

**IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY,  
PENNSYLVANIA**

ACE GROUP PITTSBURGH, LLC,

Plaintiff,

v.

Y HOTEL, LP, Y HOTEL MASTER  
TENANT, LLC, PITTSBURGH URBAN  
INITIATIVES SUB-CDE 8, LP, PNC CDE,  
LP, PNC BANK, N.A., and JOHN DOE,

Defendants.

Case No.: GD-21-001310

**WRITTEN CLOSING STATEMENT  
OF DEFENDANTS Y HOTEL, LP,  
AND Y HOTEL MASTER TENANT, LLC,  
ON MOTION FOR PRELIMINARY  
INJUNCTION**

Filed on behalf of Defendants  
Y Hotel, LP, and Y Hotel Master Tenant, LLC

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Plaintiff's Motion for Preliminary Injunction and brief in support were served on May 24, 2021.

A hearing on the Motion for Preliminary Injunction was held before the Court on June 22, 2021.

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ACE GROUP PITTSBURGH, LLC,	)	
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Plaintiff,	)	
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LP, PNC BANK, N.A., and JOHN DOE,	)	
	)	
Defendants.	)	

**WRITTEN CLOSING STATEMENT OF DEFENDANTS  
Y HOTEL, LP, AND Y HOTEL MASTER TENANT, LLC,  
ON MOTION FOR PRELIMINARY INJUNCTION**

Defendants Y Hotel, LP (“Y Hotel”), and Y Hotel Master Tenant, LLC (“Master Tenant”), by and through their undersigned counsel, respectfully submit this Written Closing Statement on the pending Motion for Preliminary Injunction and oppose the request for preliminary injunctive relief of Plaintiff Ace Group Pittsburgh, LLC (“Plaintiff” or “Ace”). For the reasons addressed herein, in the June 16, 2021 Brief In Opposition to Motion for Preliminary Injunction, and at the June 22, 2021 hearing on the matter (the “Hearing”), the Court should deny Plaintiff’s request for a preliminary injunction.<sup>1</sup>

**I. INTRODUCTION**

In its motion papers and at the Hearing, Ace has failed to demonstrate any right to relief, any cognizable irreparable harm, or any basis for its request that the Court alter the status quo

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<sup>1</sup> Capitalized terms not otherwise defined herein have the meanings as defined in the parties’ pleadings in the action or, otherwise, as defined in the agreements referenced herein. In response to the requests of the Court at the Hearing, attached as Exhibits A and B, respectively, are (A) a Glossary of Terms and (B) a Financing Structure Chart, each specifying various entities involved in the underlying transactions.

and command Y Hotel and Master Tenant to allow Ace back onto the property at 120 South Whitfield Street (the “Property”) to operate a hotel.

While Ace generally appeals to the past relationships of the parties and the purported value of its brand, Ace has entirely failed to support its claims with factual evidence of an actionable legal claim. The Subordination, Nondisturbance and Attornment Agreement (the “SNDA”) under which Ace has asserted its claims would allow Ace to return as manager only in the event of one of three specifically defined events of “Transfer” and only if Ace is not in default under its Hotel Management Agreement (the “HMA”) with the Master Tenant. At the Hearing, however, Ace failed to present evidence that any such event of Transfer occurred under the SNDA or that it is not in default under the HMA. In fact, the uncontradicted evidence demonstrated resolutely that no event of Transfer has occurred and that Ace is in default.

As a result, Ace has no legal right to operate a hotel at the Property, is unlikely to prevail on the merits of its claims, and has suffered no irreparable harm that should be addressed through the drastic mandatory injunction that it has requested from the Court. Simply stated, Ace’s motion should be denied outright, and the Defendants should be free to operate the Property.<sup>2</sup>

## **II. ACE HAS FAILED TO ESTABLISH A FACTUAL RIGHT TO RELIEF**

In its submissions to the Court, and at the June 22, 2021 Hearing on the present motion, Ace has attempted to establish a factual basis for relief. Ace has entirely failed, however, to set forth facts on which the Court should grant preliminary injunctive relief, either as requested by Ace or otherwise. Rather, Ace appeals to a general tale of entitlement to operate a hotel that has no support in the contracts at issue or the actual facts presented before the Court.

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<sup>2</sup> Further discussion of the applicable facts and law can be found in the Brief in Opposition to Motion for Preliminary Injunction of the Defendants Y Hotel, LP, and Y Hotel Master Tenant, LLC, which was submitted to the Court of June 16, 2021, and which is incorporated herein by reference.

### **A. The Hotel Management Agreement**

Simply stated, Y Hotel is the fee owner of the real Property at which the hotel building is located (Compl. ¶ 14), and Master Tenant is its tenant. (Compl. ¶ 15). While, Ace and the Master Tenant executed a Hotel Management Agreement (the “HMA”) (Compl. ¶ 18; Def. Ex. 1), Ace’s position in good standing under the HMA was a precondition to any right it may have to operate the Property. The HMA, however, could be terminated by the Master Tenant upon an Event of Default thereunder or a failure of Ace to meet the HMA’s Performance Termination Threshold. (Def. Ex. 1 § 3.3(a), (g)). Moreover, as Nathan Cunningham, the principal of Y Hotel and Master Tenant, testified at the Hearing, a result of failures in Ace’s operation of the hotel that occurred throughout its operation and particularly in the year 2019, in 2020, the Master Tenant was forced to notice certain Events of Default and terminate the HMA.

Mr. Cunningham’s hearing testimony on these issues was virtually uncontradicted. While Ace contended in a brief submitted on the eve of the Hearing that the defaults were “manufactured” somehow, the testimony and documents presented at the Hearing detailed the financial and operational failures that had placed Ace in default. (Reply Brief in Support of Plaintiff’s Renewed Motion for Preliminary Injunctive Relief (“Pl. Reply Br.”) at 1, 8). Instead of presenting evidence of its compliance with the requirements of the HMA, Ace has in essence conceded the financial failure of its management of the hotel and attempted to divert the Court away from the basic fact that it was in clear default under the HMA. (Pl. Reply Br. at 3-4, 8). In sum, Ace’s contention that the defaults were manufactured was unsupported with evidence at the Hearing and is nothing more than unfounded argument by Ace’s counsel.

Moreover, through the course of 2020, after the Master Tenant issued an April 15, 2020 Notice of Default (the “April 15 Notice”) under the HMA, Ace failed to cure the identified defaults. (Def. Ex. 20; *see also* Def. Ex. 1 §§ 11.1, 11.2 (addressing Events of Default)).

Instead, Ace abandoned the Property and business operation altogether in the summer of 2020. Ace contends that it was forced to abandon the Property because the Master Tenant refused to fund its fiscally irresponsible management of the hotel; but, as Mr. Cunningham testified, the Master Tenant is not required to continue to fund a spendthrift hotel manager that refuses to present a proper budget or cure its further defaults. (Pl. Reply Br. at 1, 8-9).

Instead, in a subsequent November 17, 2020 Notice of Default (the “November 17 Notice”), the Master Tenant was forced to reiterate the previously noticed defaults, provide further notice of additional defaults under the HMA, and document Ace’s complete abandonment of the HMA and the Property prior to September 1, 2020. (Def. Ex. 29). In addition, the Master Tenant issued a November 17, 2020 Notice of Termination (the “Termination Notice”) and requested that the parties undertake certain Transition Procedures established in the HMA. (Def. Ex. 30; Def. Ex. 1 § 3.4). Ace failed, however, to respond to the Termination Notice or to reopen the Property, which has stood empty since September 2020.

#### **B. The Subordination, Nondisturbance and Attornment Agreement**

Of course, while Ace referenced virtually no contractual or legal support for its positions at the Hearing, the HMA is not the agreement placed at issue in Ace’s Complaint. Instead, Ace brings its claims, and requests for drastic mandatory injunctive relief, solely under the separate Subordination, Nondisturbance and Attornment Agreement (the “SNDA”) between Ace, Y Hotel, Master Tenant, and Defendants PNC Bank, N.A. (“PNC”), and Pittsburgh Urban Initiatives Sub-CDE 8, LP, and PNC CDE 35, LP (collectively, the “Lenders”), who had made secured loans to Y Hotel (the “Security Interest”) encumbering the Property. (Def. Ex. 2; Compl. ¶¶ 16-17, 23, 28). Ace’s present causes of action and request for injunctive relief are dependent upon Section 3(a) of the SNDA, which provides as follows.



In the event of (a) the **foreclosure of the Security Instrument** (or the Borrower's or Tenant's leasehold interest), (b) **a conveyance of the Hotel or the Master Lease Agreement in lieu thereof**, or (c) **any action by Lender to pursue its rights under the Security Instrument** (any of foregoing a "Transfer"), then **provided Manager is not in default under the [HMA]** (beyond any period given to Manager to cure such default) **subject to the other limitations set forth in this Agreement**, the rights of Manager under **the Management Agreement shall not be disturbed** by such Transfer, and the purchaser of the Hotel or transferee of the Master Lease Agreement in accordance with the Management Agreement, in such Transfer, including Lender if Lender steps into the responsibilities of Borrower or Tenant for the Hotel, as applicable, shall fully and completely recognize each other as parties under the Management Agreement for the balance of the term (and any renewal terms) thereafter accruing in accordance with the terms and conditions therein provided. The provisions of this subsection 3(a) shall be effective and self-operative without the execution of any further instrument, provided, however, that within ten (10) business days after written request by Manager, Lender shall execute and deliver to Manager a written instrument, in form reasonably satisfactory to Lender, confirming its assumption of the Management Agreement and its agreement hereunder to perform all of the obligations of Tenant under the Management Agreement existing at or accruing after the date of the Transfer.

