

1605 SANSOM LIQUOR, LLC d/b/a
MEDIUM RARE SANSOM STREET

Plaintiff
Counterclaim Defendant

v.

G2S2 ASSOCIATES, L.P.

Defendant
Counterclaim Plaintiff
Third Party Plaintiff

v.

GET SOME FOOD GROUP, LLC

Third-Party Defendant

COURT OF COMMON PLEAS

PHILADELPHIA COUNTY

JULY TERM 2013
NO. 004373

COMMERCE PROGRAM

OPINION

This action for a special injunction and a preliminary injunction was brought by plaintiff/tenant 1605 Sansom Liquor d/b/a/Medium Rare Sansom Street, a company who owns a restaurant in Washington, D.C. and is hoping to duplicate its trade name and format in Philadelphia as a first step to developing a restaurant chain. Plaintiff is requesting specific performance of a lease it entered into with G2S2 Associates. The court heard testimony on December 5, 2013 and took the matter under advisement. The court denies the request for a special and preliminary injunction finding that the evidence presented at the hearing demonstrated that the plaintiff's right to relief is not clear and that if plaintiff does establish a right to relief at a later stage of this litigation, it may be fully compensated by monetary damages.

Background

The defendant/landlord is who built, owns and is the landlord of retail space on the ground floor of a newly constructed apartment building in the 1600 block of Sansom Street, in Philadelphia that plaintiff seeks to occupy.

Tenant and landlord entered into a lease under which the Medium Rare restaurant would occupy 2700 square feet of the ground floor retail space. The landlord thought it was vital to have a restaurant up and running as tenants began to move in to the new apartments on the upper floors. Construction of Medium Rare was delayed, and the landlord eventually declared a default of the lease, terminated the lease, and entered into a new lease with another restaurant.

The retail space at 1605 Sansom Street was brand new unfinished construction. The landlord had to complete a good deal of basic construction, such as laying a slab floor, installing mechanical systems before the tenant could begin the decorative and finishing work required to open a business.

When the parties signed the lease in the instant case, they both understood that they would work together to finish all construction in time for a Labor Day 2013 opening. To that end, the landlord's construction manager, James Pearlstein principal owner of the landlord firm, and Mark Bucher the manager of Medium Rare consulted on a regular basis in an effort to meet the deadline.

Construction delays arose, however, when the tenant wanted to install a particular type of façade along the street front which would cause the landlord's construction costs to go over budget. The landlord did not object to the tenant's proposed façade, but asked the tenant to make up the cost differential or to come up with something less expensive. This seems to have initiated a series of attempts by the tenant to have his architects come up with a less expensive alternative.

The tenant's architect drew up building plans, and the landlord's contractor submitted them to L & I, where, they were approved after some revisions. The plans did not, however, include detailed specifications for the façade construction and the landlord claims that it could not begin basic construction, such as laying the slab floor, without specific details regarding the façade. Given

these lapses, the landlord did not believe that any possibility of opening a restaurant by the time tenants began occupying the above apartments. The landlord declared a default and terminated the lease, and signed a new lease with a local restaurant owner/operator.

The landlord claimed that it was made clear before the lease was signed that time was of the essence because the new tenants expected a restaurant, and because unfinished space in an urban area presents problems with vermin and security. Conversely, the tenant claims that it gave the landlord sufficient plans in a timely manner as required under the terms of the lease.

The tenant also asserts that the location, demographics, and proximity of 1605 Sansom Street to client-generating commercial activity to Medium Rare make the site unique and that specific performance of the lease is necessary to redress the breach of the lease. The tenant further claims that if construction to the specifications of the new tenant is allowed to proceed, it will diminish the likelihood that the tenant will be able to obtain specific performance at a later date.

The landlord's principal and the tenant's realtor testified that there are other viable restaurant sites available in Philadelphia even if Medium Rare confines its search to the Rittenhouse Square area of Center City Philadelphia.

Discussion

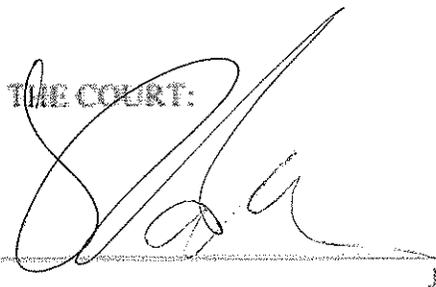
The grant of a preliminary or special injunction is confined to cases where there is no other viable of redress. Therefore, a moveant is required to produce evidence that 1) the injunction is necessary to prevent immediate and irreparable harm that would not be adequately compensated by monetary damages; 2.) greater injury would result from refusing an injunction than from granting it; 3.) the injunction is necessary to restore the parties to their status as it existed immediately prior to the alleged wrongful conduct; 4.) likelihood of success on the merits; 5.)

the injunction is a remedy reasonably suited to redress the injury; and 6.) it does not offend the public interest. *The York Grp., Inc. v. Yorktowne Caskets, Inc.* 924 A.2d 1234 (Pa. Super. 2007). There are factors which make the granting of injunctive relief inappropriate in the instant case. First, the likelihood of success on the merits is not entirely clear. Second, the tenant's principal, Mark Bucher, testified quite clearly that a restaurant operating on the model established for Medium Rare is expected to generate \$40,000 per month in profits. Therefore, if the plaintiff prevails, it could be adequately compensated by monetary damages pegged to a starting date, and adjusted for mitigation based on plaintiff's search for a substitute site. Finally, the court was not persuaded that the retail space at 1605 Sansom Street was unique or that no other space existed that would satisfy plaintiff's requirements.

ORDER

AND NOW, this 10 day of December, 2013, upon consideration of Medium Rare Sansom Street's Motion for Preliminary Injunction and GZS2 Associates, L.P.'s Response thereto, it is hereby ORDERED that the Motion for Preliminary Injunction is DENIED.

BY THE COURT:



A handwritten signature in black ink, appearing to be 'J. J.', is written over a horizontal line. The signature is stylized and cursive.