

**IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
TRIAL DIVISION—CIVIL**

KPG—MCG CURTIS TENANT, LLC <i>et al.</i>	:	May Term, 2018
	:	
<i>Plaintiffs</i>	:	Case No. 01563
	:	
v.	:	Commerce Program
	:	
COOPERAGE, LLC	:	
and	:	
CESCAPHE LIMITED, LLC	:	Control No. 18053361
	:	
<i>Defendants</i>	:	

ORDER

And now, this 17th day of September, 2018, upon consideration of Plaintiffs’ Petition for Special and Preliminary Injunction, Defendants’ opposition, Plaintiffs’ reply, Defendants’ Sur-Reply, and after an evidentiary hearing and oral argument, and for the reasons outlined in an accompanying memorandum, it is hereby ORDERED and DECREED that the Petition is GRANTED. Defendants Cooperage, LLC and Cescaphe Limited LLC, are preliminarily ENJOINED as follows:

1. Cooperage, LLC and Cescaphe Limited, LLC are prohibited from using the approximately 4,000 square feet, adjacent corridors, bathrooms and garden area adjacent to the Tiffany mosaic (the “Atrium”) located within the Curtis Center at 601 Walnut Street, Philadelphia, Pennsylvania (the “Curtis Center”);
2. Cooperage, LLC and Cescaphe Limited, LLC are prohibited from permitting any other entity to use the Atrium;
3. Cooperage, LLC and Cescaphe Limited, LLC may not interfere with Plaintiffs’ rights with respect to the Atrium, including the right to license and/or lease the use of the Atrium to any person or entity other than Defendants;

4. Cooperage, LLC and Cescaphe Limited, LLC may not interfere with Plaintiffs' rights under Plaintiffs' lease with Galaxy Restaurant Catering Group, LP d/b/a Starr Catering Group ("Starr Catering Lease"), until all issues in this litigation are resolved;

5. Cooperage, LLC and Cescaphe Limited, L.L.C. are prohibited from publicly promoting the Atrium and/or the Curtis Center as a venue at which Defendants host events;

6. This injunction shall continue in effect until further Order of this Court; and

7. This Order for Preliminary Injunction is effective immediately.

It is **further** ORDERED and DECREED that Plaintiff, KPG—MCG Curtis Tenant, LLC, shall post an injunction bond in the amount of \$20,000 in compliance with Pennsylvania Rule of Civil Procedure §1531(b).

Notwithstanding discussion in court, no further hearings are currently scheduled before this court.

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MEMORANDUM OPINION

Plaintiff KPG—MCG Curtis Tenant, LLC “(KPG)”, the owner of the Curtis Center in Society Hill, Philadelphia has petitioned this court to enjoin Defendants Cooperage, LLC, and Cescaphe Limited, LLC (“Cescaphe”) from using and marketing a tenancy area known as the “Atrium”. The dispute involves KPG’s decision to lease the Atrium to Starr Catering (“Starr”), a Cescaphe competitor. KPG contracted with Starr at the expiration of the “Illona Lease”, a lease between a previous owner of the Curtis Center and Cescaphe. Our findings and reasoning are in footnote form with a longer explanation on immediate and irreparable harm.

A preliminary injunction requires (1) immediate and irreparable harm, (2) clear right to

success on the merits,¹ (3) greater injury from refusing the injunction than granting it,² (4) restoration of the status quo,³ (5) the injunction is reasonably suited to abate the offending activity,⁴ and (6) consideration of the public interest.⁵

I. IMMEDIATE AND IRREPARABLE HARM

Plaintiff KPG will experience immediate and irreparable harm as we find its loss of future profits cannot be calculated. This loss includes, but is not limited to, lost business opportunity. An injury is irreparable if the damage can be “estimated only by conjecture and not by an accurate pecuniary standard.”⁶ An impending loss of a business opportunity or market advantage is irreparable injury at preliminary injunction.⁷