(Def. Ex. 2 § 3(a) (emphasis provided)). Section 3(a) of the SNDA requires PNC and the Lenders to recognize Ace's rights under the HMA if (a) a Transfer (as that term is explicitly defined in the SNDA) occurs and (b) Ace is not in default under the HMA.

Strikingly, Ace's contentions in its Complaint and briefing and its presentation at the Hearing have failed to even allege let alone prove the occurrence of an event of Transfer that could provide it with any right to relief under the SNDA.

- Ace did not plead and did not prove that PNC or the Lenders have foreclosed on the Hotel;
- Ace did not plead and did not prove that PNC or the Lenders have executed a conveyance in lieu of foreclosure for the Hotel; and
- Ace did not plead and did not prove that PNC or the Lenders have taken action to pursue their rights under the Security Interest.

Instead, Ace asserts that, because Y Hotel defaulted on its loans, the Lenders must be forcing it to sell the Hotel. This fact, however, was refuted by both the testimony of Mr. Cunningham and in the Lenders' uncontested affidavits presented to the Court without objection from Ace. (Def. Ex. 37; Def. Ex. 40). Moreover, even if true, these facts would not present events of Transfer under Section 3(a) of the SNDA. In essence, Ace is asking the Court to rewrite the SNDA to treat a notice of default and reservation of rights as an event of Transfer; despite the fact that the clear language of Section 3(a) does not include such events as Transfers and Ace has presented no evidence that it does. (Pl. Reply Br. at 1-2, 5, 9-10). Thus, even if the HMA had not been previously terminated, Ace's rights under the SNDA were not triggered because none of the Transfer events defined in Section 3(a) have ever occurred.

### **C. The Irrelevant Factual Claims of Ace's Present Motion**

Beyond lacking any factual foundation in the agreements between the parties, Ace appeals to the factual consequences of its own deficient performance of the HMA as grounds for its present motion. Ace's contentions, however, were unsupported by evidence at the Hearing and are irrelevant in any event. Ace contends that it will lose customer relationships and reputational standing in the industry, but any injury to its commercial relationships and reputation occurred long ago and are simply the consequences of Ace's defaults throughout its operation of the hotel, which it chose not to cure when they were noticed in April 2020. Moreover, Ace's effort to argue a tale of wrongful termination was unsupported with relevant facts at the Hearing and, as Ace concedes, its default and termination under the HMA vitiates any legal rights to which it can direct the Court. (Pl. Reply Br. at 2-3 (referencing contractual rights provided Ace is not in default); Def. Ex. 1 § 2.2(b); Def. Ex. 2 § 3(a)).

As the testimony at the hearing demonstrated, since the beginning of its operation of the Property, Ace was financially irresponsible, breached its obligations and defaulted under the

HMA, ultimately abandoned the hotel and business operation and, as a result, was terminated by the Master Tenant. Due to Ace's poor operation of the hotel, over the course of 2020, Y Hotel was forced to explore a potential sale of the Property at its own discretion and without "action to pursue" any rights by the Lenders. (Def. Ex. 2 § 3(a)). Because Ace was in default under the HMA, and because the Lenders did not trigger any of the three Transfer provisions of Section 3(a), however, the proposed sale did not implicate the SNDA rights that Ace now asserts.

### **III. ACE HAS FAILED TO ESTABLISH A LEGAL RIGHT TO RELIEF**

Ace has failed to satisfy the legal standard that must be applied in assessing its request for a mandatory injunction. As expressed in *Summit Towne Centre, Inc. v. Shoe Show of Rocky Mount, Inc.*, 828 A.2d 995, 1001 (Pa. 2003),

a party seeking a preliminary injunction must show [1] that an injunction is necessary to prevent immediate and irreparable harm that cannot be adequately compensated by damages[, 2] that greater injury would result from refusing an injunction than from granting it, [3] that a preliminary injunction will properly restore the parties to their status as it existed immediately prior to the alleged wrongful conduct[, 4] that 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] that the injunction it seeks is reasonably suited to abate the offending activity[, and 6] that a preliminary injunction will not adversely affect the public interest.

