

<b>Hutcher v Madison Sq. Garden Entertainment Corp.</b>
2022 NY Slip Op 33853(U)
November 14, 2022
Supreme Court, New York County
Docket Number: Index No. 653793/2022
Judge: Lyle E. Frank
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. LYLE E. FRANK PART 11M

Justice

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INDEX NO. 653793/2022

MOTION DATE N/A

MOTION SEQ. NO. 001

LARRY HUTCHER, JEFFREY CITRON, SID DAVIDOFF, HOWARD WEISS, IAN BRANDT, LESLIE BARBARA, CHARLES CAPETANAKIS, ADAM CITRON, ROBERT COSTELLO, SEAN CROWLEY, ARTHUR GOLDSTEIN, PATRICIA GRANT, CHARLES KLEIN, JOSH KRAKOWSKY, GARY LERNER, ELLIOT LUTZKER, WILLIAM MACK, STEVE MALITO, HOWARD PRESANT, ERIC PRZYBYLKO, ROBERT RATTET, PETER RIPIN, MARTIN SAMSON, STEVE SPANOLIOS, WILLIAM WALZER, MICHAEL WEXELBAUM, DEREK WOLMAN, JUDITH ACKERMAN, NICK ANTENUCCI, MYRON RABIJ, ASHWINI JAYARATNAM, ALEXANDER MCBRIDE, RICHARD WOLTER, STEVEN APPELBAUM, MAX DUVAL, ELI GEWIRTZ, DANIEL GOLDENBERG, CAROLINE HALL, MICHAEL KATZ, DAVID LEVINE, BENJAMIN NOREN, FEDERICA PANTANA, JOSEPH POLITO, ASHWANI PRABHAKAR, NICOLE SANTO, MICHAEL APPELBAUM, JAMES GLUCKSMAN, JOSEPH ASIR, HENRY CITTONE, JOHN CORRIGAN, WILLIAM COX, JOHN KIERNAN, ROBERT LEVINE, MARK SPUND, NICHOLAS TERZULLI, ALEXANDER VICTOR, DAVIDOFF HUTCHER & CITRON, LLP

DECISION + ORDER ON MOTION

Plaintiff,

- v -

MADISON SQUARE GARDEN ENTERTAINMENT CORP., HAROLD WEIDENFELD,

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 59, 60, 61, 62, 63

were read on this motion to/for INJUNCTION/RESTRAINING ORDER.

Upon the foregoing documents and after oral argument the plaintiffs' order to show cause for a preliminary injunction is granted in part. The Court first notes that it appears that the plaintiffs are no longer challenging the ability of the defendants to not sell tickets to the plaintiffs or to revoke tickets previously sold except for a small carve out just before the event in question;

thus, that part of the plaintiffs' order to show cause is denied. The plaintiffs however are continuing to challenge the defendants' ability to refuse admittance to certain locations when one or more of the plaintiffs have a valid ticket. This challenge is in the plaintiff's complaint as its third cause of action, and is in the instant order to show cause as iii.<sup>1</sup>

The plaintiffs' remaining contention is granted for the reasons indicated below. The Court agrees with the plaintiffs' interpretation of Civil Rights Law Section 40(b). That statute is clear. If a person is 21 or older and behaves appropriately at certain venues set forth in this statute, they cannot be denied entry to the event. This is clearly an exception to the common law ability of owners of certain private venues from excluding others. The Court agrees with plaintiffs that there are no qualifications as to this statute. The statute allows for such entry a reasonable time before the event to start. The Court interprets that to meet once the doors of the location are open to the general public.

The Court is also not convinced by the defendants' argument that plaintiff do not have a private right of action. As defendant's counsel himself acknowledged, a private right of action for injunctive relief is still available when the person seeking such an injunction can demonstrate irreparable harm will result. The Court has previously held that irreparable harm would result without a injunctive relief, due to the intangible of being able to see a unique theatrical performance. The Court takes judicial notice that there is only one Radio City Music Hall, one Beacon Theater, and only one Madison Square Garden. As such, the plaintiff is entitled to injunctive relief. The Court also believes that the balance of the equities continues to favor plaintiffs for the reasons previously indicated by this Court, that there appears to be no rational basis for the policy instituted by the defendants except to dissuade attorneys from bringing suit

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<sup>1</sup> The Court will not address defendant's contention if a manufactured emergency. There were apparently tickets in question for an event on November 10. As that date has come and gone, that issue is moot.

against them. The concern that the defendants could be prejudiced by allowing attorneys who are representing those who have brought action against the defendant to attend events with thousands of other people is unavailing to this Court.

Based on the foregoing, the plaintiffs may not be denied entry into any shows where they possess a valid ticket (valid notwithstanding the policy of defendants), regardless of who purchased such tickets, for Radio City Music Hall, the Beacon Theater, the Hulu Theater at Madison Square Garden, and Madison Square Garden itself when there are concerts scheduled.<sup>2</sup>

Notwithstanding the above, the defendant may refuse to sell tickets to the plaintiffs, and may revoke tickets of the plaintiffs up until the time they present such tickets for entry into the locations and for the events listed above.

The Court has reviewed the remaining contentions of the parties and find them unavailing. Based on the foregoing, it is hereby

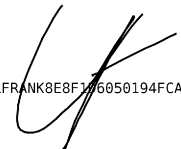
ORDERED that plaintiffs' order to show cause is granted in part in that the defendants are enjoined from denying access to a person presenting a valid ticket in the day of an event after the venue opens to the public at Radio City Music Hall, the Beacon Theater, the Hulu Theater at Madison Square Garden, and Madison Square Garden when such venue is holding a theatrical performance or a musical concert; and it is further

ADJUDGED that the remainder of the relief sought in the order to show cause is denied.

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<sup>2</sup> Civil Rights Law Section 40(b) explicitly lists the types of performances that are subject to this law. Sporting events are not covered by this statute. As such, there is no basis for enjoining the defendants from denying access to the plaintiffs for sporting events. The only events at Madison Square Garden proper that are subject to this statute at present are theatrical performances and musical concerts. Whole the other locations would require access for all events, these locations would also be limited to events that fall within 40(b).

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11/14/2022  
DATE

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LYLE E. FRANK, J.S.C.

CHECK ONE:

CASE DISPOSED

GRANTED

DENIED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: