

# Innovative R.I. court program to protect pandemic-crippled businesses goes untapped

By **Mary MacDonald** - August 28, 2020 4:00 am



*BITTER SITUATION: Providence Brewing Co. owner Efen Hidalgo has received an eviction notice from his landlord for his North Providence brewery. Without enough money to move his equipment to a new location, Hidalgo is worried that if he is forced from his North Providence location immediately, he will default on his sales contracts. / PBN*

*PHOTO/MICHAEL SALERNO*

Government lifelines are disappearing for businesses gutted by the COVID-19 pandemic.

Struggling small-business owners who received an infusion of cash from the Paycheck Protection Program in the spring are exhausting that money. Many businesses haven't seen sales bounce back yet, as some customers have stayed away for fear of infection or anxiety over financial well-being.

Business evictions have also resumed since the state's moratorium expired in June, and are starting to pile up against small businesses and franchise owners who have overdue rent.

Yet, a lifeline set up months ago by the R.I. Judiciary to help rescue business owners pinned between creditors and damaged by the pandemic remains unused.

It's called the Business Recovery Plan, a program in which the court system can provide protections for businesses saddled with coronavirus-related problems, allowing them to continue operating and accessing working capital while climbing out of debt.

When the program was launched by the Superior Court on March 31, in collaboration with the [Rhode Island Bar Association](#), officials thought the innovative, nonliquidating receivership model would receive a lot of attention from companies waylaid by the coronavirus.

But that hasn't been the case.

No businesses had filed for COVID-19 nonliquidating receivership as of Aug. 26, although its administrators have spent months speaking to professional business organizations about it.

Why?

Attorney John A. Dorsey, a court-appointed program coordinator with W. Mark Russo, suspects businesses are now weighing their options as PPP funding runs out.

"PPP is coming to an end and now people are making an assessment, can I sink or swim? [And] what impact might a program like this have on my credit?" Dorsey said recently.

Some business owners may still be learning about program details. As administrators, Dorsey and Russo, partners in Providence-based Ferrucci Russo Dorsey PC, would work with the businesses to craft repayment plans for creditors.

Interest seems to be increasing now, according to Dorsey. He has received more inquiries in August, typically from accountants on behalf of faltering businesses. Many ask if a non-liquidating receivership will damage credit standings of small-business owners, many of whom have backed their ventures with personal credit.

"My answer to folks is that receivership, in and of itself, does not damage your credit. Not paying your bills is what will ultimately damage your credit," Dorsey said.

The increase in business-related eviction filings – 39 new cases since June 2 – is a sign that there is a need for the program.

"It's a tough situation," Dorsey said. "You have landlords who either are not being paid or they're not being paid enough rent. And they still have mortgages. They still have carrying costs. They're between a rock and a hard place and they feel like they have to do something."

## **AN UNKNOWN**

The concept of a nonliquidating receivership program is new in Rhode Island.

Superior Court Judge Brian P. Stern, one of the program's architects, explained that it would allow a business owner to remain in control of the company while following a court-authorized plan to pay creditors such as landlords and vendors.

Unlike a traditional receivership or a Chapter 7 bankruptcy, the program would not sell off the business assets to pay those creditors. It differs from a Chapter 11 bankruptcy in that debt would not be reorganized or reduced.

An attorney is required, and a filing would be public.

For some businesses trying to survive the pandemic, the most significant fear has been whether a nonliquidating receivership filing would damage their credit standing.

Dixie Carroll and Bill Jette, who own J Marcel, a women's boutique on Hope Street in Providence, learned about the program months ago from their attorney. But through the summer, a combination of online and in-store sales and the [U.S. Small Business Administration's](#) forgivable PPP loan were enough to cover the bills.

"We have excellent credit. And we don't want to do anything to jeopardize our credit," Carroll said in April. "But as things go further and further, we have to see what starts happening as our deferred payments start coming due, if we still have no customers going through the door."

Carroll and Jette reopened the store on June 10, and they were able to rehire the employees who wanted to come back. But since then, their PPP funds have run dry. When asked how it was going, Jette described it as "treading water." They are open five days a week, instead of seven, to give staff a break. They are applying for a new state grant for small business and are trying to beef up their online sales.

So far, they're able to pay the bills, and they're not ready to pursue a nonliquidating receivership.

But the business will need to bring in more sales through the fall and holiday season, Jette and Carroll said, describing the effort to keep the business open as a "fight."