Each of these factors weighs against the Court's issuance of injunctive relief to Ace on the present motion. Moreover,

a mandatory injunction which commands the performance of some positive act requires a much stronger case. [A] mandatory injunction which is imposed to preserve the status quo should be issued only in rare cases and certainly more sparingly than one which is merely prohibitory. Thus, in order for a mandatory injunction to issue, it is essential that a clear right to relief in the plaintiff be established.

*Roberts v. Board of Directors of School Dist. of City of Scranton*, 341 A.2d 475, 469-70 (Pa.

1975) (affirming refusal of mandatory preliminary injunction); *see also Crowe ex rel. Crowe v.*

*School Dist. of Pittsburgh*, 805 A.2d 691, 694 (Pa. Commw. Ct. 2002) (vacating mandatory preliminary injunction entered by trial court).

**A. Ace Failed to Demonstrate Any Entitlement to Prevail on the Merits Because It Showed No Contractual or Legal Right to Operate the Hotel**

Ace's motion can be readily resolved by addressing the merits of Ace's case first. Under the fourth element of the *Summit Towne* standard, Ace has shown no legal right to a mandatory decree forcing Y Hotel to accept Ace as a manager of the Hotel. As a result, Ace is not likely to prevail on the merits of its claims for breach of the SNDA, and its motion should be denied.

The plain language of Section 3(a) of the SNDA (Def. Ex. 2 § 3(a)), states three events whose occurrence would require the Lenders to recognize Ace's management of the Hotel provided it is not in default under the HMA. But, none of them has occurred, and Ace is in default. In order for the SNDA to apply, an event of Transfer under Section 3(a), must have occurred. At the Hearing Ace seemed to disregard the requirement that it have a legal basis for its claim, failed to prove that any event of Transfer has occurred, and even failed to present evidence of a likelihood that Ace could prove that such a Transfer occurred on the merits.

This is because the facts prove otherwise. In sum, (a) neither PNC nor the Lenders have foreclosed on the Hotel; (b) there has been no conveyance in lieu of foreclosure of the Hotel; and (c) the Lenders have not taken action to pursue their rights under the Security Interest. (Def. Ex. 2 § 3(a)). In fact, in a September 14, 2020 Notice of Reservation of Rights, the Lenders expressly noted only that "the Lenders *may* undertake remedial actions " to pursue their rights against Y Hotel but, clearly, did not take such actions at that time or at any time. (Def. Ex. 27 (emphasis added)). While Ace's counsel has argued that the September 14 correspondence was an "action" under Section 3(a) of the SNDA, Ace's witnesses did not testify to this effect at the

Hearing, and the uncontradicted testimony of Mr. Cunningham and affidavits of the Lenders resolutely establish that no “action” was ever taken. (Pl. Reply Br. at 9-10; Def. Ex. 2 § 3(a)).

Thus, under Section 3(a), no Transfer has occurred by which PNC, the Lenders, or a purchaser of the Property would step “into the responsibilities of [Y Hotel] or [Master Tenant] for the Hotel” and, as a result, Ace is entitled to no relief. (Def. Ex. 2 § 3(a)). Moreover, Section 3(a) of the SNDA expressly provides that its provisions do not apply if Ace is in default under the HMA. (Def. Ex. 2 § 3(a)). As Ace admits in the Complaint, and as was described in detail at the Hearing, the Master Tenant declared Ace in default and terminated the HMA based upon failures of performance in 2019 and continuing into 2020. (Def. Ex. 20, 29, 30). Under Sections 3.3(a) and (g) of the HMA, Master Tenant was fully within its rights to terminate the HMA for enumerated Events of Default and Ace’s failure to meet a Performance Termination Threshold. (Def. Ex. 1 §§ 3.3(a), (g)). Once noticed, Ace failed to cure these failures, choosing to simply deny them in the same conclusory and unsubstantiated fashion that Ace exhibited at the Hearing.

Finally, as a matter of law, Master Tenant possesses an absolute legal right to terminate the HMA as an agency contract. *See FHR TB, LLC v. TB Isle Resort, LP*, 865 F.Supp.2d 1172, 1202 at fn. 13 (S.D. Fla. 2011); *see also* Restatement (Third) of Agency § 3.10; Restatement (Second) of Agency § 34 (Revocation of agency by principal) and § 118 (Revocation or Renunciation). Ace attempts to assert that it has some “property interest” that could overcome this right (Pl. Reply Br. at 2, 10-11), but Ace explicitly acknowledged in the SNDA as follows.

Notwithstanding the subordination or any other provisions of this Agreement, the rights and interest of [Ace] arising under the Management Agreement **do not create an ownership, lien or security interest in or to the Property in favor of [Ace]**.

