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

LIVE NATION ENTERTAINMENT, INC.,	:	March Term 2022
	:	
Plaintiff,	:	No. 657
	:	
v.	:	Commerce Program
	:	
ERIC BLUMENFELD, ET AL.,	:	Control Number 24094267
	:	
Defendants.	:	

OPINION

Plaintiff Live Nation Entertainment, Inc. ("Live Nation"), filed a petition for a special injunction maintaining the status quo and preliminary injunctive relief. For the reasons discussed below, and after an evidentiary hearing held on October 22, 2024, the Court denied the petition without prejudice on October 25, 2024.

BACKGROUND

The Event Center Lease

On April 24, 2017, Holy Ghost I, LP entered into an Event Center Lease ("Lease") with Live Nation for the Metropolitan Opera House ("the Met") located at 858 N. Broad Street, Philadelphia, PA, to be used as a first-class live entertainment venue. (P-1, Event Center Lease between Live Nation and Holy Ghost I, LP dated 4/24/17 ("Lease")).¹ On January 18, 2018, Holy Ghost I, LP assigned all rights, title, interest in the Lease to Holy Ghost Met Master Tenant

¹ In addition to using the Met as a first-class live entertainment venue, the Lease permits ancillary uses by Live Nation, such as the operation of food and beverage service (including the sale and consumption of alcoholic beverages), fund-raising events, charity events, sale of concessions, and sale of merchandise. (P1, Lease at § 1.1 (c)).



LLC (“Holy Ghost”).² The Lease provides for a term of 29 years with a fixed minimum rent of \$1,500,000 per year, payable in equal monthly installments of \$125,000.00 and payment of percentage rent each lease year based on ticket sales for each lease period, which is identified under the Lease as “Additional Rent”. (P1, Lease at § 1.1 (d), (g) and (h))

The Lease gives Live Nation the “exclusive right to hold or host for profit live entertainment events” at the Met. (*Id.* at § 5.3). The Lease specifically provides that Holy Ghost shall take no actions that would: 1) interfere with Live Nation’s use of the Met, 2) increase Live Nation’s costs or burdens under the Lease, or 3) decrease Live Nation’s rights under the Lease. (*Id.* at § 4.1). Also, the Lease contains a covenant that Live Nation shall have the peaceful and quiet enjoyment of the premises without any hinderance from Holy Ghost. (*Id.* at § 27.11).

The Lease reserves certain limited and specified usage rights for Holy Ghost and the Congregation of Holy Ghost Revival Center (the “Church”), which is an owner and partner in Holy Ghost. These include the right to hold “special events” at the Met. Section 3.2 of the Lease provides:

Tenant acknowledges and agrees that Landlord . . . shall have the right to host or permit other non-profit or local community organizations to host special events at the Premises, provided that such events are scheduled in advance with Tenant and do not conflict with performances **booked** by Tenant for the Premises. (emphasis added)³

Similarly, subject to the reasonable approval of Landlord and Tenant, the Church shall have the right to host special events at the Premises, provided that such events are scheduled in advance with both Landlord and Tenant, and do not otherwise conflict with any events or performances **booked or held** by Landlord and/or Tenant. The use of or hosting any live entertainment by Landlord (or its designee) or the Church shall not include the use of concession areas, sound and lighting (other than house lighting)

² It is undisputed that Holy Ghost is now the tenant under the Lease.

³ The Lease does not define the term “booked”.

and secured areas, unless otherwise approved in advance by Tenant. Any use set forth above shall be at no cost to Tenant (it being understood that if the Church or Landlord (or its designee) require or request services to be performed by Tenant in connection therewith, such services may be performed at the discretion of Tenant and shall be subject to reimbursement of Tenant's reasonable charges therefor.)

