

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
35, LP, PNC BANK, N.A., and JOHN
DOE,

Defendants.

CIVIL DIVISION

No. GD-21-001310

**BRIEF IN SUPPORT OF PLAINTIFF'S
RENEWED EMERGENCY MOTION FOR
PRELIMINARY INJUNCTIVE RELIEF**

Filed on Behalf of Plaintiff:
Ace Group Pittsburgh, LLC

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CERTIFICATE OF COMPLIANCE

I certify 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.



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ACE GROUP PITTSBURGH LLC,
Plaintiff,

CIVIL DIVISION

No. GD 21-001310

v.

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,
Defendants.

**BRIEF IN SUPPORT OF PLAINTIFF'S RENEWED EMERGENCY MOTION FOR
PRELIMINARY INJUNCTIVE RELIEF**

I. INTRODUCTION

Plaintiff Ace Group Pittsburgh LLC (“**Ace**”) seeks a preliminary injunction to protect its right to manage the Ace Hotel Pittsburgh (“**Hotel**”). As set forth more fully below, this Honorable Court should issue a preliminary injunction because all six of the requirements established by the Pennsylvania Supreme Court for the issuance of preliminary injunctive relief are met.

First, the injunction is necessary to prevent immediate and irreparable harm that cannot be adequately compensated by damages. Without injunctive relief, Ace understands that it will be replaced as manager of the Hotel on or about May 28, 2021 based upon the May 21, 2021 letter from Defendant Y Hotel, LP stating as such (**Exhibit A**), despite Ace’s contractual right to continue managing the Hotel through 2034, at the earliest. The improper termination of Ace’s contract and right to manage the Hotel will damage Ace’s reputation in a way that is not entirely ascertainable and thus not compensable by money damages.

Second, greater injury would result from refusing the injunction than from granting injunctive relief. Indeed, Defendants would not suffer any cognizable injury if the injunction is granted, while Ace would suffer irreparable injury if it is replaced as the manager of the Hotel.

Third, the injunction would restore the parties to their status as it existed before the wrongful conduct occurred. Ace has been managing the Hotel since 2014 and would continue to manage the Hotel if the injunction is granted.

Fourth, Ace is likely to prevail on the merits. Under the parties' Subordination, Nondisturbance and Attornment Agreement ("SNDA"), Defendants Y Hotel, LP, Y Hotel Master Tenant LLC, Pittsburgh Urban Initiatives Sub-CDE 8, LP, PNC CDE 35, LP, PNC Bank, N.A. are specifically prohibited from replacing Ace as the manager of the Hotel due to the Hotel owner's failure to make loan payments. That is exactly what these Defendants plan to do here, which would be a breach of their obligations under the SNDA.

Fifth, the injunction is reasonably suited to abate the offending activity. By requiring Defendants to recognize Ace as the manager, the injunction would simply enforce the parties' agreements as written.

Sixth, a preliminary injunction will not adversely affect the public interest. The public interest would not be impacted by Ace remaining as the manager of the Hotel.

II. FACTUAL BACKGROUND

A. Defendants Agreed to Ace's Management of the Hotel Through 2034.

There are three groups of Defendants in this case: the owners of the Hotel, the lenders for the Hotel, and the proposed buyer of the Hotel. As discussed more fully below, the owners and the lenders have explicitly agreed that Ace has the right to manage the Hotel through at least 2034 (provided Ace complies with its contractual obligations). *See* Verified Complaint in Equity ("**Complaint**"), Ex. A.

Defendant Y Hotel, LP ("**Owner**") is the fee title owner of the land on which the Hotel sits. *See* Complaint, ¶ 14. On or about May 29, 2014, Owner (as landlord) and Y Hotel Master

Tenant LLC (“**Master Tenant**”) (as tenant) entered into a master lease agreement (the “**Master Lease Agreement**”), pursuant to which Owner leased the premises to Master Tenant. *Id.* ¶ 15.

On or about May 30, 2014, Ace and Master Tenant executed a Hotel Management Agreement (“**HMA**”) with an initial term of twenty (20) years. *Id.* ¶ 18 and ¶ 20; *id.* Ex. A at § 3.1. Around that same time, Owner, Master Tenant, and the lenders for the Hotel entered into the SNDA, which protects Ace’s right to manage the Hotel for the full term of the HMA if Owner defaults on its loans. *Id.* ¶ 23; *id.* Ex. B.

