands”), through Atlantic MA. (Def.’s Opp’n Ex. 1, ¶ 4.) This involved Jack’s Abby selling its Brands to Atlantic MA at a manufacturer’s price who, in turn, would re-sell the Brands to Massachusetts’ licensed liquor stores and restaurants at a wholesale price for sale to the public at retail price. (Def.’s Opp’n Ex. 1, ¶ 4.)

In April 2015, Jack’s Abby began distributing its Brands to retailers and restaurants in Rhode Island through Atlantic RI. (Def.’s Opp’n Ex. 1, ¶ 6.) This involved Atlantic RI placing purchase orders directly with Jack’s Abby for the Brands, which were delivered to Atlantic RI’s warehouse and then distributed to Rhode Island retailers. (Compl. ¶ 12; Def.’s Opp’n Ex. 1, ¶ 6.) This arrangement between Atlantic RI and Jack’s Abby continued until approximately March 2017, when Jack’s Abby ceased its manner of distribution to Atlantic RI after Atlantic MA procured a larger distribution facility in Massachusetts. (Compl. ¶ 12; Def.’s Opp’n Ex. 1, ¶ 7.) The parties thereafter agreed on a new arrangement where Atlantic MA would submit purchase orders to Jack’s Abby for both Atlantic MA and Atlantic RI, and upon receiving the requested products, Atlantic MA would transport those products directly to Atlantic RI for distribution to retailers throughout Rhode Island. (Compl. ¶ 12; Def.’s Opp’n Ex. 1, ¶ 7.) As a result of this arrangement, Jack’s Abby has not transacted with Atlantic RI directly since March 2017.<sup>1</sup> (Compl.

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<sup>1</sup> A critical issue of this litigation concerns whether the arrangement as stated above between Atlantic RI, Jack’s Abby, and Atlantic MA falls within the definition of “agreement” under the Act. Additionally, the parties dispute whether Atlantic RI is Jack’s Abby’s “wholesaler” and, similarly, whether Jack’s Abby is Atlantic RI’s “supplier” as defined by the Act. These issues are discussed in detail below.

¶ 12; Def.'s Opp'n 5.) In fact, the last purchase order submitted by Atlantic RI to Jack's Abby directly was on February 20, 2017. (Def.'s Opp'n Ex. 1, ¶ 8.)

This arrangement between Atlantic RI, Jack's Abby, and Atlantic MA continued for approximately three years until Jack's Abby notified Atlantic MA in January 2021 that it was seeking to terminate Atlantic MA's right to purchase the Brands pursuant to newly passed Massachusetts legislation.<sup>2</sup> (Pl.'s Mot. Prelim. Inj. 8; Def.'s Opp'n 8-9.) Jack's Abby and Atlantic MA had entered a written "Marketing Agreement" in April 2018, approximately one year after the parties agreed to the arrangement between Atlantic RI and Jack's Abby. (Compl. Ex. A.) This Marketing Agreement, however, did not contain any express durational period and was only between Atlantic MA and Jack's Abby. *Id.* As a result of Jack's Abby's intent to terminate Atlantic MA's right to purchase the Brands, Jack's Abby notified Atlantic RI on June 14, 2021 that it "will not and cannot accept any purchase orders directly from Atlantic RI in the future." (Compl. Ex. B.) Jack's Abby also notified Atlantic MA on June 29, 2021 that, as a result of litigation and arbitration proceedings pursuant to Mass. Gen. Laws ch. 138, § 25E1/2, Atlantic MA "no longer ha[d] any right to purchase [Jack's Abby's] products or sell those products," and consequently, the Marketing Agreement was effectively terminated.<sup>3</sup> (Compl. ¶ 29.) Atlantic RI has not received the Brands since at least June 14, 2021. (Compl. ¶ 28.)

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<sup>2</sup> Prior to January 2021, Massachusetts wholesalers, such as Atlantic MA, were protected by Mass. Gen. Laws. ch. 138, § 25E, which prevented suppliers, such as Jack's Abby, from refusing to fulfill orders from wholesalers if the supplier had sold the requested brands to that wholesaler for a period of six (6) months or longer in the ordinary course of business. Under this statute, a supplier could terminate their relationship with a wholesaler only upon a showing of "good cause." *Id.* However, on January 12, 2021, Massachusetts passed Mass. Gen. Laws. ch. 138, § 25E½ (2021), which authorized certain qualified breweries to terminate their relationship with a wholesaler "without cause."

