

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

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ADAM SANDERS and RANDI SANDERS	:	Index No. 654992/20
	:	
Plaintiffs,	:	
	:	
-against-	:	Motion No. 001
	:	
EDISON BALLROOM LLC,	:	
	:	
Defendant.	:	
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**MEMORANDUM OF LAW IN SUPPORT  
OF PLAINTIFFS' MOTION  
FOR SUMMARY JUDGMENT**

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**MEMORANDUM OF LAW IN SUPPORT  
OF PLAINTIFFS’ MOTION  
FOR SUMMARY JUDGMENT**

Plaintiffs, Adam Sanders and Randi Sanders (collectively, “Plaintiffs”), respectfully submit this memorandum of law in support of its motion for an Order, (a) pursuant to CPLR 3212, awarding plaintiffs summary judgment on their first and only cause of action and entering a money judgment in the amount of \$10,048.73 plus attorneys’ fees, costs and expenses, and pre-judgment interest, and (b) pursuant to CPLR 3211(b) and/or CPLR 3212, dismissing the counterclaim (the “Counterclaim”) asserted by defendant Edison Ballroom LLC (“Defendant”) in its Answer.

**PRELIMINARY STATEMENT**

Plaintiffs entered into an agreement to use defendant’s venue and services to host their daughter’s bat mitzvah. The parties’ agreement contained a force majeure provision that provided plaintiffs with a full refund of their deposit in the event certain governmental restrictions made the event impossible or illegal to carry out. Unfortunately, the COVID-19 pandemic has made it impossible and illegal to hold a 200-person event in the defendant’s venue. As a result, plaintiffs are entitled to a full refund as a matter of law. Based upon the undisputed

facts, instead of refunding the deposit as requested, defendant has improperly asked the Court to rewrite the terms of the parties' agreement. For the reasons set forth below, plaintiffs are entitled to summary judgment, and defendant's attempt to rewrite the Agreement should be rejected.

For the sake of brevity, a recitation of the undisputed facts, are set forth in the accompanying affidavit of Adam Sanders, ("Sanders Aff.")<sup>1</sup> and the exhibits thereto.

## ARGUMENT

### SUMMARY JUDGMENT SHOULD BE AWARDED IN PLAINTIFF'S FAVOR

#### **A. Legal Standard**

It is well-settled that summary judgment should be granted where there are no material facts in dispute. *See Sheiffer v. Shenkman Capital Mgt.*, 291 A.D.2d 295, 295 (1st Dep't 2002); *see also Sillman v. Twentieth Century-Fox Film Corp.*, 3 N.Y.2d 395, 404 (1957) ("To grant summary judgment it must clearly appear that no material triable issue of fact is presented.") (internal citation omitted).

Once the moving party meets its initial burden in showing that it is entitled to a judgment in its favor as a matter of law, the burden shifts to the non-moving party to show that genuine issues of material fact exist so as to preclude summary judgment. *See Zuckerman v. City of New York*, 49 N.Y.2d 557, 562 (1980). In order to avoid summary judgment, the non-moving party "must make his showing by producing evidentiary proof in admissible form." *Friends of Animals, Inc. v. Associated Fur Mfrs., Inc.*, 46 N.Y.2d 1065, 1067-68 (1979).

#### **B. Plaintiffs Are Entitled to Summary Judgment As a Matter of Law**

The essential elements of a cause of action to recover for breach of contract are: (a) the existence of a contract; (b) plaintiff's performance of its obligations under the contract; (c)

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<sup>1</sup> Capitalized terms not defined herein have the same meanings ascribed to them in the Sanders Aff.

defendant's breach of its contractual obligations; and (d) plaintiff's suffering of damages as a result of defendant's breach. *Markov v. Katt*, 176 AD3d 401, 401-402 (1st Dep't 2019); *Harris v. Seward Park Hous. Corp.*, 79 AD3d 425, 426 (1st Dept 2010).

Plaintiffs are entitled to summary judgment on their first cause of action because plaintiffs certainly satisfy each of the elements for breach of contract.

First, plaintiffs and defendant entered into a valid and binding agreement ("Agreement"). Sanders Aff. at ¶¶ 3, 10; Exs. D and F.

Plaintiffs performed as required by the Agreement by depositing the amount of \$45,219.28 (the "Deposit"). *Id.* at ¶ 7; Ex. E.