(P1, Lease at § 3.2) (emphasis added))

Additionally, § 5.3 of the Lease gives Live Nation the exclusive right to hold for-profit events at the Met while reserving for the Church the right to host non-profit events. It states:

...Tenant shall ...have the exclusive right to hold or host for profit live entertainment events at the Project (provided, however, that Landlord (by itself or through a non-profit or local community organization) and the Church shall, subject to the restrictions set forth in Section 3.2, above, be permitted to hold or host live entertainment acts so long as such events are non-profit or consist of local community talent).

(*Id.* at § 5.3).

Litigation History among the Parties

Four actions among these parties are currently pending in this Court. In 2019, Holy Ghost filed a complaint captioned *Holy Ghost Met Master Tenant, LLC et al. v. Live Nation Entertainment Inc., et. al.*, December Term 2019 No. 1618 (the "First Action"), alleging that Live Nation breached the Lease by failing to pay sponsorship revenue owed to Holy Ghost and breached the implied duty of good faith inherent in the Lease by holding non-ticketed events denying Holy Ghost percentage rent. Live Nation answered the complaint and asserted counterclaims against Holy Ghost for breach of the Lease.

In March 2021, Holy Ghost filed a complaint in confession of judgment against Live Nation in an action captioned *Holy Ghost Met Master Tenant, LLC v. Live Nation Entertainment, Inc.* March Term 2021 No. 2074 ("Confession of Judgment 1"). In this action, Holy Ghost

sought a judgment in ejectment alleging breaches of the Lease by Live Nation. After Live Nation filed a petition to open and strike the judgment, the Court opened the confessed judgement on May 28, 2021, and on November 1, 2021, the First Action and Confession of Judgment 1 were consolidated.

In March 2022, Live Nation filed an action against Eric Blumenfeld, Holy Ghost Met Master Tenant, LLC, Divine Hospitality Net Inc., Holy Ghost Headquarters Revival Center at the Met, Inc. Raymond Molock, and Laff Out Loud, Inc. (the “Holy Ghost defendants”), captioned *Live Nation Entertainment Inc. v. Blumenfeld, et al.*, March Term 2022 No. 657 (the “Second Action”). In this action, Live Nation alleges that defendants engaged in a scheme to improperly compete with Live Nation by filing a false application for a liquor license with the Pennsylvania Liquor Control Board (“PLCB”) asserting that Live Nation had been evicted and was no longer operating at the Met, permitting the PLCB to transfer and remove the liquor license of Live Nation’s vendor through Confession of Judgment 1. The complaint further alleges that these acts were carried out so that Mr. Blumenfeld, through a vendor, could operate the Met and take advantage of all the investments Live Nation made there.⁴ The Holy Ghost defendants filed preliminary objections to the complaint, which were sustained in part and overruled in part. Specifically, the Court found that the liquor license was not transferred and the application to transfer was withdrawn. (Second Action, Dkt. 9-13-22, Order).

On May 24, 2023, Holy Ghost filed a second action for confession of judgment against Live Nation in ejectment. This action is captioned *Holy Ghost Met Master Tenant, LLC v. Live*

⁴ In addition to suing Holy Ghost and Mr. Blumenfeld, Live Nation also sued Weber Gallagher Simpson Stapelton Fires and Newby LLP and Partick Stapelton, Esquire, for legal malpractice arising from their representation to obtain a liquor license for the defendants at the Met. Currently pending is an appeal to the Superior Court on an issue of privilege.

Nation Entertainment, Inc. March Term 2023 No. 2572 (“Confession of Judgment 2”). On November 14, 2023, the Court opened the confession of judgment upon Live Nation’s motion.