<sup>3</sup> Pursuant to Mass. Gen. Laws. ch. 138, § 25E½, in the event the parties are unable to agree to a "fair market value" of the wholesaler's distribution rights, that amount will be determined by a private arbitration proceeding between the American Arbitration Association. These arbitration

Atlantic RI now asks this Court to find that the arrangement described above falls within the bounds of the Act and, pursuant to § 3-13-7(c), shall remain in full force and effect for a period not to exceed one year during any arbitration or judicial proceedings. (Pl.’s Mot. Prelim. Inj.)

## II

### Standard of Review

Issues of statutory interpretation are generally questions of law. *See Iselin v. Retirement Board of Employees’ Retirement System of Rhode Island*, 943 A.2d 1045, 1049 (R.I. 2008). When interpreting a statute, courts must first determine whether the statute is ambiguous. *Bucci v. Lehman Brothers Bank, FSB*, 68 A.3d 1069, 1078 (R.I. 2013). “[W]hen the language of a statute is clear and unambiguous, [the court] must interpret the statute literally and must give the words of the statute their plain and ordinary meanings.” *Accent Store Design, Inc. v. Marathon House, Inc.*, 674 A.2d 1223, 1226 (R.I. 1996) (alteration omitted); *see also Dart Industries, Inc. v. Clark*, 696 A.2d 306, 310 (R.I. 1997) (citation omitted). In certain circumstances, however, the courts will not interpret the statute literally, namely “when to do so would produce a result at odds with its legislative intent . . . Rather, [the court] will give the enactment ‘what appears to be the meaning that is most consistent with its policy or obvious purpose.’” *Kirby v. Planning Board of Review of Town of Middletown*, 634 A.2d 285, 290 (R.I. 1993) (quoting *Zannelli v. DiSandro*, 84 R.I. 76, 81, 121 A.2d 652, 655 (1956)).

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proceedings commenced on February 22, 2021, captioned as *Jack’s Abby Brewing, LLC v. Atlantic Importing Company, Inc.*, AAA Case No. 01-21-0001-9951. Subsequently, on June 28, 2021, a final award was entered following the arbitration between Jack’s Abby and Atlantic MA that determined the “fair market value” of Atlantic MA’s distribution rights of the Brands in Massachusetts. The day immediately following the arbitration panel’s final award, Jack’s Abby paid Atlantic MA the “fair market value” of its distribution rights and notified Atlantic MA that Jack’s Abby was “formally terminating” the Marketing Agreement. (Def.’s Opp’n Ex. 1, ¶ 14.)

Should the court find that a statute is ambiguous, the analysis shifts because ““when a statute is susceptible of more than one meaning, [the court] employ[s] [its] well-established maxims of statutory construction in an effort to glean the intent of the Legislature.”” *Town of Burrillville v. Pascoag Apartment Associates, LLC*, 950 A.2d 435, 445 (R.I. 2008) (quoting *Unistrut Corp. v. State Department of Labor and Training*, 922 A.2d 93, 98-99 (R.I. 2007)). Even with an ambiguous statute, the court begins with the “plain language of the statute to determine the legislative intent.” *Matter of Falstaff Brewing Corp. re: Narragansett Brewery Fire*, 637 A.2d 1047, 1050 (R.I. 1994). When “interpreting a legislative enactment [it is incumbent upon the court] to determine and effectuate the Legislature’s intent and to attribute to the enactment the meaning most consistent with its policies or obvious purposes.” *Brennan v. Kirby*, 529 A.2d 633, 637 (R.I. 1987). It is only then that a court may determine how the legislative act serves its purpose, taking into consideration the practical results should the court adopt an alternative interpretation. *Matter of Falstaff Brewing Corp.*, 637 A.2d at 1050.