(Def. Ex. 2 § 1(h) (emphasis added)). Thus, aside from the fact that Ace was in default and had been properly termination by the Master Tenant in accordance with the HMA’s terms, the

agency relationship between Ace and the Master Tenant, embodied in the HMA, was admittedly unaffected by any supposed “property interest” and was revocable at will by the Master Tenant. Thus, Ace’s efforts to differentiate the authorities cited above and in the June 16, 2021 Brief In Opposition, and to appeal to general law allowing specific performance where a plaintiff *does* have an interest in real property, are entirely unavailing. (Pl. Reply Br. at 10-11).

In sum, under the contractual agreements of the parties, New York agency law, and the Restatement of Agency, Ace cannot recover specific performance as a remedy. That is, however, precisely what Ace seeks both in the relief sought in its Complaint and on the current motion seeking a mandatory command from this Court ordering that Y Hotel and Master Tenant open the hotel doors to Ace despite its failed performance. As a result, Ace cannot prevail on its motion, and the Court should decline to effect such a taking of the Property from the defendants.<sup>3</sup>

**B. Ace Failed to Demonstrate Any Threat of Irreparable Injury That Is Cognizable Under Its Legal Claims**

Despite the fact that Ace is not entitled to specific performance, possession of the Property, or an absolute right to operate the business, it has argued that it will be irreparably harmed by the termination of its management of the hotel. As an initial matter, as the undisputed facts demonstrated at the Hearing, Ace abandoned the business and terminated its relationship with the hotel at least as early as September of 2020. As a result, all of its current claims that the actions of Y Hotel or the Master Tenant (or PNC or the Lenders) will result in either actionable or irreparable harm ring hollow. Ace brought any harms upon itself and did so long ago.

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<sup>3</sup> “If a legislature *or a court* declares that what was once an established right of private property no longer exists, it has taken that property, no less than if the State had physically appropriated it or destroyed its value by regulation.” *Stop the Beach Renourishment, Inc. v. Florida Dept. of Env. Pro.*, 560 U.S. 702, 715 (2010) (emphasis in original).

Ace also contends that the absence of preliminary injunctive relief would require it to terminate contracts and lose business relationships. These relationships, however, were also lost long ago as a result of Ace's abandonment of the business; and, as the testimony at the Hearing demonstrated, it was the Master Tenant and not Ace that held such relationships with customers and vendors to the hotel operation. Ace further claims that it will lose management experience gained through its involvement with the Property; but, Ace has shown no legal right under the SNDA or the HMA to be provided with such experience, and the Master Tenant is under no legal obligation to facilitate Ace's management training.

Beyond this, Ace contends that termination of its operation of the Property will result in reputational injury and loss of standing in the industry. (Pl. Reply Br. at 12). It is not, however, the obligation of Y Hotel or the Master Tenant – under the SNDA, HMA, or otherwise – to protect or develop Ace's reputation or brand, which Y Hotel and Master Tenant do not intend to use, or to somehow assure Ace's perpetual business success. Rather, it is Ace's own business conduct and the failure of its management of the hotel that have caused any reputational harm.<sup>4</sup> Moreover, the HMA is clear that any ACE Intellectual Property belongs to Ace, and the Master Tenant has no rights to that branding material and no obligation to protect it beyond the terms of the HMA, which has been terminated. (Def. Ex. 1 at 1, 2, and 54).

In sum, the only "irreparable injuries" that Ace can concoct are business interests regarding which Ace has no claim against the defendants and which support no legal claim upon which the Court could act. Nowhere in the SNDA or the HMA are the Defendants required to

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<sup>4</sup> See *Burchfield v. Com., Dept. of Ed.*, 399 A.2d 796, 797 (Pa. Commw. Ct. 1979) (damages to reputation of dismissed employee was an "external factor" that failed to give rise to cognizable irreparable injury); see also *Executive Home Care Franchising LLC v. Marshall Health Corp.*, 642 Fed. Appx. 181, 182-83 (3d Cir. 2016) (affirming denial of preliminary injunction where franchisees had ceased using franchisor's trademarks).

generally support or promote the Ace business or brand, particularly following its default under the HMA. As a result, Ace should not benefit from a mandatory preliminary injunction compelling the Defendants to protect and promote Ace's rights and interests in a brand that the Defendants are not threatening to use. Ace asks the Court to implement a drastic mandatory injunction despite having no contractual right to operate the hotel or real property interest in the Property that could support any award of specific performance.<sup>5</sup>

In short, Ace's business concerns are of its own making, support no legal claim against the Defendants, and demonstrate no threat of irreparable harm warranting a mandatory equitable remedy from the Court that would effect a taking of the Property.

