

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

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MICHAEL BUONINCONTRO and BRANDON
ELLER,

Index No. 654844/2020

Plaintiff,

ANSWER

-against-

EDISON BALLROOM LLC,

Defendant.
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Defendant Edison Ballroom, LLC by its attorney Nathan M. Ferst, as and for its Answer to the Complaint:

1. Denies knowledge or information sufficient to form a belief as to the allegations of ¶¶1, 2, 7, 11, 17, 19, 22, 24, and 26 of the Complaint.
2. With respect to ¶¶5, 6, 13, 14, 15, and 20 of the Complaint, respectfully refers the attention of the Court to the contents of the referenced Agreement and Executive Orders and the import thereof, and otherwise denies knowledge or information sufficient to form a belief as to each and every allegation set forth therein.
3. With respect to ¶¶8 and 10 of the Complaint, avers that Plaintiff and Defendant agreed to postpone the event complained of.
4. Denies each and every allegation set forth in ¶¶21, 23, 28, 29, and 30 of the Complaint.
5. With respect to ¶¶12, 18, and 27 of the Complaint, denies any obligation to refund the referenced deposit, denies that said deposit is due and owing to Plaintiff, denies that Defendant is in breach of the Contract between Plaintiff and Defendant, and otherwise denies each and every allegation set forth therein.

FIRST DEFENSE

6. The Complaint fails to state any claim upon which relief may be granted.

SECOND DEFENSE

7. Plaintiff's action is barred by the unlawful relief which it seeks.

THIRD DEFENSE

8. If Plaintiff is granted the relief sought by Plaintiff, Plaintiff will be unjustly enriched at the expense of Defendants.

FOURTH DEFENSE

9. Plaintiff's claims are barred by the doctrines of laches, waiver, ratification, estoppel and/or unclean hands.

FIFTH DEFENSE

10. To the extent the Plaintiff has sustained losses, they were caused by third parties over whom the Defendant had and has no control.

SIXTH DEFENSE

11. Plaintiff's claims are barred, in whole or in part, by accord and satisfaction.

SEVENTH DEFENSE

12. To the extent that Plaintiff has sustained damages, Plaintiff has failed to mitigate those damages.

EIGHTH AFFIRMATIVE DEFENSE AND FIRST COUNTERCLAIM

13. Defendant repeats and realleges the contents of ¶¶1 through and including 12 hereof as though same were fully set forth herein again at length.

14. Defendant repeats and realleges the contents of ¶¶1 through and including 17 of the Complaint herein as though same were fully set forth herein again at length.

15. The situation faced by the parties as a result of the foregoing is so unprecedented and extraordinary so that cancellation of the Contract between Plaintiff and Defendant and concomitant refund of the subject deposit would be harsh, inequitable, destructive of the economic viability and, indeed, existence of Defendant, be contrary to purpose of the Contract, and work an injustice.

16. Under all of the attendant circumstances, equity and good conscience require this Court to fashion a remedy which will allow the parties to have the benefit of their bargain.

17. The proper remedy is not cancellation of the Contract between the parties but, rather, suspension of the rights and obligations of the parties until the passing of the present emergency and its limitations at which time the contracted for event can be held and the parties' having the benefit of their bargain.

18. In order to safeguard the rights and liabilities of the parties, equity and good conscience require this Court to declare that the Contract between the parties is not canceled but, rather, continues in force and effect with the rights and obligations of the parties suspended until the passing of the present emergency and its limitations and that, upon such passing, the contracted for event shall be held.

19. Defendant has no adequate remedy at law.

WHEREFORE, Defendant prays this Court for judgment:

- (a) dismissing the Complaint with prejudice;
- (b) on the first counterclaim, declaring that the Contract between the parties is not canceled but, rather, continues in force and effect with the rights and obligations of the parties suspended until the passing of the present emergency and its limitations and that, upon such passing, the contracted for event shall be held;

- (c) awarding Defendant its costs and disbursements; and
- (d) awarding Defendant such other and further relief as this Court may deem just and


proper.

Nathan M. Ferst, Esq.
Attorney for Defendant

By: _____
15 Maiden Lane – Suite 703
New York, New York 10038
(212) 683-8055

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.:

William Kaelblein, being duly sworn deposes and says: I am the Manager of Edison Ballroom LLC, a New York Limited Liability Company and Defendant in the within action. I have read the foregoing Answer and know the contents thereof to be true from my own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters I believe it to be true. This verification is made by me because the above party is a Limited Liability Company and I am the Manager thereof. The grounds of my belief as to all matters not stated upon my own knowledge are the books and records of the Limited Liability Company.


William Kaelblein

Sworn to before me on
December 28, 2020

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

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MICHAEL BUONINCONTRO and BRANDON
ELLER,

Index No. 654844/2020

Plaintiff,

AFFIDAVIT

-against-

EDISON BALLROOM LLC,

Defendant.

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STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.:

William Kaelblein, being duly sworn, deposes and says:

1. I am the General Manager of the Defendant Edison Ballroom LLC. I am fully familiar with the relevant facts of this matter. I submit this affidavit in opposition to Plaintiff's motion for a default judgment against Defendant and in support of Defendant's cross-motion to vacate its default and permit Defendant to file its Answer in the form annexed hereto as Exhibit B.

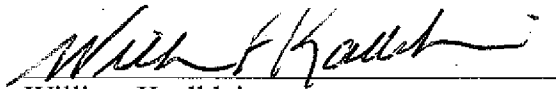
2. Defendant operates an events facility located at 240 West 47th Street in Manhattan at which Defendant hosts and caters large and sumptuous affairs for corporations and individuals, including corporate parties, weddings, and bar and bat mitzvahs. Defendant has been in business for a decade and always performs its services for its clients through customized contracts containing numerous pages containing extremely lengthy lists of specification for everything from cocktails to meals to music.

3. A contract was signed between Plaintiffs and Defendant but the world - including of course New York City - has been shocked and devastated by COVID-19, and these traumatic and devastating events have transformed everyone's way of living and totally prevented gatherings such as the gala which Defendant had planned to host for Plaintiff.

4. These catastrophic circumstances have devastated businesses and Defendant's business in particular because it is solely dependent upon large gatherings which have been completely stopped. Defendant's income and receipts have ground to a complete halt. Defendant has had to fire or lay off most of its employees and suffered numerous other expenses. Still, Defendant is in danger of having to file for bankruptcy.

5. Fortunately, most of Defendant's clients have been understanding and have not insisted upon immediate refund of their deposits while Defendant attempts to wait out the pandemic and recover, like all of us, and to hold the contracted-for events in the future rather than to be forced into bankruptcy whereby the clients would receive just a fraction of their deposits back. Plaintiff, however, has chosen not to wait a reasonable time and reschedule the event so as not force Defendant into the possibility of bankruptcy, in which Plaintiff would see a fraction of its deposit. Instead, Plaintiffs have chosen to bring this lawsuit.

6. Under these circumstances, it is respectfully submitted that Defendant's counterclaim set forth in its proposed Answer (Exhibit B) satisfies both fairness and practicality by asking this Court to declare that the Contract between the parties is not canceled but, rather, continues in force and effect with the rights and obligations of the parties suspended until the passing of the present emergency and its limitations and that, upon such passing, the contracted for event shall be held. In this way, each side has the benefit of its bargain and no-one will be hurt.


William Kaelblein

Sworn to before me on
December 28, 2020