Specifically, subsection 3(a) of the SNDA provides that in the event of a conveyance of the Hotel or the Master Lease Agreement in lieu of foreclosure or any action by the lenders to pursue their rights under the Security Instrument, then provided Ace is not in default under the HMA (beyond any period given to Ace to cure such default), the rights of Ace under the HMA “*shall not be disturbed*” and the purchaser of the Hotel or transferee of the Master Lease Agreement “*shall fully and completely recognize*” Ace as the manager of the Hotel under the HMA “for the balance of the term (and any renewal terms) thereafter accruing in accordance with the terms and conditions therein provided.” *See* Complaint, Ex. B at § 3(a) (emphasis added). Subsection 3(a) of the SNDA further provides that its provisions “shall be effective and self-operative without the execution of any further instrument.” *Id.*

B. Defendants Have Coordinated the Imminent Reopening of the Hotel in Violation of Ace’s Contractual Rights.

In or around January 2020, Owner defaulted on its loans from Defendants Pittsburgh Urban Initiatives Sub-CDE 8, LP and PNC CDE 35, LP (together, “**Lenders**”). *See* Complaint ¶ 27. Defendants recently attempted to sell the Hotel to recover the amounts loaned to Owner. *Id.* ¶ 30. It is believed, and therefore averred, that Lenders will receive most, if not all of the proceeds from a sale. *Id.*

In November 2020, and despite the language in the HMA and SNDA to the contrary, Master Tenant sent Ace an alleged notice of termination of the HMA, purporting to terminate the HMA based on Ace's alleged uncured defaults. *Id.* ¶ 28. However, those allegations were without merit because Ace has complied with its contractual obligations. *Id.* ¶ 29. The real purpose of the notice of termination was to try to facilitate a sale of the Hotel. *Id.* ¶ 31.

On May 21, 2021, Owner announced in a letter to the Court that it plans to reopen the Hotel as an independent hotel that is open to the public on or about May 28, 2021. *See* Exhibit A. As a result of the foregoing, Plaintiff is requesting the relief herein on an emergency basis to prevent the immediate and irreparable harm caused by the reopening of the Hotel under new management and ultimate termination of the HMA.

III. ARGUMENT

A. Legal Standard.

It is well established under Pennsylvania law that are six “essential prerequisites” that a party must establish prior to obtaining preliminary injunctive relief. *See Warehime v. Warehime*, 860 A.2d 41, 46 (Pa. 2004), citing *Summit Towne Ctr. v. Shoe Show of Rocky Mount, Inc.*, 828 A.2d 995, 1001 (Pa. 2003). First, a party seeking a preliminary injunction must show that an injunction is necessary to prevent immediate and irreparable harm that cannot be adequately compensated by damages. *Id.* Second, the party must show that 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. *Id.* Third, the party must show that a preliminary injunction will properly restore the parties to their status as it existed immediately prior to the alleged wrongful conduct. *Id.* Fourth, the party seeking an injunction must show 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. *Id.* Fifth,

the party must show that the injunction it seeks is reasonably suited to abate the offending activity. *Id.* Sixth, and finally, the party seeking an injunction must show that a preliminary injunction will not adversely affect the public interest. *Id.*

B. An Injunction is Needed to Prevent Immediate Reputational Harm to Ace that Cannot be Adequately Compensated by Damages.

The first prong of the *Summit Towne Centre* standard is met because the proposed reopening of the Hotel under new management is imminent, and that reopening will damage Ace's reputation in a way that cannot be adequately compensated by damages. *See* Complaint, ¶¶ 33 and 39. Ace will be forced to improperly terminate customer contracts, lose significant customer relationships and will lose reputational standing in the industry if it is replaced as the manager of the Hotel. *Id.* ¶ 39. In addition to the foregoing, Ace will also lose the considerable benefits it receives merely from the additional management experience gained through its involvement with the Hotel. *Id.* These matters were the basis and consideration for entering into the long-term HMA with the Defendants. Termination of this relationship will damage Ace in a way that cannot be adequately compensated by damages. *Id.* As such, it is impossible to quantify how many current and future customers Ace will lose without an injunction. *Id.*