**C. Issuance of Requested Injunctive Relief Would Result in Greater Injury to Y Hotel and Master Tenant and Would Disturb the Status Quo**

As was shown at the Hearing, issuance of Ace's requested mandatory injunction would cause great harm to Y Hotel and Master Tenant by disturbing the status quo that has existed since Ace abandoned the Property and hotel operation almost a year ago. In short, tying up the Property through the proposed injunction would, in essence, put Y Hotel and Master Tenant out of business and relegate them to ongoing debtor litigants in the aftermath of Ace's failed operation of the Property. In contrast, Ace would suffer no injury from the denial of its Motion given that it is not operating the hotel currently and has not done so for months.

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<sup>5</sup> In addition to recognizing a principal's right to terminate a hotel management agreement under agency law, the *FHR TB* court held that, "[u]nder New York law, a court will not compel the specific performance of a personal service contract" and Pennsylvania courts have done the same. *FHR TB*, 865 F.Supp.2d at 1204-05 (citing *In re Mitchell*, 249 B.R. 55, 59 (Bankr. S.D.N.Y. 2000)); see also *McMenamin v. Phila. Transp. Co.*, 51 A.2d 702, 703 (Pa. 1947); *Edwards v. Geisinger Clinic*, 2009 WL 585470, at \*5-6 (M.D. Pa. Mar. 6, 2009). Thus, Ace has no right to specific performance of the sort requested in its Complaint and sought on a preliminary basis in its present motion.



Ace's proposed relief requests that the Court order that: "Defendants shall (i) recognize Ace as the manager of the Hotel under the terms of the [HMA and SNDA], and (ii) confirm Ace's right to manage the Hotel and honor that right." (Pl. Motion at Proposed Order). Thus, Ace asks that the Court to affirmatively command Y Hotel and the Master Tenant to cede the Property to Ace for management as a hotel despite Ace's failure to do exactly that in accord with the HMA, leading to its termination by the Master Tenant. The command of specific performance requested by Ace but unsupported by the law, would abridge Y Hotel's free use and enjoyment of its real property, and would force the property to remain out of operation.

Finally, Ace's contention that the proposed order would restore the status quo conflicts with the evidence presented at the Hearing regarding the circumstances that have existed for roughly a year. In the summer of 2020, following the Master Tenant's April 15 Notice but long before the November 17 Notice or Termination Notice, Ace had ceased all operations at the Property and abandoned the hotel. After emptying the operating account and expending all PPP funds received by the business, Ace simply stopped managing the hotel in any fashion – whether in accord with the HMA, in an effort to cure its defaults, or otherwise.

Thus, at the time of the last status as it existed before the parties' dispute, Ace had already abandoned the Property and hotel business and had been placed in default and terminated. Thus, Ace's odd contention that the requested relief simply requests a prohibition on Ace's termination and removal is in direct conflict with the actual facts demonstrated at the Hearing. (Pl. Reply Br. at 12, n. 3). Clearly, no injunction by this Court is needed to restore the status quo, and none would be appropriate under the facts or law.

**D. The Requested Mandatory Injunctive Relief Is Unsuitable to Address the Concerns Raised by Ace and Would Harm the Public Interest**

The proposed injunctive relief is not reasonably suited to the present circumstances and would harm the public interest. While Ace claims that the injunction is well suited to its goal of enforcing the parties' agreements on the terms that it wishes, as discussed above, it is not entitled to any relief for any breaches of those agreements and has shown no right to specific performance of the sort that it has requested. Moreover, the proposed relief would not serve the public interest, as Ace has proven itself incapable of successfully operating the hotel in a fiscally responsible manner consistent with the requirements of the HMA.<sup>6</sup>

As the evidence at the Hearing demonstrated, Ace's operation of the Property has fiscally failed, the parties' business relationship has failed, and their ability to proceed forward jointly is nonexistent. As a result, rather than presenting a question of "which company manages a hotel" (Pl. Reply Br. at 12), the issuance of the proposed relief is likely to prevent the operation of a hotel, restaurant, or bar on the Property under any brand and by any management. In short, the Court's entry of the proposed order is reasonably likely to leave the Property closed to the public and a wasted commercial and community asset.

**IV. CONCLUSION**

In sum, the Court should not force Y Hotel and the Master Tenant to recognize Ace as the only possible operator of a hotel and should not command these parties to allow Ace to enter and operate the Property. Ace has demonstrated no legal entitlement to such drastic relief, it has shown no threat of irreparable harm from which applicable legal rights could protect it, and it has

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<sup>6</sup> As was argued to the court but not decided in *FHR TB, LLC*, 865 F.Supp.2d at 1216, denying the requested preliminary injunction would also serve the public interest by upholding the principal's fundamental right to terminate its agent.

asked the Court to drastically alter the status quo and dictate the commercial use of the real property at issue. Y Hotel and Master Tenant respectfully asserts that such requests are legally unfounded and that such relief is unsupported. In light of Ace's failure at the Hearing to demonstrate any cognizable remedy to which it is entitled, the Court should deny Plaintiff's Motion for Preliminary Injunction outright.