People's lives have been upended by the pandemic, Jette said, and their purchasing habits have as well.

"I would say we're still in a fairly precarious situation," Jette said. "It has been fairly difficult to maintain."

## **NEED COMING?**

Despite the reluctance of Carroll and Jette to use the court program, Stern thinks the need for it will only increase.

The judge said the availability of PPP loans and other forms of government assistance gave businesses a bridge this summer, but he believes many are now taking stock and finding they aren't pulling in enough revenue.

Initially, landlords and banks were willing to work with businesses, Stern said. That is starting to change, too.

While the Rhode Island court program is not bankruptcy or a traditional receivership, lawyers initially were advising business owners who asked about the issue to apply first for the federal program, Stern said.

"The big question is, did we just put off the inevitable to a certain extent?" he said. "My feeling is whether it's bankruptcy, receivership, or this business recovery plan, we've been able to push things off with PPP and other money. But now it's coming down to it. The funds are running out. Landlords aren't being as cooperative anymore because they have their own lenders breathing down their neck."

Filing for nonliquidating receivership stops the phone calls from creditors and puts a stay on evictions, he said.

"Someone who owns a candy store may be terrific at what they do but they may not have the expertise to start negotiating with their landlords or their creditors," Stern said. "We're hoping some of the things that the program brings to the table is you get someone who knows how to do these things in a receiver. We [can put] this injunction in place, so concentrate on operating your business."

## **EVICTION NOTICE**

One business badly damaged by the pandemic is [Providence Brewing Co.](#) LLC, a [North Providence](#)-based brewery that opened three years ago. Owner Efren Hidalgo estimated that since reopening as part of the state's reopening phases, sales are down about 80%.

In addition to direct sales to customers, through six-packs and growlers, the brewing company sells its ales and pilsners wholesale through a distributor. "This was a hobby that turned into an obsession that turned into a passion that eventually became a dream come true," he said.

On June 17, the landlord informed Hidalgo by mail that the lease would be terminated on Aug. 1. An eviction case was filed by the property owner, Elizabeth Iacofano, on Aug. 12 in District Court. The owner, he said, wants him out to convert the space for a storage business.

Hidalgo, who has since hired a lawyer, said he has paid his rent and kept up other aspects of the lease, but the pandemic has left him with no money to quickly move his equipment, including seven large fermentation tanks, to a new location.

Hidalgo worried that if he is forced from the [North Providence](#) location immediately, he will default on his sales contracts, primarily with the wholesale distributor.

Like many business owners, he hadn't heard of the court's Business Recovery Plan. He wasn't sure if it would help, but he wants to know more. "Even before the phased opening, the pandemic hit us really hard," he said.

Many customers who used to drink beers in the taproom are leery of coming inside. The business is now only open two days a week – on Saturdays and Sundays. Hidalgo said he is selling beer in to-go containers, as allowed by the state, but those sales haven't been enough.

"My hope is that the judge, whoever is looking at the case, understands I've got a small business that depends upon my ability to meet contracts," he said.

## **'SPACE AND TIME'**

The court program isn't exclusively for small business. Large companies can apply as well.

One of the qualifying rules, however, is that the business could not have been in arrears on bills before COVID-19 emerged, according to Stacey P. Nakasian, an attorney with experience in receivership cases.

"It's designed to provide some space and time for a company that is suffering cash-flow reduction as a result of COVID-19," said Nakasian, a

partner at [Duffy & Sweeney Ltd.](#) in Providence.

Under a court-approved plan, the business can halt collections or lawsuits from vendors or creditors while it puts together a plan to proceed and pay its creditors.

Stern said many businesses in Rhode Island could potentially benefit, including small restaurants and retailers that are in debt and have found they either didn't qualify for the PPP or it doesn't work for them.

The PPP rules are very specific. Those funds cannot be applied to business debts, he said. The court program is intended to keep businesses alive until the crisis fades.

"I think, unfortunately, there will be businesses that are too far gone and may need to be liquidated or sold to someone else, or just closed," Stern said. "But there will be a large number of businesses that, with the expertise of this nonliquidating receiver, can negotiate with vendors, creditors and banks, something that a lot of small businesses don't have expertise in."

Melissa Horne, an attorney at Providence-based Higgins, Cavanaugh & Cooney LLP, said she fielded many questions from clients in the initial months of the pandemic about how to access government programs designed to help businesses survive.

Horne said she suspects that many business owners have been negotiating with creditors, without the need for court action.