Pennsylvania law recognizes that a preliminary injunction is appropriate in this context. *See Kessler v. Broder*, 851 A.2d 944, 951 (Pa. Super. 2004) ("Extant case law makes clear that the impending loss of a business opportunity or market advantage may aptly be characterized as an 'irreparable injury' for this purpose, i.e. for the purpose of a preliminary injunction"); *John G. Bryant Co. v. Sling Testing & Repair, Inc.*, 369 A.2d 1164, 1167 (Pa. 1977) (possible interference with customer relationships is "unascertainable and not capable of being fully compensated by money damages"); *Ambrogi v. Reber*, 932 A.2d 969, 978 n. 5 (Pa. Super. 2007) ("An injury is 'irreparable,' as that term is contemplated in the context of a preliminary injunction, if it will cause

damage which can be estimated only by conjecture and not by an accurate pecuniary standard”). Thus, it is impossible to determine the extent of the reputational damage to Ace and how many customers Ace will lose. As a result, Ace satisfies the first prong of the *Summit Towne Centre* standard and an injunction is necessary to prevent immediate and irreparable harm that will therefore be suffered by Ace and which cannot be adequately compensated by damages.

C. Greater Injury Would Result from Refusing the Injunction Than From Granting Injunctive Relief.

Under the second prong of the prevailing standard, the aggrieved party must show that 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. *Summit Towne Ctr.*, 828 A.2d at 1001. As discussed above, without the issuance of an injunction, Ace will be replaced as the manager, thereby suffering immediate and irreparable injury. On the other hand, if injunctive relief is granted, Defendants will not suffer any cognizable injury. They would simply be required to comply with their contractual obligations as originally agreed to by the parties. As Ace has met the standard for establishing the second requirement of the *Summit Towne Centre* standard, Ace respectfully requests this Honorable Court grant the requested preliminary injunctive relief.

D. The Injunction Will Restore the Parties to Their Status as it Existed Before the Wrongful Conduct Occurred.

The *Summit Towne Centre* Court required that the aggrieved party show that a preliminary injunction will properly restore the parties to their status as it existed immediately prior to the alleged wrongful conduct. *Summit Towne Ctr.*, 828 A.2d at 1001. Ace has managed the Hotel since 2014. *See* Complaint, ¶ 23. Ace and Defendants contractually agreed that Ace had the right to manage the Hotel for a term of 20 years. *See* Complaint, ¶ 20. Defendants are attempting to renege on the contractual agreements and improperly terminate Ace’s involvement and management of

the Hotel. By issuing the requested injunction, the Court will allow Ace to maintain its current role as the manager of the Hotel pursuant to the parties' original intention and agreement, thereby restoring the parties to their status as it existed before Defendants' wrongful conduct. *See Valley Forge Historical Soc. v. Washington Mem'l Chapel*, 426 A.2d 1123, 1129 (Pa. 1981) ("The status quo to be maintained by a preliminary injunction is the last actual, peaceable and lawful noncontested status which preceded the pending controversy.") Therefore, Ace has met the standard for establishing the third requirement of the *Summit Towne Centre* standard, and respectfully requests this Honorable Court grant the requested preliminary injunctive relief.

E. Ace is Likely to Prevail on the Merits Based on the Express Terms of the SNDA.

The Pennsylvania Supreme Court requires that the party seeking an injunction must show 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. *Summit Towne Ctr.*, 828 A.2d at 1001. It is clear that the SNDA protects Ace's right to manage the Hotel for the full term of the HMA in the event the Owner defaults on its loans. *See* Complaint, Ex. B at § 3(a). Now, not even halfway through the initial term of the HMA, the Owner has defaulted on its loans. *Id.*, ¶ 30. Owner and Lenders, however, are not recognizing Ace as the manager of the Hotel despite their contractual obligations to do so. This is the exact scenario that the SNDA was designed to prevent. *Id.*, Ex. B at § 3(a) ("the rights of Ace under the HMA "***shall not be disturbed***" and the purchaser of the Hotel or transferee of the Master Lease Agreement "***shall fully and completely recognize***" Ace as the manager of the Hotel under the HMA "for the balance of the term (and any renewal terms) thereafter accruing in accordance with the terms and conditions therein provided.") (emphasis added). Thus, based on the express terms of the SNDA, the Defendants' wrongful conduct is actionable, Ace's right to relief is clear, and Ace is likely to prevail on the merits. *See*

Santoro v. Morse, 781 A.2d 1220, 1228 (Pa. 2001) (Pennsylvania courts may enjoin wrongful breaches of contract). As such, since Ace has established its rights under the fourth prong of the *Summit Towne Centre* standard, it is entitled to injunctive relief.

