

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

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THE TRUSTEES OF COLUMBIA UNIVERSITY  
IN THE CITY OF NEW YORK,

Index No. 156789/2020

Plaintiff,

EDISON BALLROOM, LLC,

Defendants.  
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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 papers 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.

Defendant cites *Wise & Co., Inc. v. Wecoline Products, Inc.*, 286 NY 365 (1941); *Duane Reade v. Stoneybrook Realty, LLC*, 63 A.D.3d 433 (1<sup>st</sup> Dep't., 2009); *Beardslee v. Inflection Energy*, 25 NY3d 150 (2015); *Urban Archeology Ltd. V. 207 East 57<sup>th</sup> 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) in respectfully requesting the Court 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.

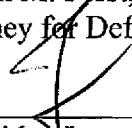
**CONCLUSION**

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

Dated: New York, New York  
February 10, 2021

Respectfully submitted,

Nathan M. Ferst, Esq.  
Attorney for Defendant

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