Respectfully submitted,

CLARK HILL PLC

Date: July 9, 2021

/s/ J. Alexander Hershey

J. Alexander Hershey, Esquire

Pa. I.D. No. 84741

Danny P. Cerrone, Jr., Esquire

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Y Hotel Master Tenant, LLC*

**EXHIBIT A**

**IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA**

ACE GROUP PITTSBURGH LLC,	)	CIVIL DIVISION
	)	
<i>Plaintiff,</i>	)	No. GD 21-001310
	)	
v.	)	Code: 020
	)	
Y HOTEL, LP, Y HOTEL MASTER	)	
TENANT LLC, PITTSBURGH URBAN	)	
INITIATIVES SUB-CDE 8, LP, PNC	)	
CDE 35, LP, PNC BANK, N.A., and	)	
JOHN DOE,	)	
	)	
<i>Defendants.</i>	)	

**GLOSSARY OF TERMS USED AT JUNE 22, 2021 EVIDENTIARY HEARING ON PLAINTIFF’S RENEWED MOTION FOR EMERGENCY INJUNCTIVE RELIEF**

Per the Court’s request at the June 22, 2021 hearing on Ace Group Pittsburgh, LLC’s Renewed Motion for Emergency Injunctive Relief, the following is a glossary of terms used during the hearing and in various documents offered as evidence or otherwise referred to in relation to the proceedings in the above-captioned matter.

“**Ace**” and “**Ace Group Pittsburgh, LLC**” mean the party that managed the Property as a hotel, pursuant to the Hotel Management Agreement, until the termination of the Hotel Management Agreement via the November 17, 2020 Termination Notice.

“**April 15, 2020 Notice of Default**” means an initial Notice of Default, provided to Ace Group Pittsburgh, LLC by Y Hotel Master Tenant, LLC, on the basis of numerous defaults by Ace Group Pittsburgh, LLC under the Hotel Management Agreement.

“**CDEs**” means PUI CDE and PNC CDE, collectively.

“**CDFI Fund**” means the Community Development Financial Institutions Fund, an agency of the United States Department of the Treasury.

**“Community Development Entity” (“CDE”)** means any domestic corporation or partnership where:

- (1) The primary mission of the entity is serving, or providing investment capital for, low-income communities or low-income persons;
- (2) The entity maintains accountability to residents of Low-Income Communities through their representation on any governing board of the entity or on any advisory board to the entity; and
- (3) The entity is certified by the CDFI Fund as a CDE.

**“HMA”** means The Agreement by which Ace Group Pittsburgh, LLC managed the Property as a hotel until the proper and justified termination of the Hotel Management Agreement via the November 17, 2020 Termination Notice.

**“Hotel”** means the building on the Property, which since May 2014 has variously been identified as the “Ace Hotel Pittsburgh” and the “Y Hotel”.

**“John Doe”** means a pseudonym under which Ace Group Pittsburgh, LLC sued the party with whom Y Hotel, LP had entered into a Purchase and Sale Agreement for the Property, which was ultimately by the potential buyer on the basis of, *inter alia*, the instant lawsuit.

**“Low-Income Community”** means any population census tract where:

- (1) The poverty rate for such tract is at least 20 percent; or
- (2) (a) In the case of a tract not located within a metropolitan area, the median family income for such tract does not exceed 80 percent of statewide median family income; or (b) in the case of a tract located within a metropolitan area, the median family income for such tract does not exceed 80 percent of the greater of statewide median family income or the metropolitan area median family income.”

**“Master Lease Agreement”** means the agreement through which Y Hotel, LP (as owner) leased the Property to Y Hotel Master Tenant, LLC (as tenant).

**“Master Tenant”** means Y Hotel Master Tenant, LLC, the lessee of the Hotel.

**“New Markets Tax Credit (NMTTC) Program”** means a federal financial program in the United States. It aims to stimulate business and real estate investment in low-income communities in the United States via a federal tax credit.

**“Non-Hotel Defendants”** means PUI CDE, PNC CDE, and PNC Bank, collectively, each of which is a defendant in the above-captioned proceeding.

**“November 17, 2020 Notice of Default”** means a follow-up Notice of Default, provided to Ace Group Pittsburgh, LLC by Y Hotel Master Tenant, LLC, on the basis of numerous continued, uncured defaults by Ace Group Pittsburgh, LLC under the Hotel Management Agreement.