### **III**

#### **Analysis**

##### **Statutory Relief Pursuant to the Act**

The Act, codified in §§ 3-13-1 *et seq.* governs all relations between suppliers and wholesalers and aims to regulate agreements between these parties to benefit the “economy and enhance competition” in Rhode Island and to promote moderation and obedience to the laws of Rhode Island relating to the distribution and sale of malt beverages. Sections 3-13-2(b)(1), (4). The Act specifically seeks to protect wholesalers’ “substantial initial and continuing investments of money, time and effort in their distributorships,” and requires that its provisions “be liberally construed and applied to promote its remedial purposes and policies.” *Id.* §§ 3-13-2(a), (b)(2).

Importantly, the Act affords wholesalers protection in the form of compensatory damages, equitable relief, or both, in the event a supplier terminates, cancels, or fails to renew any agreement without good cause. *Id.* § 3-13-7(a). Following a supplier’s purported termination of an agreement with a wholesaler, “all of the terms and conditions of an agreement between the parties shall remain in full force and effect for a period not to exceed one year” during the course of any arbitration or judicial proceedings brought to enforce the rights pursuant to an agreement or the Act. *Id.* § 3-13-7(c). Moreover, no supplier “who, pursuant to an agreement with a wholesaler, has designated a sales territory for which the wholesaler is primarily responsible or in which the wholesaler is required to concentrate its efforts, shall enter into an agreement with any other wholesaler during that one year period.” *Id.*

Atlantic RI specifically asks this Court to enforce the protections afforded by § 3-13-7(c). (Pl.’s Mot. Prelim. Inj. 1.) Before these protections can be enforced, however, this Court will first determine whether the Act is applicable to the facts in this case.

## A

### **Applicability of the Act**

To determine whether the parties and their relationship fall within the confines of the Act, the Court must analyze whether the parties fall within the statutory definitions of “supplier” and “wholesaler,” as well as whether an “agreement” existed between the parties pursuant to the Act.

As mentioned above, § 3-13-2(a) explicitly requires that the Act be “*liberally construed and applied*” to promote its “remedial purposes and policies.” *Id.* § 3-13-2(a) (emphasis added). However, prior to engaging in the act of interpretation, the court must first determine whether the statute is clear or whether it is ambiguous. *Bucci*, 68 A.3d at 1078. “[W]hen the language of a statute is clear and unambiguous, [the court] must interpret the statute literally and must give the

words of the statute their plain and ordinary meanings.” *Accent Store Design, Inc.*, 674 A.2d at 1226 (alteration omitted); *see also Dart Industries, Inc.*, 696 A.2d at 310 (citation omitted).

Here, it is evident that the Act’s terms and provisions are clear and unambiguous because the Act not only defines the very terms this Court will apply but even provides the lens through which to construe and apply these terms. *See id.* §§ 3-13-1, 2(a). Thus, this Court will interpret the Act literally and give its terms their plain and ordinary meanings.

Under the Act, a “[s]upplier” is defined as “any person engaged in business as a brewer, manufacturer, importer, master wholesaler, broker, or agent of malt beverages who enters into an agreement with any wholesaler” to distribute any or all of its brands of malt beverages, and any successor-in-interest to that entity with respect to the agreement. Section 3-13-1(5). In turn, a “[w]holesaler” is defined as “any person licensed to import, or cause to be imported, into this state, or to purchase, or cause to be purchased, in this state, malt beverages for resale or distribution to retailers licensed in this state, and any successor-in-interest to that entity.” *Id.* § 3-13-1(8). Finally, the Act defines “[a]greement” as “any contract, agreement, or arrangement, whether expressed or implied, whether oral or written, for a definite or indefinite period between a supplier and a wholesaler pursuant to which a wholesaler has the right to purchase, resell, and distribute any or all brands of malt beverages offered by the supplier.” *Id.* § 3-13-1(1).

Starting with Atlantic RI as “wholesaler,” it is clear that Atlantic RI falls squarely within the Act’s definition. This is because Atlantic RI, without question, is licensed to import or purchase malt beverages for resale or distribution to retailers in Rhode Island. This point is further evident from Atlantic RI’s consistent maintenance of its license to wholesale alcoholic beverages in Rhode Island.

