

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
MICHAEL BUONINCONTRO AND
BRANDON ELLER,

Plaintiffs,

-against-

EDISON BALLROOM, LLC,

Defendant.
-----X

SUMMONS

Index No.

Date Purchased:

Plaintiffs have designated
New York County as the
place of trial based upon
defendant's place of business.


TO THE ABOVE-NAMED DEFENDANT:

YOU ARE HEREBY SUMMONED to answer the Complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiffs' attorneys within twenty (20) days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: Edgewood, New York
September 30, 2020

STUART M. STEINBERG, P.C.

By:



Stuart M. Steinberg, Esq.
Laurie Sayevich Horz, Esq., Of Counsel
Attorneys for Plaintiff
2 Rodeo Drive
Edgewood, New York 11717
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-----X
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VERIFIED
COMPLAINT

Index No.

Date Purchased:

Plaintiffs Michael Buonincontro and Brandon Eller, by and through their attorneys, Stuart M. Steinberg, P.C., allege as follows against defendant Edison Ballroom, LLC:

1. Plaintiff Michael Buonincontro is an individual with a residence located in the State of California.

2. Plaintiff Brandon Eller is an individual with a residence located in the State of California.

3. Upon information and belief, defendant Edison Ballroom, LLC is a domestic limited liability company duly organized and authorized to do business within the State of New York, with a principal place of business located in New York County, New York.

4. Upon information and belief, defendant owns and operates a catering and event facility known as "The Edison Ballroom", located at 240 West 467th Street, New York, New York.

5. On or about April 26, 2019, plaintiffs entered into a contract with defendant (hereinafter the "Agreement") to hold and cater the plaintiffs' wedding (the "Event") which was to occur on June 6, 2020.

6. Pursuant to the terms of the Agreement, plaintiffs paid to defendant the total sum of Thirty-Nine Thousand Nine Hundred Ninety-Nine and 71/100 (\$39,999.71) Dollars (collectively referred to herein as the “Deposit”) in periodic payments as deposits towards the cost of the Event.

7. Due to the COVID-19 pandemic, defendant informed plaintiffs in or about April 2020 that plaintiff could not host or cater the Event on its scheduled date, June 6, 2020, due to restrictions on indoor dining and catering within the State of New York.

8. In light of the same, the parties agreed to postpone the Event to October 31, 2020.

9. In or about July 2020, defendant advised plaintiffs that defendant could not predict when it would be able to reopen, let alone guarantee its ability to perform its obligations under the Agreement for the Event scheduled for October 31, 2020.

10. While defendant encouraged plaintiffs to reschedule the Event a second time, the defendant could not provide plaintiffs with any information or guarantee that the wedding could go forward on any future rescheduled date.

11. As a result, plaintiffs advised defendant that they did not desire to reschedule the Event and instead requested the return of their Deposit.

12. Defendants refused and have failed to return the Deposit to Plaintiffs, despite due demand for the same and defendant’s obligation to do so under the express written terms of the Agreement.

13. The Agreement provides that either party may terminate the Agreement “due to ‘Force Majeure or Acts of God’, including, but not limited to Force Majeure, *circumstances beyond its reasonable control*, strike, *governmental authority*, terrorism, war in the United States, or unavailability of mass transportation, that make it illegal, impractical or impossible for the

affected party to hold the event or enjoy the benefits of this contract. . . . For the avoidance of doubt, in the event of an failure to perform or termination due to such Force Majeure or Acts of God, *Edison Ballroom shall promptly refund 100% of all payments made by Client to Edison Ballroom including the otherwise non-refundable deposit* and Client shall have no further obligations to Edison Ballroom *unless the Client wishes to reschedule* the event within 12 months of the event date as stated above.” (emphasis added).

14. The Agreement called for over 200 guests to attend the Event to witness and celebrate the plaintiffs’ wedding.

15. Under current New York State and New York City Executive Orders, Administrative Orders, rules and regulations governing catering and event facilities such as the defendants’, it is illegal, impractical and/or impossible for defendant to perform its obligations under the Agreement on the date of the rescheduled Event, October 31, 2020.

16. It is unknown when defendant’s facility would be able to hold an event with the number of guests contracted for under the Agreement.

17. The plaintiffs do not desire to further postpone their wedding and have informed defendant that they do not wish to reschedule the Event and have duly demanded on several occasions the return of their Deposit.

18. Defendant has refused to return the Deposit to the plaintiffs without any justification or excuse.

FIRST CAUSE OF ACTION

19. Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1 through 18 of the complaint as if set forth fully herein.