"There are not only federal programs, there are state programs, and even local programs," Horne said. "Between figuring out what is out there and what a business might best take advantage of, they may not have focused on the [Business Recovery Program] created by the court."

She said the program will work best for businesses that still have some revenue but not enough to pay all their bills.

The program is unusual, even for Rhode Island. While a nonliquidating receivership has been used on occasion in the past, including for a case involving Bess Eaton Donut Flour Co. in 1998, it has not been used in a widespread fashion through an economic crisis.

Stern said he and other attorneys brought it to the attention of Presiding Justice Alice Bridget Gibney after talking with some restaurant owners.

Restaurants were ordered to close their indoor facilities in March by Gov. Gina M. Raimondo but soon after were allowed to offer takeout, then outdoor dining. Many still couldn't pay their bills, Stern said.

"I've definitely heard from owners, especially of restaurants, [saying] 'I think I'm just going to take the key and hand it to the landlords,'" Stern said.

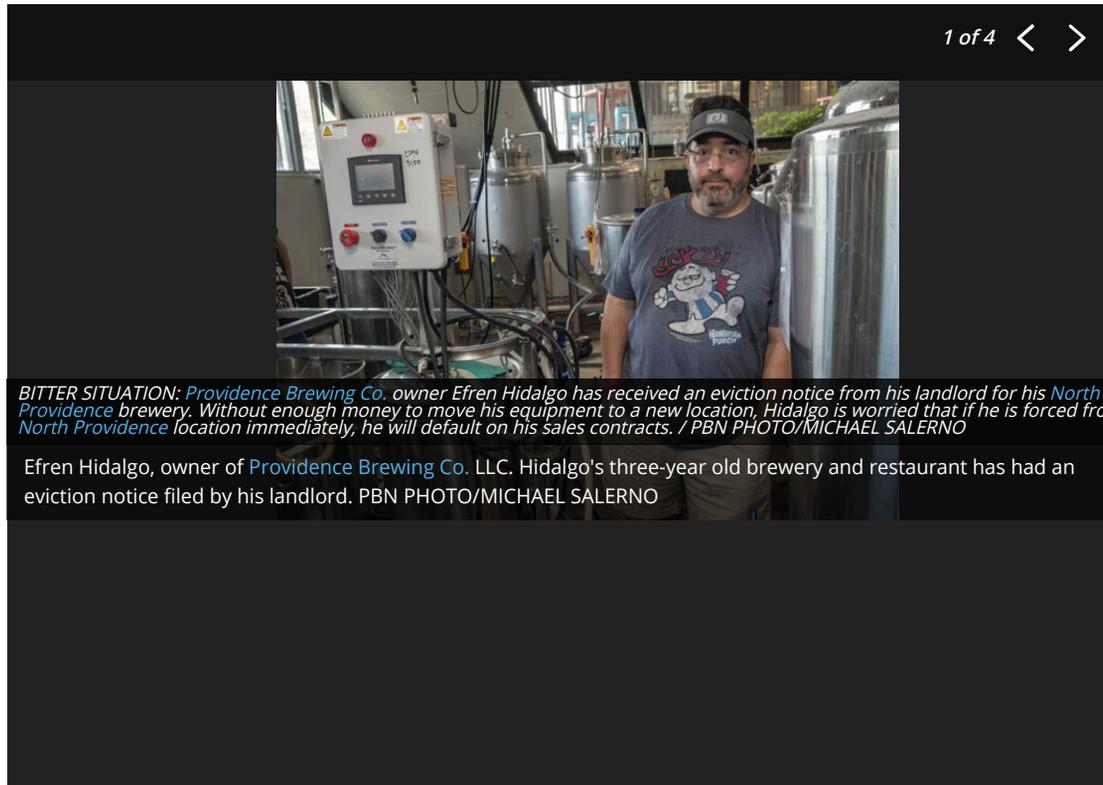
He said he had those business owners in mind when creating the program.

At J Marcel, Caroll and Jette are trying to limp through without turning to the court program, but they acknowledge they may need other options by the end of summer.

Based on everything Jette has read about the economy, he's not feeling optimistic.

"We're not looking at any rosy recovery here," he said. "It's a blurry focus, but you can kind of see where this is going. We need to be knowledgeable about all of the potential scenarios and one of them could be an asset-protected receivership. And what we do with our business to adjust to changing customer patterns and changing customer requirements. And how they're going to feel comfortable in our store. We're literally working through those things and trying to be prepared for September and October."

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