**“November 17, 2020 Termination Notice”** means a Notice of Termination of the Hotel Management Agreement by Y Hotel Master Tenant, LLC, on the basis of numerous continued, uncured defaults by Ace Group Pittsburgh, LLC under the Hotel Management Agreement

**“Owner”** means Y Hotel, LP, the fee title owner of the Hotel and a QALICB, the lessor of the Hotel to Master Tenant, and the borrower under the QLICI Loans.

**“PNC Bank”** means PNC Bank, N.A., which was the owner of a 99% membership interest in Master Tenant between May 2014 and May 7, 2021 in order to obtain certain tax credits for which the Hotel development project was eligible.

**“PNC CDE”** means PNC CDE 35, LP, a Community Development Entity that issued QLICI Loans to Owner in connection with the development of the Hotel in May 2014, in order to obtain certain tax credits for which the Hotel development project was eligible.

**“Property”** means the real property located at 120 South Whitfield Street, Pittsburgh, Pennsylvania 15206.

**“PUI CDE”** means Pittsburgh Urban Initiatives Sub-CDE 8, LP, a Community Development Entity that issued QLICI Loans to Owner in connection with the development of the Hotel in May 2014, in order to obtain certain tax credits for which the Hotel development project was eligible.

**“QLICI Loans”** means (collectively) (1) the QLICI loans issued by PUI CDE to Owner in the total principal amount of \$11,155,000, and (2) the QLICI loans issued by PNC CDE to Owner in the total principal amount of \$5,600,000.

**“Qualified Active Low-Income Community Business” (“QALICB”)** means any corporation (including a nonprofit corporation) or partnership where:

- (1) At least 50 percent of the total gross income of such entity is derived from the active conduct of a qualified business within any Low-Income Community;
- (2) A substantial portion of the use of the tangible property of such entity (whether owned or leased) is within any Low-Income Community; and
- (3) A substantial portion of the services performed for such entity by its employees are performed in any Low-Income Community.

**“Qualified Low-Income Community Investments” (“QLICI”)** means:

- (1) Any capital or equity investment in, or loan to, any QALICB;
- (2) The purchase from a CDE of any loan made by such entity that is a QLICI;
- (3) Financial counseling and other services to businesses located in, and residents of, Low-Income Communities; or
- (4) Any equity investment in, or loan to, any CDE.

**“SNDA”** means An agreement between Ace Group Pittsburgh, LLC and Y Hotel, LP, Y Hotel Master Tenant, LLC, PNC Bank, N.A., PNC CDE 35, LP and Pittsburgh Urban Initiatives Sub-CDE 8, LP, upon which Ace Group Pittsburgh, LLC purported to base its claims in the Complaint in Equity. Section 3(a) of the SNDA provides the only circumstances under which the rights of Ace Group Pittsburgh, LLC are protected—in the event of a foreclosure of the



relevant security instruments, a deed in lieu of foreclosure, or an “action by Lender to pursue its rights under the Security Instrument.” To be applicable, all of these “Events of Transfer” require that Ace Group Pittsburgh, LLC not be in default under the Hotel Management Agreement. None of these Events of Transfer occurred, and Ace Group Pittsburgh, LLC was in default under the Hotel Management Agreement. Accordingly, Section 3(a) of the SNDA does not apply and the rights of Ace Group Pittsburgh, LLC are not protected.

**“Y Hotel Leveraged Lender, LLC”** means the entity that advanced the Leverage Loan to the Ace Hotel Investment fund, such funds then being advanced to the CDEs and from the CDEs to Y Hotel LP in the form of the QLICI loans for the purpose of redeveloping the Property.

**“Y Hotel, LP”** means the fee simple owner of the Property.

**“Y Hotel Master Tenant, LLC”** means the tenant of the Property pursuant to a certain Master Lease Agreement, and the party that entered into (and ultimately terminated) the Hotel Management Agreement with Ace Group Pittsburgh, LLC.

**EXHIBIT B**



**CERTIFICATE OF COMPLIANCE**

The undersigned hereby certifies that this filing complies with the provisions of the Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts that require filing confidential information and documents differently than non-confidential information and documents.

Respectfully submitted,

CLARK HILL PLC

Date: July 9, 2021

/s/ J. Alexander Hershey

J. Alexander Hershey, Esquire

Pa. I.D. No. 84741

Danny P. Cerrone, Jr., Esquire

Pa. I.D. No. 201091

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing  
**WRITTEN CLOSING STATEMENT ON MOTION FOR PRELIMINARY INJUNCTION  
OF DEFENDANTS Y HOTEL, LP, AND Y HOTEL MASTER TENANT, LLC** has been  
served upon counsel of record this 9<sup>th</sup> day of July, 2021, by electronic mail and U.S. Mail, first  
class, postage prepaid, as follows:

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