¹ The language of the Illona and Cooperage leases present a clear right to relief for Cescaphe’s breach of contract. *See Summit Towne Ctr., Inc. v. Shoe Show of Rocky Mount, Inc.*, 828 A.2d 995, 1001 (Pa. 2003). The Cooperage Lease’s terms of use limit Plaintiff’s use of the Atrium area “to the extent agreed upon” in the Atrium License. The Atrium License itself is “governed by the rules, regulation, and terms of use . . . set forth in the agreements between Landlord and Atrium Licensee.” Cooperage Lease, Complaint, Ex. B. Among these terms of use is the duration of the License itself which, in the Illona Lease, expressly limits use of the Atrium area to “a term commensurate with the Term of this Lease . . .” Illona Lease, Complaint, Ex. A, p. 5, ¶2.1. The “term of this Lease”, meaning the Illona Lease, expired on April 1, 2018. Therefore, Defendants’ use of the Atrium area after April 1, 2018 is clearly prohibited since it is a clear violation of the “rules, regulation, and terms of use” set in the Illona lease. Defendants’ continued use of the Atrium violated a clear right which is likely to be vindicated at trial.

² Denying the preliminary injunction clearly damages KPG’s ability to generate revenue under the Starr Lease. But granting preliminary injunction does not interfere with Cescaphe’s right under the Cooperage lease to manage its “Cooperage Whiskey and Wine Bar.” Absent preliminary injunction, KPG will experience substantially greater damage because KPG would be prevented from receiving any revenue from its Atrium property for the duration of litigation.

³ Preliminary injunction returns KPG and Cescaphe to the status quo that existed when the Illona Lease expired, meaning KPG is entitled to contract with a new tenant for the Atrium.

⁴ Preliminary injunction is reasonably suited to address Cescaphe’s clearly wrongful conduct because injunctive relief is limited to Cescaphe’s use and marketing of the Atrium and has no affect on its marketing and use of the Cooperage Whiskey and Wine Bar.

⁵ This dispute affects the public’s access to one of Philadelphia’s most unique and historic venues for weddings and other banquets. Despite KPG’s clear right to contract with Starr, Cescaphe may delay resolution through an appellate process that could take years. As the banquet business, especially weddings, often involves contract decisions made several years before an event, the public and especially its families will be unreasonably be affected for years absent injiunction.

⁶ *Sovereign Bank v. Harper*, 674 A.2d 1085, 1093 (Pa. Super. Ct. 1996).

⁷ *Id.*; *Kessler v. Broder*, 851 A.2d 944, 951 (Pa. Super. Ct. 2004).

KPG's evidence at the hearing is clear that its business loss will be impossible to calculate after the company most likely proves its entitlement to use the Atrium going forward. This is because under its new lease agreement with Starr, KPG's rent is based in part on a percentage of Starr's banquet gross revenue. This is a very different deal from the one Cescaphe had with KPG and its owner predecessor, a deal based primarily on flat fees per event. KPG's future revenue under the new lease with Starr incorporates many variables such as the number of guests at each event, their consumption of liquor, the types of meals that are ordered, and other types of banquet charges to be invoiced by Starr. Although both Cescaphe and Starr are well known and popular, neither company's banquet business model necessarily mirrors each other, especially in the context of KPG's new lease based on percentage. This means an expert is unlikely to be able to opine on lost business for Starr based on Cescaphe's own history at the Atrium.

This incalculability becomes certain since we agree with Plaintiffs' testimony that the present confusion impacts KPG for years. This is because many bookings, especially weddings are booked up to two years in advance.

Cescaphe's ongoing internet marketing and other communications to the public relating to the Atrium have added to the harm. This part, however, is not irreparable because Cescaphe's marketing intrusion can easily be remedied. Indeed, at the conclusion of the hearing, Cescaphe proposed shutting down its internet and other communications relating to the Atrium. This concession, though, does not address the irreparable harm that actually exists because ending Cescaphe's Atrium marketing does not give Starr the legal right it needs to assure families, for example, that it has the authority to deliver its branded weddings at the Curtis Center Atrium.

For these reasons, KPG, whose lease calls for a percentage of Starr's gross revenue, has shown that absent preliminary injunction, it will experience immediate and irreparable harm.

II. CONCLUSION

Because KPG meets the immediate and irreparable harm test and has a clear right to contract with Starr, and has met its burden on all remaining preliminary injunctive tests, Plaintiffs' Petition is GRANTED.

Date: September 17, 2018