Whether Jack's Abby falls within the definition of "supplier" under the Act, however, is not as clear. Jack's Abby states that it has not directly sold any of its Brands to Atlantic RI since March 2017 and, as a result, has not served as Atlantic RI's supplier since that time. (Def.'s Opp'n 3.) Instead, Jack's Abby asserts that Atlantic MA served as Atlantic RI's supplier or "master wholesaler" from March 2017 to June 2021. (Def.'s Suppl. Opp'n Mot. Prelim. Inj. 2.) Jack's Abby points to the agreed-upon arrangement whereby Atlantic MA would place orders for both it and Atlantic RI, and then deliver the products to Atlantic RI for distribution throughout Rhode Island. (Def.'s Opp'n 3.)

Although Jack's Abby is correct that Atlantic RI has not placed orders directly with Jack's Abby since 2017, Atlantic RI was continuously certified by Jack's Abby as its "wholesale liquor dealer" with the Rhode Island Department of Business Regulation and caused the Brands to be distributed throughout Rhode Island until June 2021. (Pl.'s Reply Ex. A.) In fact, Exhibit A of Atlantic RI's Reply Brief shows that Jack's Abby has certified Atlantic RI as its licensed wholesaler in Rhode Island through 2021. *Id.* According to the certificate of compliance reports, the "applicant hereby states that it is the owner or authorized distributor of the [Brands], and as such has the authority to appoint a *Rhode Island licensed wholesale liquor dealer namely, Atlantic Importing & Distributing Co. RI. . . .*" *Id.* (emphasis added). Thus, it is clear to the Court that Jack's Abby still viewed Atlantic RI as Jack's Abby's "wholesaler" with respect to the Brands even after the parties, including Atlantic MA, agreed to a new arrangement after March 2017.

The task of determining whether Jack's Abby was designated as Atlantic RI's supplier does not stop there. Jack's Abby is undeniably a brewer of malt beverages and conducts business as a "Farmer-Brewery" pursuant to Mass. Gen. Laws ch. 138, § 19C. As explained above, however, a "supplier" is defined by the Act as "any person engaged in business as a brewer, manufacturer,



importer, master wholesaler, broker, or agent of malt beverages *who enters into an agreement with any wholesaler.*” Section 3-13-1(5). A plain reading of the Act makes it clear that before the Court can label a party a “supplier” under the Act, the Court must also determine whether the purported supplier “enter[ed] into an agreement” with a wholesaler. *Id.*

Again, the Act defines “[a]greement” as “any contract, agreement, or arrangement, whether expressed or implied, whether oral or written, for a definite or indefinite period between a supplier and a wholesaler pursuant to which a wholesaler has the right to purchase, resell, and distribute any or all brands of malt beverages offered by the supplier.” *Id.* § 3-13-1(1). Although Jack’s Abby correctly points out that Atlantic RI was not a party to the written Marketing Agreement between Jack’s Abby and Atlantic MA, the Act does not require an express written agreement in order for a supplier/wholesaler relationship to exist. In fact, the Act requires only a “contract, agreement, or arrangement, whether expressed or implied, oral or written . . . .” *Id.* (emphasis added). This all-encompassing definition of “agreement” in conjunction with the Act’s policies and liberal construction standard support a finding that there was an implied, oral arrangement between Jack’s Abby and Atlantic RI. This is because Jack’s Abby cannot deny that it was not only aware that Atlantic MA was placing the orders for both itself and Atlantic RI but also Jack’s Abby agreed to this arrangement. Therefore, it is clear from Jack’s Abby’s course of conduct that an implied arrangement, as defined by the Act, existed between Atlantic RI and Jack’s Abby with respect to distribution of the Brands throughout Rhode Island, and thus, Jack’s Abby was designated as Atlantic RI’s “supplier.”