Holy Ghost and To the Top Entertainment

On September 8, 2024, Holy Ghost through its counsel sent a letter to Live Nation seeking to exercise its reserved usage rights under § 3.2 of the Lease. (P-4). The letter (the “September 8 Letter”) states:

Be advised that Landlord intends to host or permit nonprofit events at the Met pursuant to section 3.2 of the Lease on the following dates:

Month/Year	Reserved Dates
October 2024	October 3 rd -5 th , October 13 th , October 19
November 2024	Nov. 2 nd -3 rd , Nov 22 nd , Nov 26 th -30 th
December 2024	Dec 1 st , Dec 7 th -8 th , Dec 31 st
January 2025	Jan 4 th , Jan 10 th -12 th , Jan 18 th -19 th , Jan 28 th -31 st
February 2025	Feb 1 st -9 th , Feb 25 th -28 th
March 2015	Mar 1 st -2 nd , Feb 8 th , Feb 15 th , Feb 25 th -31 st

Landlord will host or permit such events through “To the Top Entertainment Corp”, a Pennsylvania nonprofit led by Damariz Winborne.

Enclosed is a self-explanatory letter Landlord received from To the Top Entertainment Corp. outlining its credentials, among other things. Please advise the Landlord promptly of any conflicts with these dates.

(P4, Letter dated September 8, 2024, from Holy Ghost to Live Nation).

Attached to the September 8 Letter is a letter dated September 6, 2024, from Damariz Winborne, vice president of To the Top Entertainment (“To the Top”) to Mr. Blumenfeld, an owner of the Met.⁵ (*Id.*) In the letter, Ms. Winborne touts To the Top as a company with more than 40 years of experience producing concerts, stage plays and musicals. (*Id.*) Ms. Winborne

⁵ During the hearing, the parties stipulated that To the Top Entertainment is a nonprofit corporation.

the Met is underutilized and that To the Top is eager to create a “strategic partnership” in which it fills the Met’s calendar. (*Id.*) Ms. Winborne states that she reviewed the published Met programming calendar and confirmed that the proposed dates align with availability at the Met. (*Id.*)

The Process for Booking Live Entertainment Events at the Met by Live Nation

At the hearing on the preliminary injunction petition, Geoffrey Gordon, a Live Nation regional president, testified that Live Nation discusses with performer’s representatives’ dates for performances.⁶ Live Nation books the events based on the availability of an artist. Events are booked from 45 days to one year before a performance. If Live Nation and a performer are interested in having performances at The Met on a specific date, Live Nation places a “hold” on the date while Live Nation and the performer’s representative discuss specifics including ticket prices, payment to the performer and Live Nation, the type of labor required for the performance, and promotion of the show. (Exhibit LL-2, Live Nation, the Met Venue Calendar Report). Once the parties agree to the particulars, Live Nation and the performer sign a contract. The show is then announced to the public on the performer’s timetable and tickets are sold. Once the tickets for a show go on sale, Live Nation considers the show “confirmed” and makes a notation on its public calendar.⁷ (Exhibit LL 2). Most of the dates Holy Ghost purported to reserve in the September 8 Letter were either “booked”, “confirmed”, or had “holds” on them for performances. (P4, Exhibit LL-2).

⁶ As of the writing of this opinion, the transcript of the hearing is unavailable.

⁷ In addition to Exhibit LL 2, Live Nation also keeps another calendar, which was marked during the hearing as P-6. Live Nation did not move for the admission of P-6 during the hearing and therefore the Court does not rely on it in making its decision. Live Nation has filed a motion seeking the admission of P-6, but the motion is not yet ripe for disposition as of the filing of this opinion.

Live Nation's calendar does not use the term "booked". (Exhibit LL-2) Instead, the calendar uses the terms "Confirmed" and "Hold". (*Id.*) Mr. Gordon testified that Live Nation considers a show "booked" when it and the performer's representative have agreed to a date, and a contract is being negotiated, although it has not yet been signed. The dictionary definition of "booked" is "to arrange for or purchase (tickets or lodgings, for example) in advance; reserve; to arrange a reservation, as for a hotel room, for (someone) and to hire or engage: booked a band for Saturday night." Booked, The American Heritage® Dictionary of the English Language, Fifth Edition copyright ©2022 by HarperCollins Publishers.

