

ORIGINAL

Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

PRESENT: HON. TIMOTHY J. DUFFICY
Justice

PART 35

-----X
ROCKWOOD PARK JEWISH CENTER

Plaintiff(s),

Index No.: 703608/13

-against-

Mot. Seq. 2

**J&M CATERING INC. D/B/A CROWN
ROYALE CATERERS, JOSHUA GURELL
AND MYRON GURELL AND JOHN DOE #1
TO JOHN DOE #10,**

Defendant(s).

-----X
The following papers numbered EF 2-24 read on this application by **J&M CATERING INC.** for an order granting it a preliminary injunctive relief enjoining the plaintiff from terminating the license agreement between the parties.

	<u>PAPERS NUMBERED</u>
Order to Show Cause-Affirmation-Exhibits	EF 2-16
Affirmation in Opposition-Exhibits	EF 17-21

Upon the foregoing papers, it is ordered that defendant **J&M CATERING INC.'s** motion is denied in all respects.

The plaintiff brings this action for breach of seeking to terminate a license agreement between the parties. Defendant J&M Catering Inc. moves by order to show cause to prevent the plaintiff from terminating their agreement.

The application must be denied in all respects. It is beyond cavil that in order to obtain preliminary injunctive relief, a movant must demonstrate, by clear and convincing evidence, (1) a likelihood of success on the merits, (2) irreparable injury absent a preliminary injunction, and (3) a balancing of the equities in the movant's favor (see CPLR 6301; Aetna Ins. Co. v Capasso, 75 NY2d 860, 862 [1990]; Arcamone-Makinano v

FILED

JAN 08 2014

**COUNTY CLERK
QUEENS COUNTY**

Britton Prop., Inc., 83 AD3d 623, 624 [2d Dept. 2011]; Evans-Freke v Showcase Contr. Corp., 3 AD3d 549 [2d Dept. 2004]; see W.T. Grant Co. v Srogi, 52 NY2d 496, 517 [1981]; Petervary v Bubnis, 30 AD3d 498 [2d Dept. 2006]). The decision whether to grant or deny a preliminary injunction rests in the sound discretion of the Supreme Court (see Doe v Axelrod, 73 NY2d 748, 750 [1988]; Rowland v Dushin, 82 AD3d 738, 739 [2d Dept. 2011]).

On this record, the defendant failed to establish a clear right to relief under the foregoing standard (see Schweizer v Town of Smithtown, 19 AD3d 682 [2d Dept. 2005]; Evans-Freke v Showcase Contr. Corp., *supra*; Global Option Logistics, LLC v Choice Global Options, Inc., 37 AD3d 407, 407-408 [2d Dept. 2007]).

The moving defendant has failed to show a likelihood of success on the merits. It is apparently in arrears in its payment of license fees, taxes, and utility charges. In addition, the plaintiff has proffered disturbing evidence to the effect that the unauthorized sale of alcoholic beverages has taken place on the premises, along with activities which are inconsistent with those associated with a place of worship. Thus, the equities to not balance in the movant's favor. Any injury to defendant J&M Catering Inc. is attributable, in this Court's view, to its own breach of its obligations under its agreement.

Accordingly, based upon the foregoing, the motion is denied in all respects.

This constitutes the opinion, decision and order of the Court.

Dated: December 20, 2013



TIMOTHY J. DUFFICY, J.S.C.