Still, Jack’s Abby argues that Atlantic MA was Atlantic RI’s “master wholesaler” and, as a result, was designated as Atlantic RI’s supplier. (Def.’s Suppl. Opp’n 2.) The term, “master wholesaler,” is undefined by the Act and not addressed by any known Rhode Island case law. In

other jurisdictions with similar Beer Industry Fair Dealing laws, the term “master distributor” is defined as “a person who, in addition to being a wholesaler, acts in the same or similar capacity as a brewer or outside seller of one or more brands of beer to other wholesalers on a regular business in the normal course of business.” 815 ILCS § 720/1.1(5); MCLA § 436.1403 (defining “master distributor” as “a wholesaler who acts in the same or similar capacity as a brewer or outside seller of beer for a brand or brands of beer to other wholesalers on a regular basis in the normal course of business”); Iowa Code § 123A.2 (12) (same).

Applying this definition of “master distributor” to the facts in this case, Atlantic MA is certainly not a brewer of the Brands and, more importantly, did not sell the Brands to Atlantic RI on a regular basis in the normal course of business. There is no evidence demonstrating that Atlantic MA was charged lower prices by Jack’s Abby for the Brands compared with other non-master wholesalers or that Atlantic MA was marking up the price of the Brands before providing them to Atlantic RI. There is also no evidence demonstrating that the parties agreed to or even considered Atlantic MA to be Atlantic RI’s master wholesaler. Atlantic MA simply served as a facilitator between Atlantic RI and Jack’s Abby by placing orders for Atlantic RI and then delivering the requested products to Atlantic RI for distribution in Rhode Island. Therefore, Atlantic MA does not fall within the definition of “master wholesaler” and, thus, was not designated as Atlantic RI’s “supplier.”

Accordingly, this Court finds that Jack’s Abby is Atlantic RI’s designated “supplier,” Atlantic RI is Jack’s Abby’s designated “wholesaler,” and the arrangement between the parties falls within the definition of “agreement” as defined by the Act. As a result of this finding, and as a consequence of § 3-13-7(c), the agreement between Atlantic RI and Jack’s Abby is to remain in

full force and effect for a period not to exceed one year during the course of any arbitrations or judicial proceedings.<sup>4</sup>

## IV

### Conclusion

In sum, this Court finds that the relationship between Atlantic RI and Jack's Abby falls squarely within the Act.<sup>5</sup> Thus, as a result of the operation of § 3-13-7(c), this agreement is to be extended for a period not to exceed one year. Although § 3-13-7(c) permits the Court to enforce this agreement for a period up to one year, the Court does not believe that resolution of this case will take one year. The Court orders expedited discovery and requests that the parties submit to the Court a scheduling order pursuant to Rule 16. If the parties cannot agree on a scheduling order, each party shall submit competing scheduling orders within two (2) weeks of the date of this Decision. Based upon the scheduling order entered by this Court, the Court will set down a trial date certain. Counsel for Atlantic RI shall prepare an Order for entry.

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<sup>4</sup> To be clear, to the extent that Atlantic MA was involved in this agreement between Atlantic RI and Jack's Abby, Atlantic MA shall play the limited role of submitting purchase orders for Atlantic RI to Jack's Abby and delivering such products to Atlantic RI. Nothing in this Decision shall be interpreted as limiting Atlantic RI and Jack's Abby's ability to deal directly with each other. Atlantic RI and Jack's Abby are permitted to deal directly for ease of placing orders for and receiving delivery of the Brands if they so choose.

<sup>5</sup> Atlantic RI alternatively sought a preliminary injunction pursuant to this Court's general equitable powers. (Pl.'s Mot. Prelim. Inj. 5.) Because this Court has found the Act applicable to the case at hand, however, it is unnecessary to engage in the traditional four-part preliminary injunction analysis in light of § 3-13-7(c).



**RHODE ISLAND SUPERIOR COURT**

*Decision Addendum Sheet*

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**TITLE OF CASE:** Atlantic Importing and Distributing of Rhode Island, Inc. v. Jack's Abby Brewing, LLC

**CASE NO:** PC-2021-04923

**COURT:** Providence County Superior Court

**DATE DECISION FILED:** September 22, 2021

**JUSTICE/MAGISTRATE:** Stern, J.

**ATTORNEYS:**

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**For Defendant:** Monica R. Nelson, Esq.; Kenneth B. Walton, Esq.