Defendant has breached the Agreement by, *inter alia*, failing to return the Deposit to plaintiffs. Defendant's attempt to keep the Deposit based upon the pandemic is specifically prevented by the terms of the Agreement. Its "force majeure" claim states:

Neither party shall be responsible for failure to perform this contract if circumstances beyond its reasonable control, including, but not limited to ... governmental authority ..., make it illegal or impossible for the affected party to hold the event. For the Avoidance of Doubt, in the event of any such acts of God, **[Defendant] shall refund all payments made by [Plaintiffs] to [Defendant] and [Plaintiffs] shall have no further obligation to [Defendant].**

Ex. D at p. 14 (emphasis added).

It cannot be disputed that the Governor's Executive Order has prevented defendant from performing the Agreement. *See, e.g.*, Executive Order No. 202, March 7, 2020 (as continued and extended). In fact, defendant has acknowledged its failure to perform by incorporating the following allegation from Plaintiffs' Complaint in its Answer:

The Executive Orders have made it illegal and/or impossible for the Event to occur on the Original Event Date or Revised Event Date.

Sanders Aff., Ex. B at ¶16; Ex. A at ¶ 12. Based thereon, accordingly, defendant has breached the contract and defendant must return the Deposit.

As a result, plaintiffs have suffered damages in the amount of \$10,048.73. Sanders Aff. at ¶¶ 7, 12-13.

Accordingly, plaintiffs are entitled to an Order granting them summary judgment on their first and only cause of action and a money judgment in the amount of \$10,048.73 plus attorneys' fees, costs and expenses, and pre-judgment interest.

**C. Plaintiffs are Entitled to Summary Judgment Dismissing Defendant's Counterclaim**

Defendant asserts one counterclaim by which it, in effect, asks the Court to rewrite the terms of the Agreement by declaring that the Agreement continues in force and effect until the passing of the present emergency and that, upon the passing of the emergency, the Event be held. The Counterclaim should be dismissed because the relief it seeks is in direct contravention with the plain and unambiguous terms of the Agreement.<sup>2</sup>

The parties herein explicitly contemplated the possibility that the Event could not be held because of a governmental regulation. In that event, defendant agreed that it would refund the Deposit in full. It is essential that these negotiated and agreed-upon terms be enforced. *See, e.g., First Nat. Stores, Inc. v. Yellowstone Shopping Center, Inc.*, 21 N.Y.2d 630, 638 (1968) (“Stability of contract obligations must not be undermined by judicial sympathy”). This is consistent with the “bedrock principle that it is a court’s task to enforce a clear and complete

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<sup>2</sup> It is not clear from defendant’s answer whether it is asserting an eighth affirmative defense or a counterclaim. To the extent the allegations in paragraphs 15-21 of defendant’s answer are characterized as an affirmative defense, the affirmative defense should be dismissed pursuant to CPLR 3211(b) for the same reasons that Plaintiffs are entitled to summary judgment dismissing the Counterclaim. CPLR 3211(b) states (“A party may move for judgment dismissing one or more defenses on the ground that a defense is not stated or has no merit”).

written agreement according to the plain meaning of its terms ....” *150 Broadway N.Y. Assocs., L.P. v. Bodner*, 784 N.Y.S.2d 63, 66 (1st Dep’t 2004).

Moreover, the Event to celebrate the 13<sup>th</sup> birthday of Plaintiffs’ daughter is not capable of repeated and ongoing rescheduling. *Id.* at ¶¶ 3-4. A bat mitzvah is scheduled to coincide with her 13<sup>th</sup> birthday. *Id.* at ¶ 4. At this stage, the time for the bat mitzvah has long since passed and rescheduling the Event at this stage almost one year later is completely impracticable. Moreover; the Agreement does not require plaintiffs to repeatedly reschedule nor does it permit Defendant to retain the Deposit while the parties wait for the governmental restrictions to end, which is nowhere in sight for an event for 200 people.

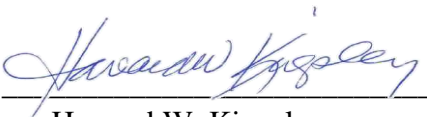
### **CONCLUSION**

Based on the foregoing, Plaintiffs respectfully request that the Court enter an Order, pursuant to CPLR 3212, awarding plaintiffs summary judgment on their first and only cause of action, entering a money judgment in the amount of \$10,048.73 plus attorneys’ fees, costs and expenses, and pre-judgment interest, and, pursuant to CPLR 3211(b) and/or CPLR 3212, dismissing the counterclaim asserted by defendant in its Answer, and for such other and further relief as the Court deems just and proper.

Dated: New York, New York  
January 6, 2021

Respectfully submitted,

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