F. The Injunction is Reasonably Suited to Abate the Offending Activity Because it Merely Requires Compliance with the Parties' Contracts.

The fifth requirement for injunctive relief is that the aggrieved party must show that the injunction it seeks is reasonably suited to abate the offending activity. *Summit Towne Ctr.*, 828 A.2d at 1001. The requested injunction is seeking to merely order Defendants to recognize Ace as the manager of the Hotel—a recognition that the Defendants have already contractually agreed to (and has been the status quo since 2014). *See* Complaint, Ex. B at § 3(a). This injunction is reasonably tailored to abate Defendants' contractual breaches. It is simply requiring Defendants to comply with their contractual obligations to Ace. *See The York Grp., Inc. v. Yorktowne Caskets, Inc.*, 924 A.2d 1234, 1244–45 (Pa. Super. 2007) (injunction to prevent contractual violations was reasonably suited to abate offending activity). Ace is not requesting anything beyond what it originally bargained for when agreeing to take on the management of the Hotel. Thus, Ace has met the standard for establishing the fifth requirement of the *Summit Towne Centre* standard, and respectfully requests this Honorable Court grant the requested preliminary injunctive relief.

G. Ace Remaining as Manager of the Hotel will Not Adversely Affect the Public Interest.

Lastly, the party seeking an injunction must show that a preliminary injunction will not adversely affect the public interest. *Summit Towne Ctr.*, 828 A.2d at 1001. Here, the issuance of an injunction and Ace remaining as the manager of the Hotel pursuant to its contractual rights would not impact the public interest. *See The York Grp., Inc.*, 924 A.2d at 1245 (“We find no evidence in the record to support a claim that the issuance of this preliminary injunction will in

any way harm the public interest.”). Thus, Ace has met the sixth and final requirement for injunctive relief under *Summit Towne Centre* standard.

IV. CONCLUSION

For the foregoing reasons, and having met all six requirements under the standard set forth by the Pennsylvania Supreme Court, Plaintiff requests that this Honorable Court **grant** Ace’s motion for preliminary injunction.

Dated: May 24, 2021

Respectfully submitted,

STRASSBURGER McKENNA GUTNICK
& GEFSKY

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May 21, 2021

Via Electronic Mail (mary_hicks@allegheycourts.us, kbarber@allegheycourts.us, and ayuill@allegheycourts.us)

The Honorable Christine A. Ward
Court of Common Pleas of
Allegheny County
819 City-County Building
414 Grant Street
Pittsburgh, PA 15219

Re: *Ace Group Pittsburgh, LLC v. Y Hotel, LP, et al.*
Court of Common Pleas of Allegheny County, PA
Case No. GD-21-001310

Dear Judge Ward:

This correspondence follows the hearings and status conferences before the Court in the above-captioned matter, wherein the undersigned counsel for Defendants, Y Hotel LP and Y Hotel Master Tenant LLC, represented, in response to an inquiry from the Court, that the property subject to the above-captioned matter is not under agreement of sale, no sale of that property is imminent and the property is not being actively marketed for sale. Such representations remain true and accurate.

In the interest of transparency, Y Hotel LP is providing notice to the Court and, by copy of this correspondence, all counsel of record that, on or around May 28th, 2021, Y Hotel LP intends to independently operate and manage its property as an independent hotel that is open to the public.

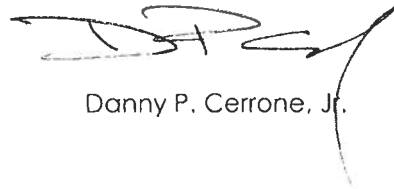


The Honorable Christine A. Ward
May 21, 2021
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Thank you for your consideration in this matter.

Sincerely,

CLARK HILL PLC

A handwritten signature in black ink, appearing to read "DPC", with a long, sweeping vertical line extending downwards from the end of the signature.

Danny P. Cerrone, Jr.

DPC/tjr

cc Gretchen E. Moore, Esq. (Via Email)
Andrew J. Muha, Esq. (Via Email)
Douglas M. Hance, Esq. (Via Email)


CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing **Brief in Support of Plaintiff's Renewed Emergency Motion for Preliminary Injunctive Relief** was served via electronic mail, this 24th day of May 2021, on the following:

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