This Petition

On September 20, 2024, Live Nation filed the pending unverified petition for a special injunction and for preliminary injunctive relief. On September 24, 2024, the Court issued a rule to show cause why Live Nation's petition should not be granted, ordered Holy Ghost to file a response by September 27, 2024, and scheduled a hearing on the petition for September 30, 2024. On September 30, 2024, the parties appeared before the Court for a hearing, but Live Nation instead requested discovery on its petition. The Court granted the request, and the hearing was rescheduled for and held on October 22, 2024. On October 25, 2024, the Court issued an order denying the petition without prejudice. This opinion is issued in support of the Court's October 25, 2024, order.

DISCUSSION

Injunctive relief, particularly a preliminary injunction, is an extraordinary remedy and may be granted only if the petitioner has established a clear right to the relief sought. *Soja v. Factoryville Sportsmen's Club*, 522 A.2d 1129, 1131 (Pa. Super.1987). A petitioner seeking a preliminary injunction must establish six prerequisites; if the petitioner fails to establish any one

of them, there is no need to address the others. *Summit Towne Centre, Inc. v. Shoe Show of Rocky Mt., Inc.*, 828 A.2d 995, 1001 (Pa. 2003).

The six prerequisites that a party must establish to obtaining preliminary injunctive relief are that: 1) “the injunction is necessary to prevent immediate and irreparable harm that cannot be adequately compensated by damages”; 2) “greater injury would result from refusing an injunction than from granting it, and, concomitantly, that issuance of an injunction will not substantially harm other interested parties in the proceedings”; 3) “a preliminary injunction will properly restore the parties to their status as it existed immediately prior to the alleged wrongful conduct”; 4) “the activity it seeks to restrain is actionable, that its right to relief is clear, and that the wrong is manifest, or, in other words, must show that it is likely to prevail on the merits”; 5) “the injunction it seeks is reasonably suited to abate the offending activity”; and, 6) “a preliminary injunction will not adversely affect the public interest.” *Id* at 1002. The burden is on the party who requested preliminary injunctive relief—in this matter, Live Nation, to prove each and every element. *Warehime v. Warehime*, 860 A.2d 41, 46–47 (Pa. 2004).

As discussed below, Live Nation has failed to satisfy at least two of the six prerequisites for a preliminary injunction.

1. Live Nation failed to prove that an injunction is necessary to prevent immediate and irreparable harm.

A party seeking a preliminary injunction must show that an injunction is necessary to prevent immediate and irreparable harm that cannot be compensated adequately by money damages. *Greenmoor, Inc. v. Burchick Constr. Co.*, 908 A.2d 310, 314 (Pa. Super. 2006). To meet this burden, a party must present concrete evidence demonstrating actual proof of irreparable harm. *Id*. The claimed “irreparable harm” cannot be based solely on speculation and

hypothesis. *Id.* For purposes of a preliminary injunction, the claimed harm must be irreversible before it is deemed irreparable. *Id.*

Live Nation has produced no evidence that it was irreparably harmed by the September 8 Letter purporting to reserve dates for “nonprofit events”. While any attempt by Holy Ghost to divest Live Nation of its leasehold interest in the Met may give rise to irreparable harm, Mr. Gordon testified that the September 8 Letter did not prevent Live Nation from booking events. In fact, Mr. Gordon testified that Live Nation confirmed one of the dates To the Top purported to reserve – December 1, 2024 – for Brett Elderidge at the Met after it received the September 8 Letter. (LL-2/P-6). Therefore, unlike in *Porter v. Chevron Appalachia, LLC*, 204 A.3d 411 (Pa. Super 2019), where the tenant sought an injunction because the lessor placed a lock on the gate to the property, or in *Fraport Pittsburgh, Inc. v. Allegheny County Airport Authority*, 296 A.3d 9 (Pa. Super. 2023), where the tenant sought an injunction because the lessor used self-help to evict the lessee, there is no evidence that Holy Ghost has at this time interfered with Live Nation’s leasehold interest. Without any evidence of interference with Live Nation’s ability to book events pursuant to the Lease, the extraordinary remedy of injunctive relief is unnecessary to prevent immediate and irreparable harm.

