

SUPREME COURT OF THE STATE OF NEWYORK
COUNTY OF NEW YORK

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ADAM SANDERS and RANDI SANDERS,

Index No. 654992/20

Plaintiff,

-against-

EDISON BALLROOM LLC,

Defendant.
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**DEFENDANT’S MEMORANDUM OF LAW IN
REPLY TO PLAINTIFF’S OPPOSITION TO DEFENDANT’S
CROSS-MOTION FOR SUMMARY JUDGMENT**

Defendant Edison Ballroom LLC, by its attorney Nathan M. Ferst, respectfully submits this Memorandum of Law in Reply to Plaintiff’s opposition to Defendant Edison Ballroom LLC’s cross-motion for an Order granting Defendant summary judgment on Defendant’s counterclaim and dismissing Plaintiff’s Complaint.

ARGUMENT

POINT I

**OWING TO THE UNPRECEDENTED SITUATION AT BAR, THIS COURT HAS THE
POWER TO FASHION THE PROPER REMEDY IN THE CASE AT BAR, WHICH IS
SUSPENSION AND NOT CANCELLATION OF THE CONTRACT**

Plaintiff’s Reply Memorandum of Law in opposition to Defendant’s cross-motion for an Order granting Defendant summary judgment on Defendant’s counterclaim and dismissing Plaintiff’s Complaint insists that, whatever the circumstances at bar are presently, the sole remedy here is as demanded by Plaintiff in its Complaint.

However, this Court has the power to suspend both sides' contractual obligations during the period of emergency which has arisen since the making of the subject contract between the parties.

The doctrine of *Rebus sic stantibus* ("things thus standing") is the legal doctrine allowing for a contract or a treaty to become inapplicable because of a fundamental change of circumstances. *Black's Law Dictionary*.

New York Uniform Commercial Code §2-615 states that delay in delivery or non-delivery in whole or in part is not a breach under a contract for sale if performance as agreed upon has been made impracticable by the occurrence of a contingency the non-occurrence of which was a basic assumption on which the contract was made.

In addition to the precedents cited heretofore cited by Defendant herein [*Wise & Co., Inc. v. Wecoline Products, Inc.*, 286 NY 365 (1941); *Duane Reade v. Stoneybrook Realty, LLC*, 63 A.D.3d 433 (1st Dep't., 2009); *Beardslee v. Inflection Energy*, 25 NY3d 150 (2015); *Urban Archeology Ltd. V. 207 East 57th Street LLC*, 34 Misc. 3d (Supreme Court, New York County, 2009); *Graubard Mollen Horowitz Pomeranz & Shapiro v. 600 Third Avenue Associates*, 93 NY2d 508 (1999); *First Natl. Stores v. Yellowstone Shopping Ctr.*, 21 NY2d 630 (1968)], the Court is respectfully requested to apply the basic principle that a court will typically award equitable remedies when a legal remedy is insufficient or inadequate.

In the case at bar, hardship will result if Plaintiff is awarded its requested relief but both parties will have the benefit of their bargain upon the Court's awarding Defendant its requested relief (Affidavit of William Kaelblein sworn to on January 26, 2021). Thus, a balancing of the hardships here, as in an application for a preliminary injunction under CPLR Article 63, empowers this Court to fashion the appropriate remedy under the circumstances ("Equity will

not suffer a wrong to be without a remedy”), which is to suspend both sides’ contractual obligations during the period of emergency which has arisen since the making of the subject contract between the parties.

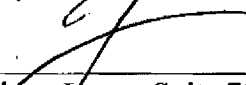
CONCLUSION

For the foregoing reasons, Plaintiffs’ motion should be denied and Defendant’s cross-motion should be granted.

Dated: New York, New York
February 2, 2021

Respectfully submitted,

Nathan M. Ferst, Esq.
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