20. The Agreement constituted a binding, enforceable contract.

21. Defendant breached the contract by failing and refusing to promptly refund plaintiffs 100% of all Deposit payments made by plaintiffs to defendant on account of the Agreement, despite the clear and unambiguous language contained in the Agreement mandating the return of the Deposit to plaintiffs.

22. Plaintiffs performed all of their obligations under the Agreement.

23. As a result, plaintiffs are entitled to a judgment against Defendant in an amount to be proven at trial, but not less than the sum of Thirty-Nine Thousand Nine Hundred Ninety-Nine and 71/100 (\$39,999.71) Dollars, plus interest.

SECOND CAUSE OF ACTION

24. Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1 through 23 of the complaint as if set forth fully herein.

25. It is illegal, impractical and/or impossible for the defendant to perform under the Agreement on the date of the rescheduled Event, October 31, 2020.

26. As a result, plaintiffs have demanded the return of the Deposit.

27. Defendant has refused to return any part or the whole of the Deposit.

28. Defendant has been unjustly enriched from these payments to plaintiffs' detriment.

29. Under the principals of good conscience, defendant should not be allowed to retain the Deposit.

30. Plaintiffs are entitled to restitution in the sum of Thirty-Nine Thousand Nine Hundred Ninety-Nine and 71/100 (\$39,999.71) Dollars, plus interest.

WHEREFORE, Plaintiffs respectfully request that this Court enter judgment in their favor as follows:

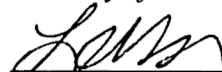
- (A) On the First Cause of Action, the sum of Thirty-Nine Thousand Nine Hundred Ninety-Nine and 71/100 (\$39,999.71) Dollars, plus interest;
- (B) On the Second Cause of Action, the sum of Thirty-Nine Thousand Nine Hundred Ninety-Nine and 71/100 (\$39,999.71) Dollars, plus interest;
- (C) The costs, fees and expenses incurred by plaintiffs in this action; and
- (D) Such other and further relief that this Court deems just and proper.

Dated: Edgewood, New York
September 30, 2020

STUART M. STEINBERG, P.C.

Attorneys for Plaintiffs

By:



Stuart M. Steinberg, Esq.
Laurie Sayevich Horz, Esq., Of Counsel
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
MICHAEL BUONINCONTRO AND
BRANDON ELLER,

Plaintiffs,
VERIFICATION

-against-

EDISON BALLROOM, LLC,


Defendant.

-----X
STATE OF CALIFORNIA)
)SS.:
COUNTY OF *Los Angeles*)

BRANDON ELLER, duly sworn, deposes and says:

I am a plaintiff in this action; I have read the annexed Complaint and know the contents thereof and the same are true to my knowledge, except those matters therein which are stated to be alleged on information and belief, and to those matters I believe them to be true.

My belief, as to those matters not stated upon knowledge, is based upon documents and other written records in my file.

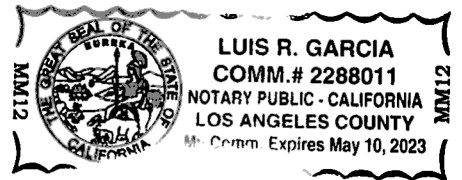

BRANDON ELLER

Sworn to before me this
22nd day of September 2020



Notary Public

1



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COUNTY OF NEW YORK

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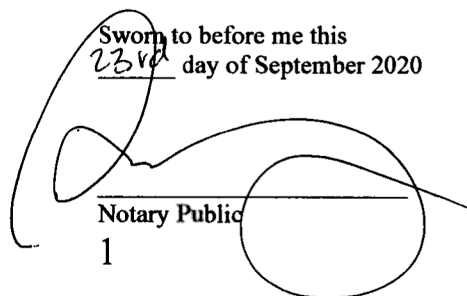
STATE OF CALIFORNIA)
New York)
)SS.:
COUNTY OF New York

MICHAEL BUONINCONTRO, duly sworn, deposes and says:

I am a plaintiff in this action; I have read the annexed Complaint and know the contents thereof and the same are true to my knowledge, except those matters therein which are stated to be alleged on information and belief, and to those matters I believe them to be true.

My belief, as to those matters not stated upon knowledge, is based upon documents and other written records in my file.


MICHAEL BUONINCONTRO

Sworn to before me this
23rd day of September 2020

Notary Public
1

DAVID M ZIDEK JR
NOTARY PUBLIC-STATE OF NEW YORK
No. 01Z16394330
Qualified in New York County
My Commission Expires 07-01-2023