2. Live Nation does not have a clear right to relief at this time.

Live Nation also has failed to prove that it has a clear right to relief. To establish a clear right to relief, the party seeking an injunction need not prove the merits of the underlying claim but need show only that substantial legal questions must be resolved to determine the rights of the respective parties. *Fischer v. Department of Public Welfare*, 439 A.2d 1172, 1174 (Pa. 1982). For a right to be clear, it must be more than merely viable or plausible. *Wolk v. School District*

of *Lower Merion*, 228 A.3d 595, 611 (Pa. Cmwlth. 2020), *appeal denied*, 240 A.3d 108 (Pa. 2020).

The Lease sets forth the parties' rights to the Met. Live Nation has the right to operate a first-class live entertainment venue for profit free and clear of any interference from Holy Ghost and without any actions that will decrease Live Nation's rights under the Lease. (P1 Lease § 4.1 (a)) Live Nation also has the right to peaceful and quiet enjoyment of the premises without any hindrance from Holy Ghost or any person or persons lawfully claiming the premises. (P1 Lease § 27.11).

The Lease also gives Holy Ghost some rights under the Lease. The Lease permits Holy Ghost to "host or permit other non-profit local community organizations to host special events at the Premises" provided the events are scheduled in advance with Live Nation, do not conflict with Live Nation's performances, do not jeopardize Live Nation's licenses, do not add any cost to Live Nation and the events are non-profit or consist of local community talent. (P1 Lease § 3.2). These nonprofits are not to interfere with Live Nation's exclusive right to hold or host live entertainment events and are not to interfere with Live Nation's use of the Met. (*Id.*)

The evidence does not support Live Nation's contention that Holy Ghost entered into a "strategic partnership" with To the Top to compete with Live Nation in direct violation of the Lease. Live Nation relies on related and pending lawsuits and confession of judgment actions filed in this Court to support its theory that Holy Ghost is interfering with its exclusive right to hold and host for profit live entertainment at the Met. The testimony of Mr. Blumenfeld, which this Court found credible, however, shows that Holy Ghost has not entered any contracts with To the Top and there are no shows reserved for it. Additionally, Mr. Blumenfeld testified that Holy Ghost has no ownership nor managerial interest in To the Top and was not involved in preparing

the proposal To The Top presented to him. (P14). Mr. Blumenfeld testified that Holy Ghost does not intend to become an operator of the Met; he would only like to see the Met used more than the 30 percent of the year he testified was the current usage rate.

Since there is no evidence that Holy Ghost interfered with Live Nation's quiet enjoyment of the Lease at this time, Holy Ghost is not likely to succeed on the merits and the petition for injunctive relief is denied.

While Live Nation failed to establish any imminent threat of interference with its right to quiet enjoyment of the Met with this petition, Holy Ghost should proceed with caution to ensure that Live Nation's right to quiet enjoyment of the Lease remains intact. While Holy Ghost possesses "the right to host or permit other non-profit or local community organizations to host **special events**" at the Met, it may exercise this right only if the events are scheduled in advance with Live Nation and do not conflict with performances booked by Live Nation at the Met. *Id.* at § 3.2 (emphasis added). "Scheduled in advance" does not mean that Holy Ghost can unilaterally send a letter to Live Nation announcing that it "intends to host or permit nonprofit events" at the Met. Attempting to schedule more than 50 events in a three-month period is not "special". Additionally, there are conditions placed on Holy Ghost's right to use the Met in the Lease, for which compliance is expected.

CONCLUSION

For the foregoing reasons, the petition for a special injunction and for preliminary injunctive relief is **DENIED without prejudice**.

BY THE COURT:

Asse F. 

ABBE F. FLETMAN, J.

11/18/24